STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1069

Joseph Howard Yennie,
Appellant,

vs.

Linda K. Thompson, et al.,
Respondents,

Abraham G. Algadi, et al.,
Respondents,

Nick J. Novak,
Respondent,

United Van Lines, et al.,
Defendants.

Filed December 28, 2010
Affirmed
Larkin, Judge

Goodhue County District Court
File No. 25-CV-09-3284

Joseph Howard Yennie, Pine Island, Minnesota (pro se appellant)

James J. Thomson, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondents-Linda K. Thompson, et al.)

Jana O'Leary Sullivan, League of Minnesota Cities, St. Paul, Minnesota (for respondents-Abraham G. Algadi, et al.)

Jason Hiveley, Stephanie A. Angolkar, Iverson Reuvers, Bloomington, Minnesota (for respondent-Nick J. Novak)

Considered and decided by Larkin, Presiding Judge; Wright, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's award of summary judgment for respondents. Because appellant fails to raise a genuine issue of material fact and because the district court correctly concluded that respondents are immune from suit, we affirm.

FACTS

Appellant Joseph Howard Yennie and respondent City of Pine Island are engaged in an ongoing dispute regarding debris on Yennie's property. This lawsuit stems from the city's most recent attempt to compel Yennie to remove the debris under a nuisance ordinance. The Pine Island City Code and Ordinances (PICO) prohibits "the accumulation on private property of unlicensed, unregistered or inoperable motor vehicles, household furniture, furnishings or appliances, or parts or components thereof, or metal, wood, glass, paper, rubber, concrete, or other material, whether organic or inorganic." Pine Island, Minn., City Code and Ordinances § 10.42, subd. 1(A) (2008). Accumulation of these materials is prohibited because it facilitates the growth and/or spread of noxious weeds; facilitates the nesting and breeding of rodents, insects, and harmful bacteria; poses a fire threat; can cause sickness and be a source of filth; and poses an immediate danger to the health, safety, and welfare of individuals and property in the city. *Id*.

In February 2008, Yennie's neighbors complained to the city about debris on Yennie's property, which consisted of wood, scrap wood, old window frames, plastic, metal, tubes, car ramps, sawhorses, ornamental iron, and a windmill. On October 28, the city informed Yennie that his storage of the debris was a violation of PICO and directed him to remove the debris by November 12. On November 17, city officials inspected Yennie's property and observed that he had not removed the debris. On December 4, the city provided Yennie with a second written notice that the debris constituted a nuisance under PICO. The notice also informed Yennie that if he did not remove the debris by December 16, the city would consider an order for abatement at a special city council meeting. On December 10, Yennie wrote to the city, claiming he could not be cited for the violation because an earlier violation was pending before this court.[1] On December 15, an inspection of Yennie's property revealed that he still had not removed the debris. On December 16, the city council met and considered Yennie's non-compliance. The city council passed an abatement resolution, but the city did not act to remove the debris at that time.

On May 11, 2009, the city sent Yennie another letter informing him that the city council would meet on May 19 to consider further action regarding his failure to abate the nuisance. On May 19, the city council passed a resolution ordering the abatement of the nuisance. On July 14, the city provided Yennie with written notice that, unless he

[1] Yennie's earlier appeal concerned whether the state could amend Yennie's two misdemeanor violations of PICO to petty misdemeanors without Yennie's consent. This court ruled for Yennie. *State v. Yennie*, No. A08-1071 (Minn. App. Apr. 22, 2009) (order). It appears that the case was dismissed on remand after the state failed to prosecute the offenses.

abated the nuisance on his property, the city would remove the debris on July 16. On July 15, city officials inspected Yennie's property; Yennie had not removed the debris. On July 16, the city's employees and agents entered onto Yennie's property and removed and transported the debris to a storage facility. Goodhue County Sheriff's Deputy Nick Novak oversaw the removal.

The city informed Yennie that he had to pay for the costs of abatement in order to reclaim his property. The city contracted with United Van Lines to transport the property at a cost of $374.47 and provided Yennie with an invoice for this amount. The city also provided Yennie with an invoice for storage costs of $112. Between July and September, the city informed Yennie of the requirements for reclaiming his property several times. Although Yennie demanded the return of his property, he did not pay the abatement costs. The record indicates that Yennie's property remains in storage.

On October 6, Yennie filed suit against respondents City of Pine Island; city administrator Abraham Algadi; Mayor Paul Perry; city council members Grant Friese, Jay Strande, Dean Weis, and Jane Krause; Deputy Novak; city attorneys Linda Thompson and Bob Vose, and their law firm, Kennedy and Graven; and United Van Lines and its employees. Yennie's complaint states that respondents removed or caused removal of his property and that the property was "taken under an insufficient order neglecting requirements in [PICO] and [Minnesota Statutes][.] [T]his neglectful action has caused denial of due process of law, said due process of law is protected by clauses in both the Minnesota Constitution and the Constitution for the [U]nited States of America."

Yennie's complaint does not specify how or why the city's abatement resolutions were insufficient.

