STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1104

Shukri Ahmed, et al.,
Respondents,

vs.

GCA Production Services, Inc.,
Appellant,

Maurico Salgeuro, et al.,
Defendants.

Filed April 28, 2009
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CV-07-26810

Frank J. Rajkowski, Troy A. Poetz, Gregory J. Haupert, Matthew W. Moehrle, Rajkowski Hansmeier Ltd., 11 Seventh Avenue North, P.O. Box 1433, St. Cloud, Minnesota 56302-1433 (for respondents)

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Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

HUDSON, Judge

In this discrimination lawsuit, appellant argues that the district court erred when it denied appellant's motion to dismiss or, alternatively, for summary judgment, based on lack of subject-matter jurisdiction, insufficient process, insufficient service of process, lack of personal jurisdiction, and expiration of the statute of limitations. We affirm.

FACTS

Alleging discrimination in the workplace, respondents Shukri Ahmed, et al., filed charges with the Equal Employment Opportunity Commission (EEOC) on or about May 20, 2007. The charges were cross-filed with the Minnesota Department of Human Rights (MDHR). On June 5, 2007, the MDHR notified appellant GCA Production Services, Inc., by letter that respondents had filed charges with the MDR and with the EEOC, and that the EEOC would process the charges. On November 19, 2007 (nearing the 180-day deadline for filing a federal claim), respondents requested "right to sue" permission from the EEOC.[1] On November 23, 2007, the EEOC issued a "Notice of Right to Sue" letter to respondents, which indicated that the EEOC was terminating its processing of the charge and that respondents' "lawsuit under Title VII or the ADA must be filed in a federal or state court [within 90 days] of . . . receipt of this notice; or [the] right to sue based on this charge will be lost." On November 29, 2007, respondents

[1] It is unclear why respondents proceeded in this manner, since they later opposed removal to federal court.

served appellant with a summons and complaint alleging discrimination under the Minnesota Human Rights Act (MHRA).

On December 24, 2007, the MDHR issued a letter to respondents advising them that: (1) the MDHR had received notice that respondents had requested "right to sue" permission from the EEOC; and (2) under Minn. Stat. § 363A.33 (2006) of the MHRA, respondents must notify the MDHR of their intent to initiate a civil action. On December 26, 2007, appellant filed an answer to respondents' complaint alleging that the district court lacked subject-matter jurisdiction because respondents did not notify MDHR of its intent to sue *prior to* service of respondents' November 29, 2007 complaint. On December 31, 2007, the MDHR received a copy of respondents' summons and complaint. In response, the MDHR sent respondents a letter on January 2, 2008 characterizing the summons and complaint as respondents' notice of intent to sue and dismissing the MDHR charges. On February 25, 2008, respondents personally served (or "re-served," according to respondents) the summons and complaint on appellant; no new claims or parties were added or deleted—appellant simply re-dated and re-signed the original November 29, 2007 complaint. On March 5, 2008, respondents filed (re-filed) the summons and complaint in Hennepin County District Court.

On April 23, 2008, appellant filed an amended motion for dismissal, judgment on the pleadings, or, alternatively, for summary judgment. Appellant's claims were based primarily on respondents' failure to notify the MDHR prior to serving the November 29, 2007 complaint, pursuant to Minn. Stat. § 363A.33, subd. 1(3). After a hearing on May 21, 2008, the district court denied appellant's motion and found that because the

MHRA is to be "construed liberally for the accomplishment of the purposes" of the act, it was appropriate to dismiss the November 29, 2007 complaint and honor the February 25, 2008 complaint in accordance with Minn. Stat. § 363A.04 (2006). Respondents did not move to amend their complaint. Nevertheless, the district court, in the alternative, granted respondents leave to amend their original complaint effective February 25, 2008 in accordance with Minn. R. Civ. P. 15.01. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred when it did not dismiss respondents' action for lack of subject-matter jurisdiction. "Subject-matter jurisdiction is a court's power to hear and determine cases of the general class or category to which the proceedings in question belong." *Bode v. Minn. Dept. of Natural Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (quotation omitted). Subject-matter jurisdiction of the district court is a question of law, which we review de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

Minn. Stat. § 363A.33 sets forth the requirements for initiating a private civil action to redress an unfair discriminatory practice under the MHRA. Either the commissioner or the aggrieved party can file an action in district court. *Id.*, subd. 1. A party may file a civil suit in the first instance or may first file a charge with the MDHR. In the latter circumstance, a civil action can be initiated if more than 45 days have elapsed since filing and no hearing has been held or agreement reached, upon notice to the commissioner of the party's intent to file a civil action. *Id*., subd. 1(3). *The suit must be commenced within 90 days after giving the MDHR notice. Id.* Here, subdivision 1(3)

is applicable because more than 45 days had elapsed since the May 20, 2007 filing with the MDHR, and no hearing had been held or agreement reached.

