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Minn. Stat. § 480A.08, subd. 3 (2012).

STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0884

Aaron Olson,
Appellant,

vs.

CenturyLink,
Respondent.

Filed February 4, 2013
Affirmed
Bjorkman, Judge

Washington County District Court
File No. 82-CV-12-2017

Aaron Olson, Hudson, Wisconsin (pro se appellant)

CenturyLink, Denver, Colorado (respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Cleary, Judge.

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

BJORKMAN, Judge

Appellant challenges the denial of his petition to proceed in forma pauperis, arguing that his claims are not frivolous. Because the district court did not abuse its discretion by denying the petition, we affirm.

FACTS

On December 14, 2011, appellant Aaron Olson contracted to receive telephone service from respondent CenturyLink. According to the amended complaint, Olson also applied for reduced-rate service that CenturyLink provides through Minnesota's Telephone Assistance Plan (TAP). TAP is a statewide program administered by the Minnesota Public Utilities Commission (the commission), the Minnesota Department of Commerce, and local service providers, which is designed to reduce telephone rates for low-income households. *See* Minn. R. 7817.0200, .0400, subp. 4 (2011).

When Olson received his first bill, he discovered that CenturyLink had not applied the reduced rate to his account. A blank copy of the TAP application was included with his bill; Olson completed the application and mailed it to CenturyLink. Olson's next bill likewise did not reflect a rate reduction. Olson called CenturyLink and learned that the company had not received his application. Olson then faxed another application to CenturyLink. A few days later, he contacted CenturyLink but could not confirm whether his application had been received. On January 31, 2012, CenturyLink disconnected his telephone service. Olson called CenturyLink to resolve the dispute, but company representatives repeatedly hung up on him.

In April 2012, Olson commenced this action, claiming that CenturyLink violated the Minnesota Human Rights Act (MHRA), was negligent, and committed intentional infliction of emotional distress. Olson filed a petition to proceed in forma pauperis (IFP).

The district court denied the petition, determining that the action is frivolous because the claims have no basis in law. This appeal follows.[1]

D E C I S I O N

A litigant may proceed in forma pauperis if he or she cannot pay the costs of litigation and the action is not frivolous. Minn. Stat. § 563.01, subd. 3(a)-(b) (2012). An action is frivolous if it lacks any reasonable basis in law or equity and cannot be supported by a good-faith argument to modify or reverse existing law. *Maddox v. Dep't of Human Servs.*, 400 N.W.2d 136, 139 (Minn. App. 1987). The district court has broad discretion to grant or deny an IFP petition, and its decision will not be reversed absent an abuse of discretion. *Id.*

Olson argues that the district court improperly denied his IFP petition because his claims are legally sound. Specifically, Olson alleges that CenturyLink discriminated against him under MHRA by denying him public accommodations and public services and is liable in tort. We address each of Olson's four claims in turn.

Olson first argues that CenturyLink is a place of public accommodation that, by not approving his rate-reduction application, denied him full access to its services based on his disability and receipt of public assistance in violation of MHRA. This argument is unavailing. MHRA prohibits denying "any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of

[1] The district court order stated that if Olson did not pay a filing fee within 30 days, the file would be closed. Although the district court has not entered a judgment of dismissal, this appeal is proper because the order denying the petition to proceed IFP effectively determined the action. *See* Minn. R. Civ. App. P. 103.3(e).

public accommodation because of race, color, creed, religion, disability, national origin, marital status, sexual orientation, or sex." Minn. Stat. § 363A.11, subd. 1(a)(1) (2012). To prevail on a public-accommodations claim, a plaintiff must establish a prima facie case of discrimination by demonstrating (1) he or she is a member of a protected class, (2) the defendant discriminated against the plaintiff regarding the availability of its services, and (3) the discrimination was due to the plaintiff's membership in a protected class. *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, 63 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009).

