STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0680

Eric Harpel,
Appellant,

vs.

Marie Thurn, et al.,
Respondents.

Filed November 24, 2014
Reversed and remanded
Schellhas, Judge

McLeod County District Court
File No. 43-CV-13-1456

Patrick T. Tierney, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St. Paul, Minnesota (for appellant)

Richard J. Thomas, Corinne Ivanca, Burke & Thomas, P.L.L.P., Arden Hills, Minnesota (for respondents)

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and Crippen, Judge.*

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

SCHELLHAS, Judge

Appellant challenges the dismissal of his defamation complaint under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. Because the

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

complaint does not demonstrate that appellant is an all-purpose public figure, and because appellant sufficiently pleaded actual malice in the complaint, we reverse and remand.

FACTS

This appeal arises from the dismissal of appellant Eric Harpel's defamation lawsuit against respondents Marie Thurn and Scott Nokes. Harpel is the chairman of the McLeod County Republican Party. Thurn previously served as the vice-chair of the McLeod County Republican Party, and Nokes is an attorney who represented Thurn.

Harpel alleged in his complaint that Thurn and Nokes falsely accused him of threatening Thurn and her husband, causing them concern for their personal safety. Harpel alleged that *City Pages* published the "false and defamatory statements" about him and that Thurn and Nokes "failed to exercise reasonable care" in making the statements, made the statements with "full knowledge" of their falsity and with "reckless disregard of the truth or falsity of the statements," and published the statements "with a deliberate disregard for the rights of [Harpel]."

Thurn and Nokes moved to dismiss the complaint under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. They maintained that Harpel is an all-purpose public figure and therefore must prove actual malice by Thurn and Nokes to prevail in the lawsuit. Thurn and Nokes argued that the complaint fails to plead facts to support a finding of actual malice. Following a hearing, the district court determined that Harpel is an all-purpose public figure because he "voluntarily assumed the role of local prominence in shaping and conducting the political affairs of society"

and "is a local celebrity and prominent social figure who has general fame and notoriety in the community." The court further held that the complaint does not plead facts necessary to establish actual malice because the complaint's paragraphs addressing the element of malice include only legal conclusions and no "[c]oncrete facts establishing [Thurn's and Noke's] first-hand knowledge of falsity . . . or a reckless disregard for the truth." The court granted the motion and dismissed the complaint with prejudice.

This appeal follows.

D E C I S I O N

All-Purpose Public Figure

Harpel first challenges the district court's determination that he is an all-purpose public figure. Whether a plaintiff in a defamation lawsuit is a private individual or a public figure is a question of law. *Britton v. Koep*, 470 N.W.2d 518, 520 (Minn. 1991). We review questions of law de novo with no deference given to the district court. *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 214 (Minn. 2014).

To establish defamation, a plaintiff must prove that a defamatory statement was communicated to someone other than the plaintiff, that the statement is false, that the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community, and that the recipient of the statement reasonably understood the statement to refer to a specific individual. *McKee v. Laurion*, 825 N.W.2d 725, 729–30 (Minn. 2013). When the plaintiff is a public figure, he or she must also prove that the statement was made with actual malice. *Chafoulias v. Peterson*, 668

N.W.2d 642, 648 (Minn. 2003) (citing *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155, 87 S. Ct. 1975, 1991 (1967)). This additional element makes proof of defamation more difficult for public figures, which is meant to encourage open and uninhibited debate on public issues. *See Britton*, 470 N.W.2d at 520 (citing *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964)).

Public figures are generally those who have "assumed roles of []special prominence in the affairs of society," such that they "invite attention and comment." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S. Ct. 2997, 3009 (1974) (noting that a person may also become a public figure involuntarily "through no purposeful action of his own," but that this is "exceedingly rare"). "In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Id.* at 351, 94 S. Ct. at 3013. But a person is not "lightly assume[d]" to be an all-purpose public figure. *Id.* at 352, 94 S. Ct. at 3013. "Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life." *Id.* at 351–52, 94 S. Ct. at 3013 (holding that an individual was not an all-purpose public figure even though he was active in community and professional affairs, served as an officer of local civic groups and professional organizations, had published several books and articles on legal subjects, and was "well known in some circles"); *see also Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 484 (Minn. 1985) (stating that all-purpose public figures are generally "celebrities and prominent social figures"). "More commonly, an individual voluntarily injects himself or is drawn into a particular

public controversy and thereby becomes a public figure for a limited range of issues." *Gertz*, 418 U.S. at 351, 94 S. Ct. at 3013; *see also Jadwin*, 367 N.W.2d at 484 (stating that limited-purpose public figures are those who "thrust[] themselves into the vortex of a public controversy to influence its outcome"). A "public controversy" is a dispute that is "already the subject of debate in the public arena at the time of the alleged defamation" and that "has received public attention because its ramifications will be felt by persons who are not direct participants." *Chafoulias*, 668 N.W.2d at 651–52.

