In the Missouri Court of Appeals
Eastern District
DIVISION FOUR

MADONNA FARROW,	)	ED96532
	)	
Plaintiff/Appellant,	)	Appeal from the Circuit Court
	)	of Cape Girardeau County
v.	)	
	)	
ST. FRANCIS MEDICAL CENTER	)	Honorable Benjamin F. Lewis
and DR. CEDRIC C. STRANGE,	)	
	)	
Defendants/Respondents.	)	Filed: June 26, 2012

Before Patricia L. Cohen, P.J., Sherri B. Sullivan, J., and Robert M. Clayton III, J.

PER CURIAM

Introduction

Madonna Farrow (Appellant) appeals from the trial court's summary judgment entered in favor of St. Francis Medical Center (St. Francis or Employer) and Dr. Cedric C. Strange (Dr. Strange) (collectively Respondents) on Appellant's eight-count first amended petition. We affirm.

Factual and Procedural Background

In 1991, St. Francis hired Appellant as a staff nurse, with her primary area of responsibility being the progressive cardiac floor. In August 1999, Appellant transferred to St. Francis' radiology department where she continued to work without incident through December 2005. In December 2005, Appellant alleges that Dr. Strange, the Medical Director of Radiology for St. Francis, made sexual propositions to her.

Appellant states that she rejected these advances and reported them to the human resources department.

Appellant maintains that again in February 2006, Dr. Strange made a sexually inappropriate comment to her. Appellant states that she then informed supervisor of radiology Eric Bandon ("Bandon") of both unwanted advances by Dr. Strange, that they made her uncomfortable and difficult to work with Dr. Strange, and requested his assistance. Appellant claims that Bandon stated he would look into it, but never got back to her, nor did any one else from St. Francis.

At this point, Appellant maintains that she became subject to retaliatory actions by Respondents. Specifically, Appellant claims that Respondents instituted a "rule" prohibiting Appellant or other nurses from performing peripherally inserted central catheter (PICC) line procedures[1] within St. Francis' radiology department and turning the responsibility for such program over to Chuck Barwick (Barwick), a non-nurse medical technician from Dr. Strange's private practice. Respondents required Appellant to train Barwick to replace her. Appellant complained to her superiors about the policy change and sought reinstatement of the use of nurses to administer the PICC lines.

Appellant also contends that Dr. Strange made defamatory statements about the quality of her work. Specifically, Appellant alleges that Dr. Strange falsely complained that Appellant was not writing the activity of the day on the board and not following orders; openly advocated to other employees and staff of St. Francis that Appellant should be fired; falsely accused Appellant of changing doctor's orders and ignoring his instructions; and berated, yelled at, intimidated and harassed Appellant in front of other

[1] Prior to 2004, St. Francis had used outside nurses to insert PICC lines in patients. During 2004, Appellant suggested and implemented a program whereby St. Francis' own employee nurses learned and took over responsibility for inserting PICC lines into patients.

employees. Appellant maintains St. Francis acquiesced in these retaliatory actions of Dr. Strange by allowing them to happen, and by disciplining her for various actions that she claims had previously not warranted discipline.

On October 16, 2006, at the advice of human resources, Appellant placed documentation into her personnel file concerning Dr. Strange's and St. Francis' actions. Subsequently, Appellant claims she heard that Dr. Strange and St. Francis wanted to fire her. Appellant declares that when she learned of the plans to terminate her, she was forced to request a transfer from radiology back to the progressive cardiac floor, which resulted in a pay loss of almost $2.00 per hour. Appellant maintains that although St. Francis agreed to the transfer, which occurred on November 4, 2006, her new supervisor on the cardiac floor, Linda Schlick (Schlick), told her she had been apprised of the "problems in radiology"; that Appellant must not make any more complaints about it; and that Appellant had to just keep her head down and do her job.

In January 2007, Appellant alleges she placed additional documentation into her personnel file regarding the prior acts of Dr. Strange and St. Francis. She claims that a few weeks later, Steven Bjelich (Bjelich), the President and Chief Executive Officer of St. Francis, approached Appellant, acknowledged that he was personally aware of her transfer and inquired as to whether the transfer had "worked out her problems." Appellant maintains she informed Bjelich that she was still continuing to have sleep problems as a result of the way she had been treated by Dr. Strange and St. Francis; that she wanted the matter investigated; that she had everything documented in her personnel file, and specifically requested that Bjelich investigate and review her file and documentation. Appellant maintains that Bjelich indicated that St. Francis would review

the matter and her file, but never did. Appellant states that it was not until April of 2007 that Bjelich spoke with Appellant again, in the hallway, inquiring as to whether she was sleeping better. Appellant said that she again told him she was still having sleep issues, and asked if St. Francis had investigated her complaints and whether he had reviewed the materials in her personnel file. Bjelich indicated he had not yet reviewed her file, but would do so. Appellant asserts that, again, she never heard back from Bjelich or St. Francis about any review or investigation of her complaints. However, on May 16, 2008, Appellant alleges she was summoned to her supervisor's office and advised that she was being written up for unprofessional conduct based on her negative attitude. Appellant claims she was also told at that time by her supervisor that she should not worry about and review her personnel file so much. Appellant decided to go and review her personnel file, and alleges that all of her documented complaints were missing from her file.

Appellant declares that subsequently she ran into Dr. Strange in the hallway, who allegedly said to her that he was "still going to get her out." Appellant complained to human resources. Appellant maintains that St. Francis responded by labeling Appellant's complaints as disruptive and non-productive behavior on her part, and ultimately terminated Appellant's employment by notice of termination on December 10, 2008, stating that it was based on failure to meet customer service expectations.

