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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2333**

Cheryl Coryea,
Appellant,

vs.

Rochester Independent School District #535,
Respondent.

**Filed September 7, 2010
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Olmsted County District Court
File No. 55-CV-09-3824

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(for appellant)

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Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Cheryl Coryea worked for the Rochester Independent School District and reported several actions by the superintendent that she believed to be illegal. The school district

terminated Coryea's employment. She sued the school district, asserting a whistleblower claim and a Minnesota Human Rights Act claim, both on the allegation that she had been fired for reporting the superintendent's allegedly illegal actions. The school district moved to dismiss, arguing that Coryea's whistleblower claim was preempted by the Human Rights Act's exclusivity provision and that her Human Rights Act claim was barred as untimely, and the district court granted the motion. We affirm the district court's dismissal of Coryea's Human Rights Act claim as untimely. But some of Coryea's allegations can support only her whistleblower claim, which has a longer limitations period, so the claim is not entirely preempted. We therefore reverse in part and remand for further proceedings based on those allegations that support only the whistleblower claim.

FACTS

Cheryl Coryea was director of business services for the Rochester Independent School District. The school district hired Romain Dallemand as superintendent in July 2007. Superintendent Dallemand had a desk custom made out of glass for his office, but when the public found out, he had it stored off site. Coryea informed Dallemand that it was illegal for him to keep public property off of school district grounds and that the desk had to be delivered to a school-district facility. Dallemand disregarded the admonition. Coryea soon became aware that Dallemand was directing school district employees to take hiring actions that she believed violated state and federal law. Specifically, Dallemand allegedly had instructed employees to delay hiring a wellness coordinator

from a pool of qualified nonminority candidates in order to find and hire a minority candidate. Coryea brought that issue to the attention of the school district's attorney.

In early December, Dallemand wrote Coryea a memorandum criticizing her performance. Coryea replied to the criticism also by memorandum, stating her concern that Dallemand's criticism was triggered by her reporting his illegal hiring practices to the school district's attorney. On January 3, 2008, Dallemand sent another memorandum criticizing Coryea for raising "information that does not respond to [his] points" and scheduled a meeting with her for later that month. The same day, Coryea reported Dallemand's offsite storage of the glass desk to the school board chairperson. She also reported that Dallemand's failure to document significant charges for meals at meetings would be considered illegal by the state auditor.

Dallemand did not wait for the meeting he scheduled. The day after Coryea reported about the desk and meals, Dallemand notified Coryea that he was firing her effective January 31. In several communications before Coryea's discharge on January 31, Dallemand acknowledged that her termination was based in part on her reporting about the desk. Coryea believed that the termination was illegal, and she and the school district began settlement discussions immediately after her discharge. An unsuccessful formal mediation session occurred on May 22. Coryea wrote a letter to the school board several weeks later in a final attempt to resolve her accusations.

Coryea filed a charge with the Minnesota Department of Human Rights (MDHR) on October 14, 2008, alleging that her firing had been in retaliation for her reporting the

alleged discriminatory hiring practice. MDHR dismissed the charge on December 26. Over four months later, on May 14, 2009, Coryea served a civil complaint on the school district alleging common law wrongful discharge and violations of the whistleblower statute, Minn. Stat. § 181.932 (2008). Coryea served an amended complaint on the school district in August 2009, adding a reprisal claim under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01–.41 (2008).

The school district moved to dismiss, and the district court granted the motion. The court reasoned that (1) the common law wrongful discharge claim must be dismissed because Coryea had not pleaded that she was discharged for refusing to perform an unlawful act, (2) the whistleblower claim must be dismissed because it relied on the same facts as the Human Rights Act claim and was therefore precluded by the Act's exclusivity provision, and (3) the Human Rights Act claim must be dismissed as time-barred.

Coryea appeals.

D E C I S I O N

Coryea challenges the district court's order dismissing her complaint. A district court can dismiss a complaint for failure to state a claim on which relief can be granted. Minn. R. Civ. P. 12.02(e). A district court's decision on a rule 12.02(e) motion is reviewed de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We consider only the facts alleged in the complaint and evaluate whether the complaint, when its allegations are accepted as true, sets forth a legally sufficient claim for relief. *Id.* We must determine whether Coryea's whistleblower claim is precluded by

her Human Rights Act claim and whether her Human Rights Act claim is barred as untimely.

