STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1561

Whitney Hinrichs-Cady,
Appellant,

vs.

Hennepin County,
Respondent.

Filed April 20, 2020
Reversed and remanded
Rodenberg, Judge

Hennepin County District Court
File No. 27-CV-19-683

Christopher J. Heinze, Kirsten J. Libby, Libby Law Office, P.A., St. Paul, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Beverly J. Wolfe, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

A person who claims to have been denied reasonable pregnancy accommodations under Minn. Stat. § 181.9414 (2018) is not required to meet the 12-month-tenure requirement in Minn. Stat. § 181.940, subd. 2 (2018), in order to assert a claim for the denial.

O P I N I O N

RODENBERG, Judge

Appellant Whitney Hinrichs-Cady appeals from the district court's rule 12 dismissal of her claims alleging violations under the Pregnancy and Parental Leave Act (PPLA) and the Minnesota Whistleblower Act (MWA). Appellant argues that the district court erred by determining that (1) she was not an "employee" as defined by Minn. Stat. § 181.940, subd. 2, for purposes of the PPLA at the time she requested the pregnancy accommodations; and (2) her PPLA and MWA claims are preempted by the exclusivity provision of the Minnesota Human Rights Act (MHRA). We reverse and remand.

FACTS[1]

Respondent Hennepin County hired appellant as a social worker on September 19, 2016. Appellant was pregnant. Appellant was initially placed with the induction unit, and she was assigned to a field-team unit in November 2016. Appellant's responsibilities included investigating cases of child abuse and neglect. This sometimes included visiting children in their homes. Appellant claims that, during some of these home visits, she was exposed to unhealthy and unsafe conditions, including exposure to cigarette smoke, marijuana smoke, and other drug use.

During her pregnancy, appellant developed an iron deficiency which caused her to faint during an in-home visit in February 2017. Appellant's doctor subsequently provided appellant with a list of job restrictions for the last seven weeks of her pregnancy. These

[1] As discussed below, the procedural posture of this case requires that we accept as true all of the complaint's allegations. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013).

restrictions included not working for more than one hour without rest, not lifting more than ten pounds, not driving if she felt dizzy, and not being exposed to environments deemed unsafe or unhealthy for appellant or her unborn child.

Appellant claims that she met with her direct supervisor on February 10, 2017, "to request that [respondent] allow her to work within the restrictions set forth by her doctor." Appellant alleges that her direct supervisor told her that the supervisor had herself "done this job pregnant" and that appellant cannot use her "pregnancy as a disability." Appellant alleges that her direct supervisor required appellant to perform her work as usual until a decision on the requested accommodations was made.

Appellant further alleges that, after she met with her direct supervisor, she went to meet with the director of the department to discuss her accommodations request and to request a new direct supervisor. Appellant's direct supervisor was already in the department director's office when appellant arrived.

Appellant claims she received a phone call from her direct supervisor, the department director, and respondent's Americans with Disabilities Act (ADA) coordinator on February 14, 2017. During that phone call, the ADA coordinator told appellant that her requested accommodations "would prevent her from successfully completing her job and [respondent] could not provide her with such accommodations."

Respondent placed appellant on unpaid leave that appellant did not request. On June 5, 2017, appellant returned to work after giving birth to her child. That same day, appellant's direct supervisor and the department director gave appellant a letter notifying her that her employment was terminated.

On October 26, 2017, appellant and respondent unsuccessfully participated in mediation. Appellant asked whether respondent would agree to another formal mediation. On February 26, 2018, respondent declined to enter into formal mediation and instead made a settlement offer to appellant. Appellant did not reply to respondent's settlement offer.

On January 11, 2019, appellant sued respondent, asserting (1) violation of the PPLA; (2) an MWA claim; and (3) an MHRA claim.

On January 30, 2019, respondent moved to dismiss appellant's complaint under Minn. R. Civ. P. 12.02(e). On May 8, 2019, respondent requested that the district court convert respondent's motion to dismiss the MHRA claim to a motion for summary judgment. At the close of the motion hearing, the district court allowed the parties to file post-hearing letter briefs, and both parties made post-hearing submissions.

On July 31, 2019, the district court granted respondent's motion to dismiss appellant's PPLA and MWA claims under rule 12.02(e). The district court also granted respondent's motion for summary judgment and dismissed appellant's MHRA claim. Judgment dismissing all claims was entered on August 1, 2019.

This appeal followed. On appeal, appellant challenges only the rule 12 dismissals of her PPLA and MWA claims. Appellant has abandoned her MHRA claim.

ISSUES

I. Does the PPLA require that appellant have been employed by respondent for 12 months in order to be entitled to its pregnancy protections?

