STATE OF MINNESOTA

IN SUPREME COURT

A22-0374

Court of Appeals — Gildea, C.J.

Dr. Eric Ringsred,

Respondent,

vs.

Filed: September 13, 2023
Office of Appellate Courts

City of Duluth, et al.,

Appellant,

Duluth News Tribune, et al.,

Respondents.

William D. Paul, Duluth, Minnesota, for respondent Eric Ringsred.

Rebecca St. George, Duluth City Attorney, Elizabeth Sellers Tabor, Assistant City Attorney, Duluth, Minnesota, for appellant City of Duluth.

Patricia Y. Beety, Susan L. Naughton, Paul A. Merwin, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

Kimberly J. Maki, Saint Louis County Attorney, Nick D. Campanario, Assistant County Attorney, Duluth, Minnesota, for amicus curiae Minnesota County Attorneys Association.

S Y L L A B U S

The continuing violation doctrine does not apply to a First Amendment retaliation claim where, as here, the plaintiff has alleged discrete acts of retaliation under 42 U.S.C. § 1983.

Reversed and remanded.

O P I N I O N

GILDEA, Chief Justice.

The question presented in this appeal is whether the continuing violation doctrine applies to toll the statute of limitations for a First Amendment retaliation claim under 42 U.S.C. § 1983. The district court ruled that the claim was time-barred. The court of appeals reversed and reinstated the claim, concluding that the alleged retaliatory acts constitute a continuing violation that tolls the statute of limitations. Because we conclude that the complaint alleges discrete acts of retaliation that do not constitute a continuing violation, we reverse the court of appeals and remand to the district court for further proceedings.

FACTS[1]

Respondent Dr. Eric Ringsred brought this action against appellant City of Duluth (the City) in 2020, alleging that the City retaliated against him in violation of his First Amendment rights. The complaint details a long, contentious history between Ringsred

[1] The district court dismissed Ringsred's complaint for failure to state a claim under Minn. R. Civ. P. 12.02(e). On appeal, we accept the factual allegations in the complaint as true. *See Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 831 (Minn. 2011). We therefore state the facts here as alleged in the complaint.

and the City over development in Duluth. Indeed, Ringsred claims that the City has been retaliating against him for over 20 years because he has been a vocal advocate for historic preservation in Duluth. Among other claims, the complaint includes one count for interference with Ringsred's First Amendment rights by the City and former City Attorney. The complaint alleges several specific "retaliatory actions."

The first dispute described in the complaint occurred in 1998. Ringsred tried to preserve an area described as "Old Downtown" by preventing the City's "Tech Village" project from going forward. In a lawsuit Ringsred filed, the district court permitted "Tech Village" to proceed, but the court also held much of "Old Downtown" to be a protected historic site. Ringsred essentially asserts that the City has been retaliating against him since the 1998 dispute and his complaint details several alleged examples.

Ringsred alleges that the City sought to have him declared a "frivolous litigant" in 2001 in retaliation for his earlier efforts relating to development.

Later, in 2006, Ringsred purchased a building in Duluth called the Pastoret Terrace (the property). The property included both residential and commercial spaces. Ringsred alleges that the City took "adverse actions" involving the property, including increased police surveillance. After a few years of Ringsred's ownership, the Duluth News Tribune ran an article in 2009 about the property titled "Officials Roust Cellar Dwellers from Duluth Buildings." Ringsred contends that the article defamed him because it ran on the front-page of the newspaper and accused him of fire code violations. He contends that this article was also in retaliation for his earlier efforts relating to development.

In 2010, there was a fire at the property. Based on the fire damage, the City condemned the property for human habitation. Following the condemnation, Ringsred spent significant resources to repair and restore the property between 2011 and 2015. But because Ringsred failed to pay the property taxes, the property was forfeited to Saint Louis County in 2015.

