STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0089

Kimberly Brinkman,
Appellant,

vs.

Nasseff Mechanical Contractors, Inc.,
Respondent,

Sprinkler Fitters Local #417,
Defendant.

Filed December 24, 2018
Reversed and remanded
Larkin, Judge

Hennepin County District Court
File No. 27-CV-17-8508

Lisa C. Stratton, Christy L. Hall, Gender Justice, St. Paul, Minnesota; and

Jean Boler, Schaefer Halleen, LLC, Minneapolis, Minnesota (for appellant)

Britton D. Weimer, William C. Weeding, Weimer & Weeding, PLLC, Bloomington, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the dismissal of her employment-discrimination and retaliation claims against respondent, arguing that the district court erred by determining that her claims were barred under the 45-day statute of limitations in Minn. Stat. § 363A.33, subd. 1(1) (2018). We reverse and remand.

FACTS

This appeal stems from appellant Kimberly Brinkman's employment with respondent Nasseff Mechanical Contractors, Inc. (Nasseff) as a sprinkler fitter, as well as her membership in the Sprinkler Fitters Local 417 trade union (Local 417). On January 14, 2014, Brinkman filed a charge of discrimination with the Minnesota Department of Human Rights (MDHR) alleging that Nasseff had discriminated against her on the basis of sex. Brinkman filed a similar charge against Local 417. MDHR cross-filed the charges with the Equal Employment Opportunity Commission (EEOC) under a work-sharing agreement between MDHR and EEOC.

By two letters dated September 30, 2014, MDHR updated Brinkman regarding her claims. One letter notified Brinkman that MDHR had "referred" her "charge" against Local 417 to EEOC for "further processing" on preemption grounds, because "MDHR lacks jurisdiction." This letter further stated that "the charge and all associated documents have been transferred to EEOC," "the charge filed with MDHR has been closed," and "[a]ll MDHR proceedings relating to the charge will now be terminated." The other letter, which contained very similar language, notified Brinkman that her "charge" against Nasseff had

also been "referred" to EEOC "for further processing because it is a companion charge" to her case against Local 417. This letter also referred to MDHR's lack of jurisdiction and stated that "the charge and all associated documents have been transferred to EEOC," "the charge filed with MDHR has been closed," and "[a]ll MDHR proceedings relating to the charge will now be terminated." Neither letter referenced a right to bring a civil action or a 45-day deadline for doing so.

MDHR sent Brinkman another letter, dated July 7, 2015, regarding her claim against Local 417. Using substantially similar language to the September 30, 2014 letters, the July letter once again informed Brinkman that her "charge" against Local 417 had been referred to EEOC "for further processing" because MDHR lacked jurisdiction. However, the letter closed by stating that "the charge filed with MDHR has been *dismissed*." (Emphasis added.) Brinkman did not receive a similar letter informing her that her charge against Nasseff had been dismissed.

On July 18, 2016, two-and-a-half years after filing her discrimination charges with MDHR, Brinkman received right-to-sue letters from EEOC. On October 21, 2016, she filed a federal suit against Local 417 and Nasseff alleging discrimination and reprisal claims under both federal and state law. On May 2, 2017, the federal district court dismissed the federal claims because Brinkman's complaint was filed after expiration of the 90-day statute of limitations for those claims. The court declined to exercise supplemental jurisdiction over the state-law claims and dismissed them without prejudice.

On June 1, 2017, Brinkman filed suit in state court, claiming discrimination and reprisal under the Minnesota Human Rights Act (the MHRA). Local 417 and Nasseff

moved for dismissal under Minn. R. Civ. P. 12.02(e), arguing that Brinkman's claims were barred by the MHRA's 45-day statute of limitations and preempted by the National Labor Relations Act. The district court granted the motions, reasoning that Brinkman's claims were untimely under the MHRA and that she failed to establish a basis for equitable tolling. The district court did not address the preemption issue. Brinkman appeals the district court's dismissal of her claims against Nasseff.[1]

D E C I S I O N

A complaint may be dismissed under rule 12.02(e) if it "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). A pleading should be dismissed under rule 12 "only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted).

