

STATE OF MINNESOTA

IN SUPREME COURT

A21-1378

Court of Appeals

Bryan Leslie Franklin,

Appellant,

vs.

Drew Evans, Superintendent, Minnesota
Bureau of Criminal Apprehension,

Respondent.

Moore, III, J.
Took no part, Hudson, J.

Filed: June 28, 2023
Office of Appellate Courts

Bradford Colbert, Legal Assistance to Minnesota Prisoners, Saint Paul, Minnesota, for appellant.

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. The requirements of predatory-offender registration in Minnesota Statutes section 243.166 (2022) do not constitute a continuing violation that tolls the statute of limitations.

2. The district court did not commit an error by dismissing appellant's claims, arising from respondent's determination that appellant must register as a predatory

offender, as time barred by the 6-year statute of limitations in Minnesota Statutes section 541.05, subdivision 1(5) (2022).

Affirmed.

OPINION

MOORE, III, Justice.

This case requires us to determine whether the requirements under Minnesota law concerning predatory-offender registration are a continuing violation that tolls the statute of limitations governing claims brought under 42 U.S.C. § 1983. In 2009, appellant Bryan Leslie Franklin pleaded guilty to second-degree assault, which arose out of the same set of circumstances as a kidnapping charge that was dismissed as part of a plea agreement. Based on this conviction and the related kidnapping charge, Franklin was required to register as a predatory offender under Minnesota Statutes section 243.166, subdivision 1b (2022).

Over a decade later, in January 2020, Franklin filed a civil action under section 1983 alleging that the continuing predatory-offender registration requirements violated his rights under the federal and state constitutions. The district court granted the motion to dismiss brought by respondent Drew Evans, Superintendent of the Minnesota Bureau of Criminal Apprehension (BCA). The district court concluded that the applicable statutory limitations period of 6 years under Minnesota Statutes section 541.05, subdivision 1(5) (2022), bars Franklin's section 1983 claims. The court further concluded that the continuing-violation doctrine does not apply to the predatory-offender registration requirements. The court of appeals affirmed. *Franklin v. Evans*, No. A21-1378, 2022 WL 1765955, at *3 (Minn. App.

May 31, 2022). Because we hold that the continuing-violation doctrine does not toll the statute of limitations for Franklin’s claims, we affirm.

FACTS

On April 27, 2009, Franklin and another person, Terry Allen Stewart, went to the home of Timothy Robeck. Robeck and a juvenile male, J.N.M.C., were in the living room of Robeck’s house at approximately 11:00 p.m. when Stewart and Franklin entered the house. Stewart accused Robeck of being a “snitch,” and Franklin assaulted Robeck with a pair of nunchucks while demanding money. J.N.M.C. attempted to leave during the struggle, but Stewart and Franklin “grabbed” J.N.M.C. and forced him onto the couch. Stewart and Franklin took the cell phones from Robeck and J.N.M.C. so they could not call for help. Before Stewart and Franklin left the residence with stolen cash and property, Stewart demanded that J.N.M.C. come with them because they “need[ed] to know where [he] live[d].” Robeck was arrested a short time later on an outstanding warrant and reported the assault to the police. Franklin was taken into custody later that evening.

The State charged Franklin with four felony crimes relating to this incident.¹ Franklin later pleaded guilty to second-degree assault under an aiding-and-abetting theory of liability and the prosecutor agreed to dismiss the other counts in the complaint. The district court imposed a 34-month executed prison sentence on September 28, 2009. At no

¹ Franklin was charged with aiding and abetting assault in the second degree, Minn. Stat. §§ 609.222, subd. 2 (2022); 609.05 subd. 1 (2022), burglary in the first degree, Minn. Stat. §§ 609.582, subd. 1(c) (2022); 609.05, subd. 1, kidnapping, Minn. Stat. §§ 609.25, subds. 1(2), 2(1) (2022); 609.05, subd. 1, and criminal damage to property in the first degree, Minn. Stat. §§ 609.595, subd. 1(3) (2022); 609.05, subd. 1.

point during the plea or sentencing hearings did the parties or the district court discuss or reference on the record any requirement that Franklin would have to register as a predatory offender resulting from this conviction.