The principal dispute in this case is the legal effect of respondents' alleged failure to comply with subdivision 1(3) by not giving notice to the MDHR prior to commencing suit against appellant. Appellant argues that, because respondents served their original summons and complaint on appellant four weeks *before* notifying the MDHR of their intent to initiate a civil action, the district court lacked subject-matter jurisdiction. Appellant relies on *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 716 (Minn. App. 1997), *review denied* (Minn. Apr. 24, 1997), to support this argument. In *Sullivan*, the complainant (Sullivan) notified the MDHR by phone of his intent to initiate a civil action prior to serving the complaint on Spot Weld. 560 N.W.2d at 716. The evidence of the alleged oral notice was not in the record. *Id.* Sullivan sought to cure this defect by later providing a copy of the complaint to the MDHR. *Id*. This court held that, even if it were to conclude that the copy of the complaint Sullivan provided to the MDHR was notice within the meaning of the MHRA, Sullivan failed to satisfy the statute's requirement that he commence his action within 90 days thereafter. *Id*.

Respondents argue that *Sullivan* is distinguishable. Here, respondents re-served their summons and complaint on February 25, 2008, which was within 90 days of notifying the MDHR of their intent to initiate a civil action, and after the MDHR dismissed the agency charges on January 2, 2008. Respondents argue that the notice requirements of the MHRA were satisfied because re-service of the summons and complaint effectively cured any procedural deficiencies. Respondents also argue that

Minn. Stat. § 363A.33, subd. 1(3), contains no requirement that the notice to the MDHR must *precede* commencement of the suit. Although we disagree with this interpretation of subdivision 1(3), for the reasons discussed herein, we nevertheless affirm the decision of the district court.

Minn. Stat. § 363A.33, subd. 1(3), permits an aggrieved party to file a civil action if more than 45 days have passed since the filing of the administrative charge, as long as no hearing has been held, the commissioner has not entered into a conciliation agreement, the commissioner is given notice of the charging party's intent to initiate a civil action, and a civil action is commenced within 90 days of the notice. The clear intent of these requirements is to avoid duplicative actions while encouraging speedy resolution of a claim, either administratively or by civil action. Similarly, the stated purpose of the Minnesota Rules of Civil Procedure is to secure a just, speedy, and inexpensive determination of an action. Minn. R. Civ. P. 1. The essential remedial purpose of the MHRA is to eradicate discrimination, *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 570 (Minn. 1994), and the language of the MHRA is broadly interpreted to accomplish the remedial purposes of the act. Minn. Stat. § 363A.04; *U.S. Jaycees v. McClure*, 305 N.W.2d 764, 766 (Minn. 1981). In addition, the district court is accorded broad discretion under Minn. R. Civ. P. 15.01 regarding the amendment of pleadings. *Utecht v. Shopko Dep't Store*, 324 N.W.2d 652, 654 (Minn. 1982). And it is well settled that "a court has inherent power to permit pleadings to be amended at any proper time when the amendment does not violate some positive rule of law or prejudice the opposing party." *State by Lord v. Jude*, 102 N.W.2d 501, 503 (Minn. 1960) (citation omitted).

Applying these principles, we conclude that the district court had subject-matter jurisdiction to consider respondents' claim because the district court dismissed the November 29, 2007 complaint and made the February 25, 2008 complaint the operative complaint for purposes of compliance with the notice provision of Minn. Stat. § 363A.33, subd. 1(3). Stated differently, the district court's decision retroactively put respondents within the statutory time frame to commence their civil action. In its January 2, 2008 letter, the MDHR confirmed that it had received respondents' "original" November 29, 2007 complaint and considered it as notice of respondents' intent to sue. Accordingly, under Minn. Stat. § 363A.33, subd. 1(3), respondents had 90 days from service of the January 2, 2008 MDHR letter within which to serve their summons and complaint, which respondents did on February 25, 2008. Thus, the February 25, 2008 summons and complaint became the original pleading for purposes of the civil action.

> If service of summons and complaint results in an intended defendant being fully informed as to the circumstances of the action, the court has acquired sufficient jurisdiction over that defendant, even though an amendment is necessary to correct a misnomer.
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> . . . .
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> Under this rule an amendment to a complaint or petition setting up no new cause of action will relate back to the commencement of the action, and where plaintiff's amendment merely restates his original cause of action, a plea of limitations cannot be interposed thereto.

