

Margaret Campbell,

Plaintiff,

**Order Denying Motion to Dismiss for
Lack of Subject Matter Jurisdiction**

v.

Court File No. 03-CV-19-266

Honor the Earth,

Defendant.

On April 5, 2021, this matter came on for hearing on Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Plaintiff, Margaret Campbell (“Campbell”), appeared with her attorney, Christy Hall. Defendant, Honor the Earth (“HTE”) was represented by its attorney, Frank Bibeau. Also present at the hearing was Winona LaDuke. This was a COVID-19 pandemic hearing held by Zoom.

At the hearing the parties argued their respective positions on the Motion, and the Court then took this matter under advisement.

Now therefore, based on the facts, the record, arguments of counsel, and the law, the Court enters the following:

Order

1. Pursuant to Article VI § 3 of the Minnesota Constitution, the Becker County District Court has original, and therefore subject matter jurisdiction over this case.
2. Pursuant to rule 8.03 of the Minnesota Rules of Civil Procedure, the Defendant failed to plead the affirmative defense of Statute of Limitations in a timely manner, and it has therefore been waived.
3. Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction is **denied**.
4. See attached Memorandum.

April 21, 2021

BY THE COURT:

Gretchen D. Thilmony
Judge of District Court

Memorandum

Factual Background

(Taken from the pleadings and the record, and are incorporated herein)¹.

Analysis

Motion to Dismiss for Lack of Subject Matter Jurisdiction

The Court has subject matter jurisdiction over this case. Rule 12.02 of the Minnesota Rules of Civil Procedure provides:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (a) lack of jurisdiction over the subject matter.

Minn. R. Civ. P. 12.02 (1989). “Subject matter jurisdiction refers to a court’s authority to consider an action or issue a ruling that will decide the issues raised by the pleadings.” *Rasmussen v. Sauer*, 597 N.W.2d 328, 330 (Minn. Ct. App. 1999) (citing *Cochrane v. Tudor Oaks Condominium Project*, 529 N.W.2d 429, 432 (Minn. Ct. App. 1995), *review denied* (Minn. May 31, 1995)). “The district court has original jurisdiction in all civil cases . . .” *Id.* (citing Minn. Const. Art. VI, § 3 (district court has “original jurisdiction in all civil and criminal cases”); Minn. Stat § 484.01, subd. 1 (1998) (district court shall have original jurisdiction in all civil actions)). Subject matter jurisdiction may not be waived or stipulated to by the parties. *Kasdan v. Berney*, 587 N.W.2d 319, 322 (Minn. Ct. App. 1999). This is an action brought in civil court. The Court has original jurisdiction, and therefore subject matter jurisdiction over this case.

Further, the statute of limitations defense raised here by HTE is not a subject matter jurisdictional issue. Subject matter jurisdiction cannot be waived, and the statute of limitations defense, which is statutory, can be waived under Rule 8.03 (*see below*). Removal of a case for lack of subject matter jurisdiction would strip the Court of its Article VI power to hear any case where the statute of limitations has been tolled or waived.

¹ For a complete recitation of the factual background in this case, see prior orders.

Waiver of Certain Affirmative Defenses; Statute of Limitations

Rule 8.03 of the Minnesota Rules of Civil Procedure provides, “In pleading to a preceding pleading, a party shall set forth affirmatively . . . statute of limitations . . . and any other matter constituting an avoidance or affirmative defense. . . .” Minn. R. Civ. P. 8.03 (1989). “If a defendant fails to plead the statute of limitations as an affirmative defense, the defense is considered waived.” *Christenson v. Argonaut Ins. Companies*, 380 N.W.2d 515, 519 (Minn. Ct. App. 1986) (citing *Rehberger v. Project Plumbing Co., Inc.*, 205 N.W.2d 126 (Minn. 1973); *Albers v. Fitschen*, 143 N.W.2d 841 (Minn. 1966)). Here, HTE failed to assert the statute of limitations as an affirmative defense during the pleading phase of this case, and has therefore waived it.

