

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1378**

Bryan Leslie Franklin,
Appellant,

vs.

Drew Evans, Superintendent,
Minnesota Bureau of Criminal Apprehension,
Respondent.

**Filed May 31, 2022
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CV-20-712

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's summary-judgment dismissal of his 42 U.S.C. § 1983 (2018) claims as time-barred. Because the ongoing obligation to register as

a predatory offender does not toll the statute of limitations, and appellant's suit commenced long after the six-year limitation period expired, we affirm.

FACTS

On May 1, 2009, respondent State of Minnesota charged appellant Bryan Leslie Franklin with aiding and abetting several crimes, including second-degree assault with a dangerous weapon inflicting substantial bodily harm, in violation of Minn. Stat. § 609.222, subd. 2 (2008), and kidnapping, in violation of Minn. Stat. § 609.25, subd. 1(2) (2008). Franklin pleaded guilty to the second-degree assault charge, and the other charges were dismissed.

Following the district court's September 28, 2009, imposition of an executed prison sentence, Franklin was notified that he was required to register pursuant to the predatory-offender-registration statute because "he was convicted of his current offense of Assault 2nd Degree out of the same set of circumstances" as the kidnapping charge. *See* Minn. Stat. § 243.166, subd. 1b(a)(1) (2020) (requiring registration when charged with a registerable felony offense arising out of the same set of circumstances as the convicted offense). Franklin was also informed that he would have to continue to comply with the registration requirements for an initial ten-year period. As a result, Franklin registered as a predatory offender on October 26, 2009, and because of subsequent incarcerations, Franklin remains required to register. *See* Minn. Stat. § 243.166, subd. 6(c) (2020) (extending the registration period following incarceration for a new offense).

On January 17, 2020, Franklin commenced a civil action pursuant to 42 U.S.C. § 1983 against the Minnesota Bureau of Criminal Apprehension (BCA) alleging that, by

requiring him to register as a predatory offender, the BCA violated (1) his right to procedural due process, (2) his right to substantive due process, (3) his right to be spared cruel and unusual punishment, and (4) the common-law doctrine of laches. Franklin also alleged in an amended complaint that the predatory-registration statute is an unconstitutional bill of attainder.

The BCA moved for dismissal pursuant to rule 12.02(e) of the Minnesota Rules of Civil Procedure or, alternatively, summary judgment pursuant to rule 56 based, in part, on the expiration of the statute of limitations. The district court granted the motion. Franklin appeals.

DECISION

Although the district court characterized its order as a rule 12.02 dismissal, the parties presented affidavits in support of their positions and the district court did not exclude them. “If . . . matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.” Minn. R. Civ. P. 12.02; *see also Antone v. Mirviss*, 720 N.W.2d 331, 334 n.4 (Minn. 2006). Therefore, we treat the order as a grant of summary judgment.

On appeal from summary judgment, appellate courts “review de novo whether a genuine issue of material fact exists,” and “whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002) (citations omitted). “[W]hen the relevant facts are undisputed the standard of review is de novo” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012) (considering the standard of review for equitable relief on summary judgment). “The

construction and application of a statute of limitations or repose, including the law governing the accrual of a cause of action, are questions of law that [appellate courts] . . . review de novo.” *Day Masonry v. Indep. Sch. Dist.* 347, 781 N.W.2d 321, 326 (Minn. 2010).

In Minnesota, section 1983 claims are governed by the six-year limitations period found in Minn. Stat. § 541.05, subd. 1(5) (2020). *Berg v. Groschen*, 437 N.W.2d 75, 77 (Minn. App. 1989) (citing *Owens v. Okure*, 488 U.S. 235, 249-50 (1989)). “The statute of limitations begins to run on a claim when ‘the cause of action accrues.’” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011) (quoting Minn. Stat. § 541.01 (2010)). “A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim.” *Id.*

The district court dismissed Franklin’s complaint because his “cause of action accrued in October 2009, when he was initially required to register as a predatory offender.” The district court reasoned that “the operative facts existed to support the elements of his claims at that time” and he served his complaint “over four years after the limitation period expired.” It rejected Franklin’s argument that the ongoing registration requirements tolled the statute of limitations.