Respondents moved for summary judgment, arguing that Yennie failed to set forth a viable due-process claim and asserting various immunity defenses. Yennie filed 13 exhibits and a supporting affidavit in opposition to summary judgment and orally responded to respondents' motions at the summary-judgment hearing. After the hearing, the district court dismissed Yennie's claims against United Van Lines and its unnamed employees, sua sponte and without prejudice, for lack of service. And the district court granted summary judgment in favor of all other respondents. This appeal follows.

D E C I S I O N

I.

We begin our analysis by reviewing the legal principles that govern our review. Yennie makes numerous references to the fact that he is pro se and suggests that this court should give him considerable leeway based on his pro se status. Courts have a duty to reasonably accommodate pro se litigants, so long as no prejudice results. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). But "[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). "When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review." *Thorp*

Loan and Thrift Co. v. Morse, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990).

In addition, parties must generally cite the record in support of factual assertions. *See* Minn. R. Civ. App. P. 128.02, subd. 1(c) (stating, "[e]ach statement of a material fact shall be accompanied by a reference to the record"); *Hecker v. Hecker*, 543 N.W.2d 678, 681-82 n.2 (Minn. App. 1996) (stating "material assertions of fact in a brief properly are to be supported by a cite to the record"), *aff'd* 568 N.W.2d 705 (Minn. 1997). The record on appeal consists of "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any." Minn. R. Civ. App. P. 110.01. It is the appellant's duty to order a transcript "of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record." Minn. R. Civ. App. P. 110.02, subd. 1(a). This court will not consider any factual assertions that are beyond the record. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) (stating that "[i]t is well settled that an appellate court may not base its decision on matters outside the record on appeal").

Moreover, an assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived "unless prejudicial error is obvious on mere inspection." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). We will not address allegations unsupported by legal analysis or citation. *Ganguli v. Univ. of Minnesota*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). And this court will generally not consider matters not argued to and considered by the

district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Yennie presents many arguments that were not raised or addressed in the district court, including allegations of witness bias, procedural deficiencies in the city's filings, preemption, and the city's failure to prosecute Yennie criminally. We limit our review to the issues determined by the district court.

Having established the appropriate parameters of our review, we now address the merits of the appeal.

II.

"On an 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 de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). No genuine issue of material fact exists 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). A summary judgment will be affirmed if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

A party opposing summary judgment "may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there

is a genuine issue for trial." Minn. R. Civ. P. 56.05. The rule requires that "[s]upporting . . . affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *Id.*

Yennie offered 13 exhibits in opposition to summary judgment, including letters from the city; the May 19, 2009, abatement resolution; various sections of PICO; portions of the Minnesota Statutes; an official transcript of the district court proceedings underlying Yennie's previous appeal; transcripts of various city council meetings that were prepared by Yennie; and minutes from a January 20, 2009 meeting. Yennie submitted an affidavit in support of these exhibits stating, "[a]ll exhibits attached hereto are true and correct copies of those I have as originals." Yennie also offered an unsworn, six page "statement of facts in [sic] and answer to [respondents'] motion to dismiss," which clarifies Yennie's arguments regarding the alleged deficiencies related to the city council's abatement resolution.

But Yennie's unsupported "statement of facts in and [sic] answer to [respondents'] motion to dismiss" does not comply with the requirements of rule 56.05, and we will not consider it. Unsworn statements are not competent evidence to defeat a summary-judgment motion. *See* Minn. R. Civ. P. 56.05 (setting forth requirements for affidavits in summary-judgment motions); *Boyer v. KRS Computer & Bus. Sch.*, 171 F. Supp. 2d 950, 960 (D. Minn. 2001) ("A document that purports to be an 'affidavit' but is not in fact sworn to and subscribed before a notary is not competent evidence on summary judgment."). *But see Lundgren v. Eustermann*, 370 N.W.2d 877, 881 (Minn. 1985)

(holding the district court could properly consider letter submitted in opposition to summary judgment, even though it was unsworn and untimely). And Yennie's sworn exhibits do not support his claim of a due-process violation.

Notice and the opportunity to be heard are the essence of due-process law. *Vill. of Zumbrota v. Johnson*, 280 Minn. 390, 395, 161 N.W.2d 626, 630 (1968). Respondents submitted affidavits and exhibits detailing the actions that were taken to ensure that Yennie had notice and an opportunity to be heard at every phase of the abatement proceeding. The undisputed facts show that Yennie attended the city council meetings and had an opportunity to address the city council. Yennie's own exhibits show that the city council notified him of the relevant hearings, allowed him to speak at the hearings, and clarified the proceedings and Yennie's responsibilities.

No genuine issue for trial exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc.*, 566 N.W.2d at 69 (alteration in original) (quotation omitted). There is no evidence suggesting that Yennie's due-process rights were violated. Having construed the evidence in the light most favorable to Yennie, we hold that Yennie has failed to establish a genuine issue of material fact for trial.

