STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2140

Shannon Miller, et al.,
Appellants,

vs.

The Board of Regents of the University of Minnesota,
Respondent.

Filed September 3, 2019
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CV-18-4262

Donald Chance Mark, Jr., Tyler P. Brimmer, Fafinski Mark & Johnson, P.A., Eden Prairie, Minnesota; and

Dan Siegel (pro hac vice), Siegel, Yee, Brunner & Mehta, Oakland, California (for appellants)

Jeanette M. Bazis, Katherine M. Swenson, Greene Espel PLLP, Minneapolis, Minnesota; and

Douglas R. Peterson, General Counsel, Timothy J. Pramas, Senior Associate General Counsel, University of Minnesota, Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold, Judge.

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

WORKE, Judge

Appellants challenge the dismissal of their claims, arguing that the district court erred by: (1) declining to equitably toll the statute of limitations; (2) dismissing their claims under the Minnesota whistleblower act (MWA), Minn. Stat. § 181.932 (2018), as barred by the exclusivity provision of the Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A.04 (2018); and (3) alternatively, dismissing two of their claims based on res judicata and collateral estoppel. By notice of related appeal (NORA), respondent challenges the district court's determination that one appellant was not collaterally estopped. We affirm.

FACTS

Appellants Shannon Miller, Annette Wiles, and Jen Banford (collectively the coaches) coached at the University of Minnesota-Duluth (the university). Miller coached the women's hockey team, Wiles coached the women's basketball team, and Banford coached the softball team and served as Miller's director of hockey operations.

In December 2014, the university informed Miller and Banford of its intention to not renew their contracts. Wiles alleged that she was forced to resign in June 2015 due to a hostile work environment. The coaches initiated actions against respondent the Board of Regents of the University of Minnesota through the Equal Employment Opportunity Commission in conjunction with the Minnesota Department of Human Rights (the department). The coaches alleged, among other things, that they were subjected to disparate treatment on the basis of their gender and sexual orientation. On May 26, 2015,

the department informed Miller of her right to sue in state court within 90 days, and informed her that she "may also be able to bring claims under the [MHRA] in an action filed in federal court." Banford and Wiles received their right-to-sue letters on September 16 and October 20, 2015, respectively. The coaches did not initiate proceedings in state court, and instead filed suit in federal district court on September 28, 2015 (the federal action).

In the federal action, the coaches brought state-law claims against the university for discrimination, hostile work environment, and reprisal under the MHRA, Minn. Stat. §§ 363A.01-363A.44 (2018); for violation of the state Equal Pay for Equal Work Law, Minn. Stat. §§ 181.66-.71 (2018); and for violation of the MWA. They also brought federal claims for discrimination, hostile work environment, retaliation, and violation of the federal Equal Pay Act. In its answer the university raised the affirmative defense that it was immune to suit pursuant to the Eleventh Amendment.

On February 1, 2018, the federal district court granted the university's motion for summary judgment and dismissed all of the coaches' state-law claims without prejudice because the university was immune to suit in federal court on state-law claims under the Eleventh Amendment.

On March 15, 2018, the coaches filed their state-law claims in district court. The university moved to dismiss, and the district court granted the motion. The district court dismissed the coaches' MHRA and equal-pay claims as untimely, and declined the coaches' request that it equitably toll the statutes of limitations. The district court

dismissed the coaches' MWA claims because the exclusivity provision of the MHRA precluded the coaches from bringing a claim under the MWA upon the same factual basis.

Finally, despite dismissing all of the coaches' claims, the district court analyzed whether collateral estoppel and res judicata provided alternative bases to support the dismissals. Within that framework, the district court determined that, based upon the federal court's rulings on their federal claims, Wiles was collaterally estopped from asserting her MWA and equal-pay claims; Banford was not collaterally estopped from asserting either claim; and Miller was collaterally estopped from asserting her equal-pay claim, and her MWA claim was precluded on the basis of res judicata. The coaches appealed, and the university filed its NORA, challenging the district court's alternative determination that Banford was not collaterally estopped.

