

United States Court of Appeals
For the Eighth Circuit

No. 25-1327

Curtis Pronk

Plaintiff - Appellant

v.

City of Rochester; Erik Kerska; Vance Swisher; Linda Hillenbrand, individually
and in their official capacities

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: October 22, 2025
Filed: October 7, 2026

Before COLLOTON, Chief Judge, LOKEN and BENTON, Circuit Judges.

LOKEN, Circuit Judge.

In 2006, Curtis Pronk began work as the “Administrative Services Manager” for the City of Rochester Minnesota Fire Department (RFD). He soon became friends with coworkers Erik Kerska, Battalion Chief, and Vance Swisher, Fire Marshal. In 2010, Swisher was promoted to Deputy Fire Chief and became Pronk’s direct supervisor. From 2011-2017, Pronk was commended for his work, and Swisher rated

Pronk “successful” on his annual performance reviews. Pronk also began assuming supervisory duties. Kerska was promoted to Fire Chief in 2018 and gave Pronk a combined performance review for 2018 and 2019, again rating Pronk’s performance as “successful.”

In August 2021, after the City Council rejected Kerska’s recommendation that the RFD hire an additional administrative assistant, Kerska undertook a “full-blown strategic plan analysis” of the RFD. Swisher again began directly supervising Pronk, who had supervision over the department’s two administrative assistants. Both administrative assistants told Swisher that Pronk was not a good manager and lacked the ability and desire to lead the administrative team. Other employees reported that Pronk’s management of budget, maintenance, and IT issues was unsatisfactory. Swisher included these criticisms in Pronk’s 2020 and 2021 performance reviews, and RFD decided to reclassify Pronk to the position of “Administrative Services Specialist” with reduced responsibilities that would decrease his pay by almost \$12,000.

On August 18, Pronk informed RFD of his intent to retire on August 31. He then filed this lawsuit. Despite never mentioning concern about age-based animus while employed, he alleged various claims for age discrimination, violation of procedural due process, and civil conspiracy. The district court¹ granted summary judgment dismissing all claims, concluding that (1) Pronk failed to present a prima facie case of age discrimination because he was not constructively discharged and failed to prove that RFD’s proffered reasons for its decision were pretext for discrimination; (2) the procedural due process claim failed because Pronk did not utilize existing grievance procedures; and (3) the civil conspiracy claim failed because he did not prove an underlying constitutional violation. Reviewing the grant

¹The Honorable Michael J. Davis, United States District Judge for the District of Minnesota.

of summary judgment *de novo*, and viewing the facts in the light most favorable to Pronk, the non-moving party, we affirm. Gustilo v. Hennepin Healthcare Sys., Inc., 122 F.4th 1012, 1015 (8th Cir. 2024) (standard of review).

I. Background

Early in 2018, Fire Chief Kerska undertook a “full-blown strategic plan analysis” of the RFD to streamline operations. Pronk as supervisor of the department’s administrative assistants recommended the RFD hire an additional administrative assistant. After the City Council rejected this recommendation, Kerska tasked Swisher with conducting a “deep analysis” of the department’s needs.

Swisher conducted “bifurcated” performance reviews of supervising administrative assistant Pronk in 2020 and 2021. In the first review, though giving Pronk a “successful” rating, Swisher noted staff criticisms that had been reported:

[Pronk] needs to become more proactive in his position and anticipate the needs of the organization and bring this information forward to Command Staff. Examples of opportunities for [Pronk] include: regulate budget review and forecasting, facilities inspections and CIP planning, identifying alternative funding opportunities (grants).

* * *

[Pronk] should become more involved with his team on a daily basis and work to gain a better understanding of the task[s] they perform and the workload they are assigned as there is an appearance of an uneven distribution of task[s] among his team members. One of his team members is assigned to support the EOC, however it does not appear that [Pronk] understand[s] the task[s] or [workload] that is placed on this team member. [Pronk] needs to move from a management orientation to

a leadership orientation for this team, focusing on developing the team through this staff and not just managing their tasks.

