FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1835

SARINA MARIA HINES,

Appellant,

v.

WHATABURGER RESTAURANTS,
LLC d/b/a WHATABURGER,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jeffrey Burns, Judge.

August 19, 2020

B.L. THOMAS, J.

Ms. Hines challenges the trial court's dismissal of her complaint against Whataburger as untimely based on the one-year statute of limitations in chapter 760, Florida Statutes.

Ms. Hines was employed by Whataburger as a crew member from August 2012 until her termination on November 2, 2014. After her termination, Ms. Hines filed a "Charge of Discrimination" against Whataburger with the Florida Commission on Human Relations (FCHR) and the Equal Employment Opportunity Commission (EEOC). The FCHR failed to issue a finding within 180 days, so on August 19, 2015, Ms. Hines withdrew her complaint through an "Election of Rights" form. On September 16, 2015, the FCHR issued a "Notice of

Dismissal." The dismissal stated that the complaint was voluntarily withdrawn, and that Ms. Hines had requested a right-to-sue letter to pursue her remedies by filing suit in a court of competent jurisdiction.

On May 20, 2018, Ms. Hines filed her complaint against Whataburger in the trial court, alleging claims of gender discrimination, sexual harassment, religious discrimination, and retaliation. On October 16, 2018, Whataburger filed a "Motion for Judgment on the Pleadings or, in the Alternative, Motion for Summary Judgment."

The trial court held a hearing and granted Whataburger's motion for judgment on the pleadings. The trial court determined that Ms. Hines' complaint was time-barred because she filed it outside of the one-year statute of limitations. The trial court issued a written order dismissing Ms. Hines' complaint with prejudice.

Ms. Hines contends that the trial court erred by granting Whataburger's motion for judgment on the pleadings because the four-year statute of limitations exception carved out by the Florida Supreme Court in *Joshua v. City of Gainesville*[1] applies, making her complaint timely. This Court reviews a trial court's order granting a motion for judgment on the pleadings de novo. *Martinez v. Fla. Power & Light Co.*, 863 So. 2d 1204, 1205 (Fla. 2003).

The general purpose of the Florida Civil Rights Act of 1992 (FCRA) is "to secure for all individuals within the state freedom from discrimination . . . ." § 760.01(2), Fla. Stat. (2014). The FCRA is to be liberally construed to further its general purposes. § 760.01(3), Fla. Stat.; *Joshua v. City of Gainesville*, 768 So. 2d 432, 433 (Fla. 2000). Section 760.11 of the FCRA describes the administrative and civil remedies, as well as the process for obtaining those remedies, for a person aggrieved by an FCRA violation.

A person aggrieved by an FCRA violation may file a complaint with the FCHR within 365 days of the alleged violation. § 760.11(1), Fla. Stat. (2014). The FCHR investigates the alleged

[1] 768 So. 2d 432 (Fla. 2000).

violation and issues a reasonable cause determination within 180 days of the filing of the complaint. § 760.11(2), Fla. Stat. After the FCHR determines there is reasonable cause to believe that discriminatory practice has occurred, the aggrieved person may either bring a civil action or request an administrative hearing. § 760.11(4), Fla. Stat. "In the event that the commission *fails to conciliate or determine whether there is reasonable cause* on any complaint under this section *within 180 days of the filing of the complaint*, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause." § 760.11(8), Fla. Stat. (emphasis added). A civil action shall be commenced within one year after the date of the reasonable cause determination. § 760.11(5), Fla. Stat.

However, the Florida Supreme Court created an exception to the FCRA's one-year statute of limitations when the FCHR fails to administer a reasonable cause determination within 180 days. *Joshua*, 768 So. 2d at 433. In *Joshua*, the Florida Supreme Court held, "the general four-year statute of limitations for statutory violations, section 95.11(3)(f), Florida Statutes (1995), applies to actions filed pursuant to chapter 760, Florida Statutes, if the Commission on Human Relations does not make a reasonable cause determination on a complaint within the 180 days contemplated by section 760.11(8), Florida Statutes (1995)." *Id.* The Florida Supreme Court noted the Legislature's awareness that the FCHR does not always make a determination within 180 days following the filing of a complaint, yet it still chose to make the limitations period contingent on the receipt of a reasonable cause determination. *Id.* at 438. Thus, in order to protect the interests of claimants, the FCHR should provide some type of notice to claimants *within 180 days of filing* regarding the status of their claims. *Id.* at 439 (emphasis in original).

