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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2073**

Dwayne Cunningham,
Appellant,

vs.

HealthEast St. Joseph's Hospital,
Respondent.

**Filed June 22, 2010
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. 62CV0811380

Michael J. Fay, David M. Langevin, McSweeney & Fay P.L.L.P., Minneapolis,
Minnesota (for appellant)

Mark R. Whitmore, Jonathan P. Norrie, Charles E. Lundberg, Bassford Remele P.A.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Connolly, Judge; and
Muehlberg, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges summary judgment dismissing his tort claims against
respondent hospital based on statutory immunity, arguing that immunity does not apply

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

and that material fact questions exist that make summary judgment inappropriate. We affirm.

FACTS

In the early morning hours of June 26, 2008, appellant Dwayne Cunningham and his wife arrived at the emergency room of respondent HealthEast St. Joseph's Hospital (the hospital). Cunningham—who has a history of violence to himself and who had previously been diagnosed with and treated for bipolar disorder and antisocial personality disorder—reported that he was experiencing “racing thoughts . . . that lead[] to thoughts of suicide” and stated that he needed to talk to someone in the mental-health department. Cunningham was shown to an examination room in the emergency department where he was interviewed by hospital social worker, Elizabeth Northrup. According to Cunningham, Northrup had only a brief conversation with him and then left.

There is a factual dispute about whether anyone else met with or evaluated Cunningham. Dr. Robert Kile, the attending physician in the hospital's emergency room that morning, testified in his deposition that he met with Cunningham and his wife after the initial intake; ordered some medical tests on Cunningham; consulted with Northrup while the tests were performed; reviewed the test results; and signed a 72-hour hold on Cunningham. Cunningham, however, denies that anyone other than Northrup met with him: he asserts that he was left alone with his wife in the examination room for over an hour before he decided to go outside to smoke a cigarette. Cunningham asserts that he was not served with a hold and was not informed that a hold had been placed on him.

Northrup testified in her deposition that she served the hold on Cunningham, that he became agitated when he learned that his wife could not stay with him, and that he stated that he was going to leave and that no one was going to stop him. Northrup testified that she alerted the staff that there was a hold on Cunningham, and he was attempting to leave. As Cunningham walked through the lobby toward the exit, a nurse attempted to stop him and hospital security officer Simone Megas grabbed Cunningham by the arm and physically prevented him from leaving the hospital. Both the nurse and Megas had been told, and believed, that there was a hold on Cunningham.

Hospital security officer Terry Santori arrived on the scene to assist. According to Santori, nurses informed him that Cunningham was on a hold and was not allowed to leave. Cunningham was physically escorted back to the examination room where a scuffle ensued and at some point Cunningham was on the floor. According to Cunningham, while he was on the ground, Officer Megas had a hold of his right foot and, as a result, his foot was twisted, causing it to break. The hospital's expert, Dr. William T. Simonet, opines that a lis franc fracture cannot occur by the manual twisting of the foot described by Cunningham.

Cunningham was subsequently arrested by St. Paul Police. Before police removed Cunningham from the hospital, his right foot was examined and it was determined that he suffered a lis franc fracture. Cunningham has since undergone multiple surgeries related to the fracture. Cunningham's physician, Dr. Patrick Yoon, who treated Cunningham's foot injury, believes that Cunningham is likely to have some significant permanent injury, disability, and damages resulting from the fracture.

Cunningham sued the hospital under a theory of respondeat superior, alleging that his injury resulted from the tortious conduct of hospital employees on June 26, 2008. The hospital moved for summary judgment based on immunity under the Minnesota Commitment and Treatment Act (CTA). *See* Minn. Stat. § 253B.23, subd. 4 (2008) (the CTA’s immunity provision). Cunningham sought leave from the district court to amend his complaint to add additional tort claims and a claim for punitive damages. After a hearing on the motions, the district court granted the hospital’s motion for summary judgment on the basis of immunity—effectively dismissing Cunningham’s complaint—and denied Cunningham’s motion to amend his complaint. This appeal followed.

