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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0285**

Julie Tossey,
Respondent,

vs.

City of St. Paul,
Appellant.

**Filed April 1, 2019
Reversed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CV-16-2947

Sandra K. Kensy, Shoreview, Minnesota (for respondent)

Lyndsey M. Olson, St. Paul City Attorney, Portia Hampton-Flowers, Deputy City Attorney, Megan D. Hafner, Assistant City Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Florey, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant city challenges summary judgment granting respondent and her dependents continued health-insurance benefits under Minn. Stat. § 299A.465 (2000) for the six years prior to commencement of this action. Respondent challenges the district court's limitation of her damages and prejudgment interest and the denial of her requests

for attorney fees. Because the statute of limitations bars respondent's claims in their entirety, we reverse.

FACTS

In 1984, respondent Julie Tossey began working for appellant City of St. Paul as a dispatcher, first for the police department and then, beginning in 1990, for the fire department. During the fall of 2000, Tossey attended the St. Paul Fire Department Recruit Academy, sustaining injuries as a result of alleged mistreatment by her instructors. On November 21, 2000, the city informed Tossey that she failed probation as a firefighter recruit and was being reinstated to her prior position as a fire dispatcher. Tossey responded by taking sick leave, and retiring on February 20, 2001.¹ As part of Tossey's 2001 retirement package, the city paid \$350 per month toward her health-insurance expense until March 2015.

On February 26, 2001, Tossey applied to the Minnesota Public Employees Retirement Association (PERA) for duty-related disability benefits, describing her injuries as major depressive disorder and post-traumatic stress disorder. After a fact-finding conference, an administrative-law judge recommended that Tossey receive in-the-line-of-duty disability benefits. PERA subsequently approved her application.

On February 16, 2002, Tossey completed a Minnesota Department of Public Safety (DPS) application to receive continued health-insurance benefits under the Public Safety Officers Benefit Program. Under this program, DPS reimburses a city for the cost of health

¹ Tossey later sued the city alleging discrimination and other claims related to her experience in the recruit academy, which the parties settled in 2004.

insurance for former firefighters who meet the requirements of Minn. Stat. § 299A.465. Tossey sent her application to the city. The city forwarded the application to DPS. On March 15, DPS sent a letter to the city stating that Tossey is not eligible for the program because “[p]sychological/stress related claims are not compensable under [the] program [and] Fire Dispatchers are not defined as ‘Peace Officers’ by Statute for this program.” On March 19, the city forwarded DPS’s letter to Tossey. The city continued to pay the same portion—\$350—of Tossey’s monthly health-insurance expense. These payments are less than what Tossey would have received in continued health-insurance benefits under section 299A.465.

In 2012, Tossey learned that retired firefighters were receiving different health-insurance benefits. She asked DPS for additional reimbursement, which it denied because Tossey was not a firefighter at the time she retired. In January 2014, Tossey again requested increased reimbursement from DPS, providing a letter from PERA stating that she was receiving duty-related disability benefits because she sustained her injuries while performing firefighter duties. In April, Tossey asked the city to confirm that she was working as a firefighter on the date of her injury. The city responded in a letter stating:

On October 16, 2000, Julie Tossey was employed by the City of St. Paul in the position of Firefighter, and assigned to the Saint Paul Fire Department’s Training Academy as a recruit. As a newly hired Firefighter, she served in a probationary status. On November 21, 2000, Ms. Tossey’s probation was terminated and she was reinstated to her previous position as Fire Dispatcher.

DPS again denied Tossey’s request for continued health-insurance benefits, and informed her that it was without authority to review, alter, or reverse the city’s decision.

In 2015, after receiving additional information regarding PERA's determination that Tossey is entitled to duty-related disability benefits, the city informed Tossey that it would provide continued health-insurance benefits at the single active employee level. The city denied Tossey's request for dependent coverage.²

In early 2016, Tossey commenced this action seeking a declaration that she is entitled to continued health-insurance benefits under section 299A.465 and reimbursement of past insurance expenses.³ Both parties moved for summary judgment. The district court granted Tossey's motion in part, concluding that she is entitled to continued health-insurance benefits for herself and her dependents. The district court also granted the city's motion in part, concluding that claims that accrued more than six years before Tossey commenced her action are barred by the statute of limitations.