At the commencement of Franklin's prison sentence in October 2009, the Department of Corrections informed Franklin, apparently for the first time, that he must register as a predatory offender because he was convicted of an offense that arose out of the same set of circumstances as a predatory offense. *See* Minn. Stat. § 243.166, subd. 1b(a)(1)(ii) (requiring a person charged with kidnapping but convicted of "another offense arising out of the same set of circumstances" as kidnapping to register as a predatory offender). Franklin obliged and registered as a predatory offender on October 26, 2009. Franklin's initial predatory-offender registration period was 10 years. *See* Minn. Stat. § 243.166, subd. 6(a) (2022). But because he has been subsequently incarcerated for new criminal convictions and supervised-release violations, Franklin's registration period has been repeatedly extended. *See id.*, subd. 6(c). The parties agree that the current anticipated expiration of Franklin's predatory-offender registration period is in 2031, 10 years from the date of his most recent release from incarceration. *See id.*

In January 2020, Franklin filed a civil action seeking injunctive and declaratory relief under 42 U.S.C. § 1983, the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, and Article I, Sections 5 and 7 of the Minnesota Constitution. In his civil complaint, Franklin alleged that continuing to subject him to the predatory-offender registration requirements violates his rights under the federal and state constitutions.

The BCA² filed a motion to dismiss Franklin’s complaint under Rule 12.02(e) of the Minnesota Rules of Civil Procedure, arguing that his claims are barred by the 6-year statute of limitations set forth in Minnesota Statutes section 541.05, subdivision 1(5). The district court granted the BCA’s motion to dismiss. The district court concluded that Franklin’s cause of action accrued when he was initially required to register as a predatory offender in October 2009 because that was when the operative facts existed to support the elements of his claims. Because the applicable limitations period is 6 years, the district court determined that Franklin’s claims expired in October 2015, meaning that his complaint, which was initially served in January 2020, was filed over 4 years too late. “The fact that the registration requirement has on-going obligations,” the district court reasoned, “does not negate the fact that as of 2009, [appellant] was aware of his duty to register,” so “[a]ny cause of action accrued at that time.”

The court of appeals affirmed. *Franklin*, 2022 WL 1765955, at *3. Franklin argued that the predatory-offender registration requirements are a continuing violation under *Sigurdson v. Isanti County*, 448 N.W.2d 62 (Minn. 1989). *Franklin*, 2022 WL 1765955, at *2. The court of appeals rejected this argument because “[t]he 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.” *Id.* (second alteration in original) (internal quotation marks omitted) (quoting *Davies v. W.*

² Franklin brought his suit against Evans in his official capacity as Superintendent of the BCA, although the parties refer generally to the respondent as the BCA. Therefore, we follow suit and refer to the respondent in this case as the BCA.

Pub. Co., 662 N.W.2d 836, 841 (Minn. App. 2001), *rev. denied* (Minn. May 29, 2001)). Unlike in *Sigurdson*, where the plaintiff was subject to continuing employment discrimination, the court of appeals concluded that any ongoing obligations associated with Franklin’s predatory-offender registration “were the natural result of being required to register in the first instance, not the BCA’s continued enforcement of those requirements.” *Id.* at *3. Therefore, the court of appeals held that Franklin’s cause of action accrued in 2009, and his complaint is barred by the 6-year statute of limitations. *Id.*

We granted Franklin’s petition for further review to determine whether the predatory-offender registration requirements are a continuing violation that tolls the statute of limitations.

ANALYSIS

Although the district court granted respondents’ motion to dismiss under Rule 12.02(e) of the Minnesota Rules of Civil Procedure, the court of appeals correctly concluded that the motion should be treated as a motion for summary judgment because the district court considered the affidavits presented by parties in support of their petitions. *Franklin*, 2022 WL 1765955, at *1; *see* Minn. R. Civ. P. 12.02 (“If . . . matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.”). Summary judgment is appropriate if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. Our court reviews a grant of summary judgment *de novo*, “view[ing] the evidence in the light most favorable to the nonmoving party and resolv[ing] all doubts and

factual inferences against the moving party.” *Welters v. Minn. Dep’t of Corr.*, 982 N.W.2d 457, 469 (Minn. 2022).

Since there are no material facts in dispute here, we “need only determine ‘whether the court erred in applying the law regarding the accrual of the cause of action and the running of the statute of limitations,’ ” which we review de novo. *Antone v. Mirviss*, 720 N.W.2d 331, 334 (Minn. 2006) (quoting *Weeks v. Am. Fam. Mut. Ins. Co.*, 580 N.W.2d 24, 26 (Minn. 1998)). “An assertion that the statute of limitations bars a cause of action is an affirmative defense and ‘the party asserting the defense has the burden of establishing each of the elements.’ ” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 326 (Minn. 2019) (quoting *MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008)).

