
SC95977

IN THE SUPREME COURT OF MISSOURI

**STATE OF MISSOURI EX REL. FOCUS
WORKFORCE MANAGEMENT, INC.,
TAMMY PETERSON, AUSTIN
SCHLATTER, BEN SHARP, AND ASHLEY POIRIER**

Relators,

v.

**HONORABLE WILLIAM B. COLLINS
CIRCUIT JUDGE, DIVISION 1
CIRCUIT COURT
CASS COUNTY, MISSOURI**

Respondent.

**Appeal from the Circuit Court of Cass County, Missouri
The Honorable William B. Collins, Circuit Judge**

**BRIEF OF RELATORS FOCUS WORKFORCE MANAGEMENT, INC.,
PETERSON, SCHLATTER, SHARP, AND POIRIER**

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I. RELATORS' PRELIMINARY STATEMENT

This writ involves the application of a statute of limitations to a claim filed after the statute had expired. Relators are asking that this Court issue a permanent writ of prohibition because Respondent, the Honorable William B. Collins, has refused to enforce the applicable limitations statute and, instead, has allowed the Plaintiff Alicia Mulvey to continue with an expired claim.

More specifically, Plaintiff sued the Relators and their co-defendant for violation of the Missouri Human Rights Act ("MHRA"). The MHRA allows a private cause of action, but requires that litigants first obtain a "right-to-sue" letter from the Missouri Human Rights Commission and then file suit within 90 days from the date of that letter. Mo. Rev. Stat. § 213.111.1

Plaintiff did not file her lawsuit within the statutory window. Instead, she initiated suit on the 91st day. Missouri law recognizes no exceptions or excuses for Plaintiff's failure to file her suit on time. The Respondent should have followed the binding Court of Appeals decision in *Hammond v. Mun. Corr. Inst.*, 117 S.W.3d 130, 133 (Mo. App. W.D. 2003) and should have dismissed the MHRA claims with prejudice. Instead, Respondent allowed Plaintiff to continue with her MHRA claims against Relators and Church, leading Relators to seek relief by way of a permanent writ of prohibition from this Court.

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IV. JURISDICTIONAL STATEMENT

This writ is before the Court on Relator's Focus Workforce Management, Inc., Tammy Peterson, Austin Schlatter, Ben Sharp, and Ashley Poirier's Petition for Prohibition to prevent The Honorable William B. Collins, Judge of the Circuit Court of Cass County, Missouri, from implementing his Order Denying Relator's Motion to Dismiss Plaintiff's lawsuit and from taking any further action other than the dismissal of Plaintiff's Petition.

On October 11, 2016, pursuant to Mo. S. Ct. R. 97, Relators filed and served a Petition for Writ of Prohibition in this Court. On November 22, 2016, this Court issued its Preliminary Writ of Prohibition. An Answer was filed on December 22, 2016. At the Court's direction, Relators submit this brief and request that this Court make its Preliminary Writ absolute.

The Supreme Court of Missouri has jurisdiction to consider this matter pursuant to Article V, Section 4 of the Missouri Constitution, under which the Court has supervisory powers over lower courts, including the authority to issue and determine original remedial writs.

V. STATEMENT OF FACTS

This is a private cause of action brought under the Missouri Human Rights Act (“MHRA”). Ex. 1, Pl.’s Pet., Appx. at 1-7.¹ Plaintiff Alicia Mulvey is a Missouri resident and was employed in Missouri. *Id.* (¶ 1 and generally). Plaintiff alleges that the MHRA governs her employment relationship and her claims. *Id.*, Appx. at 4 (¶ 9). The lone cause of action that Plaintiff raised in her initial Petition is under the MHRA. This cause of action forms the basis of Relators’ request for relief.

Relator Focus Workforce Management, Inc. (“Focus”) is a staffing agency that provides manufacturing and logistic companies with temporary workers on an assignment basis. *Id.* Appx. at 3-4 (¶¶ 2, 12). Relators Austin Schlatter, Ashley Poirier, Tammy Peterson, and Ben Sharp (the “Employee Relators”) were employed by Focus during the relevant time period and have now been sued by Plaintiff in their individual capacities under the MHRA. *Id.* (¶¶ 3-6, 10). Plaintiff alleges that these Individual Relators participated in the conduct she complains of and that participation was in the scope of their employment with Focus. *Id.*, Appx. 2-5 (¶¶ 1-7).