Swisher then conducted an “alternate” performance review that addressed the criticisms more directly. As Pronk’s friend, Swisher did not feel comfortable putting the more severe criticisms in Pronk’s actual performance review because this would impact his ability to receive a merit pay increase. Instead, Swisher prepared an alternative review that he did not submit to Human Resources for approval but did relay to Fire Chief Kerska. It stated:

[Pronk] is well like[d] by his peers, but is not respected as a member of the Fire Department Team who contributes at a level appropriate for his position. . . . [Pronk] struggles with the basic understanding of standard administrative task [sic]. . . . People feel [Pronk] makes answers up or bluffs his way through discussions even when he does not have a clear understanding. People go around [Pronk] as a result of his lack of organizational knowledge

In May 2021, Kerska, Swisher, HR Representative Jennifer Simpson, and Battalion Chief Holly Mulholland met to discuss Pronk’s situation. Swisher told Kerska that Pronk was not performing the job he was being paid for. The group decided that reclassifying Pronk’s position to remove some of his current duties, rather than putting him on a performance improvement plan, would put him “into something he could be successful at.” After this meeting, Swisher removed Pronk’s supervisory duties over the administrative assistants and asked him to identify areas of improvement from his 2020 reviews. Pronk acknowledged his efforts to improve but challenged the co-worker criticisms.

Pronk’s 2021 performance review by Kerska, Swisher, and Simpson occurred on July 20, six months after his 2020 reviews. The group discussed his performance, including his response to the 2020 reviews, and gave him an “unsatisfactory” rating. Pronk felt the criticisms were based on age but did not communicate that during or

after the meeting. The group informed Pronk of the decision to reclassify his position, detailing the potential impact on his pay, change in job-related duties, and removal from the Executive Management team. They asked Pronk for his help and gave him time to provide feedback. Pronk asked the group to go out to lunch after the meeting.

Pronk struck a different tone after the meeting, expressing concern in a written response that he was being “walked out the door,” and suggesting that only minimal changes were necessary for any reclassification of his position. Swisher replied:

Reading your response, I am under the impression you believe you could be successful in meeting the position requirements of your current job description with a minimum amount of changes.

I am sorry to be blunt, but you have not been successful previously and I don't think you would be successful moving forward with the amount of scrutiny that we are placing on all positions to maximize the efficiency and effectiveness of our current resources

Pronk then submitted more substantive changes to his role; Simpson rejected them as untimely. After the reclassification, Pronk was transitioned to the “Administrative Services Specialist” position. In his new role, Pronk’s pay would decrease almost \$12,000, an amount that Simpson and Linda Hillenbrand, the City’s Director of Human Resources, knew could be significant for him.

Pronk’s applicable Collective Bargaining Agreement (CBA)² allowed reclassification as long as the request for reclassification “demonstrate[s] that position duties and responsibilities have changed by at least 40 percent” and provided that any

²When he was not a supervisor, Pronk was a member of the Rochester Professional Employees Association. While acting in a supervisory role, he was a member of the Rochester Supervisory Association.

information “regarding changes to positions . . . would be provided to the [Union] President prior to being presented to the City Council for review and approval.” A union representative inquired about Pronk’s reclassification and the need for timely feedback for its members. Fire Chief Kerska admitted he did not know whether Pronk’s responsibilities changed 40 percent or more and no one at RFD sent the union president or the City Council the changes, as required by the CBA.

To assuage Pronk’s concerns, Simpson and Swisher met with him on August 9, presenting a memo detailing the revised changes and expectations. Pronk claimed the memo detailed additional duties not found in his original job description and not part of his most recent workflow. Instead of accepting his new position, Pronk notified Hillenbrand of his intent to retire on August 31. This “surprised” Swisher and Kerska, who thought they had “found a way for him to be successful and continue to serve the fire department.” After Pronk retired, the RFD changed his position to Administrative Service Coordinator, adding additional responsibilities. A 50-year-old man replaced Pronk, who was 60 years old when he retired.