On December 15, 2008, Appellant filed a grievance pursuant to St. Francis' grievance process, requesting that St. Francis review the decision that was made to discharge her on December 10, 2008. Her discharge on December 10, 2008 was the last act of discrimination alleged by Appellant. Step one of the grievance process was completed on December 17, 2008. Appellant proceeded to step two of the grievance

process on January 6, 2009, which was completed on January 9, 2009. Appellant then proceeded to step three of the grievance process on January 19, 2009, which was completed on January 22, 2009. Appellant next proceeded to step four of the grievance process on February 4, 2009, which was completed that same day. Subsequently, Appellant initiated the final step of the grievance process on February 17, 2009, and St. Francis' final response, issued by President and CEO Bjelich, was to deny her grievance on March 2, 2009.[2]

Appellant filed a complaint with the Missouri Commission on Human Rights (MCHR) on July 27, 2009, noting that the first act of discrimination against her by Respondents was August 22, 2008, and the last act of discrimination was her discharge by St. Francis on December 10, 2008. Appellant received a Notice of Right to Sue from the MCHR on December 18, 2009, indicating that it was issuing her a notice of right to sue in conjunction with and based on the one issued by the Equal Employment Opportunity Commission (EEOC). The notice indicated Appellant's right to bring a civil action based on her complaint against the respondents named within the complaint within 90 days of the issuance of the notice, and that all proceedings with the MCHR based on her complaint were thereby being terminated.

Appellant also filed a charge with the EEOC on August 6, 2009. On November 11, 2009, Appellant requested from the EEOC a Notice of Right to Sue. On November 16, 2009, the EEOC issued Appellant a Notice of Right to Sue. The Notice indicated that less than 180 days had passed since the filing of Appellant's charge, but that it was

[2] Each of these "steps" of the grievance process essentially involved Appellant maintaining in writing, each time with a higher-up, that she was continuing her grievance process and requesting that her termination be overturned, and each respective higher-up reviewing and denying such request in writing, culminating in the President and CEO Bjelich's final denial.

unlikely that the EEOC would be able to complete its administrative proceedings within 180 days from the date of the charge, and therefore with the right to sue notice the EEOC was terminating its processing of the charge.

On March 18, 2010, Appellant filed a petition in the trial court against St. Francis and Dr. Strange. On April 20, 2010, St. Francis filed a motion to dismiss Appellant's petition or, in the alternative, motion for summary judgment. On June 3, 2010, Dr. Strange filed his separate motion to dismiss Appellant's petition or, in the alternative, motion for summary judgment. On July 1, 2010, Appellant filed her memorandum in opposition to Respondents' motions. On July 26, 2010, Respondents filed their reply in support of their motions.

A hearing on Respondents' motions was set for August 30, 2010. Prior to the hearing, the trial court granted Appellant's request for leave to file an amended petition and as a result the hearing scheduled for August 30, 2010 was canceled.

On August 31, 2010, Appellant filed her first amended petition against Respondents alleging the following:

Count I – Violation of the Missouri Human Rights Act (MHRA), Sexual Harassment, against both Respondents;

Count II – Violation of the MHRA, Retaliatory Discrimination, against both Respondents;

Count III – Violation of the MHRA, Retaliatory Discharge, against St. Francis;

Count IV – Violation of the MHRA, Retaliatory Discharge, against St. Francis;

Count V – Wrongful Discharge, against both Respondents;

Count VI – Defamation, against Dr. Strange;

Count VII – False Light Invasion of Privacy, against Dr. Strange; and

Count VIII – Tortious Interference with Business Expectancy, against Dr. Strange.

Respondents each filed a motion to dismiss Appellant's first amended petition, or in the alternative, motion for summary judgment. Respondents jointly filed a combined memorandum in support of their motions to dismiss Appellant's first amended petition, or in the alternative, motion for summary judgment, and a statement of uncontroverted material facts. Appellant filed separate responses to Respondents' respective motions to dismiss or in the alternative, motions for summary judgment, a combined memorandum of law in support of her separate responses, along with exhibits in support thereof, a response to Respondents' combined statement of uncontroverted facts, and a statement of additional material facts that remain in dispute. Respondents filed a reply in support of their motions, a response to Appellant's statement of additional material facts that remain in dispute, and a combined statement of additional uncontroverted material facts in support of their motions. Appellant then filed separate sur-replies to Respondents' reply, a combined memorandum in support of her separate sur-replies, and exhibits in support thereof.

On February 7, 2011, the trial court heard the parties' respective arguments on the motions to dismiss, or in the alternative, for summary judgment, and took them under submission. On February 17, 2011, the court entered its judgment finding that there is no genuine issue as to any material fact, and that Respondents are entitled to judgment as a matter of law. This appeal follows. Additional facts necessary for discussion of Appellant's points on appeal will be presented as appropriate later in this opinion.

Points on Appeal

In her first point, Appellant maintains the trial court erred in granting summary judgment in favor of Respondents on Appellant's public policy exception wrongful discharge claim (Count V in her first amended petition), in that (a) Respondents had moved to dismiss the count, not for summary judgment (b) such claim was properly pled and stated a claim, (c) even if the motion was viewed as one for summary judgment, the record established there were at least questions of material fact on all elements which would preclude the grant of summary judgment at this early juncture, and (d) Appellant was entitled to leave to amend her claim in any event.

In her second point, Appellant contends the trial court erred in granting Dr. Strange's motion for summary judgment on Appellant's defamation claim (Count VI in her first amended petition), in that (a) Dr. Strange had moved to dismiss the count, not for summary judgment, (b) such claim was properly pled and stated a claim, and (c) even if the motion was viewed as one for summary judgment, the record established there were at least questions of material fact on all elements which would preclude the grant of summary judgment at this early juncture.

In her third point, Appellant claims the trial court erred in granting Dr. Strange's motion for summary judgment on Appellant's false light invasion of privacy claim (Count VII in her first amended petition), in that (a) Dr. Strange had moved to dismiss the count, not for summary judgment, (b) such claim was properly pled and stated a claim, and (c) even if the motion was viewed as one for summary judgment, the record established there were at least questions of material fact on all elements which would preclude the grant of summary judgment at this early juncture.

In her fourth point, Appellant avers the trial court erred in granting summary judgment in favor of Dr. Strange on Appellant's tortious interference with a business expectancy claim (Count VIII in her first amended petition), in that (a) Dr. Strange had moved to dismiss the count, not for summary judgment, (b) such claim was properly pled and stated a claim, and (c) even if the motion was viewed as one for summary judgment, the record established there were at least questions of material fact on all elements which would preclude the grant of summary judgment at this early juncture.

In her fifth point, Appellant states the trial court erred in granting summary judgment against Appellant on Count I of her amended petition alleging employment discrimination in violation of the MHRA, in that the claim was properly pled and there were, at a minimum, questions of fact precluding judgment as a matter of law.

