

NO. A07-1820

State of Minnesota
 In Supreme Court

Jonathan Goodman,

Respondent,

vs.

Best Buy, Inc.,

Appellant.

**BRIEF OF AMICUS CURIAE
 NATIONAL EMPLOYMENT LAWYERS ASSOCIATION,
 MINNESOTA CHAPTER**

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**STATEMENT OF AMICUS CURIAE
NATIONAL EMPLOYMENT LAWYERS ASSOCIATION (“NELA”)¹**

NELA is a non-profit organization founded in 1985, and it has a membership of approximately 3,000 employment-law practitioners nationwide. NELA’s Minnesota Chapter has appeared as Amicus Curiae in many significant employment cases before the Minnesota Supreme Court and the Minnesota Court of Appeals. See, e.g., Ray v. Miller Meester Advertising, Inc., 684 N.W.2d 404 (Minn. 2004); Abraham v. County of Hennepin, 639 N.W.2d 342 (Minn. 2002); Anderson-Johanningmeier v. Mid-Minnesota Women’s Center, 637 N.W.2d 270 (Minn. 2002); Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231 (Minn. 1998); Nordling v. Northern States Power Co., 478 N.W.2d 498 (Minn. 1991).

The undersigned is a member of Minnesota NELA and the Minnesota NELA Amicus Committee, and he is qualified to address the Minnesota Supreme Court on the legal and policy issues presented by the appeal herein. Amicus Curiae thanks the Minnesota Supreme Court for permitting Minnesota NELA to appear in this case.

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the undersigned wholly authored this Brief for Amicus Curiae. No counsel for any party authored this Brief, and no person or entity besides Minnesota NELA and its members have made any monetary contribution to the preparation or submission of this Brief. Any duplication between Minnesota NELA’s analysis and that of Respondent would be purely coincidental.

INTRODUCTION

Appellant has demanded that the statutory provision enacted *to lengthen* the time period for filing State-law claims be used *to shorten* the period for filing precisely those claims. In rejecting Appellant's Orwellian approach to statutory interpretation, the Minnesota Court of Appeals reaffirmed the axiomatic principle that the plain meaning of the express statutory language must be respected and followed. Accordingly, the Minnesota Court of Appeals ruled that no legal basis exists for dramatically reducing the limitations period codified by the Minnesota Legislature and long enforced by the Minnesota Supreme Court.

Appellant now demands that the Minnesota Supreme Court essentially read the governing language out of the statute in order to reverse the carefully reasoned decision by the Minnesota Court of Appeals. Amicus Curiae respectfully requests that the Minnesota Supreme Court reaffirm the Minnesota Court of Appeals rather than legislate from the Bench as Appellant's position would require.

I. The Statutory Language Is Clear And Confirms That Appellant's Removal Of Respondent's State-Law Claim To Federal Court Suspended The Limitations Period Until 30 Days After The Federal Court Dismissed Respondent's State-Law Claim

The main statutory provision at issue in this case states, in pertinent part, as follows:

The *period of limitation* for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), *shall be tolled while the claim is pending and for a period of 30 days after it is dismissed* unless State law provides for a longer tolling period.

See 28 U.S.C. § 1367(d) (emphasis added).

By its explicit and unambiguous terms, the statute requires the suspension of the limitations period for a State-law claim removed to Federal Court until 30 days after the Federal Court dismisses the State-law claim. See, e.g., Black's Law Dictionary (8th Ed. 2004) (defining "tolling statute" as "[a] law that interrupts the running of a statute of limitations in certain situations. . . ."). Therefore, the Minnesota Court of Appeals necessarily ruled that the running of the limitations period for filing Respondent's State-law claim did not resume until 30 days after the Federal Court dismissed the State-law claim.

The Minnesota Court of Appeals relied on well settled United States Supreme Court precedent to anchor its legal analysis of the federal statute that underlies the appeal herein:

We start from the necessary presumption that a legislative body "says in a statute what it means and means in a statute what it says." It is only when the meaning is not plain, that judicial interpretation is necessary.