D E C I S I O N

Equitable tolling

The coaches argue that the district court erred by declining to equitably toll the statutes of limitations while their MHRA and state equal-pay claims were pending in federal court. Appellate courts review equitable determinations for an abuse of discretion. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011). "[T]he standard we have used to toll statutes of limitations is necessarily a high one." *Sanchez v. State*, 816 N.W.2d 550, 561 (Minn. 2012).[1]

[1] While *Sanchez* is a criminal case, it provides a broad overview of the principles underlying equitable tolling in Minnesota, and relies on a number of civil cases in its recitation of state law. 816 N.W.2d at 560-62.

Under the MHRA, "[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." Minn. Stat. § 363A.28, subd. 3(a). The coaches received letters from the department informing them that, because they intended to bring private actions, they had 90 days to commence their action in state court, pursuant to Minn. Stat. § 363A.33, subd. 1(3). The district court determined that their equal-pay claims were subject to a two-year statute of limitations, pursuant to Minn. Stat. § 541.07(5) (2018).

The coaches argue that the district court abused its discretion by taking an overly rigid approach to its equitable-tolling analysis. The coaches assert that by relying on the guidelines for invoking equitable tolling set forth in *Sanchez*, the district court disregarded the Supreme Court's statement in *Holland v. Florida* that "[i]n emphasizing the need for flexibility, for avoiding mechanical rules, we have followed a tradition in which courts of equity have sought to relieve hardships which, . . . arise from a hard and fast adherence to more absolute legal rules . . . ." 560 U.S. 631, 650, 130 S. Ct. 2549, 2563 (2010) (quotations and citation omitted).

As an initial matter, *Sanchez* recited the holding in *Holland* that equitable tolling of the federal habeas corpus statute is "appropriate when (1) a petitioner had been pursuing his rights reasonably diligently, and (2) some extraordinary circumstance prevented him from filing his habeas corpus petition on time"; thus, it is inaccurate to state that a district court could rely on *Sanchez* while ignoring *Holland*. 816 N.W.2d at 561 (citing *Holland*, 560 U.S. at 649, 130 S. Ct. at 2562). More importantly, the district court provided a thorough analysis supporting its decision not to invoke its equitable powers to toll the

statutes. Whether one looks to federal or state caselaw outlining the doctrine of equitable tolling, the district court did not abuse its discretion.

The district court based its determination not to toll the statutes on binding precedent that required the coaches to bring their state-law claims in state court when the university raised its Eleventh Amendment immunity defense. *See Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 541-42, 548, 122 S. Ct. 999, 1004-05, 1008 (2002) (stating that 28 U.S.C. § 1367(a) does not abrogate a state's Eleventh Amendment immunity to suit in federal court; section 1367(d) does not toll the statute of limitations; and inclusion of an Eleventh Amendment defense in the answer is sufficient to negate the assertion that the university consented to suit in federal court by not immediately moving to dismiss on that basis). As accurately pointed out by the district court, "*Raygor* is essentially identical to the present case."

Equitable tolling is available only "when some factor completely outside the claimants[']control prevented [them] from meeting a statutory deadline." *Sanchez*, 816 N.W.2d at 561; *see also Holland*, 560 U.S. at 651-52, 130 S. Ct. at 2564 ("[A] garden variety claim of excusable neglect, such as a simple miscalculation that leads a lawyer to miss a filing deadline, does not warrant equitable tolling." (quotations omitted)).

Here, the holdings in *Raygor* indicated that if the coaches brought their state claims in federal court, they would be subject to dismissal on Eleventh Amendment grounds, section 1367(d) would not toll the statute of limitations, and the university's assertion in its answer that it was immune to suit would be sufficient to rebut a claim that it consented to suit in federal court. *See* 534 U.S. at 541-42, 548, 122 S. Ct. at 1004-05, 1008. Thus,

not only was there no factor completely outside the coaches' control which prevented them from meeting the state-court statutory deadlines, Supreme Court precedent indicated that, when the university raised its immunity defense in its answer, the coaches needed to bring their state-law claims in state court before the expiration of the limitations periods. Therefore, the district court did not abuse its discretion in declining to equitably toll the statutes of limitations for the coaches' MHRA and equal-pay claims while they proceeded with a litigation strategy precluded by *Raygor*.