II. Procedural History

In this action, Pronk alleges that Defendants unlawfully discriminated on account of his age in violation of (1) the Age Discrimination in Employment Act (ADEA), see 29 U.S.C. § 621 et seq., (2) the Minnesota Human Rights Act (MHRA), see Minn. Stat. §§ 363A.01-44, and (3) the Fourteenth Amendment’s Equal Protection Clause enforced through 42 U.S.C. § 1983. Pronk further alleges that Defendants (4) violated his constitutional right to procedural due process through 42 U.S.C. § 1983 and the Constitution’s Due Process Clause, and (5) conspired to deprive him of these constitutional rights.

The district court granted Defendants summary judgment and dismissed all claims. Pronk v. City of Rochester, No. 22-3090, 2025 WL 253408 (D. Minn. Jan.

21, 2025). Analyzing the ADEA, MHRA, and § 1983 Equal Protection Clause claims together, the court held that Pronk’s prima facie case failed because he was not constructively discharged -- he failed to show his working conditions were objectively intolerable because “criticism of Pronk’s work, removal of supervisory duties, and reduction in pay” are not sufficient, and he did not establish intent to discharge because his argument was “speculative The record lacks any evidence that Defendants foresaw or intended for Pronk to retire from the RFD.” Pertinent to Pronk’s non-MHRA claims, the court also held that he failed to provide a reasonable opportunity for Defendants to address his discrimination -- neither Pronk nor his union representative mentioned “working conditions or any perceived age-discrimination” in their communications with Defendants. The court further held that Pronk could not prove Defendants’ reason for reclassifying his position was only a pretext for age discrimination. Pronk, 2025 WL 253408, at *6-11.

Turning to Pronk’s due process claim, the court acknowledged that the CBA gave him a property interest in his job but concluded that “any procedural due process claims were waived when he retired and refused to participate in post-termination or grievance procedures.” The court dismissed Pronk’s conspiracy claim because there was no underlying constitutional violation. Id. at *11-13.

III. Discussion

On appeal, Pronk argues the district court erred in dismissing each of his five claims.³ Though the claims raise distinct issues, his counsel conceded at oral argument that one issue, constructive discharge, holds the “keys to the kingdom.” We agree with the district court’s resolution of this decisive issue.

³The district court also dismissed Pronk’s § 1983 Monell claim, a decision he is not appealing.

A. ADEA, MHRA, & § 1983 Equal Protection Clause Claims. These claims share the same evidentiary framework. See Aulick v. Skybridge Ams., Inc., 860 F.3d 613, 620 (8th Cir. 2017) (ADEA & MHRA); Hager v. Ark. Dep’t of Health, 735 F.3d 1009, 1014 (8th Cir. 2013) (§ 1983 Equal Protection Clause discrimination claims). As Pronk alleges only circumstantial evidence of age-discrimination, the framework we apply is the burden-shifting analysis set out by McDonnell Douglas Corp. v. Green. See 411 U.S. 792, 800-04 (1973). “Under that familiar three-step formula, a plaintiff must first present a prima facie case of intentional discrimination.” Putnam v. Unity Health Sys., 348 F.3d 732, 735 (8th Cir. 2003). If he does, the burden “shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its action.” Id. If the defendant meets this burden, the “plaintiff must show that the proffered nondiscriminatory reason is merely pretext for unlawful [age] discrimination.” Id.

To establish a prima facie age-discrimination case, Pronk must show he: “(1) was at least 40 years old, (2) experienced an adverse employment action, (3) was meeting [his] employer’s legitimate expectations at the time of the adverse action, and (4) was replaced by someone substantially younger.” Hester v. Dep’t of Treasury, 137 F.4th 684, 689 (8th Cir. 2025). In employment discrimination litigation, the doctrine of constructive discharge addresses the adverse employment action element:

Constructive discharge, like any other discharge, is an adverse employment action that will support an action for unlawful retaliation. An employee is constructively discharged when an employer deliberately renders the employee’s working conditions intolerable and thus forces her to quit her job.