I

Coryea first challenges the district court's conclusion that her whistleblower claim relied on the same circumstances as her Human Rights Act claim and is therefore precluded by the act's exclusivity provision. This provision states that, "as to acts declared unfair by [the Human Rights Act], the procedure herein provided shall, while pending, be exclusive." Minn. Stat. § 363A.04. The supreme court has explained that "the legislature could not have contemplated that employees seeking redress for allegedly discriminatory employment action [under the Human Rights Act] could simultaneously maintain an action [under the whistleblower statute] relating to the same allegedly discriminatory practice and predicated on identical factual statements and alleging the same injury or damages." *Williams v. St. Paul Ramsey Med. Ctr., Inc.*, 551 N.W.2d 483, 485 (Minn. 1996).

The district court relied on *Williams* in dismissing Coryea's whistleblower claim, and on appeal the school district continues to rely on *Williams* to argue that the court properly dismissed the whistleblower claim because it was based on facts identical to those supporting Coryea's Human Rights Act claim. But *Williams* is not controlling here because some of the facts that Coryea alleged support only her whistleblower claim.

Coryea alleged that the day before she was notified that she would be terminated she reported to the school board chairperson that Superintendent Dallemand had been

illegally storing the glass desk off school district property and had failed to document meal charges. She also alleged that “Dallemand acknowledged that the termination was, in part, based upon her reporting of the issue as to the illegal location of the glass desk and related financial improprieties and/or illegalities.” These allegations support Coryea’s whistleblower claim. *See* Minn. Stat. § 181.932, subd. 1 (providing that an employer may not discharge an employee for reporting a suspected violation of any federal or state law). But they cannot support her Human Rights Act claim because Coryea’s report about the desk and meals do not implicate any discriminatory practice forbidden by the act. *See* Minn. Stat. § 363A.15 (prohibiting reprisal against a person because the person has “opposed a practice forbidden under this chapter”); Minn. Stat. § 363A.08, subd. 2 (making it an unfair employment practice for an employer, because of race, to “refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment” or to “discriminate against a person with respect to hiring”).

Coryea’s Human Rights Act claim preempts her whistleblower claim only to the extent that the latter relies on Coryea’s reporting discriminatory hiring practices. *See Williams*, 551 N.W.2d at 485 (preempting whistleblower claim “relating to the same allegedly *discriminatory practice* and predicated on *identical* factual statements” (emphasis added)). The whistleblower claim survives the application of the exclusivity provision, but Coryea may litigate relying only on those factual allegations that support

the whistleblower claim exclusively—specifically, the allegations that she was fired for reporting the glass desk and financial improprieties.

The school district presents an excessively formalistic argument that Coryea’s whistleblower claim is based on the same facts as her Human Rights Act claim. The school district focuses on the “Claims” section of Coryea’s complaint and contends that because that section of the complaint does not substantially distinguish the two claims or specify that the whistleblower claim is based solely on Dallemand’s improper handling of public property or funds, the two claims rely on the same factual background. It maintains that this approach is consistent with the notice-pleading requirements of Minnesota Rule of Civil Procedure 8.

It is true that Coryea does not substantially distinguish the two causes of action in her complaint and merely incorporates all preceding paragraphs into each claim without specifying which factual allegations apply to which claim. But the school district urges us to parse the complaint in exacting fashion, disregarding the precise factual allegations because they are imprecisely identified in the legal allegations. The context informs us that those allegations can relate only to the whistleblower claim; treating them as the school district asks would elevate form over substance. Because Coryea’s allegation that she was fired for reporting the glass desk and financial improprieties cannot possibly support a Human Rights Act claim, her two claims were distinct, and the whistleblower claim—based on that allegation alone—survives.

II

Coryea next argues that she timely filed her Human Rights Act claim in district court. The district court concluded that Coryea's claim was untimely because she had only 45 days to file a civil complaint after the MDHR dismissed her charge on December 26, 2008, but she failed to file it until May 14, 2009—139 days later. The district court's reasoning is sound.