Goodman v. Best Buy, Inc., 755 N.W.2d 354, 356 (Minn. Ct. App. 2008) (quoting United States Supreme Court precedent).

The reasoning of the Minnesota Court of Appeals also adhered to the clearly established jurisprudence of the Minnesota Supreme Court. See, e.g., Anderson-Johanningmeier v. Mid-Minnesota Women’s Center, Inc., 637 N.W.2d 270, 273 (Minn. 2002) (citing Group Health Plan, Inc. v. Phillip Morris, Inc., 621 N.W.2d 2 (Minn. 2001)) (“We will not disregard the words of a statute if they are free from ambiguity.”).

Notably, the Minnesota Legislature has codified the point of law reaffirmed by the Minnesota Supreme Court in Anderson-Johanningmeier and followed by the Court of Appeals in this case. See Minn. Stat. § 645.16 (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”).

In short, there is no need for the Minnesota Supreme Court to wade into Appellant’s thicket of theories in order to decide the straightforward issue on appeal. Both United States Supreme Court and Minnesota Supreme Court precedent require the Minnesota Court of Appeals to rule as it did – that is, in accordance with the plain meaning of the express statutory language applicable to this case.

II. It Would be Legally Erroneous To Use A Statutory Provision That Lengthens The Time Period For Re-Filing State-Law Claims To Shorten The Period For Re-Filing Precisely Those Claims

The Minnesota Legislature established that Respondent has one year in which to file his State-law claim here. See Minn. Stat. § 363A.28, Subd. 3. Yet, Appellant argues that – because Appellant removed Respondent’s State-law claim to Federal Court – Respondent only has 30 days to re-file his State-law claim after the Federal Court dismissed the claim. *See, e.g., Appellant’s Brief, p. 21.*

In effect, Appellant has read the operative language out of 28 U.S.C. § 1367(d). The statutory language at issue is as clear as it is binding: “The period of limitation . . . ***shall be tolled while the claim is pending and for a period of 30 days after*** it is dismissed.” See 28 U.S.C. § 1367(d) (emphasis added). Importantly, Congress inserted “and” between the terms “while pending” and “30 days after.” There would have been no reason to include the “while pending” term if Congress had intended to permit only 30 days to re-file in every case.

In the face of such facially obligatory language, Appellant supports its position on appeal by declaring that “tolled” really means annulled rather than suspended. *See, e.g., Appellant’s Brief, p. 21.*

As a threshold matter, Appellant’s disregard of plainly understood statutory language contravenes well settled United States Supreme Court and Minnesota Supreme Court precedent. Zuni Public School Dist. No. 89 v. Department of

Educ., 550 U.S. 81, 93 (2007) (citation omitted) (“Under this Court’s precedents, if the intent of Congress is clear and unambiguously expressed by the statutory language at issue, that would be the end of our analysis.”); see also Conn. Nat’l Bank v. Germain, 503 U.S. 249, 253-54 (1992); Anderson-Johanningmeier, 637 N.W.2d at 273.

Appellant’s argument also fails given the context in which “tolled” operates through the statute. The use of “tolled” in 28 U.S.C. § 1367(d) is mandatory (as opposed to conditional) and refers to an ongoing occurrence (as opposed to a fixed moment in time). In this context, the only reasonable understanding of “tolled” is that it suspended the applicable limitations period. See, e.g., Dolan v. U.S. Postal Service, 546 U.S. 481, 486 (2006) (reaffirming that understanding a word in a statute “depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.”); see also Minn. Stat. § 645.16 (“Every law shall be construed, if possible, to give effect to all its provisions.”).

The Maryland Court of Appeals squarely addressed the same question decided by the Minnesota Court of Appeals herein. The Maryland Court of Appeals meticulously reviewed the Minnesota Court of Appeals’ analysis and then held that “tolled” must be understood as meaning suspended rather than annulled. Turner v. Kight, 957 A.2d 984, 991-93 (Md. Ct. App. 2008), cert. denied 129 S.Ct.

1985 (2009). Other jurisdictions have so ruled as well. See, e.g., Bonifield v. County of Nevada, 94 Cal.App.4th 298, 303-04 (Cal. Ct. App. 2001).

