STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1084

Sean Bruce Henry,
Appellant,

vs.

Servion, Inc.,
Respondent.

Filed May 5, 2025
Affirmed
Bond, Judge

Ramsey County District Court
File No. 62-CV-23-2227

Sean Bruce Henry, South St. Paul, Minnesota (pro se appellant)

Penelope J. Phillips, Lauren M. Weber, Brandon J. Wheeler, Felhaber Larson, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

Appellant-employee challenges the summary-judgment dismissal of his discrimination and retaliation claims against respondent-employer. Appellant argues that the district court erred by determining that (1) appellant's sex- and age-discrimination claims are statutorily time-barred and fail to establish a prima facie case of discrimination

and (2) appellant's familial-status discrimination and retaliation claims fail as a matter of law. We affirm.

FACTS

Respondent Servion Inc., a financial services company, hired appellant Sean Bruce Henry as an at-will mortgage postclosing specialist in August 2020.[1] When Henry was hired, Servion allowed him to work from home, in compliance with then-existing pandemic public-health guidance. Servion's working-from-home/telecommuting policy stated that management "reserves the right to amend or cancel the arrangement at any time for any reason."

Servion required Henry to track his time using either a physical timeclock if he was in the office or an electronic timekeeping system if he was working remotely. Whether he was working remotely or in the office, Henry was expected to work from 9:00 a.m. to 5:00 p.m. and had to clock in and out every day. Henry knew that clocking in after 9:00 a.m. meant he would be starting his shift late. Servion's excessive-absenteeism policy in effect at the time provided that managers were to "monitor absences to ensure that business operations are not adversely affected." The policy defined excessive absenteeism as, among other things, "a pattern of absences without prior authorization" and it stated that "[e]xcessive absenteeism, failure to obtain prior managerial approval or failure to provide sufficient notice will subject an employee to disciplinary action up to and including termination."

[1] The facts are taken from the summary-judgment record and recited in the light most favorable to Henry, the nonmoving party.

In November 2020, Servion transferred Henry to its underwriting department under the direction of manager Kim Martin. Martin provided a 30-minute grace period to all underwriters before reporting them as late.

On two occasions in January and February 2021, Martin observed that Henry had clocked in remotely but was not completing his work and not responding to emails during the workday. After these incidents, Martin discussed Henry's productivity with him, and reminded him that, even while remote, Henry had to work during his scheduled hours, be responsive to emails, and notify her if he was sick, unable to work, or experiencing technical issues. In March 2021, Martin documented another incident when Henry was clocked in but unresponsive and unproductive throughout the day. Later that month, Servion revoked Henry's work-from-home privileges. Henry's pay rate and job responsibilities remained unchanged.

In April 2021, Servion updated its remote-work policy. The new remote-work policy reiterated employee-productivity expectations, including that employees working remotely were required to perform essential duties, be available during scheduled working time, attend meetings, and notify their managers whenever connectivity was interrupted. The policy specified that failure to adhere to its requirements could result in termination and that "[r]emote work is not an employee benefit."

In July 2021, after pandemic-related public-health guidelines were lifted, Servion's underwriting department adopted a hybrid work schedule. Henry was initially required to continue working in the office five days a week, but in November, Martin agreed to allow Henry to work on a hybrid schedule.

From November 2, 2021, through February 15, 2022, Henry clocked in over 30 minutes late on more than 13 occasions. On February 16, 2022, Martin held a meeting with Henry and revoked his work-from-home privileges again. Martin provided Henry with a written attendance improvement plan that identified ten separate occasions that Henry clocked in late. Henry contested four of the dates documented in the attendance improvement plan, but did not dispute that he was late on at least six occasions without prior approval.

After the meeting, Henry contacted Jesse Kook, Servion's director of human resources, to request information about Servion's absenteeism policy and reasonable accommodations. Kook told Henry that work schedules are at the discretion of the manager and no specific threshold defines when absences become excessive. Henry stated that he intended to file a discrimination complaint because he believed he had been "singled out" by being placed on an attendance improvement plan. Kook encouraged Henry to file a formal complaint for further investigation. Henry subsequently indicated that he believed he was being discriminated against on the basis of his age or sex because his work was being compared to a veteran female employee, he was not given opportunities for advancement comparable to female or more veteran employees, he was "snapped at" and not supported, and because Martin used phrases such as "act like adults," which Henry felt insinuated that he was immature.