D E C I S I O N

I. The district court did not err by granting the hospital summary judgment on the grounds that it is entitled to immunity pursuant to the CTA.

A. Standard of Review

Cunningham argues that the district court erred by granting the hospital’s summary judgment motion on the grounds of immunity under the CTA’s immunity provision, Minn. Stat. § 253B.23, subd. 4. “On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review both questions de novo. *STAR Centers, Inc. v. Faegre & Benson, LLP*, 644 N.W.2d 72, 77 (Minn. 2002).

A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that either party

is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.

Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993) (citations omitted).

[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.

DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997).

B. The CTA

The CTA provides the framework for civil commitment and prescribes the procedures for emergency admission and treatment. Minn. Stat. §§ 253B.04, .05 (2008);

Losen v. Allina Health Sys., 767 N.W.2d 703, 708 (Minn. 2009), *review denied* (Minn.

Sept. 29, 2009). Section 253B.05, subdivision 1, sets out the procedure for instituting a

72-hour emergency hold. That section provides, in relevant part:

(a) Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner that:

(1) the examiner has examined the person not more than 15 days prior to admission;

(2) the examiner is of the opinion, for stated reasons, that the person is mentally ill, developmentally disabled, or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury. . . .

(c) . . . A copy of the examiner's statement shall be personally served on the person immediately upon admission and a copy shall be maintained by the treatment facility.

Minn. Stat. § 253B.05, subd. 1. The CTA also contains an immunity provision, which provides, in relevant part:

All persons acting in *good faith*, upon either actual knowledge or information thought by them to be *reliable*, who act *pursuant to any provision of this chapter* or who procedurally or physically assist in the commitment of any individual, *pursuant to this chapter*, are not subject to any civil or criminal liability under this chapter. . . .

Minn. Stat. § 253B.23, subd. 4 (emphasis added).

Cunningham asserts that the hospital’s employees are not entitled to immunity under Minn. Stat. § 253B.23, subd. 4, because they: (1) failed to comply with the CTA (i.e., failed to act “pursuant to” the CTA); (2) did not possess reliable information that Cunningham was on an emergency hold; and (3) did not act in good faith.

C. Compliance with the CTA

Cunningham correctly asserts that a 72-hour hold can only be legally effectuated under the CTA if: (1) consent is given by the head of the treatment facility; (2) the patient is examined by an examiner;¹ (3) the examiner prepares a written statement stating that the patient is mentally ill, developmentally disabled, or chemically dependent, and is in danger of causing injury to himself or others; (4) a copy of the examiner’s statement is served upon the patient immediately upon admission; and (5) a copy of the statement is maintained by the treatment facility. Minn. Stat. § 253B.05, subd. 1. The hospital concedes that it never served a copy of the written examiner’s statement on Cunningham.

¹ “Examiner” refers to a licensed physician who is “knowledgeable, trained, and practicing in the diagnosis and assessment or in the treatment of the alleged impairment.” Minn. Stat. § 253B.02, subd. 7(1) (2008).

Additionally, the hospital has been unable to produce the examiner's statement for this hold.

Cunningham argues that giving the hospital immunity from liability for the acts of its employees in restraining him under these circumstances would be “an absurd and unreasonable result” because it would result in a defendant being able to ignore the CTA at will and without any consequence. *See* Minn. Stat. § 645.17 (2008) (“In ascertaining the intention of the legislature the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable”).

We disagree that failure to comply with all provisions of the Act defeats a claim of immunity under the Act. The very purpose of immunity is to protect against liability even for meritorious claims. *See Rico v. State*, 472 N.W.2d 100, 106 (Minn. 1991) (stating that discretionary-function immunity of the Minnesota Tort Claims Act operates to bar *otherwise meritorious* claims).