In sum, the entirety of the statutory text, the purpose and context of the statute, and controlling precedent all contradict Appellant's portrayal of 28 U.S.C. § 1367(d). Contrary to Appellant's characterization, the statute lengthens – not shortens – the time period in which to re-file a State-law claim.

III. Appellant's Position, If Adopted, Would Thwart The Uniform Application Of The Codified Tolling Rule, Conflict With The Doctrine Of Equitable Tolling, And Foster Deleterious Public Policy

After dismissal of Respondent's State-law claim that Appellant had removed to Federal Court, Respondent still had nearly half of the limitations period left to re-file his State-law claim in State Court. Goodman, 755 N.W.2d at 359. Appellant nonetheless insists that the limitations period governing Respondent's State-law claim – which the Minnesota Legislature codified and the Minnesota Supreme Court has long enforced – must now be cut to 30 days (one-twelfth of the entire limitations period) simply because Appellant chose to remove Respondent's State-law claim to Federal Court. *See, e.g., Appellant's Brief, p. 21.*

A. Appellant's approach – in the name of promoting uniformity – impedes the uniform application of the tolling rule

Under Appellant's view of 28 U.S.C. § 1367(d), a party could unilaterally shorten a six-year limitations period (applicable to, for example, a fraud claim

accompanying a federal employment claim) to only 30 days merely by removing a State-law claim to Federal Court – even if the unilateral removal is frivolous or otherwise ultimately unsuccessful. *See, e.g., Appellant’s Brief, p. 21.*

In support of its argument, Appellant conflates its desire to impose a uniform time period for re-filing a State-law claim with the uniform application of the tolling rule codified at 28 U.S.C. § 1367(d).

Contrary to Appellant’s contention, Congress intended for 28 U.S.C. § 1367(d) to ensure that courts apply the tolling rule consistently, not that the time period for re-filing be the same in every case:

This subsection would *provide a uniform federal tolling rule*, with a residual state law reference if the state should have a more generous tolling provision. Under this subsection, the *limitations period is tolled while* the non-federal claim is *pending and for 30 days after* its dismissal. This will *give the pleader* whose claim has been dismissed *adequate time to refile in the state court* if the pleader so desires.

Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice in the House Comm. on the Judiciary, 101st Cong., 2d Sess. 695 (1990) (emphasis added).

Under Appellant’s approach, however, a plaintiff with less than 30 days to re-file would have 30 days to so file while a plaintiff with more than 30 days to re-file would have 30 days to so file. Otherwise stated, cases that have less than 30

days left in the limitations period would be treated more favorably than cases with more than 30 days left in the limitations period. This would be an inconsistent application of the tolling rule, and it would be manifestly unfair.

B. Appellant's position does not comport with the doctrine of equitable tolling

Although no doctrine exists for shortening a limitations period – as Appellant would like or otherwise – a doctrine exists for extending the time period to file a claim. Importantly, this doctrine of equitable tolling provides for the extension of the time to file beyond even what 28 U.S.C. § 1367(d) provides, and it should apply to Respondent's State-law claim herein. State by Khalifa v. Russell Dieter Enterprises, Inc., 418 N.W.2d 202, 206 (Minn. Ct. App. 1988) (confirming that the doctrine of equitable tolling applies to claims prosecuted under the Minnesota Human Rights Act); see also Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982).

Minnesota courts have ruled that the limitations period for the State-law claim pursued by Respondent is equitably tolled where, as here, the plaintiff was not unreasonable in filing the claim outside the limitations period and where, as here, the employer suffered no prejudice. See, e.g., Russell Dieter Enterprises, 418 N.W.2d at 206.

