No. SC95976

IN THE SUPREME COURT OF MISSOURI

CHURCH & DWIGHT CO., INC.,

Relator,

vs.

HONORABLE WILLIAM B. COLLINS, Circuit Judge, Division 1, Circuit Court of Cass County, Missouri

Respondent.

Cass County Circuit Court No. 16CA-CC00096

Court of Appeals No.: WD80054

REPLY BRIEF OF RELATOR IN SUPPORT OF WRIT OF PROHIBITION

Patrick F. Hulla
Jennifer K. Oldvader
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4520 Main Street, Suite 400
Kansas City, MO 64111
Telephone: 816.471.1301
Facsimile: 816.471.1303

ATTORNEYS FOR RELATOR

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I. Plaintiff's Untimely MHRA Claims cannot be saved by Her Errant Interpretation of *Morris v. Bissinger, Inc.* or Title VII Case Law.

While Plaintiff Mulvey admits she filed her Petition 91 days after her Notice of Right to Sue was issued, she argues application of *Morris v. Bissinger, Inc.*, 272 S.W.3d 441 (Mo. Ct. App. 2008) saves her MHRA claims. It does not. In *Morris*, the plaintiff's 90-day deadline fell on a Sunday – a day when courts are not open for filing. Not permitting the application of Rule 44.01(e) in this scenario, then, would have effectively resulted in the *reduction* of the statutory limitations period. That is not the case here. Plaintiff Mulvey is not arguing against an effective reduction of the statutory limitations period; she is asking this Court to *expand* the statutory limitations period by giving her 93 days to file her Petition, where the Missouri legislature gave her only 90 days.

Similarly, Plaintiff's MHRA claims cannot be saved by reference to Title VII or its accompanying case law. Indeed, federal courts do not interpret Title VII's 90-day statute of limitations as being expanded by Federal Rule of Civil Procedure 6's three-day mailing rule. Rather, they interpret Title VII's express language as triggering the 90-day limitations period based on *receipt* of a right-to-sue notice.[1] *See Hill v. John Chezik Imports*, 869 F.2d 1122, 1124 (8th Cir. 1989); *see also* 29 C.F.R. § 1601.28(e) (providing that a right-to-sue letter includes notice of the right to bring a civil action "within 90 days

[1] "[T]he Commission … shall so notify the person aggrieved and within ninety days after the *giving* of such notice a civil action may be brought… ." 42 U.S.C.A. § 2000e-5 (emphasis added).

from receipt" of notice).This is in direct contrast to the MHRA, which expressly requires an action to be brought "within 90 days *from the date of the Commission's notification letter*." Mo. Rev. Stat.. § 213.111.1 (emphasis added). Thus, because the statutory language is completely different, any comparison to Title VII or its case law is misplaced.

II. Plaintiff does not Adequately Explain Why her 90-day Window to File was Inadequate.

Even if the MHRA's 90-day limitations period were subject to equitable tolling, which it is not, Plaintiff has not adequately alleged facts showing she is entitled to equitable tolling. Here, Plaintiff alleges she did not have the personal addresses of the individual defendants, which she blames on Relator.[2] But Plaintiff explains neither why she needed the individuals defendants' personal addresses to *file*[3] her Petition nor why the 90-day window allotted to her for filing was insufficient to perform the "additional work" she says was necessary to "identify the proper Defendants." Pl.'s Response Br. at p. 21, n. 8.

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[2] Again, the individual defendants were all employed by defendant Focus, not Relator. Exhibit 1, Petition, C&D App. 001-006. Thus, Relator would not have had their personal addresses.

[3] Plaintiff argues that personal addresses were necessary to *serve* the individual defendants. But, of course, filing a Petition and serving the Petition are not the same thing. Plaintiff could have easily filed her Petition on time and then later done any necessary due diligence to determine the personal addresses of the individual defendants.

III. Plaintiff's Common Law Claims do Nothing more than Repackage Her Untimely MHRA Claims.

Plaintiff argues that her negligence and wrongful discharge claims should withstand dismissal because they "invoke[] substantive principles of law entitling Plaintiff to relief." Plaintiff's Resp. Br. at p. 23. But that is not the proper test. The test is whether the MHRA "fully comprehends and envelopes the remedies provided by common law." *Shawcross v. Pyro Products, Inc*., 916 S.W.2d 342, 345 (Mo. App. E. Dist. 1995). And, here, the MHRA not only fully envelopes the remedies sought by Plaintiff for the harassment, discrimination and retaliation she allegedly suffered, it provides her with even greater remedies (namely, attorneys' fees) than her common law claims would otherwise provide. Notably, Plaintiff makes no argument to the contrary.

Moreover, allowing a plaintiff to replead untimely MHRA claims under the guise of common law would completely undo the MHRA's administrative requirements and limitations periods set out by the Missouri legislature in the MHRA. This Court should not let Plaintiff do that.

IV. Conclusion.

Relator should not be required to bear the burden and expense of litigating time-barred MHRA and facially deficient common law claims. Relator respectfully requests this Court issue a Writ of Prohibition ordering Respondent: (1) to vacate his Orders denying Relator's motion to dismiss for failure to state a claim and granting Plaintiff's motion for leave to amend her petition and (2) to sustain Relator's motion to dismiss and deny Plaintiff's motion to for leave to amend.

Respectfully submitted,

/s/ *Jennifer K. Oldvader*
Patrick F. Hulla MO 41745
Jennifer K. Oldvader MO 60649
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
4520 Main Street, Suite 400
Kansas City, MO 64111
816.471.1301
816.471.1303 *(Facsimile)*
patrick.hulla@ogletreedeakins.com
jennifer.oldvader@ogletreedeakins.com

ATTORNEYS FOR RELATOR CHURCH & DWIGHT CO., INC.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 821 words.

CERTIFICATE OF SERVICE

I hereby certified that on March 10, 2017, a true copy of this Reply Brief in Support of Writ of Prohibition, together with Relator's Appendix, were served, via United States mail, postage prepaid, on the individuals listed below.

Honorable William B. Collins
Circuit Judge
Circuit Court of Cass County
2501 W. Mechanic Street
Harrisonville, MO 64701
816.380.8500
816.380.8225 *(Facsimile)*

RESPONDENT

Jennifer M. Hannah
Tedrick A. Housh III
Henry W. Tanner, Jr.
LATHROP & GAGE, LLP
2345 Grand Blvd., Suite 2200
Kansas City, MO 64108-2618
816.292.2000
816.292.2001 *(Facsimile)*
jhannah@lathropgage.com
thoush@lathropgage.com
htanner@lathropgage.com

ATTORNEYS FOR DEFENDANTS FOCUS WORKFORCE MANAGEMENT, INC., TAMMY PETERSON, AUSTIN SCHLATTER, BEN SHARP, AND ASHLEY POIRIER

Todd M. Johnson
VOTAVA NANTZ & JOHNSON, LLC
9237 Ward Parkway, Suite 240
Kansas City, MO 64114
816.895.8800
816.895.8801 *(Facsimile)*
tjohnson@vnjlaw.com

ATTORNEY FOR PLAINTIFF ALICIA MULVEY

/s/ Jennifer K. Oldvader
ATTORNEY FOR RELATOR
CHURCH & DWIGHT CO., INC.

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