Cunningham cites *Hoppe v. Klapperich*, 224 Minn. 224, 236, 28 N.W.2d 780, 789 (1947), in support of his assertion that “the Minnesota Supreme Court has held compliance with procedural requirements must be achieved before immunity is granted.” *Hoppe* involved judicial immunity under which a judge cannot be held civilly liable to anyone “for acts done *in the exercise of judicial authority, clearly conferred.*” *Id.* at 234, 28 N.W.2d at 787 (emphasis added) (quotation omitted). But the judge in *Hoppe* acted “wholly outside his jurisdiction and in a nonjudicial capacity”—i.e., in a “private capacity”—and, therefore, the Minnesota Supreme Court held that he could not claim

judicial immunity from civil liability. *Id.* at 236–37, 28 N.W.2d at 789. The *Hoppe* court did not hold that failure to comply with required procedures defeats immunity; rather it held that a judge must be acting in a judicial capacity to claim judicial immunity.

Likewise, in this case, a person must be acting under a provision of the CTA, or assisting in the commitment of an individual under the CTA, to claim immunity.

Cunningham asserts that a valid 72-hour hold never existed in this case and implies that a valid hold is a prerequisite for immunity under the CTA. But, under relevant caselaw, a valid 72-hour hold is *not* a prerequisite for immunity under the CTA. *See Losen*, 767 N.W.2d at 704 (holding that immunity under Minn. Stat. § 253B.23, subd. 4, applies to an examiner’s good-faith decision not to place a proposed patient on a 72-hour emergency hold); *see also Mjolsness v. Riley*, 524 N.W.2d 528, 531 (Minn. App. 1994) (stating that the plain language of the immunity provision of the CTA “unambiguously applies to *all* persons acting in good faith and its grant of immunity is not limited to persons who are successful in their efforts to commit someone”). Whether or not the hospital violated the CTA is not an issue of *material* fact precluding summary judgment based on immunity: violation of the Act that does not constitute bad faith is irrelevant to immunity. Therefore, Cunningham’s argument that the hospital is not entitled to immunity because it failed to comply with all provisions of the CTA, or because it failed to successfully place him on a hold pursuant to the CTA, is without merit.

D. Reliability of information

The district court concluded that “the actions of [the hospital]’s employees were based on information they thought was reliable.” Cunningham argues that the hospital is not entitled to immunity because, contrary to the district court’s determination, its employees did *not* possess reliable information that there was an emergency hold on him. This argument, like Cunningham’s argument that the hospital is not entitled to immunity due to its employees’ failure to follow the procedural requirements of the CTA, is mainly premised on his argument that lack of an examiner’s statement precluded a valid hold. It is also premised upon Cunningham’s assertion, raised for the first time on appeal, that he was never medically evaluated and was not informed of his rights.² Cunningham argues that, under these circumstances, the “chain of information provided by hospital personnel was unreliable.”

But all employees involved with Cunningham testified in depositions that, at the time Cunningham asserts that he was injured, each had been told and believed that Cunningham was on a 72-hour hold or was in the process of being put on a 72-hour hold. Each employee involved in the incident testified to a belief that he or she was acting on reliable information that Cunningham was on a 72-hour hold. Cunningham did not present any evidence to the contrary. Cunningham’s mere assertions that the hospital’s employees should have asked questions instead of detaining him and should not have relied on information given to them that a hold existed, is not sufficient to create a

² We decline to address these assertions. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will not consider matters not argued to and considered by the district court).

genuine issue of material fact to defeat summary judgment in this case. *See DLH*, 566 N.W.2d at 71.

E. Good faith

Finally, Cunningham argues that the hospital is not entitled to immunity because its employees did not act in good faith. At the outset, Cunningham argues that whether the hospital employees acted in good faith is a question of fact for a jury. The hospital argues that whether its employees acted in good faith is a matter of law, not fact. In the specific context of statutory immunity under Minn. Stat. § 253B.23, subd. 4, whether a defendant acted in good faith is a question of fact, but summary judgment is not precluded when there are no material facts about whether a defendant acted in good faith. *See Enberg v. Bonde*, 331 N.W.2d 731, 735 (Minn. 1983) (addressing a prior version of Minn. Stat. § 253B.23, subd. 4, and stating that the district court appropriately allowed the jury to determine whether defendants acted in good faith where there was a dispute about the existence of sufficient reliable information or knowledge to support a diagnosis of mental illness and imminent danger of injury to self or others); *see also* Minn. R. Civ. P. 56.03 (stating that if there is no genuine issue as to any material fact and either party is entitled to judgment as a matter of law, “[j]udgment shall be rendered forthwith”).