This court "review[s] de novo whether a complaint sets forth a legally sufficient claim for relief." *Walsh*, 851 N.W.2d at 606. In reviewing a rule 12 dismissal, an appellate court considers "only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bahr*, 788 N.W.2d at 80 (quotation omitted). Generally, documents outside of the pleadings cannot

[1] Brinkman does not appeal the dismissal of her claims against Local 417.

be considered on a motion to dismiss. *See* Minn. R. Civ. P. 12.02 (stating that if on a rule 12.02(e) motion, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment"). However, courts may consider documents that are attached to the complaint. *See Hardin Cty. Savs. Bank v. Hous. & Redevelopment Auth. of City of Brainerd*, 821 N.W.2d 184, 192 (Minn. 2012) (citing Minn. R. Civ. P. 10.03 in context of fraud claim under Minn. R. Civ. P. 9.02). Courts may also consider documents that are referenced in the complaint. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004).

A motion to dismiss may be properly granted "if it clearly and unequivocally appears from the face of the complaint that the statute of limitations has run." *Pederson v. Am. Lutheran Church*, 404 N.W.2d 887, 889 (Minn. App. 1987), *review denied* (Minn. June 30, 1987). "The construction and applicability of statutes of limitations are questions of law," which this court reviews de novo. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). Generally, "[c]ourts have no authority to extend or modify statutory limitations periods." *Jacobson v. Bd. of Trs. of Teachers Ret. Ass'n*, 627 N.W.2d 106, 109 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Aug. 15, 2001).

The district court dismissed Brinkman's claims after determining that she failed to comply with the 45-day statute of limitations in the MHRA. A charge of unfair discrimination under the MHRA must be (1) brought as a civil action, (2) filed in a charge with a local commission, or (3) filed in a charge with the commissioner of MDHR, "within one year after the occurrence of the practice." Minn. Stat. § 363A.28, subd. 3(a) (2018).

There is no dispute that Brinkman filed her Charge of Discrimination with MDHR within one year of the alleged discrimination.

Once a charge has been filed, the claimant must bring a civil action

> within 45 days after receipt of *notice that the commissioner has dismissed* a charge because it is frivolous or without merit, because the charging party has failed to provide required information, because the commissioner has determined that further use of department resources is not warranted, or because the commissioner has determined that there is no probable cause to credit the allegations contained in a charge filed with the commissioner.

Minn. Stat. § 363A.33, subd. 1(1) (emphasis added). The district court's dismissal was based on this statute.

Given the statute-of-limitations trigger, this case raises the question whether the September 30, 2014 letter regarding Brinkman's claims against Nasseff (the September letter) provided "notice that the commissioner ha[d] dismissed [the] charge." *Id.* In its order granting dismissal, the district court indicated that Brinkman had conceded or agreed that the September letter provided such notice, stating, "It is also undisputed that [Brinkman] received notice that the MDHR had dismissed the charges on September 30, 2014." Brinkman asserts that the district court's statement regarding her alleged concession is inaccurate.

In district court, Brinkman primarily argued that the 45-day statute of limitations does not apply to jurisdictional dismissals and that the statute was subject to equitable

tolling under the circumstances of this case.[2] Her arguments emphasized MDHR's failure to provide her with notice of a right to sue. However, at the hearing on the motions to dismiss, Brinkman noted that the September letter described MDHR's action as a transfer for investigation. Brinkman argued that "she really [had] no reason to think that she should run out and file a lawsuit right at that point. Nor [was] there really any statutory basis for the 45-day hook applying at that point." In her memorandum opposing the motions to dismiss, Brinkman characterized MDHR's action as a transfer and argued that "the statute setting the deadline does not cover the 'transfer' scenario here," "the statute does not mention . . . transfers to the EEOC," and the letter "did not provide the notice required by the statute." This record does not suggest that Brinkman conceded that the September letter provided notice that MDHR had dismissed her charge against Nasseff, such that the 45-day statute of limitations was triggered. We therefore consider whether the September letter provided the requisite notice of dismissal.

