

NO. A11-2082  
STATE OF MINNESOTA  
IN COURT OF APPEALS

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Terrance Sipe,  
Appellant,

vs.

STS Manufacturing, Labor Ready/  
TrueBlue,  
Respondents.

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**RESPONDENTS' BRIEF**

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**STATEMENT OF THE ISSUES**

- I. Whether Appellant's claim is barred by the two-year statute of limitations period provided in Minn. Stat. § 541.07(1).

## STATEMENT OF FACTS

Respondents<sup>1</sup> jointly employed Appellant from January 2007 until April 2008. (Resp. Appendix 1-2 at ¶¶ 5-6.) Appellant submitted to a drug test on April 23, 2008. (Resp. App. 2 at ¶ 7.) On or about April 26, 2008, Respondents advised Appellant that he had failed the drug test, reportedly as a consequence of Appellant's use of marijuana. (*Id.* at ¶ 8.) Appellant claims that Respondents terminated his employment because he failed the drug test. (Resp. App. 3 at ¶¶ 9-10, 15.) Appellant further alleges that his termination and the drug testing procedures violated the Minnesota Drug and Alcohol Testing in the Workplace Act ("DATWA"), Minn. Stat. § 181.950 *et seq.* (*Id.* at ¶¶ 15-19.) Appellant claims that this termination caused the damages that he seeks to recover. (Resp. App. 4).

Appellant's counsel executed the Complaint on March 17, 2011. (*See id.*) On June 16, 2011, Respondents filed a Motion to Dismiss because the applicable two-year statute of limitations expired in April 2010. (*See* Resp. App. 5-6.) The District Court agreed, holding that "Plaintiff's claim falls into that category of claims subject to a two-year statute of limitations under the language of Minn. Stat. §541.07 creating a two-year limitations period for 'other torts resulting in personal injury.'" (Resp. Addendum at 4.)

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<sup>1</sup> Respondent Labor Ready Midwest, Inc. was incorrectly sued as "Labor Ready/TrueBlue."

## ARGUMENT

### I. Standard Of Review

“Issues involving the construction and application of statutes of limitations are questions of law, which appellate courts must review de novo.” *Jacobson v. Bd. of Trs. of the Teachers Ret. Ass’n.*, 627 N.W.2d 106, 109 (Minn. Ct. App. 2001).

### II. Appellant’s DATWA Claims Are Subject To A Two-Year Statute Of Limitations

The DATWA does not expressly provide a statute of limitations. As a consequence, there are two potential statutes of limitations for Appellant’s claims: a two-year statute of limitations and a six-year statute of limitations. Which statute of limitations applies to Appellant’s claims under the DATWA appears to be a matter of first impression. This Court’s analysis of similar statutory violations shows that the two-year statute of limitations applies to the DATWA.

Minnesota’s default six-year statute of limitations applies to any “liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07.” Minn. Stat. § 541.05, subd. 1(2). Because DATWA claims are created by a statute, the six-year statute of limitations would apply unless such claims fit within one of the categories under the two-year statute of limitations.

The DATWA does fit into one of the categories subject to a two-year statute of limitations under Minn. Stat. §541.07. Specifically, allegations under the DATWA are claims for “libel, slander, assault, battery, false imprisonment, **or other tort resulting in personal injury . . .**” Minn. Stat. §541.07(1) (emphasis added). Minnesota courts have explained that claims fitting within this category: (1) are intentional or strict liability

torts; (2) involve injury to the person; and (3) usually can be the basis of a criminal prosecution. *See Christenson v. Argonaut Ins. Cos.*, 380 N.W.2d 515, 518 (Minn. Ct. App. 1986). Applying this test, this Court held that claims under Minnesota’s whistleblower statute fit within the two-year category. *See Larson v. New Richland Care Ctr.*, 538 N.W.2d 915, 920-21 (Minn. Ct. App. 1995), *abrogated on other grounds*, *Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002). Given the similarities between the Minnesota whistleblower statute and Appellant’s DATWA claims—and based on this Court’s reasoning in *Larson*—the two-year statute of limitations applies to Appellant’s DATWA claims.