In this case, the district court concluded that Cunningham’s “volatile behavior and unsound mental state[] forced [the hospital]’s employees to physically restrain [Cunningham]” and “[t]he record lacks anything to suggest [that the hospital]’s employees acted with a malicious intent or committed willful misconduct.” Cunningham argues that the following facts are evidence of the hospital’s bad faith, creating a material

fact issue that precludes summary judgment in this case: (1) he was not placed on a legal 72-hour emergency hold; (2) Santori used an improper hold technique on him; (3) Cunningham sustained “grievous physical injury;” (4) contrary to hospital policy, he was left unattended for a long period of time and was never given a “patient watch card,” put in a hospital gown, or placed on a psychiatric unit; and (5) he was physically restrained and forced into an exam room despite his stated intention to exit the hospital only to smoke a cigarette.

But “bad-faith conduct is the intentional doing of a wrongful act without legal justification or excuse, or the willful violation of a known right.” *Mjolsness*, 524 N.W.2d at 530. Bad faith includes the commission of a malicious, willful wrong. *Id.* None of Cunningham’s allegations imply bad faith on the part of the hospital employees.

Santori testified in his deposition that the narrowness of a doorway precluded him from correctly using the “escort hold” on Cunningham and caused him to use an improper form of that hold that was less effective. Cunningham does not assert that this hold caused his injury. The extent of Cunningham’s injury, that various hospital procedures were not followed, and that he was physically restrained even though he apparently did not intend to leave the hospital’s grounds, are not probative on the issue of the employees’ good faith, especially given the civil-commitment context of this case. No evidence suggests that the employees intentionally engaged in wrongful behavior without legal justification or excuse or willfully violated Cunningham’s rights.

In conclusion, Cunningham has failed to show that the hospital's employees, and therefore the hospital, are not entitled to immunity or that any fact questions precluded summary judgment on the issue of immunity.

II. The district court did not abuse its discretion by denying Cunningham's motion to amend his complaint to add claims.

The district court denied Cunningham's motion to amend his complaint to add claims of battery, assault, false imprisonment, intentional infliction of emotional distress, and negligence. Cunningham argues that the district court should not have denied his motion to add claims³ because the hospital "will not suffer any prejudice as a result of allowing [him] to amend the complaint." *See McDonald v. Stonebraker*, 255 N.W.2d 827, 830 (Minn. 1977) ("A major consideration in the [district] court's decision [whether to allow a plaintiff to amend his complaint] is the prejudice which may result to the opposing party.").

A party may amend its complaint after a responsive pleading is filed if the party obtains leave of the district court. Minn. R. Civ. P. 15.01. "The district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion." *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004) (citing *Fabio*, 504 N.W.2d at 761). "Whether the district court has abused its

³ The hospital states that Cunningham also challenges, on appeal, the denial of his motion to seek punitive damages. But Cunningham's brief only challenges the denial of his motion to add claims of battery, assault, false imprisonment, intentional infliction of emotional distress and negligence. Because Cunningham does not raise the issue of punitive damages on appeal, he has waived the issue and we decline to address it. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (issues not argued on appeal are waived).

discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling.” *Doe v. F.P.*, 667 N.W.2d 493, 500–01 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

As we have explained, the district court was correct in its underlying legal ruling granting the hospital summary judgment on the grounds of statutory immunity, under Minn. Stat. § 253B.23, subd. 4. And section 253B.23, subdivision 4, “provides *complete immunity from suit*, not simply a defense to liability.” *Mjolsness*, 524 N.W.2d at 530 (emphasis added). Therefore, any additional claims Cunningham asserts would not survive summary judgment. “A motion to amend a complaint properly may be denied when the additional claim could not survive summary judgment.” *CPJ Enters., Inc. v. Gernander*, 521 N.W.2d 622, 625 (Minn. 1994).

Under these circumstances, the district court did not abuse its discretion by denying Cunningham’s motion to amend his complaint to add claims.

Affirmed.