

SC95759

IN THE SUPREME COURT OF MISSOURI

CAESARS ENTERTAINMENT OPERATING CO., INC., et al.,

Appellants,

v.

MISSOURI COMMISSION ON HUMAN RIGHTS, et al.,

Respondents.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Circuit Judge

SUPPLEMENTAL BRIEF

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SUMMARY OF ARGUMENT

Before *Farrow*, there was no question that filing a timely complaint with the Missouri Commission on Human Rights was a condition precedent to filing a civil action and that the issue may be raised in the civil action between the complainant and the respondent after the Commission issues a notice of right-to-sue.

This practice should be reaffirmed. First, to conclude that the filing of a timely complaint with the Commission is not a condition precedent to filing a civil action would rewrite the Missouri Human Rights Act by effectively deleting the statute of limitations from the act. Second, to conclude that the timely filing of the complaint at the Commission is a condition precedent to filing a civil action, but that the issue cannot be raised in the civil action between the complainant and respondent after the Commission issues a notice of right-to-sue, would result in a complicated judicial review practice of potentially conflicting actions. Neither of these conclusions is supported by the text of the Missouri Human Rights Act, precedent before *Farrow*, or practical considerations.

For these reasons, the Commission respectfully requests that the Court reaffirm the practice in place before *Farrow*.

ARGUMENT

I. The filing of a timely complaint with the Missouri Commission on Human Rights is a condition precedent to filing a civil action and the issue may be raised in the civil action between the complainant and the respondent after the Commission issues a notice of right-to-sue because any other conclusion would rewrite the Missouri Human Rights Act and create needless complications.

The Missouri Human Rights Act provides that a person bringing a discrimination complaint must file the complaint with the Commission within 180 days of the alleged act of discrimination. § 213.075.1, RSMo.

The act also provides that the Commission must issue a notice of right-to-sue when three conditions are met:

- 1) 180 days have passed since a complaint was filed with the Commission;
- 2) the Commission has not completed its administrative processing of the complaint; and
- 3) the person that filed the complaint requests the notice.

§ 213.111, RSMo.

Notably, the Commission is directed to issue a notice of right-to-sue when it has not completed its administrative processing of the complaint. This means that the act of issuing a notice of right-to-sue is simply that an act commanded by the statute when the three conditions are met, not any type of decision regarding the issues implicated by the complaint. In other words, when the Commission issues a notice of right-to-sue, the issues implicated by the complaint are unresolved.

The Missouri Human Rights Act directs where the issues are to be resolved—in the civil action between the complainant and the respondent. Under Section 213.111, RSMo, upon issuance of a notice of right-to-sue, the Commission is to terminate its proceedings, and the circuit court takes up the matter.

To conclude that the circuit court can address the issues implicated by the complaint, except whether the complaint was timely filed with the Commission, would lead to unwarranted consequences.

To see why, it is beneficial to first review the nature and purpose of the administrative process before the Commission. When the Commission receives a complaint, its first step is to conduct an investigation to determine whether there is probable cause to credit the allegations. § 213.075.3, RSMo. Then, if there is probable cause, the Commission’s next step is to attempt to resolve the dispute informally through “conference, conciliation and

persuasion”. *Id.*; see also § 213.077, RSMo. If this ultimately fails, then the Commission is to hold an administrative hearing to determine whether the alleged discrimination did in fact occur and take appropriate actions to remedy the situation. The purpose of the process is to see whether the dispute may be resolved informally before the Commission without proceeding to formal litigation in circuit court.

The statutory structure, however, provides the complainant with the option of moving the case to circuit court before the Commission has completed its process. And, as previously explained, when this occurs, the issues implicated by the complaint are unresolved.

Two things could occur at this point in the process if the practice in place before *Farrow* is changed—both of which are unwarranted.

First, the matter could proceed before the circuit court, where the circuit court could resolve all the issues implicated by the complaint, except whether the complaint was timely filed with the Commission, leaving that issue undecided by any judicial tribunal. But this would result in the statute of limitations being effectively deleted from the statute—a result at odds with the text of the statute.