Franklin’s complaint challenges the registration requirements set forth in Minnesota Statutes section 243.166 (2022), which requires persons convicted of certain crimes to register as predatory offenders and to comply with ongoing registration requirements. “During the period a person is required to register,” those requirements include a mandate that the person must file an annual verification form with the corrections agent or law-enforcement authority containing the person’s primary address and any secondary addresses, employment and educational enrollment information, motor-vehicle data, and telephone numbers. Minn. Stat. § 243.166, subds. 4(e)(2), 4a. The BCA is tasked with monitoring compliance with registration requirements and is also required to collect and maintain the registration data for all predatory offenders in Minnesota. *See* Minn. Stat. § 243.166, subds. 1a(b), 3(b), 4(a), 4(d); Minn. Stat. § 299C.093 (2022).

Any person required to register as a predatory offender “shall continue to comply” with the requirements of the registration statute “until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later.” Minn. Stat. § 243.166, subd. 6(a). Moreover, if a person required to register “is incarcerated due to a conviction for a new offense . . . the person shall continue to register until ten years have elapsed since the person was last released from incarceration or until the person’s probation, supervised release, or conditional release period expires, whichever occurs later.” *Id.*, subd. 6(c). Failure to comply with the registration statute is a felony. *Id.*, subd. 5(a).

The question before us is whether the statute of limitations bars Franklin’s ability to challenge the constitutionality of the registration statute through his section 1983 suit. Although Franklin, at a high level, argues that the underlying rationales for statutes of limitations do not apply to the predatory registration statute, the issue here is not whether statutes of limitations are generally applicable here. As the United States Supreme Court recently reiterated, “all § 1983 suits must be brought within a State’s statute of limitations for personal-injury actions.” *Nance v. Ward*, 597 U.S. ___, 142 S. Ct. 2214, 2225 (2022). The State, like private citizens, may assert statutes of limitations as an affirmative defense to an action, including actions under 42 U.S.C. § 1983. *See, e.g., Kirckof Plumbing & Heating Co. v. State*, 240 N.W.2d 804, 806–07 (Minn. 1975) (applying the statute of limitations in a suit against the State for wrongful withholding of liquidated damages); *Weitzel v. State*, 883 N.W.2d 553, 557 (Minn. 2016) (holding that the limitations periods

in Minn. Stat. § 590.01, subds. 4(a), (c), “are statutes of limitations that the State may assert as an affirmative defense”); *Foster v. Minnesota*, 224 F. Supp. 3d 811, 815 (D. Minn. 2016) (holding that a claim against the State under 42 U.S.C. § 1983 was barred by the 6-year statute of limitations set forth in Minn. Stat. § 541.05). And the parties here agree that the 6-year statutory limitations period under Minnesota Statutes section 541.05, subdivision 1(5) is the applicable limitations period for Franklin’s section 1983 claims.³ The key issue before us is whether the registration requirement in the registration statute is a continuing violation that tolls the 6-year statute of limitations.

Generally, “[t]he 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.* Therefore, if Franklin’s cause of action accrued in October 2009 when he was first required to register as a predatory offender, any claims filed after October 2015 would be barred by the 6-year statute of limitations. *Id.*

³ See Minn. Stat. § 541.05, subd. 1(5) (providing that “any other injury to the person or rights of another, not arising on contract” must be commenced within 6 years); see also *Owens v. Okure*, 488 U.S. 243, 240–41 (1989) (noting that claims under 42 U.S.C. § 1983 “‘are best characterized as personal injury actions,’ ” so “a State’s personal injury statute of limitations should be applied to all § 1983 claims” (quoting *Wilson v. Garcia*, 471 U.S. 261, 280 (1985))); see also *Weavewood, Inc. v. S & P Home Invs., LLC*, 821 N.W.2d 576, 580 (Minn. 2012) (“[S]tatutes of limitations apply to a declaratory judgment action to the same extent as a nondeclaratory proceeding based on the same cause of action.”).

Franklin does not appear to dispute that his cause of action initially accrued in 2009.⁴ Instead, Franklin relies upon the doctrine that provides that the statutory limitations period may be extended when a claim is a continuing violation. *See Sigurdson*, 448 N.W.2d at 66. In the context of employment discrimination, the continuing-violation doctrine “can toll the statute of limitations where a pattern of discriminatory conduct ‘constitute[s] a sufficiently integrated pattern to form, in effect, a single discriminatory act.’ ” *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 70 (Minn. 2020) (alteration in original) (quoting *Hubbard v. United Press Int’l, Inc.*, 330 N.W.2d 428, 440 n.11 (Minn. 1983)). When applicable in that context, the key question as to the timeliness of the claim becomes whether “at least one incident . . . occurred within the limitations period.” *Id.* (internal quotation marks omitted) (quoting *Smith v. Ashland, Inc.*, 250 F.3d 1167, 1172 (8th Cir. 2001)). As the court of appeals noted, although the continuing-violation doctrine has been

