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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0360**

Lance Gerald Milliman,
Appellant,

vs.

Sandra K. Karsten, et al.,
Defendants,
Howell County, et al.,
Respondents,
Mona Dohman,
Respondent.

**Filed September 16, 2019
Affirmed
Reyes, Judge**

Meeker County District Court
File No. 47-CV-18-704

Lance Gerald Milliman, Eden Valley, Minnesota (pro se appellant)

Matthew D. Wilson (pro hac vice), Keck & Austin, L.L.C., Springfield, Missouri; and

Timothy J. Carrigan, Kari M. Dahlin, Arthur, Chapman, Kettering, Smetak & Pikala, P.A.,
Minneapolis, Minnesota (for respondents Howell County, et al.)

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul,
Minnesota (for respondent Mona Dohman)

Considered and decided by Tracy M. Smith, Presiding Judge; Reyes, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

REYES, Judge

Pro se appellant challenges the dismissal of his civil-rights claims arising out of a DWI arrest in Missouri and subsequent revocation of his Minnesota driver's license, arguing that the district court erred by (1) admitting pro hac vice counsel for respondents from Missouri; (2) concluding that it lacked personal jurisdiction over the Missouri respondents; (3) dismissing appellant's claims under 42 U.S.C. § 1983 (2012) (section 1983 claims) as time-barred; (4) dismissing his conspiracy claim for failure to state a claim; and (5) denying his motions for injunctive relief. We affirm.

FACTS

In 2011, a Missouri commercial-vehicle-enforcement inspector questioned appellant Lance Gerald Milliman, a Minnesota resident, at a Missouri weigh station. During the questioning, the inspector discovered that Milliman had two outstanding arrest warrants from a prior traffic stop in Missouri. The inspector detained Milliman and searched his truck. As a result of the search and Milliman's refusal to submit to a blood or urine test, the Missouri State Highway Patrol charged him with several criminal offenses and suspended his Missouri driving privileges. The Minnesota Department of Public Safety subsequently revoked his Minnesota driver's license pursuant to Minn. Stat. § 171.17, subd. 1(a)(9) (2010).¹

¹ "The [Minnesota Department of Public Safety] shall immediately revoke the license of a driver upon receiving a record of the driver's conviction of . . . an offense in another state that, if committed in this state, would be grounds for revoking the driver's license." Minn. Stat. § 171.17, subd. 1(a)(9).

Milliman filed unsuccessful petitions for reinstatement of his Minnesota driver's license in 2011, 2014, and 2018. In 2018, Milliman filed a summons and complaint against several respondents based in Missouri² and Minnesota respondent Mona Dohman, who was the commissioner of public safety at the time of the alleged events, under 42 U.S.C. § 1983, alleging that they conspired to bring "baseless" criminal charges against him. Milliman also requested a temporary restraining order (TRO) and a permanent injunction against the Missouri respondents to preclude them from making unconstitutional stops and searches under Missouri statutes, and against Dohman, to order the reinstatement of his Minnesota driver's license.

Dohman moved to dismiss Milliman's complaint against her under Minn. R. Civ. P. 12.02 and the relevant statute of limitations. The Missouri respondents also moved to dismiss the complaint for lack of personal jurisdiction and under the relevant statute of limitations. The district court granted respondents' motions, dismissing Milliman's complaint with prejudice, and denied Milliman's motions for a TRO and a permanent injunction. This appeal follows.

² The Missouri respondents include Sandra Karsten, colonel of the Missouri State Highway Patrol, Scott Nelson, Missouri State Highway Patrol sergeant, Kenneth Shewey, Missouri commercial vehicle officer, Levi Stoops, commercial vehicle enforcement inspector, Howell County, a state subdivision, and Michael Hitchings, Howell County prosecutor.

