



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Guy Greene, OID #157305, 1111 Highway 73, Moose Lake, MN 55767, a pro se plaintiff. Aaron Winter, , 445 Minnesota Street, Suite 1100, Saint Paul, MN 55101, for Defendants Dennis Benson, Cal Ludeman, Greg Carlson, Kevis Moser, David Prescott, Janine Hebert, Tom Lundquist, Elizabeth Barbo, Debra James, Julie Rose, and Vickie Aldridge. James R. Andreen and Samantha R. Alsadi, ERSTAD & RIEMER, P.A., 7301 Ohms Lane, Suite 400, Minneapolis, MN 55439, for Defendant Gary J. Fahnhorst. Plaintiff Guy Greene alleges that Defendants deprived him of his federal and state constitutional and statutory rights while confined to the Minnesota Sex Offender Program in their official capacity as employees of the Department of Human Services. Defendant GUY GREENE,

Plaintiff, v. DENNIS BENSON, CAL LUDEMAN, GREG CARLSON, KEVIN MOSER, DAVID PRESCOTT, JANINE HEBERT, TOM LUNDQUIST, ELIZABETH BARBO, DEBRA JAMES, JULIE ROSE, VICKIE ALDRIDGE, and GARY J. FAHNHORST, Defendants.

Civil No. 11-979 (JRT/DJF)

MEMORANDUM OPINION AND ORDER

ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE CLAIMS AGAINST DEFENDANT GARY F.

FAHNHORST Gary J. Fahnhorst moved to di supervisor in the Sherburne County Health and Human Services Division not the

Minnesota Department of Human Services. Magistrate Judge Dulce J. Foster reviewed motion and issued a Report the Court Fahnhorst is a county employee and Greene

did not allege how a county employee could have impacted the MSOP conditions. Greene objects to the R&R, arguing that Fahnhorst is liable under the special relationship and state-created-danger doctrines. Because the Court concludes that Greene failed to state a claim against Fahnhorst in either his individual or official capacity, the Court will overrule adopt the R&R, and grant Fah Motion to Dismiss.



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

### BACKGROUND I. FACTS

¶ 11,

Aug. 29, 2011, Docket No. 20.) Greene alleges that Defendants, who he claims were all employed by the State of Minnesota and/or the DHS, violated his constitutional rights. (Id. ¶ 11.B.)

One of the Defendants Greene identified is Gary J. Fahnhorst. (Id. ¶ 23.) Greene claims that Fahnhorst has supervisory authority and responsibility for the administration and operations of Human Services, and that he is also involved in the development and Id.) Fahnhorst allegedly trains all Social Services personnel and is treatment. (Id. reasonably close supervision of the personnel who are responsible for the deprivation of

Id.) However, Greene identifies Fahnhorst as an employee of Sherburne County not the DHS like the other Defendants. (Id.) In his memorandum opposing the present motion, Greene also states that Fahnhorst signed the petition to have Greene civilly committed to the MSOP. ¶¶ 9 15, Oct. 24, 2011, Docket No. 51.) However, this fact was not included in his

### Amended Complaint. II. PROCEDURAL HISTORY

Greene brought this action against Defendants in 2011, alleging that Defendants violated his constitutional rights. (Am. Compl. at 1 2; Compl., Apr. 19, 2011, Docket No. 1.) Specifically, Greene alleges that the conditions of his confinement were unconstitutionally restrictive, Defendants restricted his liberty, Defendants imposed punishment without due process, and Defendants failed to provide him with adequate treatment. (Am. Compl. at 1 2.) Greene brought claims against the Defendants in both Serv Id. at 1.) He asks for damages, injunctive relief, and declaratory relief, among other things. (Id. at 88 91.)

arguing that he had no ability or obligation to affect Docket No. 37.) The other Defendants filed a separate motion to dismiss on different

Dismiss, Sept. 19, 2011, Docket No. 35.) Motion to Dismiss,

seemingly arguing that Fahnhorst has a duty to protect Greene under the special relationship doctrine because Fahnhorst signed the pre- commitment. ¶¶ 9 15.) Greene claims that

treatment, rehabilitation, and welfare. (Id. ¶¶ 17, 33.)