Many courts in Florida have applied the four-year statute of limitations exception created by *Joshua*. *See Ellsworth v. Polk Cty. Bd. of Cty. Comm'rs*, 780 So. 2d 903 (Fla. 2001); *Seale v. EMSA Corr. Care, Inc.*, 767 So. 2d 1188 (Fla. 2000); *Kintz v. Escambia Cty. Util. Auth.*, 795 So. 2d 269 (Fla. 1st DCA 2001); *Williams v. Se. Fla. Cable, Inc.*, 782 So. 2d 988 (Fla. 4th DCA 2001); *Dixon v. Sprint-Fla.*, 787 So. 2d 968 (Fla. 5th DCA 2001). The Second District Court of Appeal has also held that the four-year statute of

limitations applies when there is additional communication from the FCHR or a plaintiff voluntarily withdraws a complaint. *See Maggio v. Dep't of Labor & Emp. Sec.*, 910 So. 2d 876 (Fla. 2d DCA 2005); *Ross v. Jim Adams Ford, Inc.*, 871 So. 2d 312 (Fla. 2d DCA 2004) (holding that the four-year statute of limitations applied where the FCHR took no action within 180 days, Mr. Ross withdrew his complaint, and the FCHR issued a notice of dismissal).

Whataburger and the trial court rely on federal cases to support the conclusion that the one-year statute of limitations bars Ms. Hines' complaint. *See Freeman v. Walgreen Co.*, 407 F. Supp. 2d 1317 (S.D. Fla. 2005); *Afon v. Clinical Research of Greater Miami, Inc.*, No. 12-CV-22952-JLK, 2012 WL 12875473 (S.D. Fla. Nov. 16, 2012); *Villa v. AT&T Corp.*, No. 13-22743-CIV, 2014 WL 10294725 (S.D. Fla. Oct. 6, 2014). However, the federal cases are distinguishable.

In *Freeman*, Mr. Freeman filed multiple complaints over a three-year period. 407 F. Supp. 2d at 1319. The Southern District Court of Florida held that Mr. Freeman's one-year statute of limitations began when he filed his first complaint because it eliminated the concern that he was forced into action or did not have an opportunity to be heard. *Id.* at 1321. Neither the Election of Rights form nor the Notice of Dismissal provided to Ms. Hines by the FCHR are synonymous with Mr. Freeman's filing of a complaint in the trial court. Both documents only stated that Ms. Hines was requesting the right to go to court, which did not ensure that Ms. Hines had the opportunity to be heard. As a result, *Freeman* is distinguishable.

In *Afon*, Mr. Afon requested and received a right-to-sue letter from the FCHR, which notified Mr. Afon that the administrative process was over, and that Mr. Afon had ninety days to initiate a suit if he so desired. 2012 WL 12875473, at *1. Because Ms. Hines never received a right-to-sue letter clearly stating that she had a specific time in which to file suit,[2] *Afon* is distinguishable from the case at bar.

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[2] Whataburger argued the Notice of Dismissal stated that Ms. Hines could proceed pursuant to section 760.11(8), which is subject

Finally, in *Villa*, the Southern District Court determined that the EEOC Dismissal and Notice of Rights ("right-to-sue" letter) forms amounted to a "reasonable cause determination." 2014 WL 10294725, at *3. Because there was a reasonable cause determination, Mr. Villa's discrimination claim was not governed by *Joshua*, which only applies when the FCHR fails to make a reasonable cause determination. There was no reasonable cause determination in Ms. Hines' case because she never received a right-to-sue letter. Thus, *Villa* is distinguishable.

The Florida Supreme Court established a four-year statute of limitations exception in order to protect the due process interests of claimants. *Joshua*, 768 at 439. Thus, when the FCHR fails to make a reasonable cause determination within 180 days, the four-year statute of limitations applies. *Id.* at 433. Even though Ms. Hines withdrew her complaint and was provided a Notice of Dismissal, the four-year statute of limitations applies because the FCHR failed to issue a reasonable cause determination within 180 days of Ms. Hines filing her charge. *See Joshua*, 768 So. 2d at 439.