Nelson v. Glenwood Hills Hosps., Inc., 240 Minn. 505, 513–14, 62 N.W.2d 73, 78 (1953) (citations omitted). The holding in *Nelson* is instructive.

In *Nelson*, the plaintiffs intended to sue the owner and operator of Homewood Hospital but, due to misinformation received prior to and at the time the pleadings were prepared and served, incorrectly named Glenwood Hills Hospitals as the defendant. *Id*. at 506–07, 62 N.W.2d at 74–75. Plaintiffs did not discover the error until the case went to trial; in the meantime, the statute of limitations had expired against Homewood Hospital. *Id*. at 508, 62 N.W.2d at 75. The district court granted plaintiffs' motion to amend the complaint to name Homewood Hospital as the defendant, and Homewood appealed, claiming that no service of process had been made upon it within the time allowed by the statute of limitations. *Id*. at 509–10, 62 N.W.2d 76. The supreme court upheld the amendment and stated that: "[c]onsideration may be given to certain elementary rules of law which have developed under modern rules of civil procedure, namely: A summons is a mere notice of claim against a party served therewith and an amendment should be granted freely when justice so requires." *Id.* at 513, 62 N.W.2d at 78. The court noted that "when a defendant has had notice from the beginning that the plaintiff sets up and is trying to enforce a claim against it because of specified conduct, the reasons for the statute of limitations do not exist, and we are of opinion that a liberal rule should be applied." *Id.* at 515, 62 N.W.2d at 79 (quoting *New York Cent. & H.R.R. Co. v. Kinney*, 260 U.S. 340, 346, 43 S. Ct. 122, 123 (1922)).

Although it is unclear whether respondents' February 25, 2008 complaint was, in fact, an *amended* complaint, given that the only change was the date and the signature block, the principles articulated in *Nelson* are equally applicable here. First, appellant was fully informed of the circumstances of the action because appellant was notified as

early as June 2007 that a charge had been filed with the MDHR. So long as appellant was lawfully served, as we hold was the case,[2] appellant had notice "from the beginning" that respondents were trying to enforce a claim against appellant. *See also Chan v. Katzenmeyer*, 391 N.W.2d 907, 908 (Minn. App. 1986) (acknowledging that Minn. R. Civ. P. 15.01 normally contemplates liberal amendment of pleadings, but holding that the general rule only applies when amendment works no substantial prejudice on opposing party). Second, even if the February 25, 2008 complaint were to be characterized as an *amended* complaint, it contained no new claims, new parties, or new legal theories. Therefore, neither appellant nor the MDHR was prejudiced in any way because appellant did not have to contend with new claims, parties, or legal theories, and the MDHR had not devoted resources to a detailed investigation. *See Dale v. Pushor*, 246 Minn. 254, 262, 75 N.W.2d 595, 601 (1956) (stating that "[t]he liberality to be shown in the allowance of amendments depends in part upon the stage of the action and in a great measure upon the facts and circumstances of the particular case"). Accordingly, we hold that the district court did not abuse its discretion by dismissing the November 29, 2007 complaint and substituting it with the February 25, 2008 complaint. Likewise, we see no abuse of discretion in the district court's alternative ruling granting respondents leave to amend their original complaint effective February 25, 2008.

[2] Respondents served their "amended" February 25, 2008 complaint on appellant personally, even though appellant was represented by counsel. This was arguably a violation of Minn. R. Civ. P. 5.02, which provides that service upon a "party represented by an attorney" shall be made upon the attorney. But because the district court dismissed the November 29, 2007 complaint, the February 25, 2008 complaint effectively became the original complaint and, thus, service was proper under Minn. R. Civ. P. 5.02.

Given the remedial purposes of the MHRA; the fact that it is to be liberally construed; and that the stated purpose of the Minnesota Rules of Civil Procedure is to secure a just, speedy, and inexpensive determination of an action, we hold that the district court did not err by refusing to dismiss respondents' complaint for lack of subject-matter jurisdiction. We acknowledge that "re-service" of a summons and complaint is unusual and is not specifically provided for in the rules of civil procedure. Thus, we discourage its use as it is ripe for producing the kind of confusion exhibited here. But we are mindful that the MHRA is to be liberally construed. On this unique record, given that nothing in the rules of civil procedure prohibits the re-service of a summons and complaint, we affirm the broad discretion accorded district courts in these matters. Because our resolution of this issue is dispositive, we need not address appellant's remaining, related arguments.

Affirmed.