Defendant Church & Dwight Co., (“Church”) operates a manufacturing plant in Harrisonville, Missouri. *Id.*, Appx. at 4-5 (¶¶ 8, 14). Church utilized Focus’ temporary staffing services, including in the instance at issue here.

Plaintiff’s case stems from her alleged employment relationship with both Focus and Church. Focus hired Plaintiff on October 22, 2014 and assigned her to work on a

¹ Relators’ citations are to the Exhibits attached to Relators’ Petition for Writ of Prohibition. These exhibits are replicated in the attached Appendix to this Brief in Support.

temporary basis at Defendant Church at the Harrisonville plant. *Id.* Appx. at 4 (¶ 12). Plaintiff alleges that, during her assignment at Church, she was subjected to offensive comments and conduct. *Id.*, Appx. at 4-5 (¶ 14). Plaintiff also alleges that, after reporting this offensive conduct to Focus and to Church, she was terminated and was not hired on as a permanent employee of Church. *Id.* (¶¶ 13, 15-16).

On July 27, 2015, Plaintiff filed a Charge of Discrimination with the Missouri Commission on Human Rights (“MCHR”). *Id.*, Appx. at 5 (¶ 19). The MCHR terminated its proceedings relating to her charge on February 18, 2016 and issued a “right to sue” letter (the “Letter”). *Id.*, Appx. at 6 (¶ 20). That letter, which was dated February 18, 2016, advised that Plaintiff must bring a civil action under the MHRA “WITHIN 90 DAYS OF THE DATE OF THIS NOTICE” or “YOUR RIGHT TO SUE IS LOST.” Ex. 2.1, Appx. at 15 (Ex. 1 to Defs.’ Sugg. in Supp. or Mot. to Dismiss).

The 90th day from the date of Plaintiff’s Letter fell on Wednesday, May 18, 2016. Plaintiff, however, did not file her lawsuit against Relators and Church in the Circuit Court of Cass County, Missouri until Thursday, May 19, 2016, exactly 91 days after the date on Plaintiff’s Letter. *See* Ex. 1, Appx. 1.

Faced with these facts, Relators filed a Motion to Dismiss Plaintiff’s lawsuit on June 24, 2016. Ex. 3, Appx. at 17-18; Ex. 2, Appx. at 9-13. Defendant Church filed a similar Motion. After the Defendants’ motions were fully briefed, Plaintiff sought leave to amend her Petition to bring additional common law claims of negligence and wrongful discharge against Focus and Church only. Ex. 4, Pl.’s Mot. To Am. and Sugg. in Supp., Appx. at 18-21; *see also* Ex. 9, Defs.’ Reply in Supp. of Mot. to Dismiss, Appx. at 48-51. Plaintiffs’ Amended Petition brought no additional claims against the four Employee Relators. Ex. 4.1, Am. Pet., Appx. at 23-32.

The Amended Petition includes the same MHRA claim that is the subject of this dispute. *Id.*, Appx. at 27-28 (§§ 27-31). The Amended Petition does not alter or remedy the factual detail relevant to the claim – *i.e.* the date of the notice and the date that the case was filed. *Id.*, Appx. at 26-27 (§§ 21-23).

On August 16, 2016, Respondent conducted a hearing on the pending motions and issued an Order in which he denied the Motions to Dismiss, offering no reasons for his decision. Ex. 5, Aug. 16, 2016 Order, Appx. at 34; Ex. 6 Tr. From Aug. 16, 2016 Hearing, Appx. at 36-42. Respondent also granted Plaintiff leave to amend her Petition to add claims against Focus and Church. Ex. 5, Appx. at 34.

Relators challenged the Respondents Order by filing a writ petition in the Court of Appeals for the Western District on August 31, 2016; the Petition was denied on October 3, 2016. Ex. 7, Docket Western District of Missouri Case No. WD80029, Appx. at 44.

Defendant Church also filed a writ petition in the Court of Appeals for the Western District on September 9, 2016; that Petition was denied on October 3, 2016. Ex. 8, Docket Western District of Missouri Case No. WD80054, Appx. at 46.

On October 11, 2016, Relators filed a writ petition before this Court. Defendant Church also filed a writ Petition. On November 22, 2016, this Court issued its Preliminary Writ in Prohibition.