Because Appellant's complaint was filed within the four-year period allowed by the statute of limitations, the trial court erred by granting Whataburger's motion for judgment on the pleading.

REVERSED and REMANDED.

JAY, J., concurs; WINOKUR, J., concurs with opinion.

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to a one-year limitations period under section 760.11(5), so she was on notice that she had to file suit within one year. This argument is incorrect because section 760.11(8) applies when the FCHR fails to make a reasonable cause determination. When the FCHR fails to make a reasonable cause determination, the four-year statute of limitations applies under *Joshua*. 768 So. 2d at 433. Thus, Ms. Hines was not on notice that the one-year statute of limitations automatically applied.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

WINOKUR, J., concurring.

After 180 days elapsed from the time she filed her complaint with the Florida Commission on Human Relations (FCHR), Hines filed a document with FCHR entitled "Election of Rights Form," checking the line next to the sentence, "I am withdrawing my complaint as more than 180 days have expired since my charge was filed and I am requesting a notice of right to sue and or requesting the right to go to court." FCHR responded with a "Notice of Dismissal" indicating that it was dismissing Hines' complaint because she "has voluntarily withdrawn the complaint." The Notice of Dismissal further noted that Hines "has requested that the Equal Employment Opportunity Commission issue a right-to-sue letter in order to pursue his/her federal remedies and/or state remedies by filing suit in a court of competent jurisdiction in this matter pursuant to Section 760.11(8), Rules 60Y-5.001(8) and 60Y-5.006(5), F.A.C."

In short, Hines requested from FCHR a "notice of right to sue" or "the right to go to court." FCHR not only failed to provide her with a "notice of right to sue," but claimed that Hines had requested the Equal Employment Opportunity Commission (EEOC, a separate, federal agency) to issue a right-to-sue letter. In fact, nothing in the record indicates that Hines requested anything from the EEOC, which apparently did not "issue a right-to-sue letter." This result is unsurprising, inasmuch as the record contains nothing indicating involvement in this case by the EEOC.[*]

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[*] It is true that Hines apparently filed her complaint with the EEOC as well as FCHR. But nothing in the record indicates any action that EEOC took regarding Hines' complaint.

This discrepancy may appear irrelevant, but at least one court has ruled that a right-to-sue letter is equivalent to a reasonable cause determination for purposes of determining whether the one-year limitation contained in section 760.11(5), Florida Statutes, applies to a lawsuit filed after an FCHR complaint. *See Villa v. AT&T Corp.*, No. 13-22743-CIV, 2014 WL 10294725 (S.D. Fla. Oct. 6, 2014). The *Villa* court ruled that *Joshua v. City of Gainesville*, 768 So. 2d 432 (Fla. 2000), and its holding that the four-year statute of limitations applies if FCHR does not make a reasonable cause determination within 180 days does not apply when the complainant receives a right-to-sue letter, even if the complainant does not receive the letter until after the 180 days has elapsed. *Villa,* 2014 WL 10294725 at *3. *Villa* did involve an EEOC right-to-sue letter, but the reasoning seems to apply equally to a right-to-sue notice issued by FCHR. *See also Afon v. Clinical Research of Greater Miami, Inc.*, No. 12-CV-22952-JLK, 2012 WL 12875473 (S.D. Fla. Nov. 16, 2012) (granting employer's motion to dismiss because the employee had received a right to sue letter from a local Commission on Human Rights, which foreclosed the four-year statute of limitations permitted in *Joshua*).

It is true that we are not bound by orders issued by federal trial courts. But the majority opinion distinguishes these federal cases by noting that the plaintiffs there received right-to-sue letters, unlike Hines. I generally agree with the rule applied in these cases, that a complainant who has been formally notified that he or she has the right to sue the employer is in the same position as a complainant who has received a reasonable cause determination (and therefore has the right to sue the employer), and as such, there is no reason to apply the exception to the one-year limitation set out in *Joshua*. But we cannot determine whether this rule of law might apply in this case because FCHR failed to issue a notice of right to sue. This is so in spite of the fact that Hines specifically asked them for it, on FCHR's own form. Because FCHR failed to comply with Hines' request, asserting instead that she asked EEOC for a right-to-sue letter, we are obligated to apply *Joshua*.

Marie A. Mattox of Marie A. Mattox, P.A., Tallahassee, for Appellant.

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