On February 17, Kook spoke with Martin to discuss Henry's tardiness. Kook learned that Martin applied a 30-minute grace period to all underwriters and Henry was the only underwriter who regularly clocked in after 10:00 a.m. At a February 23 meeting

between Kook, Henry, and another human resources representative, Henry acknowledged he did not actually think Martin was discriminating against him based on age or sex, but rather that she simply did not like him. After reviewing attendance records, Kook informed Henry that Henry's claims of discrimination could not be substantiated.

Henry continued to be chronically late for his shifts. In early March, Henry clocked in more than two hours after the start of his scheduled shift. On March 18, Henry was asleep at his desk and on March 22, he fell asleep in his car for three hours during his scheduled shift. On March 23, Henry clocked in more than 30 minutes late. That same day, Henry asked Kook whether he qualified for leave under the Family Medical Leave Act (FMLA) because he was caring for the finances of his autistic brother and elderly mother. Kook informed Henry that a sibling is not covered as an immediate family member under the FMLA but he could use personal time off for his family affairs. Kook also reminded Henry of the requirements of his current attendance improvement plan.

On March 29, Henry left during the workday for several hours without clocking out. Based on his repeated violations of the improvement plan and his poor performance, which included a low loan-processing rate and unsatisfactory client communication, Servion terminated Henry's employment effective April 1, 2022.

One year later, Henry commenced this litigation against Servion. Henry brought four claims: (1) sex-based employment discrimination, (2) age-based employment discrimination, (3) familial-status-based employment discrimination, and (4) retaliation for whistleblowing. Servion moved for summary judgment on all four claims. Henry responded to Servion's summary-judgment motion by filing a general denial. Henry later

filed several additional documents. Servion objected, noting that the additional documents were untimely and the summary-judgment record was closed. The district court determined that Henry's supplemental filings were outside the summary-judgment record and did not take them into consideration when ruling on Servion's summary-judgment motion.

After a hearing, the district court granted summary judgment to Servion. The district court determined that (1) Henry's sex- and age-discrimination claims are statutorily time-barred, (2) even if the sex- and age-discrimination claims were not time-barred, Henry failed to demonstrate a prima facie case of sex or age discrimination, and (3) Henry's familial-status discrimination and retaliation claims failed as a matter of law.

This appeal follows.

DECISION

Henry challenges the district court's order granting Servion's summary-judgment motion.[2] We review summary-judgment decisions de novo. *Henry v. Indep. Sch. Dist. No. 625*, 988 N.W.2d 868, 880 (Minn. 2023). A district court must grant a motion for

[2] Servion urges us to affirm the district court's summary-judgment order without reaching the merits of Henry's arguments. Servion contends that Henry's arguments, which in large part are presented by way of screenshots of various documents, lack clarity or citation to legal authority. Appellate courts generally decline to consider issues that are inadequately briefed. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc*., 558 N.W.2d 480, 480 (Minn. 1997). "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). Here, the district court considered Henry's claims on the merits. In the interests of justice, we will do the same.

summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A district court must view the evidence in the light most favorable to the nonmoving party. *Henry*, 988 N.W.2d at 880. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *See Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008).

I. Minnesota Human Rights Act Claims

Henry alleges various instances of discriminatory conduct in violation of the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.50 (2020).[3] As relevant here, the MHRA provides that

> it is an unfair employment practice for an employer, because of race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age to:
>
> . . . .
>
> (2) discharge an employee; or
>
> (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

Minn. Stat. § 363A.08, subd. 2.

MHRA claims that do not involve direct evidence are analyzed under the burden-shifting analysis first set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

[3] In 2024, the legislature amended the MHRA's definition of "familial status." *See* 2024 Minn. Laws ch. 105, § 4, at 1074. The 2024 amendments took effect August 1, 2024, and therefore do not apply to Henry's claims. We cite the 2020 version of the MHRA, which was in effect at the time of the events at issue here.