MHRA exclusivity

The coaches argue that the district court erred in granting the university's motion to dismiss their MWA claims on the basis that they were preempted by the MHRA. "We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted). The MHRA provides that "as to acts declared unfair by sections 363A.08 to 363A.19 . . . the procedure herein provided shall, while pending, be exclusive." Minn. Stat. § 363A.04. The coaches make two arguments in support of their assertion that dismissal of their MWA claims was inappropriate: (1) their MWA claims are factually distinct from their MHRA reprisal claims; and (2) the MHRA's exclusivity provision does not operate as a bar once the MHRA claims are no longer pending.

Factual distinction

In the section of their complaint pertaining to their MWA claims, the coaches alleged that "[o]n numerous occasions, [the coaches] . . . reported violations, suspected

violations, and planned violations of the [MHRA] to the [u]niversity . . . . Because of [the coaches'] reports to the [u]niversity, it discharged, disciplined, otherwise discriminated against, and penalized [the coaches] regarding their compensation, terms, conditions, and privileges of employment." The coaches also asserted a reprisal claim under the MHRA pursuant to Minn. Stat. § 363A.15, alleging that "[b]ecause [the coaches] opposed the [u]niversity's discriminatory conduct, they were subject to reprisal, including being subjected to a wide range of departures from customary employment practices . . . ."

Despite the fact that the coaches' complaint specifically cites their reports of violations of the MHRA as the basis for their MWA claim, they attempt to argue that the two claims are factually distinct. According to the coaches, their "MHRA-reprisal claims arise from retaliatory acts by [the university] in response to [the coaches'] opposition to the practices forbidden under the MHRA," while their MWA claims "arise from their *formal* reporting of violations . . . of the MHRA to the [u]niversity." In the coaches' own words, the two sets of claims are not factually distinct, as both allege that the coaches suffered adverse employment consequences because they opposed employment practices forbidden under the MHRA.

The supreme court has addressed the fundamental impossibility of distinguishing an MWA claim from an MHRA reprisal claim when the two are based upon the same underlying adverse employment practices.

> The popular title of the [MWA] connotes an action by a neutral—one who is not personally and uniquely affronted by the employer's unlawful conduct but rather one who "blows the whistle" for the protection of the general public or, at the least, some third person or persons in addition to the

> whistleblower. Were it otherwise, every allegedly wrongful termination of employment could, with a bit of ingenuity, be cast as a claim pursuant to [the MWA].

Williams v. St. Paul Ramsey Med. Ctr., Inc., 551 N.W.2d 483, 484 n.1 (Minn. 1996). The coaches' complaint implicates the same problem outlined in *Williams*. As pointed out by the district court, the coaches' MHRA reprisal and MWA claims "are identical," and therefore dismissal of the MWA claims pursuant to the MHRA's exclusivity provision was appropriate.

Remedial exclusivity

The coaches argue in the alternative that under the plain language of the MHRA, once their MHRA claims were dismissed, that statute's exclusivity provision no longer barred the MWA claims because their MHRA claims were no longer pending. The coaches' argument brings to the foreground a fundamental distinction between the plain language of the MHRA and the way in which that language has been interpreted by the supreme court.