This case was then stayed pending the disposition of a class action challenging the conditions of confinement at the MSOP, Karsjens v. Minnesota Department of Human Services, Case No. 11-3659.



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

(Order Staying Case at 10 11, Jan. 25, 2012, Docket No. 82.) Final judgment was entered in Karsjens, and the stay was lifted on October 3, 2022. (Order Lifting Stay at 24 25, Oct. 3, 2022, Docket No. 118.) The Court determined that Motion to Dismiss had not been dulled by the passage of time and allowed his motion to remain pending. (Order at 6, Oct. 5, 2022, Docket No. 119.)

Accordingly, the Magistrate Judge then Motion to Dismiss. (R. & R. at 2, Jan. 26, 2023, Docket No. 130.) The Magistrate J motion and G Amended Complaint and recommended the Court dismiss the

claims against Fahnhorst because there are no allegations as to how Fahnhorst, as a Sherburne County employee, could have had authority to impact MSOP policy and and conditions. (Id. at 6.) Further, there were no other Amended Complaint specific to Fahnhorst. (Id. at 6 7.) Thus, Greene failed to state a claim against Fahnhorst in his individual capacity. The Magistrate Judge also r official capacity because those are predicated solely on employment with DHS. (Id. at 7.)

Greene objects to the Magistrate J counsel. (See generally The content of is largely irrelevant to the matter at hand, but he seems to argue that his claims against Fahnhorst should survive the Motion to Dismiss because he adequately pled -created- s. (Id. at 3.) See Docket No. 137.)

### DISCUSSION I. STANDARD OF REVIEW

should specify the portions of the magistrate judge's report and recommendation to

Mayer v. Walvatne, No. 07 1958, 2008 WL 4527774 at \*2 (D. Minn. Sept. 28, 2008). For dispositive motions, R. Civ. P. 72(b)(3). When reviewing de novo, the Court will review the case from the start, as if it is the first court to review and weigh in on the issues. See *Salve Regina College v. Russell*, de novo review is compelled, no form of appellate United States v. Riesselman, 708 F. Supp. 2d 797, 807 (N.D.

Iowa 2010) (quoting *United States v. Raddatz*, 447 U.S. 667, 675 (1980)).

A document filed by a pro se litigant is to be liberally construed and must be held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Eighth Circuit has been willing to liberally construe otherwise general pro se objections to R&Rs and to require a de novo review of all alleged errors. See *Belk v. Purkett*, 15 F.3d 803, 815 (8 th

Cir. 19 objections lacked specificity, a de novo review would still have been appropriate given *Burgs v. Sissel*, 745 F.2d 526, 528 (8 th

Cir. 1984). In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court considers all facts alleged in the complaint as true to determine if the complaint *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8 th



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). At the motion to dismiss stage, the Court may consider the allegations in the complaint as well *Schriener v. Quicken Loans, Inc.*, 774 F.3d 442, 444 (8 th

Cir. 2014). the court to draw the reasonable inference that the defendant is liable for the misconduct

*Iqbal*, 556 U.S. at 678. The Court construes the complaint in the light most *Ashley Cnty. v. Pfizer, Inc.*, 552 F.3d 659, 665 (8 th

Cir. 2009). Although the Court accepts the complaint's factual allegations as true and construes the complaint in a light most favorable to the *Papasan v. Allain*, 478 U.S. 265, 286 (1986). In other words, a complaint

*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). II. ANALYSIS

this motion, the Court will review the R&R de novo. See LR 7.1(c)(6)(B) (identifying motions to dismiss as dispositive).

A. Rule 8(a)(2) As a preliminary matter, the Court notes that Greene has not complied with the requirements of Federal Rule of Civil Procedure 8. Rule 8(a) requires claims for relief to

Fed. R. Civ. P. 8(a)(2). every conceivable claim against every conceivable defendant, that complaint fails to meet

conduct to each defendant. *Tatone v. SunTrust Mortg., Inc.*, 857 F. Supp. 2d 821, 831 32, 839 40 (D. Minn. 2012) (adopted opinion of magistrate judge) (dismissing complaint [claims]

satisfy It is neither short nor plain. It spends only one paragraph detailing allegations against Fahnhorst, and otherwise lumps Fahnhorst with the other Defendants. And, since most of the claims against the other Defendants rely on those Defendants working at the MSOP, they are not plausible as to Fahnhorst. (E.g., Am. Compl. ¶ 178 (claiming the MSOP employees without alleging how a Sherburne County employee could have the ability to monitor such calls allegations against him.