VI. POINTS RELIED ON

RELATORS ARE ENTITLED TO AN ABSOLUTE ORDER PROHIBITING RESPONDENT FROM TAKING ANY ACTION OTHER THAN DISMISSING THE PLAINTIFF'S CLAIM UNDER THE MISSOURI HUMAN RIGHTS ACT ("MHRA") FOR THE REASON THAT THE CLAIM IS TIME-BARRED IN THAT PLAINTIFF DID NOT FILE HER LAWSUIT WITHIN THE 90-DAYS FROM THE DATE OF HER "RIGHT-TO-SUE" LETTER AND THERE IS NO BASIS UNDER MISSOURI LAW TO EXCUSE HER FOR THAT FAILURE.

- Mo. Rev. Stat. § 213.111.1
- *Hammond v. Mun. Corr. Inst.*, 117 S.W. 3d 130 (Mo. App. W.D. 2003)
- Mo. S. Ct. R. 44.01

VII. ARGUMENT

RELATORS ARE ENTITLED TO AN ABSOLUTE ORDER PROHIBITING RESPONDENT FROM TAKING ANY ACTION OTHER THAN DISMISSING THE PLAINTIFF'S CLAIM UNDER THE MISSOURI HUMAN RIGHTS ACT ("MHRA") FOR THE REASON THAT THE CLAIM IS TIME-BARRED IN THAT PLAINTIFF DID NOT FILE HER LAWSUIT WITHIN THE 90-DAYS FROM THE DATE OF HER "RIGHT-TO-SUE" LETTER AND THERE IS NO BASIS UNDER MISSOURI LAW TO EXCUSE HER FOR THAT FAILURE.

A. Standard of Review

Writs of prohibition are appropriate on the denial of a motion to dismiss when, on the face of the pleadings, the defendant is immune from suit as a matter of law. *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. banc 2009); *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 444 (Mo. banc 1986). A writ of prohibition may be used to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extra-jurisdictional authority. *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 81 (Mo. banc 2008). A writ of prohibition is appropriate to prevent unnecessary, inconvenient, and expensive litigation. *State ex rel. St. Charles Cnty. v. Cunningham*, 401 S.W.3d 493, 495 (Mo. banc 2013).

Absent relief from this Court, Relators are faced with defending a claim that was filed outside the time limitation period detailed by the Missouri Legislature. This Court has previously held that a writ of prohibition is "the appropriate remedy to prevent a

lower court from proceeding on an action barred by the statute of limitations.” *State ex rel. Holzum v. Schneider*, 342 S.W.3d 313, 315 (Mo. 2011).

Unless the writ is made permanent, Relators will have no adequate remedy by way of appeal because a denial of a motion to dismiss is not a final judgment and is not ordinarily appealable. *See In re Halverson ex rel. Sumners*, 362 S.W.3d 443, 448 n. 7 (Mo. App. 2012).

Respondent’s refusal to dismiss the untimely MHRA claim subjects the four Employee Relators to unnecessary and expensive litigation over a claim that has expired. Without the MHRA claims, the Plaintiff has no cause of action against these four individuals. *See* Ex. 4.1, at Appx. 28-31 (common laws claims raised against Focus and Church only); *see also Hill v. Ford Motor Co.*, 277 S.W. 3d 659, 669 (Mo. banc 2009)(interpreting Mo. Rev. Stat. § 213.010.07 to impose joint and several liability on individuals acting in supervisory capacities in the interest of employer). Unless the writ is made permanent, these four Employee Relators will be forced to participate in litigation that Missouri law dictates should be dismissed. Protecting the interests of the four Employee Relators alone is a sufficient reason to justify a permanent writ.

The remaining defendants, Relators Focus and Defendant Church, will also be irreparably harmed if the writ is not made permanent. Allowing Plaintiff to maintain her time-barred MHRA claims against the two defendants would impermissibly expand the remedies available to Plaintiff beyond those available under common law, including allowing Plaintiff to recover attorneys’ fees where none would ordinarily lie. *See* Mo. Rev. Stat. § 213.111.2.

Further, Defendant Church has also filed an accompanying Petition for Writ of Prohibition (Case SC95976) against Respondent, which raised the issue of Respondent’s

decision to allow Plaintiff to raise common law claims in her Amended Petition. This Court has granted preliminary relief with respect to Defendant Church's request. If the Court agrees with Church on this issue, then Plaintiff would have no other surviving claims against any Defendant.

