STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0734

Lionel Pye,
Appellant,

vs.

NuAire, Inc., a/k/a NuAire International, Inc.,
Respondent.

Filed December 24, 2012
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-11-20982

Stephen W. Cooper, Stacey R. Everson, The Cooper Law Firm, Chrtd., Minneapolis, Minnesota (for appellant)

Ansis V. Viksnins, Christopher A. Grgurich, Lindquist & Vennum, P.L.L.P., Minneapolis, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Klaphake, 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

HALBROOKS, Judge

Appellant Lionel Pye challenges the district court's dismissal, on timeliness grounds, of a state-law retaliation claim that Pye brought in state court after the claim, which was pendent to various federal claims, was dismissed without prejudice by a federal district court. Pye argues that the district court erred by (1) concluding that the amount of time that he had to file his claim in state court had expired and (2) dismissing his claim because, regardless of his technical noncompliance with the statute, the purpose of the service requirement was satisfied in this case. Because we conclude that the district court correctly calculated the amount of time that appellant had to file his state-court claim and properly dismissed Pye's claim as untimely, we affirm.

FACTS

On November 13, 2008, Pye commenced suit in federal district court against respondent NuAire, Inc., a/k/a NuAire International, Inc., alleging race discrimination, a hostile work environment, and retaliatory discharge, all in violation of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e–2000e–17 (2006), and the Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A.15 (2008). The federal complaint also asserted several common-law claims and named Pye's former NuAire supervisor as a defendant, but Pye subsequently dismissed his former supervisor as a defendant. The federal district court granted NuAire summary judgment on all claims. Pye appealed all but the common-law claims. The Eighth Circuit affirmed as to the race-

discrimination and hostile-work-environment claims and reversed and remanded with respect to the federal and state retaliation claims.

On remand, before the federal district court, NuAire moved for summary dismissal of the remaining Title VII and MHRA-retaliation claims. On October 5, 2011, the federal district court granted NuAire's motion. The federal district court dismissed the Title VII claim with prejudice and dismissed the pendent MHRA claim without prejudice after declining to exercise supplemental jurisdiction over it.

The events giving rise to the current appeal occurred after the October 5th dismissal of the retaliation claims and concern Pye's attempt to litigate the remaining MHRA-retaliation claim in state court. On October 13, 2011, Pye's counsel mailed a copy of the original federal complaint (captioned for federal court) to the Hennepin County District Court Administrator accompanied by a cover letter stating: "Due to a remand of the above-referenced matter from federal court to state court, please find enclosed for filing: . . . [t]he Complaint in the above-referenced matter." Counsel's reference to a "remand" is inaccurate because the federal district court dismissed the state-law claims; it did not remand the matter to state court.

Pye's counsel subsequently testified by affidavit that she also served a copy of the complaint and a copy of the October 13 cover letter on NuAire's counsel. NuAire's counsel, also by affidavit, acknowledged receipt of the cover letter but denied receiving a copy of the federal complaint. It is undisputed that no summons or affidavit of service was included in the mailing and that the cover letter did not claim to constitute service of the complaint on NuAire.

The court administrator returned the complaint to Pye's counsel, along with a blank certificate of representation, because the filing fee had not been paid. On October 19, 2011, Pye's counsel re-filed the complaint with the fee, a completed certificate of representation, and another cover letter. Pye's counsel maintains that she served the complaint, the letter, and the certificate of representation on NuAire's counsel, who acknowledges receiving everything except the complaint. As was true of the October 13 letter, no summons was included in the October 19 mailing, and the cover letter did not claim to constitute service of the complaint on NuAire.