In her sixth point, Appellant complains the trial court erred in granting summary judgment against Appellant on Count II of her amended petition alleging unlawful retaliation in violation of the MHRA, in that the claim was properly pled and there were, at a minimum, questions of fact precluding judgment as a matter of law.

In her seventh point, Appellant maintains the trial court erred in granting summary judgment against Appellant on Count III of her amended petition alleging retaliatory discharge in violation of the MHRA in that the claim was properly pled and there were, at a minimum, questions of fact precluding judgment as a matter of law.

In her eighth point, Appellant argues the trial court erred in granting summary judgment against Appellant on Count IV of her amended petition alleging retaliatory discharge in violation of the MHRA in that Respondents had only moved to dismiss the same for failure to state a claim; discrimination by an employer in its internal post-

termination appeal process is actionable under the MHRA; the right to sue letter issued by the MCHR included the right to pursue such claim; the claim was properly pled; and the record established questions of fact on all elements precluding summary judgment in any event.

In her ninth point, Appellant asserts that assuming arguendo that the question of the sufficiency of her presentation of her claim to the MCHR was a matter for the court to generally consider, it would still have been error for the trial court to enter judgment against Appellant on Counts I – IV of her amended petition in that questions of material fact would have still existed as to whether Appellant's filing with the MCHR was timely and, if it was not timely for any reason, whether Respondents were estopped from raising; had waived any right to raise; or were otherwise equitably precluded from raising any infirmity that might exist with regard to Appellant's filing.

In her tenth point, Appellant maintains that assuming arguendo that the question of Appellant's presentation of her claim to the MCHR was a matter for the court to generally consider; that Appellant had not timely presented her claim to the MCHR in any event; that Respondents had not waived and were not estopped or equitably precluded from raising such arguments; the trial court would still have erred in entering judgment against Appellant on Counts I - IV of her amended petition in that Missouri's public policy of encouraging pursuing remedies via employer-provided internal appeal procedures before turning to state agencies or courts would militate in favor of a rule of law tolling the time period for reporting discrimination to the MCHR until after such internal appeal procedures had been completed.

Preliminary Matter of Review

Based on the foregoing procedural history of this case, Respondents' motions were clearly presented and treated as motions for summary judgment, both by the parties and the trial court. Therefore, Appellant's assertion in each one of her points relied on that the trial court erred in granting summary judgment because the respective motions were to dismiss a particular claim, not for summary judgment, and that such claim was properly pled and stated a claim, which is the standard of review for dismissals, is denied at the outset. The proceeding below was for summary judgment and the trial court properly treated it as such, to-wit:

> Now, therefore, the Court, having heard and considered the arguments of the parties and having read and considered the briefs of the parties, finds that there is no genuine issue as to any material facts and that the Defendants, St. Francis Medical Center and Dr. Cedric Strange, are entitled to summary judgment as a matter of law.
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> The motions for summary judgment of Defendants, St. Francis Medical Center and Dr. Cedric Strange are SUSTAINED. Summary judgment is entered in favor of Defendants, St. Francis Medical Center and Dr. Cedric Strange and against Plaintiff Madonna Farrow on all counts of Plaintiff's first amended petition.

Standard of Review

Appellate review of summary judgment is *de novo*. ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo.banc 1993). Summary judgment is appropriate where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law. Id. A "genuine issue" that will prevent summary judgment exists where the record shows two plausible, but contradictory, accounts of the essential facts and the "genuine issue" is real, not merely argumentative, imaginary, or frivolous. Id. at 382. This Court reviews the record in the light most favorable to the party against whom judgment was entered. Id. at

376. The movant bears the burden of establishing a legal right to judgment and the absence of any genuine issue of material fact required to support the claimed right to judgment. Id. at 376-81.

A defending party may establish a right to judgment by showing: (1) facts that negate any one of the claimant's facts; (2) that the non-movant, after a period of discovery, has not been able to produce evidence sufficient to allow the trier of fact to find the existence of any one of the claimant's elements; or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly pleaded affirmative defense. Id. at 381.

Once a movant has met the burden imposed by Rule 74.04(c)[3] by establishing a right to judgment as a matter of law, the non-movant's only recourse is to show that one or more of the material facts shown by the movant to be above genuine dispute, is in fact, disputed. Id. at 381. If the non-movant cannot contradict the showing of the movant, judgment is properly entered against the non-movant because the movant has already established a right to judgment as a matter of law. Id. The non-movant need only show that there is a genuine dispute as to the facts underlying the movant's right to judgment as a matter of law. Id. at 382.

An appellate court can sustain the trial court's judgment on any ground as a matter of law. Id. at 387-88; Margiotta v. Christian Hosp. Northeast Northwest, 315 S.W.3d 342, 345 (Mo.banc 2010).

[3] All rule references are to Mo. R. Civ. P. 2010, unless otherwise indicated.

Discussion

Point I - (Count V) - Wrongful Discharge against both Respondents

We initially note that Appellant asserted her common law wrongful discharge claim only against St. Francis in her original petition, but added Dr. Strange as a defendant to this claim in her first amended petition. Dr. Strange was not Appellant's employer. St. Francis was. A wrongful discharge cause of action requires an employer/employee relationship. Brooks v. City of Sugar Creek, 340 S.W.3d 201, 213 (Mo.App. W.D. 2011); Maritz Holdings, Inc. v. Fed. Ins. Co., 298 S.W.3d 92, 101 (Mo.App. E.D. 2009). Missouri law allows a former employee to maintain a public-policy wrongful discharge cause of action only against a former employer. Brooks, 340 S.W.3d at 213. Even if Dr. Strange exercised some degree of control or supervision of Appellant's daily activities in his individual capacity, Missouri law does not consider individuals who merely supervise an employee as employers for the purpose of wrongful-discharge claims. Taylor v. St. Louis Cnty. Bd. of Election Comm'rs, 625 F.3d 1025, 1027, 1029 n.3 (8th Cir. 2010). Therefore, because an employer/employee relationship between Appellant and Dr. Strange was not established, the trial court did not err in entering summary judgment in favor of Dr. Strange on Appellant's wrongful discharge claim. Brooks, 340 S.W.3d at 213; Chandler v. Allen, 108 S.W.3d 756, 764 (Mo.App. W.D.2003).