DECISION

I. The district court did not err by admitting pro hac vice counsel for the Missouri respondents.

Milliman argues that the district court erred by admitting the Missouri respondents' counsel pro hac vice because he violated the reciprocity requirement under Minn. Stat. § 481.02, subd. 6 (2018), by failing to disclose to the district court that Missouri does not permit members of the Minnesota bar to act as attorneys for clients in Missouri. Milliman relies on rule 5 of the Minnesota General Rules of Practice, but that rule does not support his argument. Rule 5 provides that it supersedes Minn. Stat. § 481.02, to the extent that the rule may be inconsistent with the statute. Minn. R. Gen. Prac. 5, 1991 adoption cmt. Because rule 5 does not impose a reciprocity requirement, the district court did not err by admitting pro hac vice counsel for the Missouri respondents.

II. The district court did not err in its construction and application of the statute of limitations to dismiss Milliman's section 1983 claims against all respondents.³

Milliman argues that the district court erroneously determined that the statute of limitations for section 1983 claims against all respondents had run, because the district court failed to consider several factors. We disagree.

We review de novo a district court's interpretation and application of a statute of limitations. *Ford v. Minneapolis Pub. Sch.*, 874 N.W.2d 231, 232 (Minn. 2016). In

³ Analysis of the statute of limitations for his section 1983 claims precludes the need to address Milliman's fourth argument that he made a prima facie case for conspiracy because this forms the basis of his section 1983 claims. This analysis also precludes the need to address Milliman's second argument regarding personal jurisdiction over the Missouri respondents, as they are included in his section 1983 claims.

Minnesota, section 1983 claims are subject to a six-year limitations period. *Berg v. Groschen*, 437 N.W.2d 75, 77 (Minn. App. 1989). The statute of limitations begins to run when the cause of action accrues. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011).

The complaint alleges that the Missouri State Highway Patrol conducted an unconstitutional search of Milliman's truck and subsequently conspired with the Howell County prosecutor to file "baseless" criminal charges against him on April 5, 2011. This is the date when Milliman's cause of action for an allegedly unconstitutional search and ensuing conspiracy accrued. Applying the six-year limitations period, Milliman's section 1983 action against all respondents expired on April 5, 2017. Because Milliman did not bring his section 1983 claims against all respondents until 2018, they are barred by the statute of limitations.

Milliman argues that the statute of limitations for his section 1983 claims does not begin to run unless and until he is convicted and sentenced for his criminal charges in Howell County. Milliman relies on *Heck v. Humphrey*, 512 U.S. 477, 477, 114 S. Ct. 2364, 2364 (1994) and *Moore v. Sims*, 200 F.3d 1170, 1170 (8th Cir. 2000), without analysis, to support his argument. Neither case stands for the proposition that there must be a valid conviction and sentence before the statute of limitations begins to run, and neither case addresses the statute of limitations.

Milliman contends that, under *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 561, 97 S. Ct. 1885, 1890-91 (1977), the "Continued Violation Doctrine" extends the statute of limitations for his section 1983 claim. He argues that the "continuing violation" started

when the district court failed to give him an opportunity to confront the Missouri respondents who filed “baseless” criminal charges against him at his first reinstatement hearing in 2011 and persisted when the same criminal charges were filed with the district court in his subsequent 2014 and 2018 hearings.

The supreme court recognized the continuing-violation doctrine in *Bhd. of Ry. & S.S. Clerks v. State by Balfour*, 229 N.W.2d 3, 12 (Minn. 1975), in which it held that discriminatory employment practices that are continuing in nature extend the statute of limitations. *Id.* The continuing-violation doctrine is generally applied in the employment-discrimination context, and Milliman provides no authority to apply it to his case. In *National R.R. Passenger Corp. v. Morgan*, the Supreme Court distinguished between discrete acts and continuing violations, primarily hostile environments, 536 U.S. 101, 105, 122 S. Ct. 2061, 2068 (2002). It held that the statute of limitations for “discrete” discriminatory acts, such as “termination, failure to promote, denial of transfer, or refusal to hire,” *id.* at 114, 2073, runs from the occurrence of that act, and that Title VII “precludes recovery for discrete acts of discrimination or retaliation that occur outside the statutory time period.” *Id.* at 105, 2068. *National* makes clear that the continuing-violations doctrine does not apply to Milliman’s case because he does not allege a hostile environment or other recognized continuing violation.