In 2016, Ringsred tried to buy the property back from Saint Louis County, but the Duluth Economic Development Authority (DEDA) bought the property instead. Ringsred contends that DEDA bought the property in order to deprive him of it and that the City acted in concert with DEDA to prevent him from buying back the property in retaliation for his speaking out and taking earlier legal action against the City.[2]

After this, Ringsred brought two different lawsuits against the City and DEDA: one to challenge the County's sale of the property and the other to prevent the demolition of the property. Ringsred contends that the City's retaliation continued after these two lawsuits. He points specifically to three newspaper articles appearing in the Duluth News Tribune on April 25, 2018, October 7, 2019, and October 28, 2020, and an article in the Star Tribune on January 23, 2020, where the former City Attorney is quoted: "We've been dealing with the Ringsreds for decades. It's not surprising."

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[2] The district court noted that Ringsred's complaint references a lack of police protection and actions of Saint Louis County and DEDA as examples of alleged retaliatory acts. Because the Duluth Police Department, Saint Louis County, and DEDA are not parties to the suit, the district court concluded that these allegations do not support Ringsred's retaliation claim. The court also noted that even if the Duluth Police Department were a party to the suit, the allegation regarding the lack of police protection fails because it lacks a causal connection to the retaliation claim. These rulings are not before us.

In April 2020, Ringsred brought this action against the City and several other defendants. At issue here is his claim under 42 U.S.C. § 1983, alleging that the City interfered with his First Amendment rights by making false statements and engaging in other negative conduct toward him in retaliation for his prior lawsuits and his public opposition to the City.[3]

The City filed a motion to dismiss for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). The district court dismissed the First Amendment retaliation claim against the City. The court ruled that certain instances of the alleged retaliation are time-barred. The court rejected Ringsred's reliance on the continuing violation doctrine, citing "the lack of continuity" between the alleged retaliatory actions. The court then addressed the merits of the remaining, timely allegations of retaliation and ruled that these allegations failed on the merits. The court explained that there was "no evidence, clear or muddled, that shows because [Ringsred] spoke out against the City, the City retaliated by discussing him and his former property in a newspaper article." The court also determined that Ringsred had "not shown a person of ordinary firmness would be deterred from speaking out or continuing to litigate."

Ringsred appealed to the court of appeals, raising multiple issues involving multiple defendants. As relevant to the issues before us, Ringsred argued that his section 1983 retaliation claim against the City is timely and properly stated a claim on which relief could

[3] Ringsred's section 1983 claim against the former City Attorney is not before us. Ringsred also brought other claims against members of the media, the City, and the former City Attorney for defamation and for conspiring to defame him. These claims are not before us here.

be granted. The court of appeals agreed and reversed the district court's dismissal of the section 1983 retaliation claim. *Ringsred v. City of Duluth*, No. A22-0374, 2022 WL 4295372, at *4–5 (Minn. App. Sept. 19, 2022). First, on the timeliness of the claim, the court of appeals concluded that Ringsred's allegation of "a 20-year 'running battle' of direct and indirect retaliatory conduct . . . is sufficient to toll the statute of limitations" under the continuing violation doctrine. *Id*. at *4. Second, on the merits of the claim, the court of appeals concluded that the district court "departed from" our pleading standard because Ringsred's "allegations as a whole support inferences that the city took various adverse actions against him, directly and indirectly, over a number of years; it did so as a matter of formal policy or accepted custom; its motive for doing so was to retaliate for his litigation and public outcry against the city; and the city's actions may have dissuaded an ordinary person from continuing his protected activities." *Id*. at *5. The court of appeals therefore reinstated Ringsred's section 1983 retaliation claim against the City. *Id.*

The City of Duluth petitioned for further review only on the timeliness of the section 1983 retaliation claim.[4] The City asked us to consider whether the continuing violation doctrine tolls the statute of limitations for First Amendment retaliation claims under 42 U.S.C. § 1983 in Minnesota. The City did not challenge the court of appeals' ruling

[4] The Duluth News Tribune, Forum Communications, and Peter Passi also petitioned for review, asking us to consider whether the court of appeals had appellate jurisdiction to reinstate claims against them, asserting that they were never sufficiently served with the notice of appeal. We denied their petition for review without prejudice to filing a motion to dismiss for lack of jurisdiction in the district court.

that the complaint states a viable First Amendment retaliation claim on the merits under Rule 12.02(e). We granted the City's petition for review.