West v. Marion Merrell Dow, Inc., 54 F.3d 493, 497 (8th Cir. 1995) (quotations and citations omitted). Although the burden to establish a prima facie case “is not onerous,” Putnam, 348 F.3d at 737, the bar a plaintiff must clear to show constructive discharge is “high.” Bell v. Baptist Health, 60 F.4th 1198, 1203 (8th Cir. 2023). Pronk must show “(1) a reasonable person in [his] situation would find the working

conditions intolerable, and (2) the employer intended to force [him] to quit.” Parker v. U.S. Dep’t of Agric., 129 F.4th 1104, 1114 (8th Cir. 2025) (quotation omitted).

1. Objectively Intolerable Working Conditions. This issue is governed by an objective standard. Lisdahl v. Mayo Found., 633 F.3d 712, 718 (8th Cir. 2011). “[T]he question is whether working conditions were rendered so objectionable that a reasonable person would have deemed resignation the only plausible alternative.” Tatom v. Georgia-Pacific Corp., 228 F.3d 926, 932 (8th Cir. 2000). Pronk argues the totality of the circumstances he faced -- the unusual six-month, demeaning performance review; removal of his supervisory duties; “rapid” reclassification of his position without being put on a performance improvement plan; loss of pay; and Simpson’s August 9 memo setting out additional duties he must perform -- amounted to objectively intolerable working conditions. While no doubt intolerable for Pronk at the time, these working conditions fall well short of establishing the kind of *objectively* intolerable conditions required to prove constructive discharge.

“[S]uch things as loss of supervisory responsibilities, a feeling of being unfairly criticized, dissatisfaction with work assignments, and loss of pay are insufficient to constitute a constructive discharge.” Tatom, 228 F.3d at 932 (collecting cases). Neither is being subjected to corrective measures, like a performance improvement plan, Fischer v. Anderson Corp., 483 F.3d 553, 557 (8th Cir. 2007), nor facing “verbal harassment and increased scrutiny.” O’Brien v. Dep’t of Agric., 532 F.3d 805, 811 (8th Cir. 2008). Such measures do not leave the employee with no “plausible alternative” other than to quit, unlike conditions such as pervasive and directed use of racial slurs at an employee. Delph v. Dr. Pepper Bottling Co. of Paragould, Inc., 130 F.3d 349, 352-55 (8th Cir. 1997).

Here, Pronk no doubt disliked his “rapid” (three-month) reclassification, loss of responsibilities, and reduced pay, but these measures did not leave him no “reasonable alternative” other than to quit. Defendants could have taken actions to

make Pronk's working environment better, such as utilizing a performance improvement plan or using less "blunt" language in criticizing his performance. But "objectively intolerable" working conditions require more than disagreements with management about courses of action, especially where there is a factual basis for the employer's actions, such as complaints by co-workers. See Tidwell v. Meyer's Bakeries, Inc., 93 F.3d 490, 495 (8th Cir. 1996) (the employee's loss of a single promotion opportunity to an arguably better qualified candidate does not create "the overwhelming compulsion to quit that is necessary for constructive discharge"). Defendants chose to reclassify Pronk's position because of performance issues. A loss of responsibilities and "reduction in pay does not necessarily constitute a constructive discharge." Allen v. Bridgestone/Firestone, Inc., 81 F.3d 793, 796-97 (8th Cir. 1996) (quotation omitted). We agree with the district court Pronk has failed to show his working conditions were "objectively intolerable."

2. Intent or Reasonable Foreseeability. Even if Pronk could establish that his working conditions were objectively intolerable, his claims still fail because he cannot show "the employer intended to force [him] to quit." Parker, 129 F.4th at 1114. A plaintiff can satisfy this requirement by "demonstrating that the resignation was a reasonably foreseeable consequence of the employer's actions." Lisdahl, 633 F.3d at 718. Pronk argues that a jury could infer (a) that Defendants' reclassification actions, including evidence RFD disregarded the CBA's limitations on reclassification and ignored Pronk's input, were sufficient to show an attempt to force him out; and (b) his resignation was foreseeable because both Hillenbrand and Simpson knew Pronk would be disappointed with the pay cut and the reclassification. Like the district court, we disagree.