In certain situations, a cause of action which would otherwise be barred by a statute of limitations will be tolled because the wrongful act is a continuing violation of the plaintiff’s rights. “The continuing violation doctrine is most commonly applied in [employment] discrimination cases involving wrongful acts that manifest over a period of

time, rather than in a series of discrete acts.” *Davies v. W. Pub. Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001), *rev. denied* (Minn. May 29, 2001). It has also been applied to trespass, *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 30-31 (Minn. 1963), and required disclosures on political campaign signs. *Lewison v. Hutchinson*, 929 N.W.2d 444, 450-51 (Minn. App. 2019).

The primary case discussing the rationale for applying the continuing violation doctrine to employment discrimination is *Sigurdson v. Isanti Cnty.*, 448 N.W.2d 62 (Minn. 1989). In *Sigurdson*, the employer failed to promote Sigurdson to “deputy assessor” in 1976 when a position opened and again in 1979 when she began doing field appraising. In 1980, the employer negotiated a union contract creating a “property appraiser” position below deputy assessor and retroactively categorized Sigurdson as a property appraiser. 448 N.W.2d at 64. The supreme court determined that “the proper focus is upon the time of the *discriminatory acts*, not upon the time at which the *consequences* of the acts became most painful.” *Id.* at 67 (quotation omitted). Although failure to promote Sigurdson when she began doing the work of a deputy assessor in 1979 or when she was categorized as a property appraiser in 1980 were “[a]rguably” single discriminatory acts, the supreme court concluded that the discrimination was a continuing violation because the job classification system lacked job descriptions and “simply left undisturbed the gender discrimination against [Sigurdson] that had been occurring since December 1976.” *Id.* at 67-68. As this court later described the *Sigurdson* holding, the “wrongful acts . . . manifest[ed] over a period of time, rather than in a series of discrete acts.” *Davies*, 622 N.W.2d at 841.

Franklin argues that registration is a continuing violation because “[t]he registration statute requires every person with a registration requirement to register—at least—once a year” by filling out and returning a verification form. This, he contends, is a continuing violation of his rights because the BCA “is responsible not only for determining who must register initially, but also for continuing to impose the conditions of registration on those individuals.” We are not persuaded.

It is true that persons required to register have an ongoing obligation to comply with the registration requirements for the entire period they are required to register. Minn. Stat. § 243.166, subd. 6(a) (Supp. 2021); *see State v. Longoria*, 749 N.W.2d 104, 107 (Minn. App. 2008) (holding that “violation of the predatory-offender-registration statute is an offense that continues as long as the person required to register fails to do so”), *rev. denied* (Aug. 5, 2008). Compliance with this section requires a registrant to comply with many ongoing obligations, including reporting primary address changes, Minn. Stat. § 243.166, subd. 3(b) (2020), reporting work and school addresses, *id.*, subd. 3(c) (2020), completing a verification form at least once per year and returning it to the BCA within ten days of receipt, *id.*, subd. 4(e)(1)-(2) (2020), reporting secondary addresses, *id.*, subd. 4a(a)(2) (2020), and disclosing registration status to healthcare facilities and home care services providers before being admitted to a facility or services, *id.*, subd. 4b(b)(1) (Supp. 2021). The BCA maintains this information in the predatory-offender registry for use and access by law enforcement and social services agencies. Minn. Stat. § 299C.093 (2020).

However, and unlike the continuing discrimination in *Sigurdson*, the act of the BCA requiring Franklin to register was a discrete act which created these ongoing compliance

obligations. The BCA determined, on one discrete occasion, that Franklin was required to register, and the ongoing obligations came into effect as of that determination. Thus, Franklin's continued obligations were the natural result of being required to register in the first instance, not the BCA's continued enforcement of those requirements.

We acknowledge that the collateral consequences of predatory offender registration are not insignificant. *See Werlich v. Schnell*, 958 N.W.2d 354, 361-63 (Minn. 2021). But Franklin's ongoing obligation to comply with the registration statute, and any constitutional or common-law claims caused thereby, began in October 2009 when he was required to register, and the six-year statute of limitations to challenge his registration also began at that time. "If the result now seems harsh, it is a criticism that may be levelled against many statutes of limitation." *Anderson v. Comm'r of Pub. Safety*, 878 N.W.2d 926, 930 (Minn. App. 2016) (quotation omitted).

Affirmed.