Lastly, Milliman argues that the district court “incorrectly oversimplified the statute of limitations” by omitting consideration of several factors from its analysis, such as “tolling and savings issues.” None of these factors are relevant to the determination of whether his claims are barred by the statute of limitations.

III. The district court did not abuse its discretion in denying Milliman’s motion for a TRO against all respondents.⁴

Milliman argues that the district court abused its discretion in denying his motion for a TRO against all respondents because he “met his burden and made a fair showing of the [required] elements.” We disagree.

We review a district court’s ruling on a motion for a TRO for an abuse of discretion. *Eakman v. Brutger*, 285 N.W.2d 95, 97 (Minn. 1979). The moving party has the burden of proof. *Humenansky v. Minn. Bd. of Med. Exam’rs.*, 525 N.W.2d 559, 563 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). Factors relevant to the district court’s decision include: (1) the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief; (2) the weight of irreparable harm alleged by the moving party as compared to that inflicted on the nonmoving party if the decree is granted; (3) the likelihood that the moving party will prevail on the merits; (4) public policy considerations; and (5) the administrative burdens on the district court to supervise and enforce the decree. *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

A. Milliman’s motion for a TRO against the Missouri respondents fails under the doctrine of comity and *Dahlberg*.

The district court held that it lacked jurisdiction to decide issues “clearly involving only Missouri law and procedure,” and did not reach an analysis under *Dahlberg*. The doctrine of comity requires district courts to “exercise extreme care and restraint in taking

⁴ Milliman’s motions for permanent injunctions against all respondents also fail because they are based on time-barred section 1983 claims.

an action that may interfere with the jurisdiction of a foreign court.” *Reed v. Univ. of N. Dakota*, 543 N.W.2d 106, 109 (Minn. App. 1996). It would be an “affront” to Missouri’s sovereignty for a Minnesota district court to adjudicate a matter involving facts that occurred in Missouri, pursuant to Missouri law. *Id.* at 110. Therefore, the district court did not abuse its discretion in declining to analyze Milliman’s request for injunctive relief.

Even if the district court had analyzed Milliman’s motion under *Dahlberg*, it fails under the third and fourth prongs. *See In re Commitment of Hand*, 878 N.W.2d 503, 509 n.4 (Minn. App. 2016), *review denied* (Minn. June 21, 2016) (determining that failure to prove any one *Dahlberg* factor obviates need to address remaining four factors). Milliman cannot succeed on his section 1983 claims because they are time-barred. Even if his section 1983 claims were timely, it is unlikely that he would prevail on the merits of his underlying claim to reinstate his driver’s license because he failed to undertake the required actions for reinstatement and the reinstatement period has long since passed. And, as noted above, the doctrine of comity weighs against granting injunctive relief against the Missouri respondents.

B. Milliman’s motion for a TRO against Dohman fails under *Dahlberg*.

Milliman’s motion for injunctive relief against Dohman fails *Dahlberg*’s third prong because, as noted above, his section 1983 claim is time-barred and it is unlikely that he would prevail on the merits of his underlying claim to reinstate his driver’s license. Furthermore, in seeking to reinstate his driver’s license, Milliman seeks to change, rather than preserve, the status quo, which is not the purpose of a TRO. *Pickerign v. Pasco Mktg., Inc.*, 228 N.W.2d 562, 565 (Minn. 1975).

Because Milliman fails to establish all five of the *Dahlberg* factors concerning both the Minnesota and Missouri respondents, the district court did not abuse its discretion in denying his motion for a TRO.

Affirmed.