Pronk correctly relies on Parrish v. Immanuel Med. Ctr., 92 F.3d 727, 732 (8th Cir. 1996), for the proposition that a reasonable jury can find that circumstances surrounding a change in duties can establish the requisite intent, but that case is factually distinguishable. In Parrish, the employer offered the plaintiff, on a take it

or leave it basis, a redesigned position with different duties and later hours, even though “her supervisors knew she did not feel comfortable returning home from work after dark” and her immediate supervisor told management that “[plaintiff] would not take the proposed transfer.” Id. at 732.

Here, there is no such evidence; if anything, the summary judgment record shows that Defendants did what they could to keep Pronk as an employee. Swisher conducted an alternate performance review in 2020 so Pronk could still receive his merit-based increase. When his performance did not sufficiently improve, Defendants redesigned his role instead of terminating his employment. And when conducting the reclassification, they asked for his input and included him in the process. Taken together, these actions show “an intent to maintain an employment relationship with [Pronk], not to cause [him] to quit.” Trierweiler v. Wells Fargo Bank, 639 F.3d 456, 460 (8th Cir. 2011).

RFD’s apparent violation of the CBA reclassification policy, if anything, supports a finding Defendants wanted to keep Pronk employed. As the district court stated, “[I]t is unclear why Defendants would have gone through the trouble of breaking city policy and redesigning Pronk’s position if they intended for him to resign” Pronk, 2025 WL 253408, at *8. The testimony that Hillenbrand and Simpson knew the pay cut was significant does not suggest Defendants knew Pronk would not accept it. Swisher and Kerska both testified that they were surprised to learn that Pronk would instead retire.

Thus, the summary judgment record supports the district court’s conclusion that Pronk’s ADEA, MHRA, and § 1983 Equal Protection Clause claims fail, not only because he did not establish “objectively intolerable” working conditions, but also because he failed to show that Defendants had the intent to force him to quit, or even that voluntary retirement was a reasonably foreseeable consequence of their actions.

3. The “Reasonable Chance” Issue. In employment discrimination cases alleging ADEA and § 1983 Equal Protection Clause claims of disparate treatment, we have “consistently recognized that an employee is not constructively discharged if [he] quits without giving [his] employer a reasonable chance to work out a problem.” Blake v. MJ Optical, Inc., 870 F.3d 820, 826 (8th Cir. 2017) (quotation omitted), cert. denied, 584 U.S. 916 (2018); see Trierweiler, 639 F.3d at 460.⁴ Plaintiffs seeking to prove constructive discharge have “an obligation not to assume the worst . . . [and] jump to the conclusion that . . . [their] only reasonable option was to resign.” Blake, 870 F.3d at 826-27. “[A] [plaintiff’s] failure to seek a solution before quitting -- either by telling [their supervisor] to stop, or by alerting [management] to the alleged harassment” -- forecloses any constructive discharge claim. Id. (citing cases).

Here, the summary judgment record reflects that Pronk never mentioned his concerns of age-based animus to management or gave Defendants any opportunity to correct the age discrimination he perceived. The only comment he points to is his remark to Swisher one day after the July 20 meeting that he was concerned he was being “walked out the door.” But this legitimate concern about future employment did not communicate the belief he was facing the age discrimination later alleged in this lawsuit. Thus, he failed to provide RFD and the individual defendants any chance -- let alone a reasonable chance -- to work out the problem. This is “fatal” to his constructive discharge allegation. Blake, 870 F.3d at 826.