Brinkman contends that her "charge against Nasseff was transferred to the EEOC, not dismissed." Nasseff counters that the "terms 'closed' [and] 'terminated'" in the September letter "were entirely synonymous" with the word "dismissed." Nasseff argues that a reasonable person would have understood the letter to mean that the charge against Nasseff had been dismissed, even though the letter did not expressly say the charge was dismissed.

The September letter concerning Brinkman's claims against Nasseff states:

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[2] On appeal, Brinkman does not dispute that a jurisdictional dismissal triggers the 45-day statute of limitations.

> This is to notify you that the above-referenced *charge* and any associated documents in the file have been *referred* to the Equal Employment Opportunity Commission (EEOC) for further processing because it is a companion charge to [Brinkman's claim against Local 417]. Federal courts have found the National Labor Relations Act preempts the Minnesota Human Rights Act when the allegation involves a union's duty of fair representation. Accordingly, MDHR lacks jurisdiction to examine this discrimination claim brought under the Minnesota Human Rights Act (Minn. Stat. § 363A). MDHR will take no further action on this matter and the *charge* and all associated documents have been *transferred* to EEOC.
> . . . .
> Accordingly, the *charge* filed with MDHR has been *closed*. All MDHR proceedings relating to the charge will now be terminated.

(Emphasis added) (citation omitted).

In determining whether this letter notified Brinkman that the commissioner had dismissed her charge against Nasseff, and therefore triggered the 45-day statute of limitations, we consider the relevant statutory language, administrative rules, and caselaw.

The Statutory Language

"The construction and applicability of statutes of limitations are questions of law," which this court reviews de novo. *Benigni*, 585 N.W.2d at 54. When interpreting statutes, our goal is to effectuate the intent of the legislature. *In re Welfare of Children of J.B.*, 782 N.W.2d 535, 539 (Minn. 2010). If a statute is unambiguous, we must apply its plain meaning without resorting to canons of statutory construction. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

The MHRA requires "notice that the commissioner has dismissed a charge" to trigger the 45-day statute of limitations. Minn. Stat. § 363A.33, subd. 1(1). Neither party

argues that this statutory language is ambiguous, and we do not discern ambiguity. We therefore apply the statute's plain meaning.

The September letter does not state that the commissioner had dismissed Brinkman's charge or use any form of the word "dismiss." Instead, it says that the charge was "referred," "transferred," and "closed." A court may look to dictionary definitions to determine the plain and ordinary meanings of words. *State v. Heiges*, 806 N.W.2d 1, 15 (Minn. 2011). We do so here. "Refer" is defined as "[t]o submit (a matter in dispute) to an authority for arbitration, decision, or examination." *The American Heritage College Dictionary* 1168 (4th ed. 2007). "Transfer" is defined as "[t]o convey or cause to pass from one place, person, or thing to another." *Id.* at 1459. And "close" is defined as "[t]o bring to an end" or "terminate." *Id.* at 271. Whereas "dismiss" is defined as "[t]o stop considering" or "reject." *Id.* at 407. Although the definitions of "close" and "dismiss" are similar, the words "referred," "transferred," and "closed," as used together in the September letter, are not synonymous with "dismissed."

Moreover, the omission of the word "dismissed" in the September letter is notable because MDHR's July 7, 2015 letter regarding Brinkman's charge against Local 417 explicitly stated that "the charge filed with MDHR has been *dismissed*." (Emphasis added.) The July letter would seemingly be unnecessary and duplicative if the September 30, 2014 letter regarding Brinkman's charge against Local 417—which said the charge had been "referred," "transferred," and "closed"—provided notice that the commissioner had dismissed the charge against Local 417. Thus, the July 2015 letter regarding dismissal suggests that referring, transferring, or closing a charge is not the same as dismissing a

charge. Again, the record does not indicate that MDHR sent Brinkman a letter regarding her charge against Nasseff, stating that the "charge filed with MDHR has been dismissed."