⁴ Franklin’s complaint and amended complaint stated that “[t]he claim arises from the [BCA]’s determination that . . . Franklin must register as a predatory offender,” a circumstance that existed in 2009. *See* Am. Compl. ¶ 1. Counts I and II asserted that the BCA violated Franklin’s due-process rights “by determining that he is required to register as a predatory offender,” either “without providing him any sort of process and without making an individualized determination that the purpose of the statute is served by requiring Franklin to register” or “when he did not commit a predatory offense.” *See id.* ¶¶ 1, 11, 14. Count III asserted that the BCA violated Franklin’s constitutional rights “because requiring Franklin [to register] is irrational with respect to the articulated purpose of the statute.” *See id.* ¶ 16. Count IV asserted that the Superintendent “and his agents are estopped from requiring Franklin to register . . . based on the common law doctrine of laches” and that “Franklin has been prejudiced by the [BCA]’s unreasonable delay in requiring him to register.” *Id.* ¶ 18. Finally, Count V alleged that section 243.166 is “an unconstitutional bill of attainder” because it “require[s] all persons who have been charged, but not convicted, of a predatory offense to register as predatory offenders.” *Id.* ¶ 19. All of the facts and circumstances surrounding these allegations existed in 2009 when Franklin initially was required to register as a predatory offender.

primarily applied in the context of employment-discrimination actions, it has also been used in other contexts. *See Franklin*, 2022 WL 1765955, at *2 (citing *Davies v. W. Pub. Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001) (“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.”), *rev. denied* (Minn. May 29, 2001); *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 30–31 (Minn. 1963) (applying a similar doctrine to an action for trespass)). Regardless of the context, the “critical question” remains the same as to the timeliness of the claim under the continuing-violation doctrine: “ ‘whether any present *violation* exists’ within the statute of limitations period.” *Abel*, 947 N.W.2d at 71 (quoting *Sigurdson*, 448 N.W.2d at 67).

Relying on the continuing-violation doctrine, Franklin asserts that his section 1983 claim is not time barred because the ongoing predatory-offender registration requirements constitute a continuing violation that tolls the statute of limitations in his case. The State, on the other hand, argues that the continuing-violation doctrine does not apply because Franklin is only experiencing the continued consequences of his initial registration, meaning the acts giving rise to Franklin’s claims are not ongoing or continuing.

We agree with the State and conclude that the continuing-violation doctrine affords Franklin no relief here. We have noted that, when determining whether one or more related acts fall within the statute-of-limitations period, “[o]ne must distinguish between discriminatory acts and discriminatory effects.” *Sigurdson*, 448 N.W.2d at 67; *see also Abel*, 947 N.W.2d at 72 (concluding that the continuing-violation doctrine applied when the complaint alleged “a series of related acts of discrimination based on . . . sex and race”

(internal quotation marks omitted)). “[A] mere continuing *effect*,” like the continuing requirements of registration under Minn. Stat. § 243.166, will not extend the limitations period. *Sigurdson*, 448 N.W.2d at 67 (emphasis added); *see also Knight v. Columbus*, 19 F.3d 579, 580–81 (11th Cir. 1994) (“The critical distinction in the continuing violation analysis . . . is whether the plaintiffs complain of the present consequence of a one time violation, which does not extend the limitations period, [or] the continuation of that violation into the present, which does.” (final alteration in original) (citation omitted) (internal quotation marks omitted)); *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001) (“The continuing violation doctrine is inapplicable because Knox has failed to establish that a new violation occurs each time she is denied her visitation or mail privileges. Rather, the . . . repeated denials of Knox’s privileges with her clients [are] merely the continuing effect of the original suspension.”); *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977) (concluding that, after wrongfully forcing an employee to resign after marriage, rehiring with reduced pay and loss of seniority did not toll the statute of limitations under the continuing-violation doctrine because those were consequences of the *earlier* marital discrimination without any present violation).

Although the predatory-offender registration statute includes language requiring a person to “continue to register,” Minn. Stat. § 243.166, subds. 6(b), (c), the provisions do not provide for actual, periodic registrations. Rather, the statute requires the submission of verification forms and notifications to certain persons or agencies for persons *already* registered as predatory offenders. *See id.* For Franklin, the act giving rise to these ongoing duties was the BCA’s initial determination that he must register as a predatory offender in