Even if Plaintiff's common law claims survive a permanent writ, the inclusion of a time-barred MHRA claim expands the potential relief beyond the common law, which would also expand the scope of discovery, damages, and the general nature of the case, beyond what Missouri law allows. Focus and Church would be damaged in that they would be expending resources to defend claims that are barred as a matter of common law.

B. Missouri Law Imposes A Strict 90-Day Deadline For Initiating MHRA Actions.

Plaintiff brought this lawsuit under the MHRA, naming two companies and four individuals as defendants. A MHRA claim is a statutory remedy that requires that a plaintiff meet certain conditions in order to bring a civil claim under the Act. Specifically, as a prerequisite to filing suit, a MHRA plaintiff must first have been issued a "right-to-sue" letter from the Missouri Human Rights Commission. Mo. Rev. Stat. § 213.111.1; *Hammond v. Mun. Corr. Inst.*, 117 S.W.3d 130, 133 (Mo. App. W.D. 2003).

The provisions of the MHRA provide a private remedy for violations of that Act, but only if litigants who pursue this remedy comply with the Act's strict conditions. To bring a civil claim under the Act, a plaintiff must first file a complaint with the MHRC and be issued a "right-to-sue" letter by the agency. Mo. Rev. Stat. § 213.111.1. After issuance of the "right to sue" letter, a plaintiff must then file his or her action within

ninety (90) days of the date of the letter. Mo. Rev. Stat. § 213.111.1; *Hammond*, 117 S.W.3d at 133. Specifically, the MHRA states that: “Any action brought in court under [the MHRA] shall be filed within ninety days from the date of the commission's notification letter to the individual” Mo. Rev. Stat. § 213.111.1 (emphasis added). The drafters of the MHRA did not include any exceptions to this strict deadline. *See id.* Thus, once a plaintiff obtains the right to file a civil lawsuit for violations of the Act, the right must be exercised in the statutorily proscribed 90-day window.

C. Plaintiff Did Not Adhere To The 90-Day Deadline And, Therefore, Has No Private Cause Of Action Under The MHRA.

Plaintiff’s “right to sue” Letter from the MHRA is dated February 18, 2016. Ex. 2.1, Appx. at 15. The 90th day from the date of that Letter fell on Wednesday, May 18, 2016.

Plaintiff did not file her suit within the dictated window, instead, she filed on Thursday, May 19, 2016, exactly 91 days after the date on her letter. Ex. 1, Petition, Appx. at 2. Thus, by the time that Plaintiff opted to file her lawsuit, her right to pursue a claim under the MHRA had lapsed by operation of Missouri law.

D. The 90-Day Limitations Period Is Strictly Enforced.

Mo. Rev. Stat. § 213.111.1 expressly directs that the 90-day period is calculated from the date of the letter, not from the date of service: “[a]ny action brought in court under [the MHRA] **shall be filed within ninety days from the date of the commission’s notification letter to the individual. . . .**” Mo. Rev. Stat. § 213.111.1 (emphasis added).

Missouri Courts strictly construe this provision, and the statute's requirement that the time for filing starts to run as of the issuance of the letter has been held to be "clear and unambiguous." *Hammond*, 117 S.W.3d at 133, 137-138 (citing *Hill v. John Chezick Imports*, 797 S.W.2d 528, 530 (Mo. App. E.D. 1990) and stating that the ninety-day requirement should come as "no surprise to a lay person" as the right to sue letter both directs the recipient to the statute and sets the applicable statutory language in bold type face).

In *Hammond*, the Missouri Court of Appeals for the Western District recognized that Missouri law is more restrictive than comparable federal statutes in that the MHRA requires a complainant to file a lawsuit within 90 days "after the date of the right-to-sue letter," rather than within ninety days following receipt of the letter as required for claims under federal law. *Id.* at 137 (emphasis added); see also *Houston-Morris v. AMF Bowling Centers, Inc.*, No. 11-00325-CV-W-FJG, 2011 WL 5325646, at *3 (W.D. Mo. Nov. 3, 2011)(following *Hammond* in holding that a MHRA claim, in contrast to a federal claim, must be filed from date of letter). *Hammond* affirmed the dismissal of an employee's MHRA claim against his employer when the employee failed to file the lawsuit within 90 days after the issuance of the date of the right-to-sue letter and filed the lawsuit on the 91st day. *Id.* at 133.