II. Are appellant's claims under the PPLA and the MWA preempted by the exclusivity provision of the MHRA?

ANALYSIS

Appellant challenges on appeal the district court's dismissal of her PPLA and MWA claims under rule 12.02(e). Appellate courts "review de novo the district court's grant of a motion to dismiss under Minn. R. Civ. P. 12.02(e)." *Sipe*, 834 N.W.2d at 686. In this posture, we "consider only the facts alleged in the complaint, accepting those facts as true." *Id.* (quotation omitted). We therefore do not evaluate the merits of appellant's claims but only whether appellant's complaint fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e).

I. The district court erred by concluding that appellant was not an "employee" entitled to the protections of the PPLA.

Appellant argues that the district court erred by concluding that she is not entitled to the protections of the PPLA because she had not yet been employed by respondent for 12 months and therefore did not meet the definition of "employee" under Minn. Stat. § 181.940, subd. 2, at the time she requested pregnancy accommodations. Appellant argues that the definition of "employee" provided in Minn. Stat. § 181.940 (2018), which contains a requirement of 12 month's employment, does not apply to her request for pregnancy accommodations under Minn. Stat. § 181.9414. Respondent disagrees and

argues that the section 181.940 definition applies to the PPLA. We are therefore presented with an issue of statutory interpretation.

Appellate courts review questions of statutory interpretation de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). "The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous." *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). "A statute is ambiguous if it is subject to more than one reasonable interpretation." *State v. Pakhnyuk*, 906 N.W.2d 571, 576 (Minn. App. 2018), *aff'd*, 926 N.W.2d 914 (Minn. 2019).

On Mother's Day in 2014, the Minnesota legislature made changes to the laws concerning the rights of pregnant women by enacting the Women's Economic Security Act. 2014 Minn. Laws ch. 239, art. 1. The Women's Economic Security Act added section 181.9414—the PPLA—to Minnesota's employment laws. 2014 Minn. Laws ch. 239, art. 3, § 4. It placed the PPLA within a group of statutes that at the time related only to parenting leave. *See* Minn. Stat. § 181.940-.944 (2012).

The 2014 PPLA, providing for pregnancy-accommodations, states that "[a]n employer must provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if she so requests." Minn. Stat. § 181.9414, subd. 1. The statute further requires the employer to "engage in an interactive process with respect to an employee's request for a reasonable accommodation." *Id.* The statute prohibits retaliation by an employer against an employee who requests or obtains a pregnancy accommodation. *Id.*, subd. 3. Finally, the statute provides that an employer "shall not require an employee to take a leave or accept an accommodation." *Id.*, subd. 4.

"Employee" is defined for purposes of the group of statutes pertaining to parenting leave and accommodations in Minn. Stat. § 181.940, subd. 2. That section provides that an "employee" is:

> a person who performs services for hire for an employer from whom a leave is requested under sections 181.940 to 181.944 for:
>
> (1) at least 12 months preceding the request; and
>
> (2) for an average number of hours per week equal to one-half the full-time equivalent position in the employees job classification as defined by the employer's personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during the 12-month period immediately preceding the leave.

Minn. Stat. § 181.940, subd. 2.

The definitions section of the parenting leave and accommodation statutes states that "[f]or the purposes of sections 181.940 to 181.944, the terms defined in this section have the meanings given them." Minn. Stat. § 181.940, subd. 1. The "pregnancy accommodations" section is numbered within the range of sections identified in section 181.940, subdivision 1. Subdivision 2 then defines "employee." The statute does not further define the term "leave." *See* Minn. Stat. § 181.940.

Respondent argues, and the district court concluded, that an "employee" for purposes of the PPLA must have worked for an employer for 12 months before the PPLA recognizes the employee as eligible for protection under it. In its order granting respondent's motions to dismiss, the district court applied the section 181.940 definition of "employee," and determined that appellant was "not an eligible 'employee' covered by the PPLA" because appellant "had not performed services as an employee for at least 12

months preceding the alleged request for accommodation." The district court also determined that, even if the definition of "employee" were considered to be ambiguous, "the history of the [PPLA statute's] modification reflects the Legislature's intent to provide that the PPLA provisions cover individuals with 12 months of employment tenure."

Appellant argues that the definition of "employee" in section 181.940, subdivision 2, as applied to the PPLA, which requires pregnancy *accommodations*, is ambiguous. We agree with appellant that the legislature, by placing the pregnancy-accommodations statute where it did, created ambiguity concerning how courts should apply the definition of "employee" for purposes of the PPLA.