Olson's amended complaint does not establish a prima facie case of discrimination. First, Olson has not shown he was denied access to CenturyLink's services; Olson received telephone service from CenturyLink, which was only disconnected after he failed to pay his bill. Second, Olson's amended complaint does not indicate that CenturyLink denied him service due to his disability or receipt of public assistance. Rather, the amended complaint suggests that CenturyLink did not approve Olson's TAP application because the company never received the application and that CenturyLink disconnected Olson's telephone service because he did not pay his bill. Based on the allegations in the amended complaint, we cannot conclude that the district court abused its discretion by finding that Olson's public-accommodations claim is frivolous.

Olson next contends that CenturyLink discriminated against him by denying him a benefit from a public service in violation of Minn. Stat. § 363A.12 (2012). MHRA defines a public service as "any public facility, department, agency, board or commission,

owned, operated or managed by or on behalf of the state of Minnesota." Minn. Stat. § 363A.03, subd. 35 (2012). Olson argues that the state so heavily regulates and subsidizes CenturyLink's activities that the state, in effect, manages CenturyLink. We disagree. Manage means "to direct the affairs or interests of." *The American Heritage Dictionary* 1061 (4th ed. 2006). Although the commission regulates the activities of CenturyLink and other telephone service providers, the commission does not direct CenturyLink's affairs or interests. CenturyLink is a private company that manages its own business; it is not a public service.[2] Accordingly, Olson's public-service discrimination claim has no legal basis.

Olson's first tort claim asserts that CenturyLink negligently failed to process his TAP application. This claim also lacks merit. To prevail on a negligence claim, a plaintiff must show (1) the existence of a duty, (2) a breach of that duty, (3) proximate causation, and (4) damages. *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722, 729 (Minn. 1990). CenturyLink's duty to provide telephone service to Olson arose under the parties' contract. Tort liability does not arise when the duty breached is imposed by contract. *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 584 (Minn. 2012).

Finally, Olson claims that CenturyLink is liable in tort for intentional infliction of emotional distress. To prevail on this tort, a plaintiff must establish the defendant's conduct (1) was extreme and outrageous, (2) was intentional or reckless, (3) caused emotional distress, and (4) the distress was severe. *Hubbard v. United Press Int'l, Inc.*,

[2] *See In re Exclusion of Molnar*, 720 N.W.2d 604, 611 (Minn. 2006) (concluding that, for purposes of the Fourteenth Amendment, regulation of a private company alone does not transform private conduct into state conduct).

330 N.W.2d 428, 438-39 (Minn. 1983). Extreme and outrageous conduct is behavior "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Id.* at 439 (quotation omitted). Furthermore, the emotional distress must be so severe "that no reasonable man could be expected to endure it." *Id.* (quotation omitted).

The conduct alleged in the amended complaint does not approach this standard. First, CenturyLink's acts of failing to process Olson's application, disconnecting his telephone service, and hanging up on him during telephone conversations are not so atrocious that they pass the boundaries of decency. *See Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 865 (Minn. 2003) (holding that insults, indignities, annoyances, petty oppressions, and other trivialities do not constitute extreme and outrageous conduct); *see also Venes v. Prof'l Serv. Bureau, Inc.*, 353 N.W.2d 671, 675 (Minn. App. 1984) (concluding a jury could reasonably find that a debt collector engaged in extreme and outrageous conduct by repeatedly threatening a debtor in light of the debtor's medical problems). Second, Olson does not allege that he experienced severe emotional distress as a result of CenturyLink's conduct. *See Covey v. Detroit Lakes Printing Co.*, 490 N.W.2d 138, 144 (Minn. App. 1992) (determining plaintiff's distress was not severe where he had sought no psychiatric, psychological, or other treatment); *see also Wenigar v. Johnson*, 712 N.W.2d 190, 208 (Minn. App. 2006) (concluding that plaintiff's distress was severe when he suffered from nightmares, crying spells, physical illness, and post-traumatic stress disorder).

Because Olson's claims lack any reasonable basis in law, the district court did not abuse its discretion by determining that his action is frivolous and denying his IFP petition.

Affirmed.