Generally, an employer may discharge an at-will employee, with or without cause, and not be subject to wrongful discharge liability. Shawcross v. Pyro Products, Inc., 916 S.W.2d 342, 343 (Mo.App. E.D. 1995); Dake v. Tuell, 687 S.W.2d 191, 193 (Mo.banc 1985). However, this Court, while recognizing that employers may terminate

employees at-will for no reason, or for an arbitrary or irrational reason, has specifically determined that there is no right to discharge an employee for an unlawful reason or purpose which goes against public policy, and has recognized the public policy exception to employment at-will. Shawcross, 916 S.W.2d at 343. When the discharge of an at-will employee violates a *clear mandate* of public policy, this Court has determined that the employee has a wrongful discharge claim. Id. The public policy exception to the at-will employment rule is very narrowly drawn. Margiotta, 315 S.W.3d at 346.

The courts of this state have recognized four categories of cases under the public policy exception: (1) discharge of an employee because of his or her refusal to perform an illegal act; (2) *discharge because an employee reported violations of law or public policy to superiors or public authorities*; (3) discharge because an employee participated in acts that public policy would encourage, such as jury duty, seeking public office, asserting a right to collective bargaining, or joining a union; and (4) discharge because an employee filed a worker's compensation claim. Shawcross, 916 S.W.2d at 343; Lynch v. Blanke Baer and Bowey Krimko, Inc., 901 S.W.2d 147, 150 (Mo.App. E.D. 1995). The second category is at issue in this case, as Appellant asserts that her discharge resulted from her complaints of Respondents' violations of the law and public policy as set forth in the Nursing Practices Act (NPA), Section 335.017 et seq.[4]

Missouri has previously recognized that termination of employment due to a refusal to violate or condone the violation of the NPA supports a claim for the public policy exception wrongful discharge. Kirk v. Mercy Hospital Tri-County, 851 S.W.2d. 617, 622 (Mo.App. S.D. 1993). In Kirk, the plaintiff nurse sued the defendant hospital for wrongful discharge. The trial court granted the defendant hospital's motion for

[4] All statutory references are to RSMo 2006, unless otherwise indicated.

summary judgment based on its finding that there was no public-policy exception to the employment-at-will doctrine. Id. at 618. "Here, the trial court apparently concluded Plaintiff, as an at-will employee, could be lawfully discharged unless a specific "law or regulation" prohibited the Hospital from doing so." Id. at 620. The Kirk court disagreed, reversing the summary judgment, stating that:

> The gist of Plaintiff's claim here is that her discharge violated a clear mandate of public policy as reflected in [the NPA]…. [such as] (1) the prevention of illness to her patient, (2) care and counsel of ill persons, (3) administration of prescribed treatment and medication, and (4) assisting in the delivery of a health care plan. Section 335.016(8). Such duties reflect the public policy of this state that registered nurses licensed in this state have an obligation to faithfully serve the best interests of their patients….
>
> Here, Plaintiff perceived Debbie Crain was dying from improper medical treatment. After reporting her views to her direct superior, she was told to "stay out of it." We are convinced the NPA and regulations thereunder sets forth a clear mandate of public policy that Plaintiff not "stay out" of a dying patient's improper treatment. Plaintiff's constant and immediate involvement in seeking proper treatment for Debbie Crain was her absolute duty. Common sense dictates this is the highest duty in the nursing profession.

Id. at 620, 622. In its holding, the Court specifically noted that "public policy" as defined in Boyle v. Vista Eyewear, Inc., 700 S.W.2d 859, 871 (Mo.App. W.D. 1985), *infra*,

> … would hold that the Hospital cannot lawfully require that Plaintiff 'stay out' of Debbie Crain's case because of the obvious injurious consequences. Therefore, on the facts of this case we hold that the NPA and regulations thereunder constitutes a clear mandate of law on which a cause of action for wrongful discharge in violation of public policy can be based.

Kirk, 851 S.W.2d at 622.

Thus, in the case at bar, as the Court did in Kirk, we must decide if, *as a matter of law*, there is a clear mandate of public policy reflected by the NPA with application to the facts in this case. Id. at 621.

Appellant claims Count V of her first amended petition specifically pled each of the necessary elements for a public policy exception wrongful discharge claim, to-wit: that she was terminated, at least in part, for her objection to and outspoken disapproval of Respondents' changes to the PICC line program established by Appellant, by removing the duty of administering the PICC lines from nurses and giving it to non-nurses. Appellant asserts that this change in procedure violated the public policy with regard to who may "administer" intravenous fluids as set forth in the NPA, Section 335.011 et seq., i.e., licensed practical nurses and registered professional nurses.[5] Appellant set forth the definitions of "Administer" as defined in 20 Code of State Regulations (C.S.R.) 2200-6.020(1) as "to carry out comprehensive activities involved in intravenous infusion treatment modalities that include, but are not limited to, the following: observing; performing; monitoring; discontinuing; maintaining; regulating; adjusting; documenting; assessing; diagnosing; planning; intervening; and evaluating" and "PICC lines" as included under the definition of "Central venous catheter" in 20 C.S.R. 2200-6.020(3). Appellant also presented in support of her argument Section 335.096, which provides that it is a Class D Felony for someone to violate any of the provisions of the NPA, which is as Appellant puts it, a strong indicator of the public policy in favor of having qualified nurses perform this type of work.

Appellant went on to allege that in making the changes to the PICC line program, Respondents chose Barwick to be the "point person" for administering the PICC lines. Barwick is a physician assistant, not a nurse. Appellant claims that this practice was in

[5] Appellant did not specifically cite Section 335.017 of the NPA, "Intravenous fluids, administration requirements for practical nurses," and its text until her brief on appeal. Therefore, we do not consider it as part of the summary judgment record.

violation of the NPA, and she had the right to complain of it, and her employment was terminated at least in part because of her complaint of it.