"The primary objective in interpreting a statute is to give effect to the intention of the legislature in drafting the statute." *State v. Sopko*, 770 N.W.2d 543, 544 (Minn. App. 2009) (quotation omitted). "[W]e assume that the legislature does not . . . intend absurd or unreasonable results." *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003). "[W]e cannot add words to a statute that the Legislature intentionally or inadvertently left out." *Great River Energy v. Swedzinski*, 860 N.W.2d 362, 364 (Minn. 2015) (quotation omitted).

The words that the legislature used, in the context that they were used, creates ambiguity here. The definition in section 181.940, subdivision 2, concerns persons who work for "an employer from whom leave is requested." Minn. Stat. § 181.940, subd. 2. Before enactment of the PPLA, all of the sections to which the definition of "employee" applied provided for some type of leave. The definition is a vestige of that pre-PPLA time. *See Saltonstall v. Birtwell*, 164 U.S. 54, 70, 17 S. Ct. 19, 25 (1896) ("[I]t is not unusual, in a succession of statutes on the same subject-matter, amending or modifying previous

provisions, that a word or phrase may remain, although rendered useless or meaningless . . . . Such words are merely vestigial, and should not be permitted to impair or defeat the fair meaning of the enactment.").

The PPLA covers a good deal more than "leave." It specifically identifies well-understood pregnancy accommodations including the need for "frequent restroom, food, and water breaks," lifting limitations, and seating and positional accommodations. These sorts of accommodations are not leave. They are the sorts of accommodations that allow pregnant women to *continue* working.

The county argues that every requested accommodation under Minn. Stat. § 181.9414 is a request for leave. The county posits, therefore, that any person requesting an accommodation must also have worked for an employer for 12 months. This cannot be right. No common definition of "leave" includes the likes of lifting restrictions or restroom breaks. And the statute itself recognizes the difference between leave and accommodation by providing that pregnant employees shall not be required "to take a leave *or* accept an accommodation." Minn. Stat. § 181.9414, subd. 4 (emphasis added). Moreover, because section 181.9414, subdivision 1, requires an employer to accommodate at least three things that are plainly not "leave," the legislature cannot have intended that no PPLA accommodations need be made before an employee has worked for the employer for 12 months.

While the legislature might have had a reason for requiring a person to have worked for an employer for 12 months before that person is entitled to leave, it surely did not intend the same for a person requesting non-leave accommodations under the PPLA. Indeed, the

definition on which the county relies applies *only* when "leave is requested" from the employer. By limiting application of the definition to situations when an employee requests leave, and by distinguishing between leaves and accommodations, the legislature demonstrated its intent to limit the definition of "employee" in section 181.940, subdivision 2, to circumstances involving an employee who requests leave. And, as discussed, the PPLA expressly identifies specific sorts of pregnancy accommodations that will allow pregnant women to *continue* working instead of taking a leave.

The absence of a statutory definition for non-leave accommodations for pregnant women does not undermine our conclusion. "Employee" has a plain-language, commonsense definition. When a pregnant woman requests *non-leave* accommodation under the PPLA, we employ that definition and not the leave-specific definition in section 181.940, subdivision 2. The purpose of the PPLA is to require that employers accommodate the reasonable pregnancy-related needs of women. These needs are common to pregnant employees regardless of how long they have worked for the employer. Pregnant women may require more restroom breaks or may require positional or lifting accommodations even though they have not yet worked for 12 months for their employer. The evident intention of the PPLA is that those accommodations be made. We resolve the statutory ambiguity consistent with the evident legislative intention in enacting the PPLA: to require accommodation of the pregnancy-related needs of women. Employees who request reasonable *non-leave* accommodation of their pregnancy-related health conditions are "employees" for purposes of the PPLA regardless of whether they have worked for the employer for 12 months.

We hold that non-leave pregnancy accommodations under the PPLA do not require that the employee requesting accommodation must have worked for the employer for 12 months. The district court therefore erred in dismissing appellant's claims under the PPLA.

II. Appellant's claims under the PPLA and MWA are not barred by the MHRA's exclusivity provision for purposes of respondent's rule 12 motion.

Appellant argues that the district court erred when it determined that her claims under the PPLA and MWA are barred by the exclusivity provision of the MHRA.

Appellant brought three claims against respondent in district court: (1) a PPLA claim, (2) an MWA claim, and (3) an MHRA claim. Appellant has abandoned her MHRA claim and now challenges only the dismissal of her PPLA and MWA claims by the district court under Minn. R. Civ. P. 12.02(e).

The district court concluded that appellant's PPLA and MWA claims are barred by the exclusivity provision of the MHRA. The exclusivity provision states that "as to acts declared unfair by sections 363A.08 to 363A.19, and 363A.28, subdivision 10, the procedure herein provided shall, while pending, be exclusive." Minn. Stat § 363A.04 (2018).