Lastly, although there may be merit to Nasseff's argument that a reasonable person could read the September letter to mean that the charge against Nasseff had been dismissed, under the plain language of the relevant statute of limitations, the triggering event is "receipt of notice that the commissioner has dismissed a charge," and not receipt of notice that could reasonably be construed as a dismissal. Minn. Stat. § 363A.33, subd. 1(1).

In sum, the plain language of the statute does not suggest that the September letter notified Brinkman that the commissioner had "dismissed" her charge against Nasseff.

The Administrative Rules

MDHR administrative rules state that "[t]he commissioner shall issue an order dismissing a charge when it falls outside the jurisdiction of the [MHRA] or when it is dismissed pursuant to the act." Minn. R. 5000.0560 (2017). "Written notice dismissing a charge shall be sent by certified and first class mail to the charging party and to the respondent within ten days of the dismissal." *Id.* "Notification to the charging party *shall* include notice of the right to bring a civil action relating to the charge within 45 days of a dismissal . . . ." *Id.* (emphasis added). But the September letter did not contain notice of the right to bring a civil action relating to the charge within 45 days of a dismissal. The omission of that mandatory language suggests that the September letter was not "[w]ritten notice dismissing a charge" as contemplated by the rule. *Id.*

Moreover, the MHRA's 45-day statute of limitations is triggered when the commissioner dismisses a charge "because it is frivolous or without merit, because the

charging party has failed to provide required information, because the commissioner has determined that further use of department resources is not warranted, or because the commissioner has determined that there is no probable cause to credit the allegations." Minn. Stat. § 363A.33, subd. 1(1). MDHR administrative rules address each of those grounds. Minn. R. 5000.0530 (2017) provides that the commissioner "shall dismiss" a frivolous charge. Minn. R. 5000.0540, subp. 1 (2017), provides that under certain circumstances, the commissioner "shall dismiss" a charge for "failure to provide required information." And Minn. R. 5000.0580, subp. 1 (2017), provides that "[t]he commissioner shall issue an order dismissing a charge" if "there is no probable cause to believe that the respondent has engaged in the alleged unfair discriminatory practice."

However, MDHR administrative rules do not mandate dismissal if the commissioner determines that a charge does not warrant further use of department resources. Instead, Minn. R. 5000.0520 provides that "[t]he commissioner *shall not process*" a charge that "the commissioner determines does not warrant further use of department resources." (Emphasis added.) Instead of mandating dismissal like rules 5000.0530, 5000.0540, and 5000.0580, rule 5000.0520 provides for "termination of proceedings" and states that the commissioner "shall not process" certain cases. Because the relevant rules distinguish between dismissing a charge and terminating proceedings, they refute Nasseff's argument that notice of termination of MDHR proceedings is the same as notice of dismissal of a charge.

In sum, the relevant administrative rules do not suggest that the September letter notified Brinkman that the commissioner had "dismissed" her charge against Nasseff.

Caselaw

The parties discuss *Jones v. Consol. Freightways Corp.*, 364 N.W.2d 426 (Minn. App. 1985) in their briefs to this court. One of the issues in *Jones* was whether MDHR had provided notice of the occurrence of an event sufficient to trigger application of a 90-day statute of limitations under the then-existing MHRA. 364 N.W.2d at 428. We determined that MDHR had done so. *Id.* at 430.

In *Jones*, the applicable statute of limitations provided in relevant part, "if within 90 days from the filing of a charge . . . the department has not entered into a conciliation agreement to which the charging party is a party, [the commissioner] shall so notify the charging party and within 90 days after the giving of such notice a civil action may be brought by the charging party." *Id*. at 428 (emphasis omitted) (quotation omitted). MDHR notified Jones, by letter, that "attempts to voluntarily resolve the above-captioned case through conciliation have been unsuccessful" and "we were unable to reach an agreement." *Id.* Thus, the letter expressly referenced the relevant statute-of-limitations triggering event: lack of a conciliation agreement.

Here, the relevant triggering event is "notice that the commissioner has dismissed a charge," Minn. Stat. § 363A.33, subd. 1(1). Unlike the letter in *Jones*, the September letter did not expressly refer to that triggering event. Thus, *Jones* does not support a conclusion that the September letter provided the notice necessary to trigger the statute of limitations.