We disagree, as a matter of law. Appellant has not shown that allowing a physician assistant to administer a PICC line is a violation of the NPA. The NPA is comprised of statutes governing the licensing and regulation of various types of nurses, including registered nurses. Hughes, 283 S.W.3d at 801, n.4. None of the acts alleged by Appellant involve the violation of any of the NPA's statutes or regulations derived therefrom regarding the licensing, regulation and practice of nurses. Appellant does not and cannot allege based on the facts in the record that the NPA states that nurses are the only health care providers allowed under law to administer PICC lines. Nor do the NPA provisions cited by Appellant suggest there is a public policy that only nurses may establish PICC lines. In fact, Respondents had Appellant and other nurses train physician assistants how to administer and perform the PICC lines. Appellant does not allege how having trained physician assistants administer the PICC lines violates public policy or the NPA, or even how such practice is substandard to the program Appellant had set up with nurses administering the PICC lines. Therefore, St. Francis is also entitled to judgment as a matter of law on Appellant's wrongful discharge claim, because the undisputed facts as alleged by Appellant do not constitute a violation of the NPA or any clearly mandated public policy emanating therefrom.

Based on the foregoing, Point I is denied.

Point II – (Count VI) – Defamation against Dr. Strange

Count VI of Appellant's first amended petition asserts a claim for defamation against Dr. Strange for the allegedly false and damaging statements Dr. Strange made to

others regarding Appellant, to-wit: that Appellant was not writing up the activity of the day on the board when required; was not following orders; and had altered doctor's orders and ignored instructions. On October 16, 2006, Appellant documented these comments which she deemed retaliatory for rebuffing Dr. Strange's sexual advances. In January 2007, Appellant placed additional documentation regarding these statements in her personnel file because she alleges she was still concerned for her job, worried about continued retaliation, and suffering from anxiety and insomnia.

Section 516.140 provides that defamation claims are subject to a two-year statute of limitations. Section 516.100 provides that:

> Civil actions, other than those for the recovery of real property, can only be commenced within the periods prescribed in the following sections, after the causes of action shall have accrued; provided, that for the purposes of sections 516.100 to 516.370, *the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained.*

[Emphasis added.]

Appellant filed her defamation claim on March 18, 2010, which Respondents contend is beyond two years from January 2007. However, Appellant alleges that Dr. Strange's defamatory statements against her ultimately damaged her by causing, at least in part, her termination, which occurred in December 2008, extending the time for filing her claim under Section 516.100's language that the cause of action begins to accrue when the "last item" of damage from the wrongful conduct is sustained.

Appellant's theory is that her termination from employment was her last item of damages resulting from Dr. Strange's alleged defamatory comments, extending the

commencement of the running of the statute of limitations beyond the time she first discovered the alleged comments and ascertained their resulting damage to her. Missouri case law has never interpreted Section 516.100's language in this fashion.

Appellant's action accrues "when the damage resulting therefrom is sustained and is capable of ascertainment." Section 516.100; Cook v. DeSoto Fuels, Inc., 169 S.W.3d 94, 103 (Mo.App. E.D. 2005). "In common parlance, 'capable of ascertainment' may be construed to mean capable of being ascertained by a reasonable person using reasonable diligence." Id.; Lockett v. Owens-Corning Fiberglas, 808 S.W.2d 902, 907 (Mo.App. E.D. 1991). Whether damages are capable of ascertainment is an objective test, ordinarily decided as a matter of law. Cook, 169 S.W.3d at 103; Carr v. Anding, 793 S.W.2d 148, 150 (Mo.App. E.D. 1990). It is met when the plaintiff's right to sue arises and they could have first maintained the action successfully. Cook, 169 S.W.3d at 103; Carr, 793 S.W.2d at 150. This occurs when the damage is substantially complete and the fact of damage can be discovered or made known, even if the exact amount of damage is not yet ascertainable, even if some additional damage may occur in the future and even if the plaintiff has not actually discovered the injury. Cook, 169 S.W.3d at 103; Lockett, 808 S.W.2d at 907.

Damages need not be complete at the time they are first ascertained. Powel v. Chaminade College Preparatory, Inc., 197 S.W.3d 576, 589 (Mo.banc 2006) (J. Wolff, concurring.). A cause of action accrues when a party can first ascertain the fact of damage, even though she may not know the extent of the damage. Id.; Business Men's Assur. Co. of America v. Graham, 984 S.W.2d 501, 507 (Mo.banc 1999). The fact that Appellant's damages may not have become "complete" until her employment was

terminated is irrelevant. Powel, 197 S.W.3d at 589. Not only should the fact that she had suffered damages prior to her termination been objectively known to Appellant, as a reasonable person, but subjectively her allegations of pre-termination damage are replete throughout her petition. See id.

Based on the foregoing, Appellant's damages were ascertainable at least as early as when she filed her complaints with personnel in 2006 and 2007, and well prior to the date of her termination on December 10, 2008. Based on these respective relevant dates, her petition was filed out of time, beyond the two-year statute of limitations for her defamation claim. Accordingly, Respondents are entitled to judgment as a matter of law on this claim. Point II is denied.

Point III – (Count VII) – False Light Invasion of Privacy against Dr. Strange

Count VII of Appellant's first amended petition asserts a cause of action against Dr. Strange for False Light Invasion of Privacy.

In Sullivan v. Pulitzer Broadcasting Co., 709 S.W.2d 475 (Mo.banc 1986), the Court looked at the issue of whether the plaintiff could sue for false light invasion of privacy separately from a cause of action for defamation. In deciding that question in the negative, the Sullivan court noted that other states, but not Missouri, had recognized a cause of action apart from defamation for false light invasion of privacy, but that:

> [i]t may be possible that in the future Missouri courts will be presented with an appropriate case justifying our recognition of the tort of "false light invasion of privacy." The classic case is when one publicly attributes to the plaintiff some opinion or utterance, whether harmful or not, that is false, such as claiming that the plaintiff wrote a poem, article or book which plaintiff did not in fact write.

Sullivan, 709 S.W.2d at 478, 480.

Meyerkord v. Zipatoni Co., 276 S.W.3d 319 (Mo.App. E.D. 2008) was that future case, and as a matter of first impression in Missouri, formally recognized the tort. Id. at 325. The tort is defined thusly: when one gives publicity to a matter concerning another that places the other before the public in a false light, he is subject to liability to the other for invasion of his privacy if, (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Id. at 323. The difference between false light invasion of privacy and defamation torts is that in defamation law, the interest sought to be protected is the objective one of reputation, whether economic, political, or personal, in the outside world. Id. at 324. On the other hand, in privacy cases, the interest affected is the subjective one of injury to the person's "right to be let alone." Id. at 324-25; Sullivan, 709 S.W.2d at 479. Further, where the issue is truth or falsity, the marketplace of ideas provides a forum where the answer can be found, while in privacy cases, resort to the marketplace merely accentuates the injury. Meyerkord, 276 S.W.3d at 325. It was based on these differences that the Meyerkord court decided that the false light invasion of privacy tort was sufficiently distinguishable from defamation to be recognized as a separate and distinct tort in Missouri.