In *Williams v. St. Paul Ramsey Med. Ctr.*, the Minnesota Supreme Court defined the scope of the MHRA's exclusivity provision, holding "that the exclusivity provision of the Human Rights Act operates as a bar to the separate maintenance of [a] claim under the Whistleblower Act" where the same acts by the employer were claimed by the plaintiff-employee to violate both the MHRA and the MWA. 551 N.W.2d 483, 486 (Minn. 1996).

Among other things, appellant's PPLA claim is that respondent did not make reasonable accommodations for health conditions and complications related to her pregnancy, that respondent required appellant to take unpaid leave, and that respondent retaliated against her by terminating her employment when appellant requested accommodations.

Some of the conduct alleged in appellant's PPLA claims could also violate provisions of the MHRA. If this were true, then the supreme court's analysis in *Williams* might apply. However, appellant asserts in her MWA claim that she was penalized for having requested accommodations under the PPLA.

Based on the limited record on appeal, and applying the rule 12 standard of whether appellant's complaint has stated a claim on which relief can be granted, it cannot now be determined as a matter of law that appellant's PPLA and MWA claims are barred by the MHRA's exclusivity provision.

The MHRA protects against employment discrimination on the basis of a number of identified statuses. Among the persons protected are those with "any condition or characteristic that renders a person a disabled person." Minn. Stat. § 363A.03, subd. 12 (2018). Respondent identifies no authority supporting the notion that all pregnant women are disabled, and we are certainly aware of no such authority. Some pregnant women may be disabled within the meaning of the MHRA and, we suppose, the MHRA's exclusivity provision might then apply to claims that fall within both it and the PPLA. But that case is not now before us. Appellant's MHRA claim has been dismissed with prejudice and appellant has abandoned it. She advances no argument that her requests for

accommodations related to pregnancy were accommodations for a "disability" or that she was a "disabled person." And appellant's MWA claims relate to her allegations that she was discharged for having requested pregnancy accommodations and reporting a suspected violation of law when she was denied them. She did not allege any status identified in and protected by the MHRA.

It is true that appellant's complaint alleges sex discrimination. But it is evident that the essence of appellant's complaint is that her pregnancy-based needs were not accommodated, not that she was discriminated against for the status of being pregnant. We decline to stretch the supreme court's analysis in *Williams* to apply here.[2]

Appellant's MWA claim, on its face and for purposes of rule 12, is viable. Appellant's MWA claim alleges that respondent penalized appellant by terminating her employment after she reported suspected violations of law by respondent in not accommodating her pregnancy-related needs under the PPLA. In other words, appellant claims to have blown the PPLA whistle on respondent's conduct. She makes no claim to have blown the MHRA whistle regarding sex discrimination or disability discrimination.

[2] Courts have questioned the scope of the rule of law announced in *Williams*. *See, e.g.*, *Pierce v. Rainbow Foods Group, Inc.*, 158 F. Supp. 2d 969, 974-75 (D. Minn. 2001) (wherein Senior United States District Judge Alsop noted the "lack of a consistent analytical framework" in Minnesota's law after *Williams*, resulting in at least four possible approaches to the MHRA-preemption issues). We do not by our holding here, or by noting Judge Alsop's concern expressed in *Pierce*, question the viability of the supreme court's *Williams* holding, and we are well aware that supreme court precedent binds us. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). Among other distinctions between this case and that one, the PPLA did not exist when *Williams* was decided. Our holding here is limited to the question of whether MHRA preemption applies to appellant's PPLA claims in the rule 12 posture of this case.

In a rule 12 analysis, appellant's MWA claim is viable regardless of the MHRA's exclusivity provision.

Appellant also raises a constitutional argument on appeal which we do not reach. Because appellant's PPLA and MWA claims do not fail to state claims on which relief can be granted, it is unnecessary and would be unwise that we address any constitutional issues. *See Midland Glass Co., v. City of Shakopee*, 226 N.W.2d 324, 326 (Minn. 1975) (stating that "whenever possible, the merits of a case should be decided without a determination of a statute's unconstitutionality"); *see also Alexander v. Severson*, 408 N.W.2d 195, 199 (Minn. App. 1987) (explaining that there is no need to address constitutional claims when a case is resolved on the merits without reference to constitutional arguments).

D E C I S I O N

We reverse the district court's rule 12 dismissal of appellant's PPLA claims based on the reasoning that appellant is not entitled to PPLA protection because she had not worked for respondent for 12 months when accommodations were requested. We also reverse the district court's dismissal of appellant's MWA claims as barred by the exclusivity provision of the MHRA. Appellant has stated viable claims for purposes of rule 12 under both the PPLA and the MWA. We remand to the district for further proceedings consistent with this opinion.

Reversed and remanded.