See Sigurdson v. Isanti County, 386 N.W.2d 715, 719-20 (Minn. 1986); *Ward v. Emp. Dev. Corp.*, 516 N.W.2d 198, 201 (Minn. App. 1994), *rev. denied* (Minn. July 8, 1994). Under this analysis, an employee alleging sex or age discrimination is first required to make a prima facie showing of discrimination. *McDonnell Douglas*, 411 U.S. at 802; *Sigurdson*, 386 N.W.2d at 720; *Ward*, 516 N.W.2d at 201. If the employee fails to establish this prima facie case, summary judgment is appropriate. *See Moore v. City of New Brighton*, 932 N.W.2d 317, 323 (Minn. App. 2019) (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). But if the employee meets that burden, the employer has the burden of producing evidence of a legitimate, nondiscriminatory reason for its actions. *McDonnell Douglas*, 411 U.S. at 802. If the employer produces such evidence, the burden shifts back to the employee to show that the employer's proffered reason was a pretext for unlawful discrimination and "that the employer intentionally discriminated against [the employee]." *Sigurdson*, 386 N.W.2d at 720.

A. Sex- and Age-Discrimination Claims

Henry first challenges the district court's determination that his sex- and age-discrimination claims are barred by the statute of limitations. A claim under the MHRA relating to a discriminatory practice must be brought "within one year after the occurrence of the practice." Minn. Stat. § 363A.28, subd. 3(a). Henry's sex- and age-discrimination claims relate to losing his work-from-home privileges and being placed on the attendance improvement plan, actions which undisputedly occurred between March 2021 and February 2022. Henry commenced his lawsuit on March 31, 2023, more than one year later. Henry concedes that he failed to file his claims within the applicable one-year statute

of limitations under the MHRA. But Henry contends that the statute of limitations should have been tolled under either Minn. Stat. § 363A.28, subd. 3(b), or the equitable tolling doctrine. Henry raised this tolling argument in one of his supplemental filings submitted to the district court after the summary-judgment record closed. Accordingly, the district court did not address whether the statute of limitations was tolled. Because we generally do not address issues not presented to and considered by the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), we decline to consider Henry's tolling argument for the first time on appeal.

Even if Henry's sex- and age-discrimination claims were not time-barred, Henry failed to allege facts that establish a prima facie case of sex- or age-based employment discrimination. To establish a prima facie case for employment discrimination, a plaintiff must show that (1) he "belongs to a protected class," (2) he "is qualified for the position," (3) he "suffered an adverse employment action," and (4) "circumstances exist that give rise to an inference of discrimination." *Henry*, 988 N.W.2d at 883 (stating requirements to establish a prima facie case of age-based employment discrimination based on disparate treatment); *see also Sigurdson*, 386 N.W.2d at 720 (stating similar requirements to establish a prima facie case of sex-based employment discrimination based on disparate treatment).

Henry alleges that he "suffered an adverse employment action" when his work-from-home privileges were revoked. The record establishes that Henry's work-from-home privileges were not an employment benefit, but rather a discretionary arrangement subject to managerial approval and certain productivity and performance benchmarks. As Henry

admitted at his deposition, this revocation did not alter his job title, pay, or job responsibilities. Thus, Henry failed to show that he suffered an "adverse employment action" when he was required to work in-person at Servion's office.

Henry also alleges several circumstances that, in his view, give rise to an inference of sex and age discrimination. These circumstances include (1) that he was denied an opportunity to obtain additional underwriting authority, (2) his work had been compared to other female employees, and (3) he was told he was not "mature" enough. These circumstances do not establish a prima facie case for sex or age discrimination. First, nothing in the record establishes that Henry was denied the opportunity to eventually pursue underwriting authority. Second, Henry provided no evidence to support how or when his work was directly compared to female co-workers. Third, Henry's speculation that he believed his work-from-home privileges were revoked because Martin thought he "wasn't mature enough" is not sufficient evidence to survive summary judgment. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (concluding that speculation is not sufficient to create a genuine issue of material fact). Because Henry failed to establish a prima facie case of sex- and age-discrimination claims, the district court properly granted summary judgment to Servion.[4]

[4] The district court observed that, even if the record could be construed to support a prima facie case, Servion put forth "ample evidence of legitimate, non-discriminatory reasons for revoking Mr. Henry's work from home privileges where he was regularly late or absent from work."