We note a uniqueness to the tort as well in the level of offensiveness and gravity of harm required. The tort applies only when the publicity given to the plaintiff has placed him in a false light before the public, of a kind that would be *highly offensive* to a reasonable person. Meyerkord, 276 S.W.3d at 323. In other words, it applies only when the defendant knows the plaintiff, as a reasonable person, would be justified in the eyes

of *the community* in feeling *seriously offended* and *aggrieved* by the publicity. Id. On the other hand, the plaintiff's privacy is not invaded when unimportant false statements are made, even when they are made deliberately. Id. It is only when there is such a *major misrepresentation* of one's *character, history, activities, or beliefs* that *serious offense* may reasonably be expected to be taken by a reasonable person in his or her position, that there is a cause of action for invasion of privacy. Id.

We find that Dr. Strange's alleged statements about Appellant, to-wit: that she was not writing up the activity of the day on the board, was not following orders, and had altered doctor's orders and ignored instructions, do not rise to the level of seriousness required for the false light invasion of privacy tort contemplated in Meyerkord. In Meyerkord, the plaintiff sued his former employer for false light invasion of privacy because the employer used the plaintiff's name to register a website used to create a viral marketing campaign. As such, the campaign was publicly attributed to the plaintiff. The plaintiff alleged that shortly after the campaign became active, bloggers, consumers, and consumer activist groups began voicing on blogs and websites their concern, suspicion, and accusations over the campaign and those associated with it, including the plaintiff. Id. at 321. The plaintiff alleged that his "privacy has been invaded, his reputation and standing in the community has been injured, and he has suffered shame, embarrassment, humiliation, harassment, and mental anguish" and that the injuries would continue because the blogs and websites criticizing him will remain "on the [i]nternet and open for searching/viewing for an indefinite period of time." Id. at 322.

A viral marketing website could be fairly characterized by a reasonable person to be publicly obnoxious and disruptive and so attributing its creation to an individual

would likely subject that person to ill will in the community and seriously aggrieve that person. It would represent that person as being someone who would resort to the corruption of people's personal property and uninvited disruption of their activities in order to advertise a purely profit driven and selfish marketing message. Such a scenario does not compare to that of the instant case, which is one of a supervisor making critical assessments of Appellant's job performance, based upon his personal knowledge and opinion, to other employees in the workplace.

After more discussion of the nature of the tort, the Meyerkord court stated that:

> Because we have adopted the tort of false light invasion of privacy and have found that the proper standard for liability is actual malice, we find Meyerkord has failed to plead the essential elements for a claim of false light invasion of privacy. Meyerkord failed to allege Zipatoni acted with knowledge of or with reckless disregard as to the falsity of the publicized matter and the false light in which Meyerkord would be placed. Thus, we conclude Meyerkord's current petition does not adequately plead a cause of action under the false light invasion of privacy theory as stated in the Restatement and adopted by us. Therefore, the trial court did not err in granting Zipatoni's motion to dismiss because Meyerkord's petition failed to state a claim upon which relief may be granted.

Id. at 326.

As such, even though we recognize that Missouri now acknowledges the tort of false light invasion of privacy separate and apart from defamation torts, we find that Appellant's facts as pled, and undisputed, do not support such a claim in this case as a matter of law. Therefore, Respondent Dr. Strange is entitled to judgment as a matter of law on this basis. Count III is denied.

Point IV – (Count VIII) - Tortious Interference with Business Expectancy against Dr. Strange

Count VIII of Appellant's first amended petition asserts a claim for tortious interference with business expectancy against Dr. Strange, for the false statements he

made for his own purposes as retaliation against Appellant for declining his sexual proposition and reporting him for that wrongdoing, the falsity of the same, and the fact that such statements were at least a partial cause of Appellant's demotion, transfer, limitation of hours and compensation, and ultimate termination.

A submissible case of tortious interference requires the plaintiff to adduce evidence of: (1) a valid business expectancy; (2) the defendant's knowledge of the relationship; (3) a breach induced or caused by the defendant's intentional interference; (4) absence of justification; and (5) damages. Nazeri v. Missouri Valley College, 860 S.W.2d 303, 316 (Mo.banc 1993); Stehno v. Sprint Spectrum, L.P., 186 S.W.3d 247, 250 (Mo.banc 2006).

Absence of justification is the absence of any legal right on the part of the defendant to take the actions about which a plaintiff complains. SSM Health Care, Inc. v. Deen, 890 S.W.2d 343, 346 (Mo.App. E.D. 1994). A defendant may be justified in interfering with a business relationship or expectancy if he has a legal right to do so, Id., and for the purpose of protecting his own economic interest, so long as he does not employ improper means. Nazeri, 860 S.W.2d at 317. Improper means are those means that are independently wrongful, such as threats, violence, trespass, defamation, misrepresentation of fact, restraint of trade, or any other wrongful act recognized by statute or the common law. Id.

Here, Appellant has alleged no facts supporting Dr. Strange's lack of justification for the statements he made about her work performance. He was in a supervisory capacity over her at St. Francis. The facts show that Dr. Strange's comments were regarding her work performance, which he had the right to criticize. Although she

characterizes the comments as false and defamatory, these are merely conclusory allegations. Because Appellant has failed to assert factual allegations in support of her conclusory averments, Dr. Strange is entitled to judgment as a matter of law on Appellant's tortious interference claim. Point IV is denied.

Points V-VIII – (Counts I – IV) – Violation of the MHRA

There is significant overlap amongst the next four points and their corresponding counts in the petition. Therefore, we address them together for purposes of clarity and to avoid needless repetition.

