STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1688

Ronaldo S. Ligons,
Appellant,

vs.

Joan Fabian,
Commissioner of Corrections, et al.,
Respondents.

Filed July 6, 2010
Affirmed
Peterson, Judge

Ramsey County District Court
File No. CV-08-9448

Ronaldo S. Ligons, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Angela Behrens, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Willis, Judge.*

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

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

PETERSON, Judge

In this pro se section-1983 action brought by a prisoner against the commissioner of corrections and department employees, appellant argues that the district court erred (1) in dismissing his original complaint without the required assistance of liberal construction and without giving appellant an opportunity to file an amended complaint addressing the deficiencies identified by the district court and (2) in denying other motions filed by appellant. We affirm.

FACTS

Appellant Ronaldo Ligons, an inmate at the Minnesota Correctional Facility at Stillwater, brought this action against the commissioner of corrections and several department of corrections (DOC) employees. Appellant alleged that a DOC dentist committed malpractice and that other DOC employees violated his constitutional rights by providing insufficient storage space for inmates' personal belongings, intercepting mail from legal counsel, infringing on religious beliefs, and implementing a grievance procedure that is not expeditious.

Respondents moved to dismiss the malpractice claim for failure to provide an expert affidavit as required under Minn. Stat. § 145.682 (2008) and the remaining claims for failure to state a claim. After respondents filed the motion to dismiss, appellant moved to amend his complaint. The district court denied appellant's motions to amend, granted respondents' motion to dismiss, and denied several other motions filed by appellant, including motions for appointment of counsel and certification as a class

action, and to enjoin respondents from intercepting legal mail from attorneys and from infringing on religious freedom. This appeal followed.

D E C I S I O N

The district court stated that it considered motions, affidavits, and evidence submitted by appellant. "When matters outside the pleadings are presented to a court considering a motion to dismiss, and . . . are not excluded by the court when it makes its determination, the motion to dismiss shall be treated as one for summary judgment." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 12.02). On appeal from summary judgment, we review the record to "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). We view the evidence in the record "in the light most favorable to the party against whom judgment was granted." *Fabio*, 504 N.W.2d at 761. A genuine issue of material fact exists if the evidence would "permit reasonable persons to draw different conclusions." *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002).

I.

"Although 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). Minn. R. Civ. P. 8.01 requires a plaintiff to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Courts extend

"great liberality" to pro se pleadings. *State ex rel. Farrington v. Rigg*, 259 Minn. 483, 484, 107 N.W.2d 841, 841-42 (1961).

Appellant argues that the district court had an obligation to assist him in presenting his claims and that the district court should have assisted him in presenting sufficient facts to support his claims. Appellant argues that the limited space available on federal section-1983 forms misled him into believing that only the nature of a claim needed to be stated in a complaint. Appellant's argument is contradicted by the fact that he did not use a complaint form and by the numerous facts alleged in his complaint and proposed amended complaint. Also, the district court's dismissal of appellant's complaint was based not only on the complaint but also on the motions, affidavits, and evidence submitted by appellant, and based on all of these materials, the court concluded that appellant had failed to state legally cognizable claims. The district court was not required to make further accommodations for appellant.

II.

To prove medical malpractice, a plaintiff must establish a standard of care recognized by the medical community and applicable to the defendant's conduct, a departure from that standard, and injuries to the plaintiff directly caused by the departure. *Plutshack v. Univ. of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn. 1982). A plaintiff alleging malpractice against a health-care provider must also comply with statutory expert-review requirements when expert testimony is necessary to establish a prima facie case. Minn. Stat. § 145.682, subd. 2. The expert-review statute requires the plaintiff to serve with the complaint an affidavit stating that an expert has reviewed the facts of the case and is of

the opinion that the defendant deviated from the standard of care and caused the plaintiff injury. *Id.*, subds. 2-3(a). The statute also provides that failure to serve this affidavit within 60 days after a demand results in mandatory dismissal with prejudice. *Id.*, subd. 6(a). A pro se plaintiff must sign the affidavit and is bound by the provisions of the statute as if represented by an attorney. *Id.*, subd. 5. The statutory requirements apply even when the plaintiff is incarcerated. *See Mercer v. Andersen*, 715 N.W.2d 114, 124 (Minn. App. 2006) (affirming dismissal and rejecting inmate's argument that incarceration limited his ability to comply with expert-review statute).