Respondent timely filed his State-law claim before Appellant removed it to Federal Court. *App. Appx. 10-16*. Moreover, the dismissal of the State-law claim gave no guidance to Respondent – who was pro se at that stage – about how he could pursue his State-law claims after dismissal by the Federal Court. *App. Appx. 33-35; Resp. App. 13*. In any event, Respondent re-filed his State-law claim in State Court promptly under the circumstances. *App. Appx. 36-43*. For its part, Appellant has investigated and defended against Respondent’s State-law claim from the inception of the litigation in 2005 and up to the Federal Court’s dismissal of the State-law claim. *Resp. App. 9; App. Appx. 20-32*. The only party that could be prejudiced here is Respondent, and the prejudice would be among the most severe forms that a party could suffer.

C. Appellant’s approach flouts the compelling public policy codified in the Minnesota Human Rights Act (“MHRA”) and conflicts with the related Minnesota Supreme Court precedent

Respondent pursues his State-law claim under the MHRA, which states as follows:

*It is the public policy of this state to secure for persons in this state, freedom from discrimination. * * * Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy.*

See Minn. Stat. § 363A.02, Subd. 1(a)-(b) (emphasis added).

Indeed, Respondent serves as a “private attorney general” because his case “not only redresses his own injury but also vindicate[s] the important congressional policy against discriminatory employment practices.” Alexander v. Gardner-Denver Co., 415 U.S. 36, 44 (1974); see also McKennon v. Nashville Banner Publishing Co., 513 U.S. 352, 358 (1995) (citing Alexander with approval).

In furtherance of the vital public policy underlying the MHRA, the Minnesota Legislature has expressly established that the statute “shall be construed liberally for the accomplishment of the purposes thereof.” See Minn. Stat. §363A.04. Similarly, the Minnesota Supreme Court has “consistently held that the remedial nature of the Minnesota Human Rights Act requires liberal construction of its terms.” Frieler v. Carlson Marketing Group, Inc., 751 N.W. 2d 558, 572 (Minn. 2008) (citing Cummings v. Koehnen, 568 N.W.2d 418, 422 (Minn. 1997)).

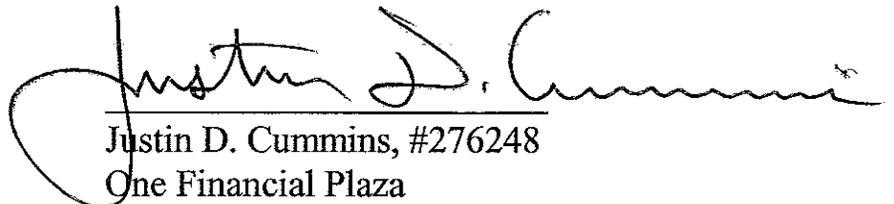
Appellant would have the Minnesota Supreme Court defy this Court’s clearly established precedent and the manifest legislative intent. The MHRA itself and Minnesota Supreme Court precedent both compel an expansive construction of the MHRA to eradicate discrimination and to safeguard democracy.

CONCLUSION

The clear meaning of the explicit statutory language at issue provides for the suspension of the limitations period while a State-law claim has been removed to Federal Court and for an additional 30 days after the Federal Court dismisses the claim. In addition, the statute underlying the appeal lengthens, not shortens, the time period for re-filing a State-law claim. Furthermore, Appellant's Orwellian interpretation of the statute would undermine the uniform application of the tolling rule and otherwise contravene controlling precedent and compelling public policy. For the foregoing reasons, Amicus Curiae respectfully requests that the Minnesota Supreme Court affirm the ruling of the Minnesota Court of Appeals.

Dated: June 9, 2009

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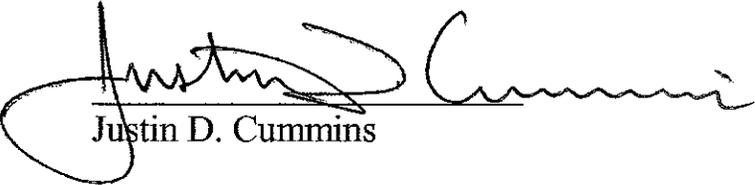
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CERTIFICATION

I certify that this Brief conforms to Rule 132.01 of the Minnesota Rules of Appellate Procedure for a Brief produced using proportional serif font, 14-point or larger. The Brief was prepared using Microsoft Word and is 2,527 words in length.

Dated: June 9, 2009


Justin D. Cummins