ANALYSIS

The City of Duluth argues that the continuing violation doctrine does not apply to First Amendment retaliation claims under 42 U.S.C § 1983. In the alternative, the City contends that if the continuing violation doctrine could apply in theory to section 1983 retaliation claims, the doctrine does not toll Ringsred's claim here. This is so, the City argues, because the complaint alleges discrete acts of retaliation that do not constitute a continuing violation.

This case comes to us on review of the district court's grant of the City's motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12.02(e) of the Minnesota Rules of Civil Procedure. Our "review [of] a district court's dismissal for failure to state a claim [is] de novo." *Thompson v. St. Anthony Leased Hous. Assocs. II, LP*, 979 N.W.2d 1, 6 (Minn. 2022). We accept the facts alleged in the complaint "as true and construe all reasonable inferences in favor of the nonmoving party." *Id.* (citation omitted) (internal quotation marks omitted). We also review de novo the running of the statute of limitations. *Franklin v. Evans*, 992 N.W.2d 379, 384 (Minn. 2023).

Ringsred brought the retaliation claim against the City under 42 U.S.C § 1983, a federal civil rights statute, which "provides a specific damages remedy for plaintiffs whose constitutional rights were violated by state officials." *McDeid v. Johnston*, 984 N.W.2d 864, 871 (Minn. 2023). To prove a First Amendment retaliation claim under section 1983, Ringsred "must show (1) that he engaged in a protected activity, (2) that the defendant's

actions caused an injury . . . that would chill a person of ordinary firmness from continuing to engage in the activity, and (3) that a causal connection exists between the retaliatory animus and the injury." *Scott v. Tempelmeyer*, 867 F.3d 1067, 1070 (8th Cir. 2017). The cause of action accrues "when the retaliatory action occurred." *Rassier v. Sanner*, 996 F.3d 832, 836 (8th Cir. 2021). The cause of action accrues at the time of the retaliatory action "because damages result at that time," even when " 'the full extent of the injury is not then known or predictable.' " *Id.* at 837 (quoting *Wallace v. Kato*, 549 U.S. 384, 391 (2007)).

Section 1983 does not include a specific statute of limitations. According to the Supreme Court, because a "federal cause of action brought at any distance of time [is] utterly repugnant to the genius of our laws," courts apply the "most analogous" or "most appropriate" state statute of limitations when, as here, federal law is silent on the matter. *Wilson v. Garcia*, 471 U.S. 261, 268, 271 (1985) (citations omitted) (internal quotation marks omitted). In addition, courts generally refer to "state law for tolling rules." *Wallace v. Kato*, 549 U.S. 384, 394 (2007). *But see id.* at 388 (explaining that "the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law").

In determining the length of the state statute of limitations, the Supreme Court has held that section 1983 claims are "best characterized as personal injury actions" for statute of limitations purposes. *Wilson*, 471 U.S at 280. In Minnesota, the statute of limitations for personal injury actions is 6 years. Minn. Stat. § 541.05, subd. 1(5) (2022). There is no dispute that the applicable statute of limitations for section 1983 claims in Minnesota is

6 years, and so we apply that limitations period here.[5] *See Rassier*, 996 F.3d at 836; *Franklin*, 992 N.W.2d at 385 & n.3. Because Ringsred brought his section 1983 retaliation claim against the City in April 2020, the 6-year statute of limitations bars a retaliation claim that is based on alleged retaliatory acts before April 2014, unless the continuing violation doctrine applies.

Ringsred asks us to affirm the court of appeals' holding that his section 1983 claim based on retaliatory acts before April 2014 is timely under the continuing violation doctrine. *Ringsred*, 2022 WL 4295372, at *4. The continuing violation doctrine is an equitable doctrine that can toll the statute of limitations where a pattern of conduct "constitute[s] a sufficiently integrated pattern to form," in effect, a single act. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 440 n.11 (Minn. 1983). In determining whether the doctrine applies here, the threshold question is whether federal law controls because the accrual date of Ringsred's claim is a question of federal law, or whether Minnesota law applies because the continuing violation doctrine is a tolling rule. *See Wallace*, 549 U.S. at 388, 394. Because the parties agree that Minnesota law controls, we do not reach this issue and simply assume that Minnesota law on the continuing violation doctrine applies.