On its face, the exclusivity provision refers only to an exclusive procedure, not an exclusive remedy.[2] Thus, if this were an issue of first impression, we might conclude that

[2] While we do not engage in statutory interpretation here, and instead rely on binding precedent construing the MHRA, one potential explanation for the MHRA's inclusion of an exclusive *procedure*, as opposed to an exclusive *remedy*, is that as originally enacted, the Act for Fair Employment Practices (as the relevant sections of the MHRA were originally called) did not provide for a direct private right of action. Under the provisions of the original act, a petitioner had to file a complaint with the commission. 1955 Minn. Laws ch. 516, § 8, at 807-08. If unsuccessful at remedying the unfair employment practice, the commission could then request that the governor appoint a board of review to hold a public hearing. *Id*. § 9, at 809. Finally, a party could then seek district court review of the

the exclusivity provision applies only while an MHRA claim is pending. *See* Minn. Stat. § 363A.04 ("[T]he *procedure* herein provided shall, *while pending*, be exclusive." (emphasis added)). The district court, relying on unpublished caselaw, dismissed the coaches' MWA claims despite its dismissal of their MHRA claims by the same order, reasoning that "claims that are the same but simply wrapped in a different legal theory cannot proceed" in accordance with the exclusivity provision.

Despite the statutory provision of an exclusive *procedure*, the supreme court has construed section 363A.04 to provide for an exclusive *remedy*. Relying on the statutory requirement that a specific provision of law controls over a general provision,[3] the supreme court stated in *Williams* that "[w]hile the [MWA] was enacted in 1987, long after the [MHRA], we cannot identify any clear legislative intention that such a general remedial provision should, as the court of appeals held, 'take precedence' over the exclusivity *of remedies* provision of the [MHRA]." 551 N.W.2d at 485 (emphasis added).

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board's findings. *Id*. § 10, at 810. This is the exclusive "procedure" provided for by the original enactment. *Id*. § 13, at 812.

[3] When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

Minn. Stat. § 645.26, subd. 1 (2018).

In *Williams*, the district court granted the medical center's motion to dismiss Williams's MWA claim, Williams proceeded to trial on her MHRA claims, which she lost, and then she sought to revive only her MWA claim on appeal. *See id.* at 484. The supreme court concluded that "the exclusivity provision of the [MHRA] operates as a bar to the separate maintenance of this claim under the [MWA]." *Id.* at 486; *see also Hedglin v. City of Willmar*, 582 N.W.2d 897, 903 (Minn. 1998) ("[O]ur only holding in *Williams* was that a plaintiff who brings a claim under the [MHRA] is barred from also bringing a claim under the [MWA].").[4] Despite the fact that Williams's MHRA claim was no longer pending, because she lost her court trial, the supreme court still held that an MWA claim could not be maintained because of the exclusivity provision in the MHRA. *Williams*, 551 N.W.2d at 486. The same is true here.

Even though the plain language of section 363A.04 speaks only of an exclusive procedure, applicable while an MHRA claim is pending, binding supreme court precedent states that when the MWA and the MHRA reprisal claims are factually identical, the exclusivity provision of the MHRA acts as a bar to maintenance of the MWA claim, even when the MHRA claim is no longer pending. *See id.* at 485-86.[5] On this basis, the district court did not err in granting the university's motion to dismiss the coaches' MWA claims.

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[4] *Hedglin* only involved an MWA claim, and therefore this statement is only dictum, but is illustrative of the supreme court's interpretation of the MHRA's exclusivity provision as a bar to maintenance of an independent action under the MWA. *See* 582 N.W.2d at 900.

[5] In the same footnote discussed above, the supreme court in *Williams* noted that dismissal of the MWA claim would have been appropriate based on Williams's failure to state a claim under that act, but since the case "was tried and decided on the basis of exclusivity, we have no occasion to rule on the validity of the cause of action asserted as a [MWA] claim in Williams' complaint, but we could, in the alternative, have ruled that no such

Estoppel

Because we affirm the district court's dismissal of the coaches' MHRA and equal-pay claims on statute-of-limitations grounds, and dismissal of the coaches' MWA claims on the basis of the MHRA's exclusivity provision, we do not reach any of the parties' arguments regarding the district court's alternative bases of dismissal pertaining to res judicata and collateral estoppel.

Affirmed.

cause of action exists here." 551 N.W.2d at 484 n.1. The same is true here; the district court dismissed the coaches' MWA claims solely on the basis of exclusivity, as opposed to their failure to state a claim under the MWA.