B. Familial-Status Discrimination Claim

Henry next appears to argue that the district court erred by determining that his familial-status discrimination claim fails as a matter of law. "The applicability of a statute is an issue of statutory interpretation, which appellate courts review de novo." *Ramirez v. Ramirez*, 630 N.W.2d 463, 465 (Minn. App. 2001).

The MHRA prohibits an employer from "discharg[ing] an employee" or "discriminat[ing] against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment" based on that employee's "familial status." Minn. Stat. § 363A.08, subd. 2. "Familial status" is defined as the class of individuals who are parents or guardians to minor children. Minn. Stat. § 363A.03, subd. 18. Here, Henry contends that he was discriminated against on the basis of his familial status because he cares for his elderly mother and his autistic brother, neither of whom live with him. The MHRA does not protect Henry's status as a family member caring for his mother and brother. Therefore, the district court did not err by determining that Henry's familial-status discrimination claim fails as a matter of law and granting summary judgment to Servion.

II. Minnesota Whistleblower Act Claims

Finally, Henry argues that the district court erred by dismissing his retaliation claim under the Minnesota whistleblower act (MWA). Minn. Stat. § 181.932 (2024).[5] The

[5] The legislature amended the whistleblower act in 2023. *See* 2023 Minn. Laws ch. 53, art. 11, § 26, at 1290-91. The 2023 amendments, which took effect July 1, 2023, do not apply to Henry's claim, which is based on conduct on or before April 1, 2022.

district court determined that Henry failed to state a claim under the MWA because he did not demonstrate that he engaged in "statutorily protected conduct" as defined by the MWA. Whether Henry is entitled to the protection of the MWA "is a question of law that we review de novo." *Moore*, 932 N.W.2d at 324.

The MWA prohibits an employer from discharging or otherwise discriminating against an employee who, "in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer." Minn. Stat. § 181.932, subd. 1. To establish a prima facie case under the MWA, a plaintiff must produce evidence of (1) statutorily protected conduct by the employee, (2) an adverse employment action, and (3) a causal connection between the two. *See Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 371-72 (Minn. 2022); *see also Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983). If an employee fails to establish any of these elements, summary judgment in the employer's favor is appropriate. *See Moore*, 932 N.W.2d at 323. To constitute a form of protected conduct, a report made by an employee must allege facts that, if true, would constitute a violation of the law. *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 22-23 (Minn. 2009). This report must be made "for the protection of the general public or, at the least, some third person or persons in addition to the whistleblower," and not just for the protection of the employee's own rights. *Williams v. St. Paul Ramsey Med. Ctr., Inc.*, 551 N.W.2d 483, 484 n.1 (Minn. 1996).

Henry contends that his communications to Kook and Martin in February and March 2022 constitute protected reports. In those communications, Henry stated that he believed he was being singled out on the basis of his age or sex and he disclosed facts about his

father's death and his brother's autism.[6] These reports seek to protect Henry's own employment rights rather than the rights of the general public or a third person. *See Williams*, 551 N.W.2d at 484 n.1. Therefore, Henry's reports do not qualify as statutorily protected conduct under the MWA. The district court did not err by concluding that Henry's MWA claim fails as a matter of law and by granting summary judgment to Servion.

Affirmed.

[6] Henry asserts, for the first time on appeal, that he engaged in protected activity under Minn. Stat. § 144.4196, subd. 2(a)(1) (2024), for being discharged as a result of being "in isolation or quarantine." Henry did not assert a claim under Minn. Stat. § 144.4196 (2024) in his complaint nor did he even mention this statute until after the summary-judgment record closed. Because Henry's assertion that he engaged in protected activity under Minn. Stat. § 144.4196, subd. 2, was not argued to and considered by the district court, we do not consider this argument on appeal. *Thiele*, 425 N.W.2d at 582.