The Human Rights Act provides two alternative ways for an aggrieved person to bring a claim: she may either bring a civil action directly in the district court or bring a charge before the MDHR. *See* Minn. Stat. § 363A.28, subd. 1 (“Any person aggrieved by a violation of this chapter may bring a civil action as provided in section 363A.33, subdivision 1, or may file a verified charge with the commissioner [of MDHR] or the commissioner’s designated agent.”). Coryea chose the second option, but the MDHR dismissed her charge. If a claimant chooses to bring her claim as a charge before the MDHR and loses, she still has the option of taking her claim to the district court, but she must do so within 45 days of receiving notice of the MDHR’s dismissal of the charge. *See* Minn. Stat. § 363A.33, subd. 1 (“[A] person may bring a civil action . . . within 45 days after receipt of notice that the [MDHR] has dismissed a charge.”). Although the record apparently does not contain the date when Coryea received notice of MDHR’s dismissal of her reprisal charge, there is no assertion that the notice was untimely. We induce that she received it within several days after the actual dismissal on December 26,

2008. So by commencing her suit on May 14, 2009, she acted well outside the 45-day deadline.

Coryea does not dispute that she missed the 45-day deadline but argues that it does not apply to her. She asserts that section 363A.33, subdivision 1 allowed her to bring her claim “directly to district court” without the 45-day limit even though she had already brought a charge before the MDHR. And she reasons that her claim was timely because it was filed within the act’s one-year statute of limitations. The act provides that an aggrieved person must bring her claim in district court or before the agency within one year after the discriminatory practice occurs. Minn. Stat. § 363A.28, subd. 3.

The school district argues persuasively that Coryea could not bring her reprisal claim “directly” to district court after first bringing it as a charge before MDHR. The act provides for either a direct or an indirect route to the district court: “[A] person may bring a civil action seeking redress for an unfair discriminatory practice *directly* to district court. *In addition*, a person may bring a civil action . . . within 45 days after receipt of notice that the commissioner has dismissed a charge.” Minn. Stat. § 363A.33, subd. 1 (emphasis added). Coryea did not bring her claim *directly* to the district court. *See The American Heritage Dictionary of the English Language* 527 (3d ed. 1992) (defining “directly” as “[w]ithout anyone or anything intervening”). Instead, she brought her civil claim *indirectly*, by first submitting the charge to the MDHR. Coryea therefore took the second route with its associated 45-day postdismissal time limit. *See also Special Sch. Dist. No. 1 v. Dunham*, 498 N.W.2d 441, 443 (Minn. 1993) (holding that

“Minn. Stat. § 363.14, subd. 1(a) [later renumbered to § 363A.33] is meant to address the time within which a plaintiff must bring a civil action in district court after some interaction with the [MDHR]”).

Coryea argues that construing the Human Rights Act this way nullifies the one-year statute of limitations for plaintiffs who, like her, seek review by the MDHR and receive a decision within one year of the alleged violation. This is incorrect; the one-year limitation period had full effect here. Coryea satisfied the limitation period by filing her administrative charge within one year after being notified that her employment would be terminated. *See* Minn. Stat. § 363A.28, subd. 3. Once she filed her charge, the initial limitation period had served its purpose. Coryea is essentially complaining that the MDHR disposed of her charge too promptly. Under her reasoning, she might as easily complain about her own promptness in filing the charge, which also contributed to the 45-day period’s running before the one-year period.

Although the district court’s reading of the statute does not nullify the one-year limitation period, Coryea’s suggested reading would partially nullify the 45-day period. She would have us ignore the 45-day period in cases in which the MDHR dismisses a charge before the primary one-year period expires. This reading would violate the canon of construction that requires courts to construe a statute “to give effect to all its provisions.” Minn. Stat. § 645.16 (2008). Coryea claims that the only reasonable purpose of the 45-day period is to give a claimant time to commence a court action when the MDHR disposes of her charge *after* the initial one-year period, but she provides no

supporting authority and the statutory language does not dictate that interpretation. The statute unambiguously applies to bar the human rights claim in the current situation. There is therefore no room to apply the rule that “[t]he provisions of [the Human Rights Act] shall be construed liberally for the accomplishment of [its] purposes,” Minn. Stat. § 363A.04, and err on the side of a longer limitation period.

The parties dispute two other issues. Coryea argues that the district court improperly calculated the tolling of the one-year statute of limitations, but this is irrelevant because the court’s dismissal of the reprisal claim is supported by the 45-day period alone. And Coryea argues that the continuing-acts doctrine further tolls the one-year limitation period. But because Coryea failed to commence her civil action within 45 days of MDHR’s dismissal of her charge, it is irrelevant whether the continuing acts doctrine tolled the primary, one-year limitation period.

Affirmed in part, reversed in part, and remanded.