We also agree with the district court's conclusion that summary judgment was appropriate based on immunity doctrines. The district court concluded that the city and its officials are entitled to quasi-judicial immunity. Quasi-judicial immunity provides that public officials are immune from liability for their quasi-judicial decisions, even if those judgments are erroneous. *Brown v. Dayton Hudson Corp.*, 314 N.W.2d 210, 214

(Minn. 1981). A city council acts in a quasi-judicial capacity when it investigates a situation, considers facts in light of a prescribed standard, and renders a binding decision on the claim. *Handicraft Block Ltd. v. City of Minneapolis*, 611 N.W.2d 16, 20 (Minn. 2000) ("[T]he three indicia of quasi-judicial actions can be summarized as follows: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." (alteration in original) (quotation omitted)). In this case the city council investigated whether the debris on Yennie's property was a nuisance and concluded that it was. The city council then followed the applicable city ordinance and, after giving Yennie multiple opportunities to remedy the problem, removed the offending debris. On this record, the district court did not err in its determination that the city and its officials are entitled to quasi-judicial immunity.

The district court also concluded that the city and its officials are entitled to qualified immunity. Qualified immunity protects public officials who perform discretionary functions, unless the officials violate a clearly established statutory or constitutional right. *Maras v. City of Brainerd*, 502 N.W.2d 69, 76 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993). Generally, qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Burns v. Reed*, 500 U.S. 478, 494-95, 111 S. Ct. 1934, 1944 (1991) (quotation omitted). Yennie presents no evidence that his due-process rights were violated. And Yennie has not shown that the city and its officials were incompetent in their enforcement of the

code. Summary judgment in favor of the city and its officials based on qualified immunity is therefore appropriate.

The district court awarded summary judgment for Deputy Novak based on official immunity and qualified immunity. Official immunity protects public officials charged by law with duties that call for the exercise of judgment from personal liability. *Maras*, 502 N.W.2d at 77. Official immunity is intended to enable "public employees to perform their duties effectively, without fear of personal liability that might inhibit the exercise of their independent judgment." *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006). Official immunity exists if the challenged acts occurred in the exercise of an officer's discretion and the officer did not commit a willful or malicious wrong. *Maras*, 502 N.W.2d at 77. Deputy Novak was acting in his official capacity as a sheriff's deputy when he supervised the removal of Yennie's property, and Yennie has presented no evidence that Deputy Novak's actions were willful or malicious. *See Semler v. Klang*, 743 N.W.2d 273, 279 (Minn. App. 2007) (stating, "[m]ere allegations of malice are not sufficient to support a finding of malice, as such a finding must be based on specific facts evidencing bad faith." (quotation omitted)), *review denied* (Minn. Feb. 19, 2008). The district court therefore did not err by awarding summary judgment for Deputy Novak based on the doctrine of official immunity.

Turning to qualified immunity, an officer is entitled to qualified immunity unless his conduct violated clearly established statutory or constitutional rights of which a reasonable person should have known. *Maras*, 502 N.W.2d at 77. Because Yennie presents no evidence that Deputy Novak violated his constitutional rights, the district

court did not err by awarding summary judgment for Deputy Novak on the basis of qualified immunity.

The district court concluded that Thompson, Vose, and Kennedy and Graven are entitled to summary judgment as a matter of law because they owed Yennie no duty of care, analyzing Yennie's claims as tort claims, including, professional negligence. On appeal, Yennie explains that his claim against these respondents is based solely on the alleged due-process violation and not on tort law. But because Yennie fails to establish a genuine issue of material fact as to the purported due-process violation or to set forth a legal basis on which to hold these respondents liable for any alleged due-process violation, summary judgment is appropriate.

Because the city officials and Deputy Novak are immune from suit, and because Yennie has no claim against Thompson, Vose, or Kennedy and Graven, the city is not vicariously liable as to these respondents. *See Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) ("When applicable, vicarious official immunity protects the government entity from suit based on the official immunity of its employee."); *Sutherland v. Barton*, 570 N.W.2d 1, 5 (Minn. 1997) (explaining that vicarious liability imposes liability on one party for the actionable conduct of another party, based solely on the relationship between the two parties).

Yennie offers other arguments in support of reversal, but they miss the mark. Yennie argues that dismissal based on failure to state a claim was inappropriate because his pleadings were sufficient to avoid a rule 12 dismissal. *See* Minn. R. Civ. P. 12.02(e) (stating that a motion to dismiss may be brought for "failure to state a claim upon which

relief can be granted"). But the district court did not dismiss Yennie's case based on insufficient pleadings. Yennie also argues that dismissal was not appropriate as a "sanction." But the case was resolved by summary judgment, not by the sanction of dismissal. Accordingly, his arguments in this regard are not persuasive.

In conclusion, summary judgment is appropriate because there is no genuine issue of material fact regarding Yennie's due-process claim and because respondents are immune from suit.

III.

The district court dismissed Yennie's claims against United Van Lines and its unnamed employees without prejudice for lack of personal service. To prevail on appeal, an appellant must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975); *see also* Minn. R. Civ. P. 61 (stating, in part, "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"); *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993) (stating that the appellant bears the burden of demonstrating that error is prejudicial), *review denied* (Minn. June 28, 1993). Because this dismissal is without prejudice and Yennie has not demonstrated prejudice, we do not review the order.

Affirmed.

Dated:

Judge Michelle A. Larkin