

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1574**

Keith Allen Kiefer,
Appellant,

vs.

Isanti County,
Respondent,

State of Minnesota,
Respondent.

**Filed June 23, 2025
Affirmed
Worke, Judge**

Isanti County District Court
File No. 30-CV-23-743

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Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the district court's order granting respondent county's motion to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e), and respondent state's motion to dismiss for lack of subject-matter jurisdiction under Minn R. Civ. P. 12.02(a). Because the district court did not err by granting either motion, we affirm.

FACTS

We derive the following facts from appellant Keith Allen Kiefer's November 29, 2023 complaint, including documents referenced and exhibits attached thereto. In 2008, respondent Isanti County (the county) charged Kiefer with a misdemeanor for violating a solid-waste ordinance. After trial, a jury found Kiefer guilty, and he served 60 days in jail.

The county then sued Kiefer for violating the same ordinance. The district court determined that Kiefer violated the ordinance and ordered him to remove particular items from his property. Kiefer appealed, and we reversed, concluding that the district court erroneously interpreted the text of the ordinance. *See County of Isanti v. Kiefer*, No. A15-1912, 2016 WL 4068197, at *2-4 (Minn. App. Aug. 1, 2016).

Based on our decision in the civil matter, Kiefer petitioned to vacate his 2009 criminal conviction. On October 8, 2018, a postconviction court granted the petition, reasoning that this court's interpretation of the solid-waste ordinance in the county's civil action "constitutes a new interpretation of law" that applies retroactively to Kiefer's criminal conviction. *See Minn. Stat. § 590.01, subd. 4(b)(3) (2024)*.

With his conviction vacated, Kiefer sued the county for malicious prosecution and false imprisonment. Kiefer also sued respondent State of Minnesota (the state), seeking declaratory judgment that Minn. Stat. § 590.11 (2024), a provision of the Minnesota Imprisonment and Exoneration Remedies Act (MIERA), violates the United States and Minnesota Constitutions by excluding him from receiving compensation for the time he wrongly served on his misdemeanor conviction. According to Kiefer, the statute violates the Equal Protection Clause because it allows persons exonerated for felonies, but not misdemeanors, to receive compensation. *See* Minn. Stat. § 590.11, subd. 5.

Although the statute of limitations for his claims was two years, *see* Minn. Stat. § 541.07(1) (2024), he argued that the claims were timely because an earlier federal lawsuit—which he filed on October 2, 2020—remained pending until the United States Supreme Court denied his petition for a writ of certiorari on October 30, 2023, just over a month after he filed the petition on September 27, 2023.¹ *See* 28 U.S.C. § 1367(d) (2018) (tolling the limitation period on state claims over which a federal court exercises supplemental jurisdiction while the claims are pending and for 30 days afterward); *Kiefer v. Isanti County*, No. 20-cv-2106, 2022 WL 607397, at *1 (D. Minn. Mar. 1, 2022) (dismissing Kiefer’s claims against the state without prejudice), *aff’d*, 71 F.4th 1149 (8th Cir. 2023), *cert. denied*, 144 S. Ct. (2023).

After Kiefer filed his complaint, the county moved to dismiss the false-imprisonment and malicious-prosecution claims under Minn. R. Civ. P. 12.02(e). The

¹ Kiefer provided the date on which he filed the petition at a hearing on respondents’ motions to dismiss.

county argued that the two-year statute of limitations expired because, at the latest, his claims remained pending until July 20, 2023, when the Eighth Circuit issued a mandate affirming the district court, *see* Fed. R. App. P. 41, and the district court entered the mandate as its final judgment. The county provided a copy of the mandate to support its motion, along with verification of the district court entering the mandate and closing the case.

Likewise, the state moved to dismiss the equal-protection claim under Minn. R. Civ. P. 12.02(a). The state argued that Kiefer lacked standing to bring his claim because “MIERA has not caused Kiefer an injury-in-fact and the [district court] cannot fashion relief that would render Kiefer eligible for exoneration-compensation under MIERA.” Specifically, it argued that, because there was no “evidence of factual innocence,” Kiefer was not “exonerated” under Minn. Stat. § 590.11, subd. 1(b), (c).

The district court agreed with respondents and granted both motions to dismiss. Kiefer appeals.

DECISION

Kiefer challenges the district court’s order granting the county’s motion to dismiss under Minn. R. Civ. P. 12.02(e) and the state’s motion to dismiss under Minn. R. Civ. P. 12.02(a).