Point V (Count I)– Employment Discrimination/Sexual Harassment against both Respondents

Point VI (Count II) – Unlawful Retaliation (Retaliatory Discrimination) against both Respondents

Point VII (Count III) – Retaliatory Discharge against St. Francis

To initiate a claim under the MHRA a party must timely file an administrative complaint with the MCHR and either adjudicate the claim through the MCHR or obtain a right-to-sue letter. Stuart v. General Motors Corp., 217 F.3d 621, 630 (8th Cir. 2000).[6] A victim of discrimination asserting claims based on the MHRA must file a verified complaint with the MCHR within one hundred and eighty (180) days of the discriminatory act. Sections 213.075.1[7]; Pollock, 11 S.W.3d at 763. Under Missouri

[6] In deciding a case under the MHRA, appellate courts are guided by both Missouri law and applicable federal employment discrimination case law. Hill v. Ford Motor Co., 277 S.W.3d 659, 664 (Mo.banc 2009); Pollock v. Wetterau Food Distribution Group, 11 S.W.3d 754, 763 (Mo.App. E.D. 1999); Daugherty v. City of Maryland Heights, 231 S.W.3d 814, 818-19 (Mo.banc 2007); Midstate Oil Co., Inc. v. Mo. Comm'n on Human Rights, 679 S.W.2d 842, 845–46 (Mo.banc 1984).

[7] 213.075. Complaints to commission, how filed, when--filing with federal agencies, effect--duties of executive director--respondents--hearing, notice, procedure--attorney general to represent commission--appeal, discovery--effect of orders of commission

1. Any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint in writing, within one hundred eighty days of the alleged act of discrimination, which shall state the name and address of the person alleged to

law, the failure to meet the deadline under the MHRA for filing an administrative charge of discrimination bars the claim. Gipson v. KAS Snacktime Co., 83 F.3d 225, 228 (8th Cir. 1996) (abrogated on other grounds by AMTRAK v. Morgan, 536 U.S. 101 (2002)). Any act of discrimination occurring outside this 180-day period is considered "merely an unfortunate event in history which has no present legal consequences." Pollock, 11 S.W.3d at 763; Thompson v. Western-Southern Life Assur. Co., 82 S.W.3d 203, 206-07 (Mo.App. E.D. 2002); United Air Lines, Inc. v. Evans, 431 U.S. 553, 557 (1977).

Here, the discriminatory acts alleged by Appellant in Count I are that she was subjected to sexual harassment during her employment with St. Francis in violation of the MHRA; in Count II, that Respondents retaliated against her in violation of the MHRA in several ways during her employment with St. Francis for complaining about the alleged sexual harassment; and in Count III, that she was discharged as a result of her complaint in violation of the MHRA, all occurring on or before Appellant's discharge on December 10, 2008, which was the last act of discrimination alleged by Appellant.

Appellant filed her administrative charge with the MCHR on July 27, 2009, which was 230 days after her discharge on December 10, 2008, her last alleged act of discrimination alleged in Counts I-III of her first amended petition. Because such administrative charge was filed more than 180 days after the acts of discrimination alleged by Appellant occurred, Appellant failed to meet the prerequisites for filing an MHRA claim. Sections 213.075.1; Pollock, 11 S.W.3d at 763.

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have committed the unlawful discriminatory practice and which shall set forth the particulars thereof and such other information as may be required by the commission. The complainant's agent, attorney or the attorney general may, in like manner, make, sign and file such complaint.

Therefore, because Appellant's MHRA claims in Counts I-III are time-barred, Respondents are entitled to judgment as a matter of law on these claims. Based on the foregoing, Points V-VII are denied.

Point VIII (Count IV) – Retaliatory Discharge against St. Francis
Post-Termination Discrimination

In her eighth point, Appellant argues that the trial court erred in granting judgment against Appellant on Count IV of her amended petition, in which she claimed that Respondent St. Francis retaliated against her by failing to provide her with a meaningful review and appeal of her termination. St. Francis counters that the trial court did not err in granting judgment in St. Francis's favor because Appellant: (1) failed to exhaust her administrative remedies; and (2) "any alleged discrimination ceased to exist" when St. Francis terminated Appellant's employment.

To exhaust her administrative remedies, a claimant must give notice of all claims of discrimination in the administrative complaint. Section 213.075.1; Reed v. McDonald's Corp., 363 S.W.3d 134, 143 (Mo.App.E.D. 2012). "However, administrative complaints are interpreted liberally in an effort to further the remedial purposes of legislation that prohibits unlawful employment practices." Id. (quotation omitted). Accordingly, administrative remedies will be deemed exhausted as to all incidents that are like or reasonably related to the allegations contained in the charges filed with the MCHR and "the scope of the civil suit may be as broad as the scope of the administrative investigation which could reasonably be expected to grow out of the charge of discrimination." Id. (quotation omitted).

Appellant argues that her claim of post-termination retaliation is reasonably related to the allegations contained in the charge of discrimination she filed with the

MCHR and that an administrative investigation of post-termination retaliation could reasonably be expected to grow out of the allegations contained in her charge.[8] Appellant's administrative charge does not describe any conduct relating to St. Francis's post-termination grievance procedure. Rather, the charge focuses exclusively on Dr. Strange's harassing behavior and St. Francis's retaliatory actions during Appellant's employment, which, she alleged, culminated in her discharge on December 5, 2008. Given the facts of this case, we agree that Appellant's charge is not likely or reasonably expected to lead to an investigation of adverse employment actions committed in St. Francis's post-termination grievance process.

Respondents also contend that the trial court's judgment is proper because post-termination retaliation is not actionable under the MHRA. The Supreme Court considered this question in Keeney v. Hereford Concrete Products, Inc., 911 S.W.2d 622, 625 (Mo. banc 1995) and determined that under Section 213.070(1) an employee may base a claim of retaliation upon actions taken by an employer after the employment relationship is severed. 911 S.W.2d at 625.

[8] In Appellant's charge of discrimination, she stated:

> I was hired by the above named employer in October 1991, as a RN. My most recent position held was RN/Cardiac Floor. My immediate supervisor was Linda Slick, Manager of Cardiac Floor.
>
> During my employment I was subjected to sexual harassment by Dr. Cedrick Strange. I complained of the sexual harassment to management and Human Resources, however no action was taken to cease this discriminatory behavior. As a direct result of me refusing Dr. Strange's sexual advances and complaining of the sexual harassment, I was retaliated against by being written up, subjected to different terms/conditions of employment (placed on restrictions) as compared to my co-workers, and subsequently discharged on December 5, 2008.
>
> I believe that I have been discriminated against due to my sex, female, and retaliation, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Because Appellant failed to exhaust her administrative remedies, the trial court properly entered judgment for St. Francis as to Appellant's Count IV. Point VIII is denied.