Statute of Limitations; MHRA Claims

Grievances brought under the Minnesota Human Rights Act (“MHRA”) (Chapter 363A), which are considered human rights violations, include acts of gender discrimination and sexual harassment in the workplace. Minn. Stat. § 363.08, subd. 1 (2014). Actions brought under the MHRA are subject to a one-year statute of limitations. Minn. Stat. § 363A.28, subds. 3(a) (2017) (for filing claims, generally). Sexual harassment claims brought under the MHRA are not time-barred if there is a “continuing violation.” *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 595 (Minn. Ct. App. 1994) (citing *Lane v. Ground Round, Inc.*, 775 F.Supp. 1219, 1224 (E.D.M.O. 1991)). A “continuing violation” occurs when “the unlawful employment practice manifests itself over time, rather than as a series of discrete acts.” *Id.* (quoting *Lane* at supra). “To establish a continuing violation, a plaintiff must show that at least one incident of harassment occurred within the limitations period.” *Id.*

Acts of sexual harassment are not time-barred where acts of reprisal negatively affecting the employee’s employment fell within the one-year period. *Id.* “The prohibition against sex discrimination . . . includes sexual harassment which affects conditions of employment when the employer knows or should have known of the employee’s conduct and fails to take timely and appropriate action.” *Id.* (citing Minn. Stat. § 363.01, subd. 41 (1990) (*repealed and replaced by* Chapter 363A); *Tretter v. Liquipak Int’l, Inc.*, 356 N.W.2d 713, 715 (Minn. Ct. App. 1984)). Where the plaintiff has established *prima facie* evidence of discrimination, the burden shifts to the employer to

show credible, legitimate, nondiscriminatory reasons to demonstrate how the alleged acts of discrimination are nonpretextual. *Id.* at 594 (citing *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973) (three-part burden-shifting scheme adopted by Minnesota Courts for employment discrimination cases)).

Here, Campbell alleges acts of reprisal committed by HTE in addition to the sexual misconduct committed by Michael Dahl (“Dahl”) in 2014. The acts of reprisal include acts that continued into February 2015. On January 29, 2016, Campbell filed her MHRA claims with the Minnesota Department of Human Rights (“MDHR”)². Campbell cites specific instances of reprisal against her by HTE, including her boss, Winona LaDuke’s (“LaDuke”) failure to take Campbell’s allegations against Dahl seriously, meetings that took place where Campbell’s concerns were minimized, threats of litigation for “breach of confidentiality,” and creation of a generally hostile work environment. Additionally, on February 4, 2015, Campbell was placed on unpaid “administrative leave” which she alleges was also a retaliatory act. On February 6, 2015, Campbell resigned, claiming she felt forced to quit due to the circumstances, hostile work environment, and stress caused by HTE’s actions. Campbell alleges that after she resigned, LaDuke called all prospective employers in the area and disparaged her, calling Campbell a “bad employee” and “unethical” to ensure she could not be hired anywhere else. Campbell has demonstrated *prima facie* evidence of discrimination and retaliatory acts committed by HTE and Dahl.

HTE argues that Campbell was not constructively discharged, but that she quit on her own initiative, that she did not have a free-speech right in the workplace, and that her dissemination of the sexual abuse allegations to the public were premature, and an internal employment and human resources issue. They further argue that there was no need for Campbell to quit because Dahl was no longer a threat due to his removal from the work environment.

² Campbell’s claims were dismissed by MDHR because she failed to file her complaint within the one-year statute of limitations. The MDHR court did not find *beyond a reasonable doubt* that “continuing violations” occurred such that the acts of reprisal would toll the statute of limitations. This Court is not bound by that standard of proof. Campbell need only show *prima facie* evidence of her claims to show continuing violations occurred.

The arguments proffered by HTE are not compelling, and fail the second part of the burden-shifting test set forth in *McDonnell-Douglas*. First, HTE stopped paying Campbell. It was not unreasonable for her to quit if she was no longer being paid. Second, Campbell being an at-will employee, does not excuse HTE from potential criminal and civil liability for human rights violations under the MHRA. There was no confidentiality agreement between the parties, and Campbell was not limited in her free speech rights under any other operation of law. Third, while Dahl was eventually removed from the workplace, the acts of retaliation continued, and HTE has not proffered any evidence showing how their acts were credible, legitimate, non-discriminatory, and nonpretextual. This was a continuing violation, and even if HTE had not waived their statute of limitations defense, it would have failed.

Conclusion

Becker County District Court has subject matter jurisdiction over this case. Defendant has waived the affirmative defense of Statute of Limitations. The filing of Campbell's claims under the MHRA was timely because she established *prima facie* evidence of continuing violations which HTE failed to rebut. Defendant's Motion to Dismiss is **denied**. G.D.T.

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