The district court denied Tossey's subsequent motion for attorney fees, but entered judgment of \$72,693.12 in damages, as well as prejudgment interest, costs, and disbursements. Both parties appeal.

² In January 2016, due to a system error, the city began contributing \$1,351.86 of the monthly premium for Tossey's health insurance, the rate provided to active employees who receive dependent coverage. In November 2016, the city notified Tossey of the error and asked her to repay \$9,297.72.

³ Tossey also sued DPS. The district court granted DPS's motion to dismiss, which Tossey does not challenge in this appeal.

DECISION

Summary judgment shall be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. Where, as here, the material facts are undisputed, we review de novo the district court's legal conclusions. *Phillips v. State*, 725 N.W.2d 778, 782 (Minn. App. 2007), review denied (Minn. Mar. 28, 2007).

Minn. Stat. § 541.05, subd. 1(2) (2018), provides a six-year limitations period for actions based “upon a liability created by statute.” Because the obligation to pay continued health-insurance benefits is created by Minn. Stat. § 299A.465, Tossey's claim is subject to this six-year statute of limitations.

Generally, a statute of limitations begins to run when a cause of action accrues. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011). “Accrual is the point at which a plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim on which relief can be granted.” *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018) (quotation omitted). In determining when a cause of action accrued, courts consider the nature of the claimed wrongful conduct. *Park Nicollet Clinic*, 808 N.W.2d at 837. “If, for example, the wrongful conduct is failure to pay wages, a cause of action accrues with each failure to pay wages earned.” *Id.* But a statute of limitations may be tolled if the allegedly wrongful conduct was part of “a continuing violation.” *Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989). We review the interpretation and application of a statute of limitations de novo. *Trebelhorn v. Agrawal*, 905 N.W.2d 237,

244 (Minn. App. 2017) (citing *Ford v. Minneapolis Pub. Sch.*, 874 N.W.2d 231, 232 (Minn. 2016)).

The city argues that Tossey's claims are barred in their entirety because her cause of action accrued in 2002, when she learned she was ineligible for continued health-insurance benefits. We agree. As noted above, accrual of a cause of action turns on the nature of the conduct at issue. In *Park Nicollet Clinic*, a physician sued his employer for reducing his salary contrary to a policy exempting senior physicians from night call. 808 N.W.2d at 830-31. The physician argued that his cause of action did not accrue until 2008, when the clinic first reduced his salary, and that a new claim arose with each subsequent paycheck. *Id.* at 832. The clinic argued that the action accrued in 2005, when the physician attempted to invoke the policy and learned it was no longer in existence. *Id.* at 833-34. The supreme court agreed, concluding that the alleged wrongful conduct occurred in 2005, when the clinic refused to honor its policy. *Id.*

In reaching its conclusion, the *Park Nicollet Clinic* court cited numerous cases that analyze the nature of the conduct for claim-accrual purposes, including cases involving statutory violations. *Id.* at 835-36. In *Alldread v. City of Grenada*, the court determined that a single Fair Labor Standards Act (FLSA) violation occurred when the employer city required firefighter employees to sign a contract agreeing to waive compensation for sleep time, resulting in lower overtime wages. 988 F.2d 1425, 1432 (5th Cir. 1993). In *Figueroa v. D.C. Metro. Police Dep't*, officers sued under the FLSA, alleging that the police department failed to calculate their overtime based on enhanced pay owed to detectives. 633 F.3d 1129, 1130 (D.C. Cir. 2011). The court held that a new cause of action accrued

each time the employer issued a deficient paycheck because the employer had an ongoing statutory duty to pay overtime. *Id.* at 1134-35. Distinguishing *Alldread*, the court explained that “[i]f the officers have meritorious claims, it is because they worked more than forty hours in particular weeks” as opposed to a “single violation” of the FLSA. *Id.* at 1135.