On October 25, 2011, NuAire's counsel received a notice of judicial assignment from the court administrator. NuAire's counsel then wrote to the district court to explain that neither NuAire nor its counsel had been served a complaint and that, although a case had been filed with the district court, no case had "commenced" under Minnesota law. NuAire's counsel requested the district court to direct appellant to serve a properly captioned complaint on NuAire. Pye's counsel then wrote to the district court, disputing NuAire's assertion that NuAire had not received a complaint and observing that, in any case, the current complaint was simply a copy of the federal complaint that NuAire had received when Pye first brought his claims in federal court in 2008. Pye's counsel stated it would nonetheless serve the complaint directly on NuAire.

On November 18, 2011, Pye served a summons and complaint directly on NuAire. The complaint was identical to the federal complaint that Pye had previously sent to the district court except for the inclusion of an additional cover page captioning the case for

state court and the exclusion, in the state-court caption, of Pye's former supervisor as a defendant.

NuAire moved the state district court to dismiss the complaint, arguing that (1) Pye's state-law retaliation claim (the only claim that had not been dismissed with prejudice by either the Eighth Circuit or the federal district court) was untimely; (2) the remaining claims against NuAire, which had all been considered and dismissed with prejudice, were barred by res judicata; and (3) the claims against Pye's former supervisor should be dismissed because they had been previously dismissed by Pye.

The district court granted NuAire's motion. The district court first concluded that Pye's MHRA-retaliation claim was not timely commenced under 28 U.S.C. § 1367(d) (2006), which establishes the amount of time a party has to re-file in state court a state-law claim that has previously been asserted pendent to federal claims in federal court and dismissed without prejudice. The district court reasoned that Pye had failed to serve a summons within the limitations period and that timely service of a complaint was insufficient to satisfy the MHRA time-limitations requirement that a claim be timely "brought as a civil action." The district court further concluded that Pye's other claims were barred by res judicata and that Pye had not, in fact, asserted claims against his former supervisor. This appeal follows.

D E C I S I O N

I.

The principal issue before us—whether Pye timely filed his MHRA-retaliation claim in state court following its dismissal without prejudice in federal court—turns on

the interpretation of 28 U.S.C. § 1367(d). We review matters of statutory interpretation de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2012). This court first considers whether the statute's language is clear. *See ILHC of Eagan, LLC v. Cnty. of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). "If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language. If a statute is ambiguous, we apply other canons of construction to discern the legislature's intent." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citation omitted).

Under the MHRA, "[a] claim of an unfair discriminatory employment practice, must be brought as a civil action . . . , filed in a charge with a local commission . . . , or filed in a charge with the commissioner within one year after the occurrence of the practice." Minn. Stat. § 363A.28, subd. 3 (2012). Where, as here, a party has asserted federal- and state-law discrimination claims together in federal court, and the federal court has dismissed the federal claims with prejudice and the state claims without prejudice, 28 U.S.C. § 1367(d) governs the amount of time the party asserting the claims has to subsequently file the remaining state claims in state court.

The federal statute provides:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C. § 1367(d). The subsection (a) referenced in the tolling provision grants federal district courts supplemental jurisdiction over claims that are "so related to" the claims in the action over which the district court has original jurisdiction. *Id.* § 1367(a) (2006). The Minnesota Supreme Court has interpreted the tolling provision in section 1367(d) to require a plaintiff, whose federal claims have been dismissed and whose pendent state actions are still viable, to commence a state action within 30 days plus the time that was remaining on the state-law limitations period prior to the commencement of the federal action. *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 760 (Minn. 2010). Put slightly differently, the *Goodman* court concluded that the tolling provision in "section 1367(d) suspends the running of a limitations period during the time a state-law claim is pending in federal court and for 30 days after the claim is dismissed." *Id.* at 758.

Here, the state district court applied *Goodman*, which is controlling. First, the district court found that Pye's one-year limitation period for his MHRA claim began to run on November 19, 2007, the day he was terminated. Pye filed his federal suit on November 13, 2008—six days before the end of the one-year limitations period. The district court concluded that when the federal court dismissed Pye's MHRA claim on October 5, 2011, he had 36 days to commence his MHRA suit in state court. The district court arrived at this figure by adding the 30 days provided under section 1367(d) to the six days remaining on Pye's MHRA-limitations period. The district court therefore determined that the limitations period on Pye's MHRA claim expired on November 10, 2011—36 days after that claim was dismissed in federal court.