Pronk further argues that a reasonable jury could infer that any such reporting would have been futile because of Swisher’s prior “to be blunt” email. Of course, Pronk had multiple opportunities to raise his age discrimination concerns outside his

⁴This rule does not apply to Pronk’s MHRA claim. “Because we adopt the employer-intent requirement, we decline to require . . . that plaintiffs alleging disparate-treatment-based constructive discharge notify their employers of the intolerable conditions or otherwise attempt to mitigate the alleged mistreatment before resigning.” Henry v. Ind. Sch. Dist. #625, 988 N.W.2d 868, 887 (Minn. 2023).

email exchange with Swisher. In addition, we expressly rejected this futility argument in Blake, 870 F.3d at 826:

[Pronk] tries to avoid this result by arguing any attempt to fix the problem would have been “futile” because [management] “would not have done anything about it.” [Pronk] does not support this conclusory allegation with any reasoning or concrete example where [management] ignored such a complaint Nor does [Pronk] cite any case recognizing [his] proposed futility exception, likely because our precedent all but forecloses the notion.

Therefore, the district court properly dismissed Pronk’s ADEA and § 1983 Equal Protection Clause disparate treatment claims for this additional reason.

B. § 1983 Procedural Due Process Clause Claim. “An employee must have a protected life, liberty, or property interest in continued employment to maintain a procedural due process claim under 42 U.S.C § 1983.” LaCoe v. City of Sisseton, 82 F.4th 580, 582 (8th Cir. 2023), citing Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 & n.3 (1985). Independent sources such as state law create and define protected property interests. Id.

Under Minnesota law, at-will employees do not have a protected property interest in continued employment. Rutherford v. Cnty. of Kandiyohi, 449 N.W.2d 457, 460 n.1 (Minn. App. 1989). However, if “a public employee may not be terminated except for good cause, that is a property interest entitled to due process protection.” Somers v. City of Minneapolis, 245 F.3d 782, 785 (8th Cir. 2001). Here, Article II of Pronk’s CBA states that “[e]mployees shall not be terminated except for just cause.” As the district court recognized, this gave him a protected property interest in his continued RFD employment.

To be entitled to due process protections, Pronk must show the City as his employer *deprived* him of this property interest. See Cleveland Bd. of Educ., 470 U.S. at 538 (emphasis added). Here, it was Pronk’s decision to retire and voluntarily give up his employment. Thus, his claim fails because he was not “deprived” of a protected property interest. See Angarita v. St. Louis Cnty., 981 F.2d 1537, 1544 (8th Cir. 1992) (“If the resignation is found voluntary, the procedural rights to which the employee is otherwise entitled are waived.”); Palka v. Shelton, 623 F.3d 447, 453 (7th Cir. 2010), cert. denied, 562 U.S. 1287 (2011).

Even assuming Pronk was “deprived” of his right to procedural due process, his claim nonetheless fails because he did not utilize the available CBA grievance procedures. “[A] plaintiff cannot complain of a violation of procedural due process when he has not availed himself of existing procedures.” Does 1-2 v. Regents of the Univ. of Minn., 999 F.3d 571, 582 (8th Cir. 2021) (quotation omitted). Before filing this lawsuit, Pronk never attempted to utilize the grievance procedures of either union of which he was a member (they were identical). “Nothing in our jurisprudence suggests that a government employee can legitimately sue for deprivation of the right [to procedural due process] when he never asserted the right before suing for damages.” Winskowski v. City of Stephen, 442 F.3d 1107, 1111 (8th Cir.), cert. denied, 549 U.S. 975 (2006). His broad allegations on appeal that utilizing these procedures would have been “futile” due to Defendants’ failure to follow their reclassification policy -- assuming without deciding they could ever excuse Pronk’s failure to exhaust available remedies -- are not sufficient. See Raymond v. Bd. of Regents of Minn., 847 F.3d 585, 593 (8th Cir. 2017) (Shepherd, J., concurring).

C. § 1983 Civil Conspiracy Claim. “There can be no [§ 1983] civil conspiracy [violation] without an underlying constitutional violation.” Wolk v. City of Brooklyn Ctr., 107 F.4th 854, 860 (8th Cir. 2024). Because Pronk has no claim

under § 1983 for either a violation of his right to equal protection or procedural due process, the district court properly dismissed this fifth claim.

For the foregoing reasons, the judgment of the district court is affirmed.