Plaintiff was not ignorant of the 90-day time limit on her claim. Indeed, her February 18, 2016 letter, the receipt of which she acknowledges in her Petition, expressly warned her that, if she failed to file suit within 90 days of the date of the letter, her right to sue would be lost. Ex. 2.1, Appx. at 15.

Here, exactly as was the case in *Hammond*, Plaintiff filed her lawsuit on the 91st day after her letter was issued. Ex. 1, Appx. at 2. Applying the plain language of Section

213.111.1 and following the binding holding in *Hammond*, Plaintiff's cause of action under the MHRA is time-barred. *See* 117 S.W.3d at 137. Respondent, therefore, should have dismissed Plaintiff's Petition with prejudice. *See id.*

E. There Are No Plausible Exceptions To The 90-Day Deadline That Could Resuscitate Plaintiff's Claim.

1. Missouri Supreme Court Rule 44.01 does not apply in this case to extend Plaintiff's time for filing.

Plaintiff does not contest the date of her Letter or the date that she filed her suit. *See* Ex. 1, Appx. at 2-7. Instead, she argues that her case should not be dismissed because she should be allowed an additional three days to file her lawsuit under Rule 44.01(e) because the Letter was sent to her via U.S. Mail. Rule 44.01(e) applies to extend the time for certain acts when notices or paper are served by mail. The *Hammond* Court took up, and rejected, precisely the same argument under identical relevant facts. 117 S.W.3d at 139. Although Respondent did not give a reason for his denial of Relators' Motion, Respondent was bound by Missouri precedent to follow *Hammond* and dismiss Plaintiff's case.

In support of the argument that Rule 44.01(e) should apply, Plaintiff offered *Morris v. Karl Bissinger, Inc.*, 272 S.W.3d 441 (Mo. App. E.D. 2008), a decision that applied Rule 44.01(a), the rule that enlarges the time to complete an act when the period of time proscribed falls on a weekend or legal holiday, to preserve a case filed under the MHRA where the 90th day of the statutory filing period fell on a Sunday. *See* Ex. 6, Appx. at 37-38 (8:21-12:11). To be clear, Plaintiff does not argue that Rule 44.01(a) should apply to her case. Indeed, the 90th day of Plaintiff's statutory window fell on a

Wednesday, not a weekend or a holiday, making Rule 44.01(a) wholly inapplicable. See Ex. 1, Appx. at 2; Ex. 2.1, Appx. at 14. Instead, Plaintiff's reasoning seems to be that, because some provisions of Rule 44.01 have been applied to MHRA claims, Courts have license to apply any subsection that would seem to save a potential MHRA plaintiff's claim.

The plain language of the different provisions of Rule 44.01, however, demonstrates the flaws with Plaintiff's argument. Subsections (a) and (e) are very different in their wording and these differences are crucial when applied to the 90-day deadline in Mo. Rev. Stat. § 213.111.1. These differences can also explain why the Courts in *Hammond* and *Morris* each correctly reached opposite results.

a. Rule 44.01(e) – the three-day mailing rule

Rule 44.01(e), which Plaintiff argues should apply here, extends the time for taking an act when the obligation to take the act *is triggered from service of a notice or pleading* by mail. See Rule 44.01(e)(extending time to act by three days for mailing when action is triggered by “service of notice or other paper”). The filing deadline for a MHRA claim, however, is not triggered by service. Instead, Mo. Rev. Stat. § 213.111.1 instructs that the clock on a plaintiff's 90-day window starts to run as of *the date of the Right-to-Sue letter, not the service thereof*. Because the 90-day deadline is not calculated “after service of a notice or other paper upon the party,” the three-day mailing rule does not apply to extend the date for filing. See Mo. Rev. State. 213.111.1; Mo. S. Ct. R. 44.01(e). This is exactly the result reached by the Court in *Hammond*. See 117 S.W.3d at 139.

b. Rule 44.01(a) – the weekend and holiday rule

To contrast, the rule applied to save the MHRA claim in *Morris*, Rule 44.01(a), is worded broadly, allowing Courts to apply it in any number of situations where the deadline for a party's action falls on a day when the court is not open. *See* Mo. S. Ct. R. 44.01(a)(extending “*any period* of time prescribed or allowed by these rules, by order of court, or by any applicable statute.” (emphasis added)). The open-ended language that Rule 44.01(a) applies to “any applicable statute” would necessarily include the application to Section 213.111.1. Thus, when the 90th day of the *Morris* plaintiff's window fell on a date that the court was not open, the plaintiff was allowed until the following court day to file suit.