**A. DATWA claims involve an intentional tort.**

The *Larson* court explained that the whistleblower statute creates an intentional tort claim because it provides that an “employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee” for reporting suspected violations of the law or refusing to follow an employer’s order to violate the law. *See Larson*, 538 N.W.2d at 920 (quoting Minn. Stat. §181.932, subd. 1). The DATWA—in language highly similar to that of the whistleblower statute—provides that an “**employer may not discharge, discipline, discriminate against**, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.” Minn. Stat. §181.953, subd. 10 (emphasis added). Breaching such legal duties is a tort as contemplated by the two-year statute of limitations: “A tort is a breach of a legal duty; statutes may create the legal duty for a tort action if the plaintiff is within the class the statute was designed to benefit, there was a

violation of the duty, and the person suffered damage.” *Larson*, 538 N.W.2d at 920 (citing *Anderson v. Settergren*, 111 N.W. 279 (1907)). Appellant alleges that Respondents violated a statutory duty designed to benefit him, and that he suffered damages. Therefore, Appellant’s claims under the DATWA allege a tort.

**B. DATWA claims involve injuries to the person.**

“[W]rongful discharge is obviously a personal wrong that meets the personal injury requirement . . . .” *Larson*, 538 N.W.2d at 920. Appellant’s Complaint alleged that he was discharged in violation of DATWA, and this allegedly wrongful discharge caused him damages. This compels the conclusion that Appellant’s claims involve injuries to him.

But now—in an attempt to evade the statute of limitations—Appellant says that only part of his allegations allege damage, and that other aspects of his single DATWA count “did not lead to any personal injury.” (Appellant Br. at 8.) This does not help Appellant. His entire case is based upon his claim that Respondents wrongfully terminated him in violation of the DATWA. (*See* Resp. App. 13.) Indeed, Appellant essentially concedes that if there was no wrongful termination, he would not have a claim under the DATWA for damages. (Appellant Br. at 8.)

As the District Court held, “DATWA was enacted to address the wrongful discharge of employees . . . .” (Resp. Addendum at 5.) That is what Appellant alleges. *Larson* and other courts applying Minnesota law have consistently held that wrongful discharge of an employee is a personal injury of the type contemplated by the two-year statute of limitations. *See Larson*, 538 N.W.2d at 920; *Marz v. Presbyterian Homes &*

*Serv.*, Civ. No. 11-0200, 2011 WL 2912866 at \*5 (D. Minn. June 22, 2011), *Rep't & Recommendation adopted*, 2011 WL 2894651 (D. Minn. July 19, 2011) (holding that claim for wrongful discharge, whether statutory or common law, is governed by Minnesota's two-year statute of limitations); *Rice v. Target Stores*, 677 F. Supp. 608, 616 (D. Minn. 1988) (holding that wrongful discharge claim is subject to Minnesota's two-year statute of limitations). As in those cases, Appellant's wrongful discharge case is governed by the two-year limitations period.

**C. DATWA claims relate to criminal conduct.**

DATWA involves "an action and injury [that] can usually be the basis of a criminal prosecution." *Christenson*, 380 N.W.2d at 518. In *Larson*, this Court held that "conduct related to" a whistleblower claim satisfied this prong of the *Christenson* test. *Larson*, 538 N.W.2d at 921. (See also Resp. Addendum at 6 & n. 1.) In so holding, the court noted that Minnesota has criminal statutes related to the facts in that case (which dealt with failure to properly care for nursing home patients), including potential conduct by the plaintiff and the defendant. See *Larson*, 538 N.W.2d at 920-21. The court also noted "the myriad of state and federal regulatory requirements that are capable of enforcement under both the civil and criminal laws" pertaining to the nursing home setting. *Id.* at 921.

Here, drug use in the workplace—the reason for the DATWA—is the subject of criminal enforcement. Clearly, Appellant is subject to criminal prosecution for using illegal drugs (like marijuana) in the workplace. Moreover, drug use in the workplace can also be the subject of criminal prosecution against an employer. For example, an

employer could be charged with criminal negligence if it knowingly permits an employee to engage in certain work (such as operate vehicles or other equipment) while under the influence of illegal drugs, leading to someone's death. *See, e.g., State v. Back*, 775 N.W.2d 866, 871-72 (Minn. 2009) (“[A] person is guilty of manslaughter if she ‘causes the death of another . . . (1) by the person’s culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another.’”) (quoting Minn. Stat. § 609.205(1)). As another example, an employer risks forfeiture of its property under Minnesota’s criminal statutes if an employee is arrested while in the possession of illegal drugs that the employee is using on the job. *See, e.g., Minn. Stat. § 609.5311(2)(a)* (“All property, real and personal, that has been used, or is intended for use, or has in any way facilitated, in whole or in part, the . . . delivering . . . transporting, or exchanging of contraband or a controlled substance . . . is subject to forfeiture under this section . . .”). Thus, the District Court correctly held that “illegal drug use is related to [Appellant’s] DATWA claim and could be subject to criminal prosecution.” (Resp. Addendum at 6 n. 1.)