In considering a motion to dismiss a complaint under Minn. R. Civ. P. 12.02(e), a court may consider only matters contained within the pleadings and documents referenced in the complaint. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004) (stating that, if other matters or documents are considered, the motion must be treated as one for summary judgment). Here, the complaint and the *City Pages* article contain very limited information about Harpel. The complaint states that Harpel is the chairman of the McLeod County Republican Party but contains no information relating to fame, notoriety, or celebrity status. Additionally, the complaint contains no information relating to Harpel's work duties in his position to indicate whether he is pervasively involved in the affairs of society. The parties do not dispute that the complaint and the *City Pages* article referenced in the complaint do not reflect that Harpel has voluntarily injected himself into any public controversy, such that he could be considered a limited-purpose public figure. The complaint and the *City Pages* article do not contain "*clear evidence* of general fame or notoriety in the community[] and pervasive involvement in the affairs of society." *See Gertz*, 418 U.S. at 352, 94 S. Ct.

at 3013 (emphasis added). Absent such clear evidence in the record, we cannot conclude that Harpel is an all-purpose public figure. *See id.*

Pleading of Actual Malice

Even if Thurn and Nokes are able to prove that Harpel is a public figure, therefore necessitating Harpel's proof that a defamatory statement was made with actual malice, Harpel's allegations in the complaint that relate to the element of actual malice are sufficient to withstand a motion to dismiss under Minn. R. Civ. P. 12.02(e). "A pleading which sets forth a claim for relief . . . shall contain a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Minn. R. Civ. P. 8.01. A pleading may be dismissed for "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). Whether a complaint sets forth a legally sufficient claim for relief is reviewed de novo, and the reviewing court must "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

The Minnesota Supreme Court recently addressed the standard for a sufficient pleading and explicitly rejected the "plausibility standard" articulated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007). *See Walsh*, 851 N.W.2d at 603 ("We now decline to engraft the plausibility standard from *Twombly* and *Iqbal* onto our traditional interpretation of Minn. R. Civ. P. 8.01."). In *Twombly*, the Supreme Court held that, under the Federal Rules of Civil Procedure, a pleading must contain sufficient factual allegations to demonstrate that the claim for relief is "plausible on its face." 550 U.S. at 570, 127 S. Ct. at 1974. A claim is

plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009). The Supreme Court stated that, while "detailed" factual allegations are not required, a pleading must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964–65.

In *Walsh*, the Minnesota Supreme Court interpreted the Minnesota Rules of Civil Procedure, rejected *Twombly*'s plausibility standard, and reaffirmed the pleading standard articulated in *N. States Power Co. v. Franklin*, 265 Minn. 391, 122 N.W.2d 26 (1963). 851 N.W.2d at 603–06. "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Id.* at 603; *see also Franklin*, 265 Minn. at 395, 122 N.W.2d at 29 ("[A] pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded."). Minnesota's rules "permit the pleading of events by way of a broad general statement which may express conclusions rather than . . . by a statement of facts sufficient to constitute a cause of action." *Franklin*, 265 Minn. at 394–95, 112 N.W.2d at 29 (stating further that a pleader is not "required to allege facts and every element of a cause of action"). Because "Minnesota is a notice-pleading state,"

> [t]he functions of a pleading today are simply to give fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory

> upon which his claim for relief is based, to permit the application of the doctrine of res judicata, and to determine whether the case must be tried by the jury or the court.

Walsh, 851 N.W.2d at 602, 604–05 (emphasis omitted) (quotation omitted).

"A statement is made with actual malice when it is made with the 'knowledge that it was false or with reckless disregard of whether it was false or not.'" *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 673 (Minn. 2003) (quoting *Sullivan*, 376 U.S. at 279–80, 84 S. Ct. at 726). "Reckless disregard" means that the defendant made the statement "while subjectively believing that the statement is probably false." *Chafoulias*, 668 N.W.2d at 655; *see also St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325 (1968) (stating that "reckless disregard" means publication with "serious doubts as to the truth").

The complaint alleges that Thurn and Nokes "made the defamatory statements with full knowledge that the statements were false, and with a reckless disregard of the truth or falsity of the statements." Harpel contends that Thurn and Nokes had personal knowledge that the statements they made about him were false. *Cf. Krueger v. Lewis*, 794 N.E.2d 970, 974 (Ill. App. Ct. 2003) (holding that allegation that defendant made statements "in full knowledge that they were untrue or in reckless disregard of their truth or falsity" was sufficient pleading of actual malice when plaintiff maintained that defendant had personal knowledge of falsity of statements). Harpel's pleading of the element of actual malice is sufficient to withstand a rule 12.02(e) motion to dismiss under the Minnesota standard of pleading. Evidence might be produced that is consistent with the complaint and that will support a granting of relief to Harpel. The complaint suffices

to give Thurn and Nokes fair notice of the incident giving rise to the lawsuit with sufficient clarity to disclose the legal theory upon which relief is claimed. The district court erred by dismissing the complaint for failure to state a claim upon which relief can be granted. We reverse and remand for further proceedings consistent with this decision.

Reversed and remanded.