The district court's calculation of the limitations period on Pye's MHRA claim properly followed the rule enunciated in *Goodman*. Appellant, however, argues that the Federal Rules of Appellate Procedure entitled him to an additional 30 days in which to re-file his MHRA claim in state court following its dismissal from federal court. This argument, however, is not properly before us because Pye failed to raise it to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (deeming waived on appeal issues that are not raised and decided by the district court). We nonetheless reiterate that the district court correctly calculated the number of days in which Pye could timely re-file his MHRA claim in state court after it was dismissed in federal court. Pye has not cited any legal authority that persuades us either that the district court's calculation was imprecise or that he was subject to a time frame other than the one prescribed under *Goodman*.

II.

We next turn to Pye's argument that the state district court erred by dismissing his claim as untimely. Pye contends, because his case "has been pending" for three years and because he properly served and filed the federal complaint in November 2008, that it is immaterial whether he served a summons along with the complaints that he alleges to have served on NuAire in October 2011.

To satisfy the one-year limitations period, a claim of unfair discriminatory practices under MHRA must be "brought as a civil action pursuant to section 363A.33, subdivision 1." Minn. Stat. § 363A.28, subd. 3. We have previously resolved that the phrase "'bring a civil action' is synonymous with 'commence a civil action.'" *Ochs v.*

Streater, Inc., 568 N.W.2d 858, 860 (Minn. App. 1997). Minn. R. Civ. P. 3.01 plainly states that a civil action cannot commence absent service of process: "A civil action is commenced against each defendant . . . when the summons is served upon that defendant." And a district court must dismiss an action absent proper service of process. *Uthe v. Baker*, 629 N.W.2d 121, 123 (Minn. App. 2001). A judgment entered by a court without personal jurisdiction is therefore void. *Pugsley v. Magerfleisch*, 161 Minn. 246, 247, 201 N.W. 323, 323 (1924) (stating that default judgment is void for lack of jurisdiction when service of process is not properly made). Whether service of process was proper is a question of law, subject to de novo review. *Amdahl v. Stonewall Ins. Co*., 484 N.W.2d 811, 814 (Minn. App. 1992), *review denied* (Minn. July 16, 1992).

Under these governing principles, Pye did not commence his state lawsuit until he served the summons on NuAire on November 18, 2011, which was eight days after the expiration of the statute of limitations on his claim. Pye relies on *Goodman*, however, in attempting to persuade us that the filing of a complaint, absent a summons, is sufficient to commence an action. In that case, the supreme court held that "the limitations period on Goodman's MHRA claim had not expired when he filed his complaint in state district court on March 9, 2007." *Goodman*, 777 N.W.2d at 761-62. Pye argues that this language means that filing a complaint alone commences an action. But *Goodman* does not stand for that proposition. In *Goodman*, as the district court here observed, appellant had originally brought his suit in state court, and it was later removed to federal court. *Id.* at 756. Therefore, when he re-filed a claim in state court, after the federal claims were

dismissed, there was no need to serve another summons, because one had already been served when the suit was originally initiated in state court.

Pye raises other equitable arguments in support of his proposal that we excuse his failure to timely serve a summons as an insignificant or merely technical error. We refuse to do so because we wholly disagree with Pye's view that the lack of timely service of process is inconsequential or should be overlooked. And Pye's additional argument—that service rules should be liberally construed so as to deem them satisfied in this case—is defeated by the fact that none of the cases Pye cites in support of this proposition concern a party's failure to serve a summons. Accordingly, because Pye's state-law action commenced on November 18, 2011, when he served the summons on NuAire, the district court did not err by dismissing his claim as untimely.

Affirmed.