We review *de novo* a district court’s decision to grant motions to dismiss under Minn. R. Civ. P. 12.02(a) and (e). *Forslund v. State*, 924 N.W.2d 25, 30 (Minn. App. 2019) (addressing both types of dismissals). In doing so, we consider “only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in

favor of the non-moving party.” *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 826-27 (Minn. 2011) (failure to state a claim); *Brenny v. Bd. of Regents of Univ. of Minn.*, 813 N.W.2d 417, 420 (Minn. App. 2012) (subject-matter jurisdiction). We affirm dismissal 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.” *Bahr v. Cappella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted) (failure to state a claim); *Brenny*, 813 N.W.2d at 420 (subject-matter jurisdiction).

Nevertheless, when we review dismissal under rule 12.02(e), and “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.” Minn. R. Civ. P. 12.02; *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). Materials are outside the pleading when the pleading neither includes nor references the materials. *See N. States Power Co.*, 684 N.W.2d at 491. We review a grant of summary judgment de novo and affirm “if no genuine issues of material fact exist and if the court accurately applied the law.” *Hanson v. Dep’t of Nat. Res.*, 972 N.W.2d 362, 371-72 (Minn. 2022). In doing so, “we view the evidence in the light most favorable to the nonmoving party.” *Id.* at 372 (quotation omitted).

Motion to dismiss for failure to state a claim upon which relief can be granted

First, Kiefer argues that the district court erred by granting the state’s motion to dismiss his false-imprisonment and malicious-prosecution claims by incorrectly concluding that the two-year statute of limitations on both claims expired.

To begin, we note that an important fact in the district court’s analysis was the date that the Eighth Circuit issued its mandate. However, nowhere in the complaint does Kiefer

mention the mandate, nor did he mention or attach documents that discuss it. Instead, the mandate first appears in the record when the county discussed and provided a copy of the document to support its motion to dismiss. Because the mandate is outside Kiefer's complaint, and because the district court considered the mandate in ruling on the motion to dismiss, we treat the district court's decision as a grant of summary judgment that we review de novo. *See N. States Power Co.*, 684 N.W.2d at 491.

Kiefer's challenge revolves around 28 U.S.C. § 1367(d) and the duration of its tolling period. Under section 1367(d), "[t]he period of limitations" for state claims over which a federal court exercises supplemental jurisdiction, "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless [s]tate law provides for a longer tolling period." Kiefer contends that the district court misapplied section 1367(d) because his claims remained "pending" while he waited to hear from the United States Supreme Court on his petition for a writ of certiorari.

To resolve Kiefer's argument, we address when claims are "pending" in federal court and the relationship between the pendency of those claims and the process by which parties petition for Supreme Court review. The Eighth Circuit has explained that a claim is no longer pending in a federal court of appeals when the court issues a mandate affirming judgment, and it is no longer pending in federal district court when the court enters that mandate as its final judgment. *See Carlson v. Hyundai Motor Co.*, 222 F.3d 1044, 1045

(8th Cir. 2000).² Upon entry of judgment, a party must generally petition for a writ of certiorari within 90 days. 28 U.S.C. § 2101(c) (2018); Sup. Ct. R. 13. However, if a party wishes to pause entry of judgment while it petitions for a writ of certiorari, it may pursue a stay on judgment “for a reasonable time.” 28 U.S.C. § 2101(f) (2018). The judge who grants the stay may condition it on the party giving security in the event the party fails to petition for or to obtain a writ of certiorari. *Id.* A party may also move to stay a mandate while pursuing certiorari review, provided it demonstrates that “the petition would present a substantial question and that there is good cause for a stay.” Fed R. App. P. 41(d). Again, a court may condition the stay on the party providing security. Absent a stay, a party’s act of petitioning for a writ of certiorari does not prevent a judgment from becoming final. *Glick v. Ballentine Produce, Inc.*, 397 F.2d 590, 594 (8th Cir. 1968).

Within this context, section 1367(d) tolls the statute of limitations while a claim is pending, and upon dismissal, tolling continues for an additional 30 days. Nowhere does the statute suggest that a party petitioning for a writ of certiorari once a claim is no longer pending in the lower federal courts, and after the 30-day grace period ends, alters or reinitiates the tolling period. To the contrary, the existence of the 90-day deadline to petition for a writ of certiorari enables a party to file a petition long after the tolling period under section 1367(d) ends. And if a party wishes to preserve the pendency of a claim, and

² Although not binding, we afford “due deference” to Eighth Circuit opinions on matters of federal law and may treat them as persuasive authority. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003).

in turn preserve the tolling period under section 1367(d), it may pursue a stay on the entry of judgment or on the issuance of a mandate.