We previously have applied the continuing violation doctrine in two contexts. The first context is continuing trespass claims. *See N. States Power Co. v. Franklin*, 122 N.W.2d 26, 30–31 (Minn. 1963). In that context, we have explained that "[w]here a

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[5] The district court concluded that the statute of limitations for the First Amendment retaliation claims here is 4 years. The court of appeals held that "the district court erred by applying a four-year limitations period," because "the applicable statute of limitations is six years." *Ringsred*, 2022 WL 4295372, at *4.

structure is erected or junk is stored and the harmful effect is one that may be abated or discontinued at any time, there is a continuing wrong so long as the offending object remains, and the courts regard such as a continuing trespass . . . and the statute of limitations does not run from the initial trespass." *Id.* (citations omitted) (internal quotation marks omitted).

The second context is employment discrimination claims under the Minnesota Human Rights Act. *See Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 71 (Minn. 2020). The continuing violation doctrine may apply to hostile environment claims because "an affected individual may not be aware of the discriminatory impact of certain employment practices until a pattern emerges as a result of the cumulation of numerous events over a substantial period of time." *U.S. v. Georgia Power Co.*, 474 F.2d 906, 922 (5th Cir. 1973). *Abel* provides a helpful example. There, a female graduate student alleged employment discrimination stemming from her time working at a hospital. We concluded that she had "plausibly alleged a continuing violation" stemming from her allegations of "a series of related acts of discrimination based on [her] sex and race." 947 N.W.2d at 72. In making this determination, we emphasized that "the continuing violations doctrine is particularly relevant in hostile environment claims" because such "claims may be based on '[p]ervasive incidents, any of which may not be actionable when considered in isolation.' " *Id.* at 71 n.5 (quoting *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 232 (Minn. 2020)).

While we have applied the continuing violation doctrine in only these two contexts, we have never held that such contexts are the exclusive areas for application of the doctrine. But we need not resolve in this case whether the continuing violation doctrine could ever

apply to section 1983 retaliation claims under Minnesota law. Even assuming the doctrine could apply to such claims, it does not apply here because the acts of retaliation that Ringsred alleges are discrete acts, each of which was actionable when committed.

Both the Supreme Court and our court have recognized that the continuing violation doctrine is not applicable where the conduct at issue constitutes discrete acts. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002) (discussing discrete acts); *Abel*, 947 N.W.2d at 71 n.5 (citing *Morgan*, 536 U.S. at 116–17). "Discrete acts" are "easy to identify" and are separately "actionable." *Morgan*, 536 U.S. at 114. And even if a discrete act outside the limitations period is "plausibly or sufficiently related to" a discrete act within the limitations period, such that there may be a "serial violation," each discrete act is still considered separately for timeliness based on when that act became "actionable." *Id*. The continuing violation doctrine "does not allow a plaintiff to recover for discrete acts of retaliation that occur outside of the limitations period simply because those acts are related to other acts of retaliation that occurred within the limitations period." *Katz v. McVeigh*, 931 F. Supp. 2d 311, 338 (D.N.H. 2013).

Ringsred's complaint alleges a series of discrete acts of retaliation, each of which would have been actionable when committed. *See Rassier*, 996 F.3d at 836. For example, assuming, as Ringsred alleges, that the City interfered with his ability to buy back his property as retaliation for his prior speech, that conduct was actionable when it was committed. Similarly, if the City's statements that appeared in the newspapers were retaliatory, Ringsred could have pursued his claims when those statements were published. The fact that Ringsred alleges that the City committed the retaliatory acts over a period of

time with the same motive does not allow him to aggregate those discrete acts into a continuing violation of his First Amendment rights. *See O'Connor v. City of Newark*, 440 F.3d 125, 128 (3d Cir. 2006) (noting that acts of First Amendment retaliation are "individually actionable, even when relatively minor").