Appellant argues that a DOC dentist committed malpractice by failing to provide appropriate care for a diabetic patient and by performing substandard restorative work. Appellant does not dispute that an expert affidavit was required. On January 21, 2009, respondents wrote to appellant demanding an expert affidavit. In response, appellant referred to two affidavits that he had previously executed. In the first affidavit, appellant stated his own opinion that he had received substandard dental care. In the second affidavit, appellant purported to quote the text of a letter that he had received from a dentist stating that "diabetics *require* a higher effort assisted by the dental clinic." In a second response, appellant referred respondents to documents that had not been served, including various letters. On March 10, 2009, in support of his first motion to amend the complaint, appellant submitted an affidavit with attachments that included two letters from a dentist. Although the two letters indicated that appellant needed additional restorative care and questioned the level of dental care appellant had received in the past, neither stated that the DOC dentist had violated the standard of care or caused appellant

injury. The district court did not err in dismissing appellant's medical-malpractice claim for failure to comply with the requirements of Minn. Stat. § 145.682.

III.

Appellant argues that he was denied equal protection and access to courts based on the size of the two footlockers that inmates are allowed for storage of personal possessions. The access-to-courts argument was rejected by this court in *Kristian v. State*, 541 N.W2d 623, 628 (Minn. App. 1996), *review denied* (Minn. Mar. 19, 1996).

"An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves." *State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. June 19, 2007). Appellant admits that "all Minnesota prisoners" use the same footlockers. Prisoners are not similarly situated to non-prisoners. *Murray v. Dosal*, 150 F.3d 814, 818 (8th Cir. 1998). Accordingly, appellant's equal-protection claim fails.

IV.

"[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives. . . ." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348, 107 S. Ct. 2400, 2404 (1987) (quotation and citation omitted). To establish a violation of an inmate's right to the free exercise of religion, an inmate must show that the government has interfered with a sincerely held religious

belief and that the interference is not reasonably related to a legitimate penological interest. *Gladson v. Iowa Dep't of Corr.*, 551 F.3d 825, 831 (8th Cir. 2009).

Appellant's free-exercise-of-religion claim is based on a DOC policy limiting the quality and quantity of teas, herbs, and oils that he can possess. Appellant does not indicate how that policy interferes with any religious belief that he holds. Because appellant's assertion that the policy interferes with the free exercise of religion is not supported by argument or citation to legal authority, we deem it waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that pro se appellant's assertions are deemed waived if they contain no argument or citation to legal authority to support allegations).

V.

Appellant alleges that respondents violated his right to "confidential attorney-client communications by removing from clearly marked legal mail from an attorney items that they as legally untrained persons do not recognize as 'legal looking.'" The Supreme Court has recognized that interference with correspondence from an attorney may implicate an inmate's constitutional rights. *Wolff v. McDonnell*, 418 U.S. 539, 575-77, 94 S. Ct. 2963, 2984-85 (1974). But although appellant received mail from an attorney, nothing in the record indicates that the attorney was acting as appellant's attorney. Rather, the attorney described himself as appellant's mailing agent. Appellant's interference claim, therefore, fails.

VI.

Appellant alleges that the DOC's adoption of a grievance procedure that exceeds 55 days "severely impedes the exhaustion of remedies." The Prison Litigation Reform Act of 1995 requires inmates to exhaust available administrative remedies before litigating cases related to conditions of confinement. 42 U.S.C. § 1997e(a) (2006). But a prison grievance procedure is only a procedural right; "it does not confer any substantive right upon the inmates." *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

VII.

The district court dismissed appellant's constitutional and malpractice claims that were outside the statute of limitations. *See* Minn. Stat. §§ 541.05, subd. 1(5) (prescribing six-year limitations period for constitutional claims), 541.076 (b) (prescribing four-year limitations period for malpractice claims) (2008); *see also Owens v. Okure*, 488 U.S. 235, 249-50, 109 S. Ct. 573, 582 (1989) (holding that statute of limitations for section 1983 claims is same as state statute of limitations for personal-injury actions). Appellant cites no authority to support his argument that statutes of limitations do not apply to claims arising from ongoing policies, customs, and practices.

Affirmed.