Plaintiff also argued that a case decided by this Court, *Bowling v. Webb Gas Co., Inc. of Lebanon*, 505 S.W.2d 39 (Mo. 1974) is “controlling” on the issue of the Plaintiff's timeliness. Ex. 6, at Appx. 37-8 (7:5-11, 8:22-9:19.) *Bowling* did not involve the MHRA or the application of Mo. Rev. Stat. § 213.111.1. *Bowling* was a case arising under the Missouri Wrongful Death Act and, like the *Morris* case, applied Rule 44.01(a) to extend the deadline. Since the *Bowling* decision involves neither the statutory deadline that Plaintiff seeks to have extended nor the rule that Plaintiff seeks to utilize to extend that deadline, it has no relevance to the question at issue in this case.

The problem with Plaintiff's contention that *Morris* and *Bowling* are controlling, or even persuasive, is that Plaintiff has no argument that Rule 44.01(a) has any bearing on her case. The 90th day of Plaintiff's statutory window fell on Wednesday, May 18, 2016. Unlike in decisions that Plaintiff relies upon, Plaintiff had no issue of access to the Court on the last day of her filing window. Thus, the *Morris* and *Bowling* Courts' utilization of Rule 44.01(a) has no application to Plaintiff's case.

2. The *Morris* Court's Criticism Of *Hammond*'s Reasoning Does Not Detract From *Hammond*'s Correct Conclusion.

Because *Hammond*, which was decided under nearly-identical facts, is binding on the Circuit Court, Plaintiff has sought to discredit this decision by amplifying the *Morris* Court's criticism of one particular line of reasoning applied by that Court. This discussion is not crucial to the *Hammond* decision and is not reasoning to abandon the result, which was based on the plain language of the MHRA.

The criticism revolves around a distinction that the *Hammond* Court made regarding the administrative nature of an MHRA proceeding. While the *Hammond* decision looks mainly to the language of Mo. Rev. Stat. § 213.111.1 to deny that plaintiff's request to extend the time for filing a claim, the Court also opined that the plaintiff should not be able to utilize Rule 44.01 in general because the MHRA proceedings were administrative in nature. *Hammond*, 117 S.W.3d at 139. The *Morris* Court disagreed with this conclusion that Rule 44.01 as a whole does not apply, and utilized Rule 44.01(a) to extend the time for filing a claim in that case. *Morris*, 272 S.W.3d at 443. *Morris* was not charged with the question of whether rule 44.01(e) could be applied in light of the language of Mo. Rev. Stat. § 213.111.1. The *Hammond* Court did decide that issue and the answer was "no." 117 S.W. 3d at 139.

The issue of whether an MHRA proceeding is administrative is not germane to the question at hand because the argument was not presented as a reason that the Respondent should grant the Motion to Dismiss. Instead, Relators directed the Respondent to the direct language of the statute and to the rules that Plaintiffs seek to utilize. That language is sufficient to conclude that the statute of limitations cannot be extended and to require that Respondent dismiss the action.

The *Hammond* Court did not need to consider its administrative proceeding argument to reach the correct conclusion. Further, simply because the Court may have used an incorrect reasoning to reach its conclusion does not mean that the result should be overturned if the conclusion itself was correct. *See Rietsch v. T.W.H. Co.*, 702 S.W.2d 108, 117 (Mo. Ct. App. 1985)(lower court's decision should be upheld if it is correct, even if reasons for decision are not). *Hammond's* analysis of Section 213.111.1 is good, persuasive, and binding law that the Respondent was bound to follow under the principles of *stare decisis*. *See State v. Banks*, 457 S.W.3d 898 (Mo. Ct. App. 2015)(when the same or an analogous issue was decided in an earlier case, such case stands as authoritative precedent unless and until it is overruled).

Respondent was thus bound to consider the Relator's Motion and dismiss the Plaintiff's time-barred MHRA claim.

3. Procedural Rules, such as Rule 44.01(e), Cannot Be Applied to Divest Substantive Rights.

Further, Plaintiff's argument that she can utilize Rule 44.01(e) to save her MHRA claim is contrary to the Missouri Constitution. Specifically, Article 5, Section 5 of this State's Constitution directs that the Supreme Court may make rules relating to the courts, but prohibits the court from altering substantive rights by those rules. Mo. Const. Art. 5, § 5. *Wilkes v. Missouri Highway and Transp. Comm'n*, 762 S.W.2d 27, 28 (Mo. banc 1988); *see also Berdella v. Pender*, 821 S.W.2d 846, 850 (Mo. banc 1991)("This Court has the power to make procedural rules governing all legal matters subject only to the limitations of federal law and the Missouri Constitution."))