Comparing hostile environment claims to First Amendment retaliation claims further illustrates this principle. Hostile work environment claims "cannot be said to occur on any particular day" and are instead based on the "cumulative effect of individual acts." *Morgan*, 536 U.S. at 115; *see also Abel*, 947 N.W.2d at 71 n.5 (noting that "the continuing violations doctrine is particularly relevant in hostile environment claims"). Because the harm "occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own," the continuing violation doctrine may be applicable to hostile environment claims. *Morgan*, 536 U.S. at 115; *see also Abel*, 947 N.W.2d at 71–72, 71 n.5. By contrast, the wrongful nature of each act of retaliation Ringsred alleges was complete and known at the time the City committed the act. Accordingly, the retaliatory acts alleged here do not constitute a continuing violation sufficient to toll the statute of limitations.[6]

The court of appeals reached a contrary conclusion, relying on *Monell v. Department of Social Services*, 436 U.S. 658 (1978). The court of appeals explained that,

[6] Ringsred argues that his allegation in the complaint of a "continuing violation" is sufficient to survive a Rule 12 motion to dismiss. We disagree. While we are bound by factual allegations at the Rule 12 stage, we are not bound by conclusory legal labels dressed up as factual allegations. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

under *Monell*, "retaliatory conduct may be official policy or governmental 'custom,' " *Ringsred*, 2022 WL 4295372, at *4 (citing *Monell*, 436 U.S. at 690–91), and an allegation of "retaliation as custom" requires the plaintiff to "point to, and eventually prove, a 'continuing, widespread, persistent pattern' " *id.* (quoting *Mitchell v. Kirchmeier*, 28 F.4th 888, 899 (8th Cir. 2022)). Based on this "concept of retaliation through governmental custom" from *Monell* and the court of appeals' conclusion that it is "similar" to the continuing violations doctrine, the court of appeals reasoned that Ringsred's allegations were "sufficient to toll the statute of limitations" because he had alleged "a 20-year 'running battle' of direct and indirect retaliatory conduct." *Id.*

But *Monell* is about municipal liability for a section 1983 claim; it is not about the timeliness of a section 1983 claim. Under *Monell*, in order to hold a municipality liable "for an injury inflicted solely by its employees," a plaintiff must establish that the action at issue was the result of a municipal "policy or custom" and not just the action of individual municipal employees. *Monell*, 436 U.S. at 694. To subject a municipality to section 1983 liability, the plaintiff generally must show either a policy—"a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters"—or a custom—a sufficiently "widespread, persistent pattern of unconstitutional misconduct." *Corwin v. City of Indep.*, 829 F.3d 695, 699–700 (8th Cir. 2016) (citations omitted) (internal quotation marks omitted). In other words, the *Monell* municipal liability standard asks whether the challenged conduct was the result of an

official policy, *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479–80 (1986),[7] or an unofficial custom, which can be shown by the frequency of similar conduct being done in a widespread fashion, often through instances of similar conduct being done to parties other than the plaintiff, *see Perkins v. Hastings*, 915 F.3d 512, 521–23 (8th Cir. 2019).

Monell and its policy or custom requirement is a test for establishing liability against a municipality. The continuing violation doctrine, by contrast, is a test for determining whether a series of acts should be treated, in effect, as a single, continuous violation that tolls the statute of limitations. *See Abel*, 947 N.W.2d at 73. These tests are different in their applications and purposes. To the extent that the court of appeals relied on the *Monell* custom element to toll the statute of limitations under the continuing violation doctrine, we hold that the court of appeals erred.

In sum, the acts Ringsred alleges as retaliation are discrete acts that were actionable when committed. Accordingly, those acts do not constitute a continuing violation that tolls the statute of limitations.[8]

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[7] Under *Monell*, a single discrete act of a government official can be actionable against a municipality if the discrete act was in conformity with an official policy. *See, e.g.*, *Pembaur*, 475 U.S. at 484–85 (holding a municipality liable for a single act of an unconstitutional search by public officials acting in accord with municipal policy).

[8] On remand, the district court needs to assess whether Ringsred's complaint alleges a timely retaliation claim, and if so, resolve that claim on the merits. Our holding on the timeliness of the retaliation claim should not be read as restricting the right of Ringsred on remand to offer evidence of a municipal practice that took place before April 2014 to help establish a pattern of municipal misconduct that may be relevant to proving a timely section 1983 retaliation claim against the City. *See Corwin*, 829 F.3d at 700.

CONCLUSION

Based on our analysis, we reverse the court of appeals and remand to the district court for further proceedings consistent with this opinion.