**D. Public policy favors a two-year statute of limitations for DATWA claims.**

The *Larson* court found compelling policy reasons to apply the shorter two-year statute of limitations. For example, a shorter limitations period is appropriate because it gives employees a swift remedy, accommodates a prompt investigation of the employer’s conduct, and prevents evidence from growing stale. *See Larson* 538 N.W.2d at 921 n. 5. The *Larson* court also noted that the two-year statute of limitations is similar to the short statutes of limitations that apply to other employment claims, such as discrimination

claims under the Minnesota Human Rights Act (which have a one-year statute of limitations). *See id.* The policy reasons for applying the two-year statute of limitations to the whistleblower statute in *Larson* pertain with equal force to Appellant's DATWA claims here.

**E. *Manteuffel* is inapposite.**

Appellant tries to distinguish this case from *Larson* by relying on *Manteuffel v. City of North St. Paul*, 570 N.W.2d 807 (Minn. Ct. App. 1997). In *Manteuffel*, this Court considered the Minnesota Data Practices Act, and applied a six-year statute of limitations to violations of that statute. *Id.* at 812. That case and that statute are inapposite. *Manteuffel* dealt with “a tort that may be committed only by a government entity, rather than by a private actor.” *Id.* at 811. Its holding rested largely on the court's conclusion that duties imposed on government officials were not sufficiently analogous to libel and slander, which are the key examples of torts to which the two-year statute of limitations applies. *Id.* at 811. *See* Minn. Stat. §541.07(1). The relevant statute here—DATWA—is aimed at private actors like the Respondents, not government entities. The holding of *Manteuffel* is therefore inapposite. Moreover, comparing *Manteuffel*'s analysis of the Data Practices Act with *Larson*'s discussion of Minnesota's whistleblower-protection act shows that the whistleblower statute—and the torts encompassed by that statute—are far more analogous to the DATWA than the statute in *Manteuffel*. *See, e.g., Larson*, 538 N.W.2d at 920; *Manteuffel*, 570 N.W.2d at 810. The reasoning and holding in *Larson* are therefore far more applicable to this case, and call for a two-year statute of limitations on Appellant's DATWA claim.

**F. *McDaniel* is inapposite.**

Appellant also relies upon *McDaniel v. United Hardware Distrib. Co.*, 469 N.W.2d 84 (Minn. 1991). That case is also inapposite. In fact, *McDaniel* does not even deal with the same provision of Minnesota's statute-of-limitations law as this case. *McDaniel* involved a claim for retaliatory discharge related to workers' compensation benefits. *Id.* at 85. The Minnesota Supreme Court analyzed the claim under two specific provisions of Minnesota's statute of limitations law, **neither of which are at issue here**. Specifically, the Court analyzed Minn. Stat. §541.07(2) (addressing a "penalty" statute), and Section 541.07(5) (addressing "recovery of wages" ). *Id.* at 86-87. Appellant's own brief recognizes that neither of these sections apply here. (See Appellant Br. at 7) (quoting Minn. Stat. § 541.07(1).) As Appellant notes, this case involves Section 541.07(1), which deals with "libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury . . ." Minn. Stat. §541.07(1). Therefore, it is irrelevant that *McDaniel* found a six-year statute of limitations applicable to a workers' compensation claim. That case dealt not only with a different substantive statute, but with different parts of Minnesota's statute-of-limitations law. *McDaniel* does not apply here.

**III. Appellant's Complaint Is Time-Barred**

Appellant's Complaint alleges only violations of the DATWA. Because Appellant's Complaint was initiated after the two-year statute of limitations expired, Appellant is time-barred from pursuing his claims. See *Miernicki v. Duluth Curling Club*, 699 N.W.2d 787, 788-89 (Minn. Ct. App. 2005) (noting that statute of limitations

“prescribe[s] a period within which a right may be enforced and after which a remedy is unavailable for reasons of private justice and public policy”) (quotation omitted).

**CONCLUSION**

The District Court correctly held that Appellant’s claims under the DATWA are subject to a two-year statute of limitations under Minn. Stat. § 541.07. Respondents respectfully ask this Court to affirm the District Court’s Order dismissing Appellant’s Complaint with prejudice.

Dated: May 2, 2012

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