Procedural rules, like those found in the Supreme Court Rules, are distinguished from substantive rights. “Procedural law prescribes a method of enforcing rights or obtaining redress for their invasion; substantive law creates, defines and regulates rights; the distinction between substantive law and procedural law is that substantive law relates to the rights and duties giving rise to the cause of action, while procedural law is the machinery used for carrying on the suit.” *Wilkes*, 762 S.W.2d at 28 (quoting *State v. Reese*, 920 S.W.2d 94, 95 (Mo. banc 1996)). While the Court may establish rules that provide the final say as to procedural matters, those rules may not alter substantive rights.

The substantive right at issue is the statute of limitations enacted as part of the MHRA. This Court has held that, once a statute of limitations period has expired, the defendant has acquired a vested, substantive right to be free from suit. *See Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. 1993)(citing *Uber v. Missouri Pacific R.R. Co.*, 441 S.W.2d 682 (Mo. 1969); *see also Wentz v. Price Candy Co.*, 352 Mo. 1, 175 S.W.2d 852 (1943); *State ex rel. Research Medical Center v. Peters*, 631 S.W.2d 938 (Mo. App. 1982). Here, per the express language that the Missouri Legislature adopted into Mo. Rev. Stat. § 213.111.1, the time for Plaintiff to file a MHRA claim against the Relators and Church expired on May 18, 2016, after her 90-day window closed. Any application of Rule 44.01(e) to extend that period altered Relators’ vested substantive right to be free from suit after the expiration of the 90-day window and violated the prohibitions of Article 5, Section 5.

4. There Are No Equitable Reasons That Would Justify An Extension Of The 90-Day Window For Plaintiff To File Her MHRA Lawsuit.

Cognizant that she missed her deadline for filing her lawsuit, Plaintiff has also argued that “equitable” reasons should have saved her MHRA claim for dismissal. While Respondent did not identify his reasons for denying the Relators’ Motion to Dismiss, this equitable argument cannot justify Respondent’s decision to allow the claim to survive.

Relators’ Motion to Dismiss is based on the expiration of the statute of limitations under the MHRA. Missouri law does not allow for courts to extend statutes of limitations for equitable reasons *unless* the Missouri Legislature has specifically proscribed such relief. *Hammond*, 117 S.W.3d at 133 (“Statutes of limitation may be suspended or tolled only by specific disabilities or exceptions enacted by the legislature, and courts cannot extend those exceptions”). The statute at issue in this case, Mo. Rev. Stat. § 213.111.1, bears no such exceptions. *See Houston-Morris*, 2011 WL 5325646, at *3 (holding there is no equitable tolling of statute of limitations on MHRA claim).

Even if equity could extend Plaintiff’s deadline, Plaintiff has not presented any cognizant reason why she should be allowed extra time. Plaintiff does not argue that she was not aware of the notice or that she was unable to file on time. Unlike in *Morris*, where the 90th day ran on a date that the Plaintiff would not have had access to the Court, there was no impediment in place that would have prevented Plaintiff from filing inside her window. *See* Ex. 1, Appx. at 2-7; *Morris*, 272 S.W.3d at 442.

The only specific argument that Plaintiff offered to justify her delay is her claim that the Defendants somehow failed to provide her with proper service information for each of the Employee Relators and that not having that information delayed her filing.

This argument is a red herring. Plaintiff filed her lawsuit, on the 91st day, *without* the Employee Relators' individual service information. Ex. 1, Appx. at 2. Plaintiff instead used business addresses for Defendants that had been known to Plaintiff for some time. *Id.* Even if Plaintiff did not have all of the service information that she wanted on the 90th day, that didn't stop her from filing her lawsuit without it on the following day. Plaintiff does not explain how this issue prevented her from filing a timely lawsuit.

The MHRA provides aggrieved plaintiffs with unique relief that is not available under common law. Consequentially, plaintiffs must abide by the strict procedures contained in the Act in order to avail themselves of the Act's benefits. Plaintiff missed this deadline. Plaintiff cannot write her own exception to the provisions adopted by the Missouri Legislature and, to the extent that Respondent accepted this equitable argument, it was in error.