Point IX – Equitable Estoppel and Waiver

In her ninth point, Appellant asserts that questions of material fact still exist as to whether Respondents were equitably estopped from raising or had waived any right to raise any infirmity that might exist with regard to the timeliness of Appellant's MCHR claims.

Equitable Estoppel

"The essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts." Ethridge v. Tierone Bank, 226 S.W.3d 127, 133 (Mo.banc 2007).

When a genuine dispute exists as to the facts underlying the elements of an employee's equitable estoppel argument, summary judgment has been held to be improper in an MHRA case. Young v. Tri-State Water Treatment, Inc., 343 S.W.3d 695 (Mo.App. E.D. 2011). For example, in Young:

> The question of whether Tri-State is equitably estopped from asserting the statute of limitations as a defense turns on what transpired between counsel. And that is very much in dispute. The submitted affidavits give vastly different accounts. Mr. Young's attorney asserts that defense counsel stated he would not raise a statute-of-limitations defense should

> Mr. Young voluntarily dismiss and then re-file his case. Defense counsel asserts he made no such representation.

Id. at 698. In such a case, lingering disputed issues of material fact and credibility issues make summary judgment inappropriate. Therefore, we reversed the trial court's grant of such. Id.

Likewise, in Stoling v. Arkadelphia Human Dev. Corp., 81 Fed.Appx. 83, 84-5 (8th Cir. 2003), the employee Stoling stated that his employer Arkadelphia told Stoling that he could not take outside action, i.e., file a discrimination charge, until the internal grievance process was completed. The Eighth Circuit found that such an assertion *might* warrant the application of equitable estoppel, particularly because the "the record was not fully developed as to whether Stoling reasonably relied on [Arkadelphia]'s allegedly misleading statements, and whether such statements were deliberately made to prevent Stoling from bringing a timely suit." Id. at 85. As such, the district court reversed and remanded the cause for further proceedings. Id.

In the instant case, by contrast, the record reveals no false representation or concealment of material facts by Respondents or conduct which was calculated to convey the impression that the facts were otherwise than, and inconsistent with, those which Respondents subsequently attempted to assert. The record reveals no intention or expectation on the part of St. Francis that any of its conduct should be acted upon by Appellant. In other words, the record does not support a conclusion that there is a dispute about whether St. Francis's affirmative steps could be understood to have prevented or intended to prevent Appellant from filing a charge of discrimination or from discovering the statute's time limiting her ability to do so. This is especially so based on the undisputed facts of the present case where there is a five-month unexplained delay

between the conclusion of the internal review proceedings between Appellant and St. Francis on March 2, 2009, and Appellant's initial filing of her discrimination claim on July 27, 2009. "[O]ne cannot set up another's act or conduct as the ground of an estoppel when he knew or had the same means of knowledge as the other to the truth." Farmland Industries, Inc. v. Bittner, 920 S.W.2d 581, 583 (Mo.App. W.D. 1996).

Based on the foregoing, the trial court did not err when it granted summary judgment on the issue of the application of equitable estoppel.

Waiver

Appellant maintains that Respondents did not "assert a concern with the timing of the charge before the [MCHR], the [MCHR] ruled that it had jurisdiction, issued a right to sue letter, and Respondents did not challenge or appeal that ruling." Appellant asserts that Respondents therefore waived their right to assert a timing challenge to her charge of discrimination with the trial court.

Waiver is the intentional relinquishment of a known right. Shahan v. Shahan, 988 S.W.2d 529, 534 (Mo.banc 1999). Waiver may be express or implied by conduct that clearly and unequivocally shows a purpose … to relinquish a … right. Id. Waiver and estoppel are different legal doctrines. Brown v. State Farm Mut. Auto. Ins. Co., 776 S.W.2d 384, 387 (Mo.banc 1989). A waiver involves the act or conduct of one party only as well as both his knowledge and intent, and does not necessarily imply that the other has been misled to his prejudice or into an altered position. Id. An estoppel always involves this latter element. Id. Appellant has cited no cases supporting the proposition that failure to challenge timeliness of the charge of discrimination waives a later assertion of untimeliness in the circuit court.

For the foregoing reasons, Point IX is denied.

Point X – Tolling

In her tenth point, Appellant maintains that Missouri's public policy of encouraging the pursuit of employer-provided internal appeal procedures before turning to state agencies or courts militates in favor of a rule of law tolling the time period for reporting discrimination.

Section 213.111's strict requirement for timely filing a discrimination charge is not completely immune from the principle of equitable tolling. Pollock, 11 S.W.3d at 763; Thompson, 82 S.W.3d at 206-07.[9] However, Appellant does not present us with any case law supporting the existence of an equitable toll based upon the pursuit of an employer-provided internal appeal procedure. In fact, it has been held by our highest Court that the pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations periods on federal employment discrimination claims. Delaware State College v. Ricks, 449 U.S. 250, 261, 101 S.Ct. 498, 506 (1980). See also Electrical Workers v. Robbins & Myers, Inc., 429 U.S. 229, 236, 97 S.Ct. 441, 446-47 (1976), where the arguments for tolling the statutory period for filing a claim with the EEOC during the pendency of grievance or arbitration procedures were denied, because the Court found that the contractual rights under a collective-bargaining agreement and the statutory rights provided by Congress under Title VII have legally independent origins and are equally available to the aggrieved employee.

[9] One recognized equitable tolling theory is the continuing violation theory exception, Pollock, 11 S.W.3d at 763-64; Thompson, 82 S.W.3d at 206-07, which is not applicable here because not one act alleged by Appellant occurred within the filing period, which is a requirement for this tolling exception to apply.

Likewise, in the instant case, employer-provided grievance procedures and procedures provided by the MCHR are separate, Gray, 428 F.Supp. at 200, and thus there is no need for tolling. As in Electrical Workers, Appellant's two remedial avenues for her alleged employment discrimination, through St. Francis and through the MCHR, are not mutually exclusive nor is there a reason they cannot be pursued at the same time.

In summation, we ascertain no rule of law, federal or state, tolling the time period for reporting employment discrimination to the MCHR while pursuing employer-provided internal appeal procedures. Point X is therefore denied.

Conclusion

The trial court's judgment is affirmed.