B. Official Capacity Claims First, Greene brings claims against the Defendants in their ¶¶ 24 25.) But in his Amended Complaint, Greene

identifies Fahnhorst as the Sherburne County Social Services Supervisor meaning that Fahnhorst is not actually employed by DHS. (Id. ¶ 23.) claims against Fahnhorst depend on Fahnhorst being a DHS employee, which Fahnhorst

is not, his official capacity claim must fail.



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

Even if Greene had brought an official capacity claim against Fahnhorst as an employee of Sherburne County, his claims against Fahnhorst would still be dismissed. Lawsuits against government employees in their official capacity are treated as claims against the government entity itself. Kentucky v. Graham official-capacity suit is, in all respects other than name, to be treated as a suit against the

Though generally plaintiffs may not bring damages suits against a state government unless the state waives its Eleventh Amendment immunity from claims in federal court, plaintiffs may bring an action against a municipality, such as a county, if the See e.g., Soc. Servs. of City of N.Y., 436 U.S. 658, 694 (1978).

While Greene does allege that Fahnhorst has a supervisory role in Sherburne

practices and procedures concerning caused Greene injury

Motion to Dismiss. Greene has not identified any specific policies or practices that Fahnhorst plausibly influenced and has not described exactly how Sherburne County would have authority to impact the MSOP program. Because Greene has merely stated claims against Fahnhorst in his official capacity. Iqbal, 556 U.S. at 678 (internal quotation

omitted).

C. Individual Capacity Claims Likewise, the Court must dismiss the claims against Fahnhorst in his individual capacity. Here again, Greene has failed to plead sufficient plausible factual matter to state a claim to relief. See *id.* Greene does not allege exactly how Fahnhorst a Sherburne County employee could have been involved in the alleged misconduct at the MSOP.

In his memorandum, Greene asserts that Fahnhorst signed the petition that led to Complaint, but Greene argues that it confers a claim to relief under the special relationship and state-created-danger doctrines. Even giving Greene the benefit of the doubt and assuming this assertion to be true, Greene has not alleged a claim to relief because neither doctrine applies here.

1. Special Relationship Doctrine There is only a duty to act for the protection of another if a special relationship exists between the parties and the risk involved was foreseeable. *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 168 69 (Minn. 1989). A special relationship can arise from (1) the another person under circumstances in which that other person is deprived of normal

opportunities of self-protection ; or (3) where an individual assumes responsibility for a duty owed by one individual to another. *Bjerke v. Johnson*, 742 N.W.2d 660, 665 (Minn. 2007) (citations omitted).

At issue here is the second type of special relationship. A court determining if a the vulnerability and



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

dependency of the individual, the power exerted by the defendant, and the degree to which the defendant *Becker v. Mayo Found.*, 737 N.W.2d 200, 213 (Minn. 2007); see also *In re Target Corp. Customer Data Sec. Breach Litig.*, 64 F. Supp. 3d 1304, 1308 09 (D. Minn. 2014) (explaining that in addition to a special relationship, the risk must also be foreseeable for a defendant to be liable). Influencing these factors is whether the defendant accepted absolute authority over the See *H.B. ex rel. Clark v. Whittemore*, 552 N.W.2d 705, 708 09 (Minn. 1996). Further, cases recognizing a special relationship have hinged in part on the defendant exercising some control over the harm-causing third-party. 1

Here, Greene has not alleged sufficient facts to find Fahnhorst had a special relationship with him. He makes no allegations in his Amended Complaint that he was at any point in the custody of Fahnhorst and Sherburne County, much less that Fahnhorst had control over his daily welfare. He claims for the first time in his briefing that it was Fahnhorst who petitioned for his civil commitment, but the court can only consider factual allegations made in the complaint. *Iqbal*, 556 U.S. at 678. Regardless, this would still be insufficient to plausibly claim Greene was in the custody of Fahnhorst so as to establish a special relationship. Further, Greene has also failed to allege that Fahnhorst was, or could have been, aware of a foreseeable risk that Greene would be harmed if put in the care of the MSOP, or that Fahnhorst had any control over the MSOP. See *In re Target Corp.*, 64 F. Supp. 3d at 1308 09 (discussing the foreseeability requirement).