F. Plaintiff Should Not Be Allowed To Resuscitate Her Time-Barred Claims By Attaching Common Law Labels.

Defendant Church also filed a Petition for Writ of Prohibition (Case SC95976) against Respondent, which raised the same issues discussed in this brief.

Defendant Church also requested relief from Respondent's decision to allow Plaintiff to amend the Petition to bring separate, common law claims that are based on the same allegations that form the basis of her time-barred MHRA claims. Defendant Church correctly argues that the claims for negligence and wrongful discharge that are added against Church and Relator Focus are simply the time-barred MHRA repackaged in hopes of avoiding the statute of limitations.

Church is correct that the statutory remedy that the MHRA provides has displaced the common law. *See Shawcross v. Pyro Prods., Inc.*, 916 S.W.2d 342, 345 (Mo. App. E.D. 1995); *Noel v. AT&T Corp.*, 936 F. Supp. 2d 1084, 1089 (E.D.Mo. 2013) Plaintiff's common law claims are based on the same facts and seek the same relief as the MHRA claim that Plaintiff allowed to lapse. The Missouri Legislature has provided potential plaintiffs with a powerful statutory remedy, but has also restricted that remedy with conditions precedent, which include filing within a 90-day window. It would be contrary to the plain direction of the Legislature to allow this Plaintiff to simply re-label her claim to avoid the restrictions that are placed on her claim.

Plaintiff's MHRA claim is time barred and her common law actions should be equally prohibited. Defendant Church is correct in arguing that the Amended Petition should not have been allowed because it did not present any viable cause of action. The filing of the Amended Petition should not prevent this Court from entering a permanent writ of Prohibition requiring that Respondent should follow Missouri law and grant the Motions to Dismiss. Moreover, this Court should also extend the permanent nature of its writ with respect to the Amended Petition and bar Plaintiff from bringing this futile amendment.

G. There Is No Justification for Respondent's Refusal To Dismiss The Plaintiff's MHRA Claim.

Respondent failed to enforce the strict statutory requirements set out in the MHRA, failed to follow a binding decision of a higher Court, and has deprived Relators from their vested, substantial right to be free from suit. Because Plaintiff did not file her lawsuit within 90 days from the date of her "right to sue" letter, her claim is untimely.

See Hammond v. Mun. Corr. Inst., 117 S.W. 3d 130 (Mo. App. W.D. 2003). She has no cause of action against the Relators and Defendant Church under the MHRA. The Motion to Dismiss should have been granted. This Court should, accordingly, prohibit Respondent from taking any action on Plaintiff's MHRA claims other than entering judgment as a matter of law in favor of the Respondents.

VIII. CONCLUSION

At the expiration of the 90-day period from the issuance of her Right-to Sue letter, the Relators acquired a vested interest to be free from suit based on the Complaint that the Plaintiff made to the MHRA. Plaintiff has not, nor can she, provide any law or fact to sustain her claim and defeat the Motion to Dismiss. Respondent was obligated to act upon the Motion to Dismiss filed by the Relators and Defendant Church and to dismiss Plaintiff's MHRA claims in their entirety.

Proceeding with the MHRA claims would mean that the four Employee Relators would be subjected to expensive and unnecessary litigation. Moreover, allowing the claims expands the relief available and complicates the issues as to the remaining defendants, Focus and Church.

For the foregoing reasons, and those set forth in the initial Petition for Writ of Prohibition, Relators Focus Workforce Management, Inc., Tammy Peterson, Austin Schlatter, Ben Sharp and Ashley Poirier respectfully request that the Preliminary Writ of Prohibition by this Court should be made absolute.

Dated: January 20, 2017

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CERTIFICATE OF SERVICE

I hereby certify that, on January 20, 2017, I filed a true and accurate Adobe PDF copy of this Brief of Relators and its appendix via the court's electronic filing system, which notified the following that filing:

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**CERTIFICATION THAT BRIEF COMPLIES WITH THE WORD
LIMITATIONS AND ELECTRONIC FILING REQUIREMENTS OF RULE
84.06(c)**

I certify that I prepared this brief using Microsoft Word 2010 in the Times New Roman size 13 font. I further certify that this brief complies with the word limitations of the Supreme Court Rule 84.06(b), as this brief contains 6,199 words.

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