Second, the practice could be that the timeliness issue can be raised in some other proceeding than in the civil action between the complainant and the respondent in circuit court. But it would make little sense to permit the

circuit court to resolve all issues implicated by the complaint except the timeliness issue, and it would make little sense to have the timeliness issue resolved in some judicial proceeding separate from the circuit court proceeding. As previously explained, the issuance of a notice of right-to-sue occurs when three conditions are met, and the issuance of the notice necessarily means the issues implicated by the complaint are unresolved. Therefore, there is no support for the conclusion that a party can bring some kind of judicial review action against the Commission for issuing of a notice of right-to-sue alleging anything other than that the three statutory conditions have not been met.

Further, it should be noted that many complaints filed with the Commission contain timely and untimely claims. So, the notion that the Commission must make some type of finding at the time it issues the notice of right-to-sue would result in a situation where one or both of the parties would file a writ action to challenge the Commission's timeliness findings, while the civil action between the complainant and respondent would either proceed at the same time or be delayed until the writ action(s) became final. This situation would needlessly multiply judicial proceedings and burden both the Commission and the courts.

By reaffirming the practice in place before *Farrow*, these problems are avoided and both parties are allowed to address all of their claims and

defenses in one civil action—a result consistent with the text of the Missouri Human Rights Act.

II. The purpose of the two year limitation on filing a civil action is to prevent a complaint from pending before the Commission for a lengthy period of time and then having the case shifted to circuit court where the parties would have to start the process over more than two years after the alleged acts of discrimination.

As previously explained, the Missouri Human Rights Act provides that a complaint must be filed with the Commission within 180 days. If the Commission proceeds to a final resolution during its process, its decision may be challenged via a petition for judicial review. *See* § 213.085.2, RSMo (“Any person who is aggrieved by a final decision, finding, rule or order of the commission may obtain judicial review by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the commission’s final decision.”).

The act, however, provides an alternative route for resolving the dispute. After 180 days from the date the complaint is filed, if the Commission has not issued a final decision, the complainant has the option to proceed in circuit court by requesting a notice of right-to-sue. § 213.111, RSMo.

In providing this alternative route, the General Assembly directed that the alternative route may not be taken more than two years after the alleged

act of discrimination occurred. § 213.111, RSMo; *see also State ex rel. Martin-Erb v. Mo. Comm'n on Human Rights*, 77 S.W.3d 600, 605 (Mo. 2002) (“After filing a complaint with the MCHR, she chose to continue pursuing remedies through the administrative process rather than seeking a ‘right to sue’ letter. Once two years had passed—that is, after January 11, 1999—Ms. Martin-Erb could no longer sue Wal-Mart for the discrimination directly, but was limited to seeking action by the MCHR.”).

The reason for this is apparent from the structure of the statute. If the two year limitation had not been included in the statute, then there could be situations where a complaint is filed with the Commission within the 180 days, but it remains pending before the Commission for some time, and then the complainant requests a notice of right-to-sue, resulting in the process starting over in circuit court several years after the fact.

The requirement that a complainant must file a civil action within 90 days of the issuance of a notice of right-to-sue was enacted for a similar reason. *See* § 213.111, RSMo. If the 90-day limitation had not been included, the proceedings before the Commission would be terminated and then the matter could potentially sit dormant for more than a year before the civil action is filed to comply with the two year limitation.

CONCLUSION

Many complaints filed with the Commission contain timely and untimely claims. If the Commission is allowed to proceed with its process, it will issue a final decision resolving the issues concerning the timeliness of the claims, and then that decision may be challenged via judicial review. But when the Commission has not completed its process, and the complainant requests a notice of right-to-sue, the Commission has not made any decision other than that the three conditions of the statute have been met. To conclude that a party may challenge the issuance of a notice on any ground other than that the three conditions have not been met will result in a complicated system where, no matter what the Commission does, it will be subject to suit by one of the parties. This result is inefficient and is not supported by the text of the Missouri Human Rights Act. Such a practice, moreover, would needlessly burden both the Commission and the courts. For these reasons, the Missouri Commission on Human Rights respectfully requests that this Court reaffirm the practice in place before *Farrow*.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

Undersigned counsel hereby certifies that on February 14, 2017, a true and correct copy of this brief was sent through the electronic filing system to:

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Undersigned counsel further certifies that this brief complies with Rule 84.06 and that the entire brief contains 2,564 words.

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