of

1 See *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165 (Minn. 1989) (finding parking ramp owner had a duty to exercise reasonable care to deter criminal activity that could harm its customers); *Sylvester v. Nw. Hosp. of Minneapolis*, 236 Minn. 384 (1952) (finding hospital liable for patient being injured by violence of another intoxicated patient); *Mesedahl v. St. Luke's Hosp. Ass'n of Duluth*, 194 Minn. 198 (1935) (holding hospital had duty to exercise reasonable care to prevent patient from committing suicide). the pleading standard. *Twombly*, 550 U.S. at 555. While the Court construes a pro se cannot an additional factual allegation would have formed a stronger complaint. *Stone v. Harry*,

364 F.3d 912, 915 (8 th

Cir. 2004). 2. State-Created-Danger Theory Greene also argues the state-created-danger theory of liability applies. Under this ; harm in conscious disregard of the risk *Hart v. City of Little Rock*, 432 F.3d 801, 805 (8 th

Cir. 2005). Actionable claims that satisfy the fifth factor involve abuse of power so brutal and offensive that it does not comport *Id.* at 806. Mere negligence or even gross negligence do not satisfy this requirement. *Id.* at 805. Instead, a state-created-danger claim usually requires proof of intent to harm, though proof of deliberate indifference may also suffice. *Terrell v. Larson*, 396 F.3d 975, 978 (8 th



## Greene v. Benson et al

2023 | Cited 0 times | D. Minnesota | March 14, 2023

Cir. 2005). To show deliberate that a substantial risk of serious harm exists, a Hart, 432 F.3d at 806.

Greene has not alleged sufficient facts to state a plausible claim under the state- created-danger theory of liability. Again, while Greene alleges in his brief that Fahnhorst petitioned for him to be civilly committed, there is nothing in his complaint that alleges it Hart, 432 F.3d at 805; see also Iqbal, 556 U.S. at 678. Nor does Greene

allege any facts that plausibly show Fahnhorst was aware of facts at the time he took any alleged conduct from which he could draw the inference a substantial risk of harm existed in the MSOP. Further, he does not allege that Fahnhorst actually drew such an inference from any potential facts. Therefore, he has failed to allege Fahnhorst was deliberately Hart, 432 F.3d at 805.

to plead a cause of action against Fahnhorst, and the special relationship and state-created-danger theories are not applicable here. Therefore, the

D. Appointment of Counsel Lastly, Greene to the R&R asks the Court to appoint him counsel. There is no constitutional or statutory right to appointed counsel in civil cases like this. Edington , 52 F.3d 777, 780 (8 th

Cir. 1995), abrogated on other grounds, Doe v. Cassel, 403 F.3d 986, 989 (8 th

Cir. 2005). A court may choose to appoint counsel but is not required to do so indigent civil litigant, the district court considers relevant factors such as the complexity

of the case, the ability of the indigent to investigate the facts, the existence of conflicting Stevens v. Redwing, 146 F.3d 538, 546 (8 th

Cir. 1998). Greene has neither filed a motion for an appointment of counsel nor made a showing that appointment of counsel is necessary in this case. The appropriate course of action is for Greene to file a motion for an appointment of counsel that details why counsel is necessary in this present action, which the Court may then consider.

CONCLUSION and - created-danger doctrines are not applicable. The Court will therefore adopt the Magistrate J

ORDER Based on the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. Judgment [Docket No. 29] is GRANTED; 2. out



## **Greene v. Benson et al**

2023 | Cited 0 times | D. Minnesota | March 14, 2023

prejudice; 2 3.

OVERRULED; and 4. The Magistrate J

ADOPTED.

DATED: March 14, 2023 at Minneapolis, Minnesota. JOHN R. TUNHEIM United States District Judge

2 claims against Fahnhorst.