2009 because he was convicted of a crime that arose out of the same circumstances as a charged predatory offense. Franklin’s cause of action therefore accrued in October 2009 when he was first required to register as a predatory offender because all the facts and circumstances of his case existed “such that the cause of action could [have been] brought and would survive a motion to dismiss for failure to state a claim.” *Hamann*, 808 N.W.2d at 832. And the continuing-violation doctrine does not apply because the obligations associated with registration that form the basis of Franklin’s complaint⁵ are the continuing *effects* of registration that flow from the explicit requirements of section 243.166, not any additional *acts* by the BCA. The statute does not contain any provisions granting the BCA discretion to waive the continuing registration requirements; rather, the registration requirements apply for the entire duration of the registration period to anyone who is initially required to register and are statutorily imposed without any action by the BCA. *See* Minn. Stat. § 243.166, subd. 6(a) (providing that “a person required to register under this section shall continue to comply with this section until ten years have elapsed”). The registration requirements are not a product of the BCA “simply [leaving] undisturbed” any erroneous pattern of conduct. *Sigurdson*, 448 N.W.2d at 68. Rather, the registration requirements are a residual burden resulting from the BCA’s initial, single determination that Franklin must register, meaning no “present violation exists within the statute of limitations period.” *Abel*, 947 N.W.2d at 73. “This classification will continue to have

⁵ As already noted, Franklin does not appear to dispute that his cause of action initially accrued in 2009. Nor does he appear to meaningfully dispute that the registration obligations he faces today are continued consequences of his initial registration. *See supra* at 10 n.4.

effects on [the registrant] into the future, but a new act has not occurred every time [he] feels one of those continuing effects.” *Meggison v. Bailey*, 575 F. App’x 865, 867 (11th Cir. 2014) (concluding that the continued harm resulting from classification as a sex offender is not a continuing violation). Ultimately, the registration requirements do not form any integrated pattern of a policy by the State that would effectively constitute a single discriminatory act. *See Abel*, 947 N.W.2d at 70–71; *see also Hubbard*, 330 N.W.2d at 440 n.11.

It is important to distinguish Franklin’s assertion that the predatory-offender registration requirements create a continuing violation from the “continuing obligation” the statute imposes on a person required to register. In *State v. Washington*, we concluded that, like many other statutes, because the registration statute creates a “continuing obligation” on a person required to register, the *failure* to register is an ongoing offense. 908 N.W.2d 601, 606–07 (Minn. 2018); *see also State v. Banks*, 331 N.W.2d 491, 494 (Minn. 1983) (holding that possession of a firearm by an ineligible person is a continuing offense); *State v. Lawrence*, 312 N.W.2d 251, 253 (Minn. 1981) (holding that “concealing or possessing stolen goods” is a continuing offense); *State v. Burnett*, 195 N.W.2d 189, 189 (Minn. 1972) (holding that “[e]scape is a continuing offense”); *State v. Clark*, 182 N.W. 452, 454 (Minn. 1921) (holding that the unlawful failure to support dependent children is a continuing offense). Therefore, the date on which the offense is deemed to have occurred is “the entire range of dates over which an offender commits a continuing offense.” *Washington*, 908 N.W.2d at 608. It does not follow, however, that the continued obligations associated with registration are also a continuing violation by the State. Unlike

the obligations the statute imposes on persons required to register, the BCA's determination that Franklin must register as a predatory offender was a one-time occurrence. Franklin's grievances concern the continued effects of that discrete determination. To conclude otherwise would stretch *Washington* beyond its holding.

Franklin also argues that the extensions of his registration period implicate the continuing-violation doctrine or restart the limitations period, even if the continued registration requirements do not. We are not persuaded. As noted above, Franklin has been incarcerated for new convictions and supervision violations during the 10-year period of his predatory-offender registration, which, as the parties agree, means that his registration period has been extended. *See* Minn. Stat. § 243.166, subd. 6(c). Like the notification and verification requirements of the statute, the extension of a person's registration period is an explicit statutory requirement imposed on individuals to register—another consequence flowing from the initial requirement to register rather than a new, discrete act. Again, the BCA has no discretion regarding the extension of Franklin's registration period resulting from his later incarcerations. And Franklin provides no persuasive reason why the statutorily mandated extension of his registration period is a subsequent wrongful act that tolls or restarts the limitations period for challenging his registration, which occurred in 2009 when Franklin's cause of action accrued.

Finally, Franklin argues that if the statute of limitations does not apply to extensions of the registration period, the State could extend a person's registration indefinitely, and the person would be prohibited from ever challenging the registration requirements after the limitations period has ended. But Franklin makes no such allegation here. The fact

that the limitations period for challenging his initial registration has passed, as well as the fact that the continuing registration requirements are only continuing effects of Franklin's initial registration, are sufficient to conclude that summary judgment for the State was appropriate in this case.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

HUDSON, J., took no part in the decision of this case.