Applying our supreme court’s precedent, we are persuaded that Tossey’s cause of action accrued in 2002—when DPS advised that she was not eligible to receive continued health-insurance benefits. Tossey’s claimed damages, although continuing, all flow from this determination of ineligibility. *See Park Nicollet Clinic*, 808 N.W.2d at 837 (reasoning that the damages the doctor suffered all flowed from the wrongful conduct at issue). The undisputed record demonstrates Tossey was able to allege sufficient facts to survive a motion to dismiss in April 2002. At that time, she had been both notified of her ineligibility for continued health-insurance benefits and had received another monthly health-insurance contribution from the city in the same amount she received prior to the DPS application.

Tossey first contends that the March 15 letter did not provide “any notice” because DPS informed the city that she was not eligible for the benefits; DPS did not advise her that the city would not provide the requested benefits. We disagree. Tossey signed the DPS form as the “claimant” and provided information including her job title and a description of her disabling injuries. The form seeks “reimbursement of employer’s costs in providing insurance benefits,” and is expressly directed to DPS. Accordingly, Tossey was aware that the city was a conduit of her claim. Receipt of DPS’s letter to the city stating “we find the Fire Dispatcher Julie Tossey is not eligible for our program,”

constituted notice to her of the decision-maker's determination. At the very least, the letter placed her on reasonable notice that she should inquire further into her eligibility. See *Dakota County v. BWBR Architects*, 645 N.W.2d 487, 492 (Minn. App. 2002) (“[T]he statute of limitations begins to run when an actionable injury is discovered or, with due diligence, should have been discovered, regardless of whether the precise nature of the defect causing the injury is known.”), *review denied* (Minn. Aug. 20, 2002).

Likewise, the fact that the city's monthly contribution to Tossey's health-insurance expense did not change provided reasonable notice that her request for increased benefits had been denied. Yet Tossey did nothing to pursue the matter for 14 years. The fact that Tossey continues to incur damages as a result of the ineligibility determination does not change the fact that she could have commenced this action in 2002 without fear of dismissal for failure to state a valid claim.

Tossey next argues that the continuing-violation doctrine tolls the statute of limitations because the city violates section 299A.465 each month it fails to provide continued health-insurance benefits. We are not persuaded. The doctrine is most commonly applied in employment discrimination cases “when the discriminatory acts of an employer over a period of time indicate a systematic repetition of the same policy and constitute a sufficiently integrated pattern to form, in effect, a single discriminatory act.” *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 441 n.11 (Minn. 1983); see *Davies v. W. Publ’g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001) (stating that continuing-violation doctrine is most commonly applied in discrimination cases because those types

of cases involve wrongful acts that manifest over a period of time, rather than in a series of discrete acts), *review denied* (Minn. May 29, 2001).

In *Sigurdson*, the supreme court explained that application of the continuing-violation doctrine depends on “whether any present *violation* exists.” 448 N.W.2d at 67 (quotation omitted). In performing this analysis, a court must distinguish between discriminatory acts and discriminatory effects: “[T]he 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.* (quotation omitted).

The continuing-violation doctrine has been applied outside the employment-discrimination context. *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 30-31 (Minn. 1963) (trespass); *Minn. Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 555 N.W.2d 908, 912 (Minn. App. 1996) (workers’ compensation coverage), *review granted in part, decision modified*, 558 N.W.2d 480 (Minn. 1997). But this court has been reluctant to do so. *See St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 409 (Minn. App. 2007) (“We are aware of no cases extending the doctrine of continuing violations from the typical discrimination or worker’s compensation case to the breach of contract case that we have here.”), *review denied* (Minn. Dec. 11, 2007); *Wenigar v. Johnson*, 712 N.W.2d 190, 209 (Minn. App. 2006) (rejecting the continuing-violation doctrine for an intentional-infliction-of-emotional-distress claim); *Davies*, 622 N.W.2d at 841 (rejecting the continuing-violation doctrine for a claim of improper distribution of association funds).

Here, the alleged wrongful conduct occurred in 2002 when the city determined Tossey was ineligible for continued health-insurance benefits. The city’s failure to pay

Tossey those benefits each month is a consequence of the 2002 decision. On this record, we decline to extend the continuing-violation doctrine to toll the statute of limitations.

In sum, the six-year statute of limitations bars Tossey's claims in their entirety because her cause of action accrued in 2002 and she waited 14 years to commence this action.⁴

Reversed.

⁴ Because the statute of limitations bars Tossey's claims, we need not address the issues she presents in her related appeal.