Here, Kiefer's claims arose on October 8, 2018, and he filed his federal lawsuit on October 2, 2020, a mere six days before the statute of limitations would have otherwise run. On appeal, the Eighth Circuit affirmed the district court's dismissal of his claims without prejudice and issued a mandate on July 20, 2023. The district court entered the mandate as its final judgment that same day. Kiefer never moved for a stay. As a result, on July 20, 2023, his claims were no longer pending. Over two months later, well past the 30-day grace period under section 1367(d), and the running of the time remaining on the statute of limitations from before he filed his federal lawsuit, Kiefer petitioned for a writ of certiorari on September 27, 2023. The United States Supreme Court denied the petition on October 30, 2023. Given the timing of Kiefer's activities in federal and state court, the district court properly determined that Kiefer's claims against the county were untimely. We conclude that summary judgment was appropriate.

Motion to dismiss for lack of subject-matter jurisdiction

Next, Kiefer argues that the district court erred by granting the state's motion to dismiss his equal-protection claim for lack of subject-matter jurisdiction after it concluded that he did not have standing to bring suit.

"To have standing, a party must have a sufficient stake in the controversy to seek relief from the court so that the issues before the court will be vigorously and adequately presented." *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn. 2015) (quotation omitted). Standing is essential for a court to exercise jurisdiction over a dispute.

Clapp v. Sayles-Adams, 15 N.W.3d 648, 652 (Minn. 2025). “We review the existence of standing de novo.” *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024).

A party can acquire standing when it is “the beneficiary of some legislative enactment granting standing,” or as is the case here, by asserting an “injury-in-fact.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). An injury-in-fact requires “a concrete and particularized invasion of a legally protected interest.” *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014) (quotation omitted). “[T]he injury must be fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Id.*

Under Minn. Stat. § 590.11, subd. 2, a party can “petition for an order declaring eligibility for compensation based on exoneration . . . before the district court where the original conviction was obtained.” To be “[e]xonerated” requires, among other things, that “a court . . . vacated . . . a judgment of conviction on grounds consistent with innocence.” Minn. Stat. § 590.11, subd. 1(b). “[G]rounds consistent with innocence” include when a party is “exonerated because the judgment of conviction was vacated . . . and there is *any evidence of factual innocence* whether it was available at the time of investigation or trial or is newly discovered evidence.” *Id.*, subd. 1(c) (emphasis added).

Here, the parties disagree about whether a favorable judicial decision would likely redress Kiefer’s alleged constitutional injuries, given the requirement under Minn. Stat. § 590.11, subd. 1(c), that for a party to be exonerated, there must be “evidence of factual innocence.”

The supreme court has interpreted the phrase “[f]actual innocence” to mean “the state of being not guilty of a crime . . . but only when the reason is restricted to or based on facts.” *Kingbird v. State*, 973 N.W.2d 633, 642 (Minn. 2022). In *Kingbird*, a party was convicted for unlawfully possessing a firearm under Minn. Stat. § 609.165, subd. 1b(a) (2014). *Id.* at 635. Law enforcement had found him with an “air-compressed BB gun.” *Id.* at 636. The party’s conviction was later vacated after the supreme court determined, in a separate case, that “air-compressed BB gun[s]” are not firearms within the meaning of the unlawful-firearm-possession statute. *Id.* (citing *State v. Haywood*, 886 N.W.2d 485, 487 (Minn. 2016)). The party then petitioned for compensation under section 590.11, but the district court denied the petition. *Id.* On appeal, the supreme court affirmed, concluding that the party was not exonerated based on factual innocence—meaning innocence for reasons “restricted to or based on facts”—but rather because there was no legal basis for his guilt. *Id.* at 642. The court emphasized that the party “admitted as part of his plea agreement that he possessed a BB gun at a time when he was ineligible to possess certain firearms” and his conviction was vacated simply because of the subsequent *Haywood* decision. *Id.* at 642-43.

We conclude that *Kingbird* governs this case. Here, a postconviction court vacated Kiefer’s conviction because this court interpreted a law—the county ordinance—in a manner inconsistent with his guilt. In its order, the postconviction court expressly stated that it vacated his conviction because of how this court interpreted the ordinance during Kiefer’s appeal in the civil action. As a result, even if a court rendered unconstitutional the limitation under section 590.11 that only those individuals exonerated of felonies can

receive compensation, the district court would still be unable to provide Kiefer with compensation because the reasons for his exoneration are not “restricted to or based on facts.” *Kingbird*, 973 N.W.2d at 642. Therefore, “no facts, which could be produced consistent with the pleading . . . would support granting the relief demanded.” *Brenny*, 813 N.W.2d at 420 (quotation omitted).

We conclude that the district court did not err by determining that Kiefer lacked standing, and in turn, did not err by granting the state’s motion to dismiss for lack of subject-matter jurisdiction under Minn. R. Civ. P. 12.02(a).

Affirmed.