We also consider *Special Sch. Dist. No. 1 v. Dunham*, 498 N.W.2d 441 (Minn. 1993). In *Dunham*, the supreme court held that "[a] claimant who withdraws a request for reconsideration of a no probable cause determination under [the MHRA] must commence

a civil action within 45 days of the date of the withdrawal." 498 N.W.2d at 442. The supreme court considered the 45-day limitations period at issue here and said that it "was almost certainly put in place to encourage quick legal action after the [MDHR] made a negative determination." *Id.* at 445.

The "negative determination" in *Dunham* was a no-probable-cause determination. *Id.* at 442. This case does not involve such a determination. Instead MDHR "referred" or "transferred" Brinkman's charge against Nasseff to EEOC for processing. If we construe all reasonable inferences in Brinkman's favor, as we must, *see Bahr*, 788 N.W.2d at 80, the current record indicates that MDHR determined that EEOC should process Brinkman's charge instead of MDHR. We do not view MDHR's transfer of Brinkman's charge to another investigating agency as a statute-of-limitations-triggering negative determination comparable to the no-probable-cause determination in *Dunham*.

The supreme court in *Dunham* also stated that "[a] new 45-day period is necessary once the petition for reconsideration is withdrawn because otherwise . . . a charging party could be forced to bring a civil action while a petition for reconsideration was still pending [before MDHR]." 498 N.W.2d at 446 n.4. Treating the September letter as a notice of dismissal would have forced Brinkman to bring a civil action while an investigation of the underlying charge was still pending before EEOC. The prospect of forcing the filing of a civil action before completion of a pending EEOC investigation regarding the underlying charge under a work-sharing agreement with MDHR is similar to forcing the filing of a civil action before completion of a pending MDHR reconsideration of a negative determination. Neither scenario is desirable.

In sum, the relevant caselaw does not suggest that the September letter notified Brinkman that the commissioner had "dismissed" her charge against Nasseff.

Conclusion

We must keep in mind the rule 12 context of our review. A motion to dismiss based on expiration of the applicable statute of limitations is appropriate only if it "clearly and unequivocally" appears that the statute of limitations has run. *Pederson*, 404 N.W.2d at 889. On this record, we cannot reach that conclusion because the relevant statute, administrative rules, and caselaw do not suggest that the September letter provided notice that the commissioner had dismissed Brinkman's charge against Nasseff. Thus, the current record does not establish that the 45-day statute of limitations was triggered, much less that it has run. We therefore reverse the district court's order dismissing Brinkman's claims based on the 45-day statute of limitations.[3] Because we reverse on this ground, we do not consider the district court's ruling regarding equitable tolling. We remand for further

[3] The district court also ruled that even if it were to have concluded that the 45-day statute of limitations did not apply, "it would be compelled to find that [Brinkman's] claims are barred under the alternative limitations period established by Minn. Stat. § 363A.28, subd. 3(a)." Brinkman assigns error to this alternative ruling, but Nasseff does not defend it or otherwise argue that section 363A.28, subdivision 3(a), provides a basis to dismiss. Once again, under Minn. Stat. § 363A.28, subd. 3(a), "A claim of an unfair discriminatory practice must be brought as a civil action . . . or filed in a charge with the commissioner within one year after the occurrence of the practice." Brinkman initially elected to file a charge with the commissioner, instead of bringing a civil action. There is no assertion that Brinkman did not file her claim of an unfair discriminatory practice with the commissioner "within one year after the occurrence of the practice." We therefore do not discern a basis to dismiss for failure to comply with the one-year statute of limitations in section 363A.28, subdivision 3.

proceedings consistent with this decision, including a ruling on Nasseff's preemption argument, if requested by Nasseff.[4]

Reversed and remanded.

[4] Our reversal of the district court's rule-12 dismissal does not prevent the district court from revisiting the statute-of-limitations issue on a more fully developed record in a summary-judgment proceeding.