IN THE SUPREME COURT OF MISSOURI

CASE NO. SC97721

DWIGHT TUTTLE,

Appellant,

v.

DOBBS TIRE & AUTO CENTERS, INC.,
DAVID W. DOBBS AND DUSTIN W. DOBBS,

Respondents.

Appeal from the Circuit Court of St. Louis County

Honorable Michael Jamison
Circuit Judge

APPELLANT'S SUBSTITUTE BRIEF

Jerome J. Dobson, #32099
Amanda D. Anthony, #57834
DOBSON, GOLDBERG, BERNS & RICH, LLP
5017 Washington Place, Third Floor
St. Louis, MO 63108
Tel: (314) 621-8363
Fax: (314) 621-8366
jdobson@dobsongoldberg.com
manthony@dobsongoldberg.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

This appeal is from a judgment entered in the Circuit Court of St. Louis County (hereinafter referred to as the "trial court") dismissing Appellant Dwight Tuttle's ("Appellant") claims for relief under the Missouri Human Rights Act ("MHRA"), Mo. Rev. Stat. § 213.010 *et seq.* for age discrimination and retaliation. (*See* D111.) Appellant timely appealed the trial court's judgment with the Missouri Court of Appeals for the Eastern District (hereinafter referred to as the "Court of Appeals"). (*See* D116, pp. 1-3.) On December 18, 2018, the Court of Appeals issued an order and memorandum affirming the trial court's judgment. Appellant timely filed a Motion for Rehearing and Application for Transfer in the Court of Appeals, both of which were denied.

Appellant subsequently filed a timely Application for Transfer with this Court pursuant to Missouri Rule of Civil Procedure 83.04. On April 2, 2019, this Court sustained Appellant's Application and granted transfer. This Court has jurisdiction under Article V, Section 10 of the Missouri Constitution which gives it authority to accept transfer "because of the general interest or importance of a question involved in the case, or for the purpose of re-examining the existing law, or pursuant to supreme court rule."

STATEMENT OF FACTS

After receiving a Notice of Right to Sue letter from the Missouri Commission on Human Rights ("MCHR"), Appellant, a resident of Illinois, filed his First Amended Petition for Damages against Respondents Dobbs Tire & Auto Center, Inc., David Dobbs, and Dustin Dobbs (collectively referred to herein as "Dobbs Tire") on November 6, 2017, for age discrimination and retaliation in violation of the MHRA.[1] (*See* D73, pp. 1-10). In his First Amended Petition, Appellant alleged that his age (at the time), 52, and his cooperation with an investigation into improper and unlawful conduct by David Dobbs were contributing factors in adverse employment actions taken by Dobbs Tire. (*Id.* at ¶¶ 1, 24, 34-40.) Dobbs Tire is a Missouri corporation with its headquarters in High Ridge, Jefferson County, Missouri. (*Id.* at ¶ 2.) David Dobbs, at all relevant times, was the President and Chief Executive Officer of Dobbs Tire. (*Id.* at ¶ 3.) Dustin Dobbs, at all relevant times, was the Director of Retail Operations for Dobbs Tire. (*Id.* at ¶ 4.) David Dobbs and Dustin Dobbs are both residents of St. Louis County, Missouri. (*Id.* at ¶¶ 3-4.) Dobbs Tire owns and operates tire and auto stores throughout St. Louis County and other Missouri counties. (*Id.* at ¶ 2.) Dobbs Tire also has tire and auto stores in Illinois. (*Id.*) Appellant, at all relevant times, worked at and/or managed tire and auto stores in Illinois for Dobbs Tire. (*See id.*).

In his First Amended Petition, Appellant alleged that he was constructively discharged on March 23, 2017, by Dobbs Tire. (*Id.* at ¶ 23.) Appellant alleges that

[1] All references to the MHRA are to the version of the statute that was in effect immediately prior to the amendments of August 28, 2017.

Dobbs Tire, David Dobbs, and Dustin Dobbs are each "employers" as that term is defined under the MHRA; that they each had authority over Appellant's employment at the tire and auto stores in Illinois; and that they each made decisions leading to Appellant's constructive discharge. (*Id.* at ¶¶ 2-3, 8-9, 13-17, and 22-23.)

Appellant specifically alleged twice in his First Amended Petition that Dobbs Tire's discriminatory actions and/or decisions occurred in Missouri. (*See id.* at ¶¶ 7, 23.) In paragraph 7, in support of his claim for venue in St. Louis County, Appellant alleged that **"on information and belief, one or more of the discriminatory decisions and/or actions taken against Plaintiff set forth in paragraphs 13-17 below took place in St. Louis County."** (*Id.* at ¶ 7.)(emphasis added). In paragraphs 13 through 17, Appellant described how Dustin Dobbs told him that he would never get another raise at Dobbs Tire (despite his years of service and satisfactory job performance); how Dobbs Tire improperly transferred expenses to Appellant's store which distorted and diminished his profit numbers; how Dobbs Tire refused to remove the improper expenses from Appellant's store despite his objections; how Dobbs Tire and David Dobbs transferred him to a poor performing store; and how Dustin Dobbs forced Appellant to sign a certain document that much younger store managers did not have to sign upon being transferred. (*Id.* at ¶¶ 13-19.)

Later in paragraph 23, Appellant alleged:

> As a result of the multiple adverse actions taken by Defendants against Plaintiff, including but not limited to the levying of improper expenses to his store, unjustified criticisms of his job performance, transferring Plaintiff to a less profitable store (a demotion for Plaintiff), the disparate treatment of Plaintiff compared to younger employees regarding the signing of the

> transfer document, and the threat to terminate Plaintiff, Plaintiff's work environment was intolerable. Plaintiff tendered his resignation on March 13, 2017, and was constructively discharged. **Some of the decisions and actions taken against Plaintiff were done in St. Louis County.**

(*Id.* at ¶ 23.)(emphasis added).

Dobbs Tire filed a Motion to Dismiss ("Motion") the First Amended Petition under Rule 55.27(a)(6) and/or (a)(1) for failure to state a claim and/or lack of jurisdiction over the subject matter. (D79, pp. 1-6.) Alternatively, Dobbs Tire requested that the trial court issue an order requiring Appellant to file a more definite statement regarding where the alleged acts of discrimination occurred. (D79, p. 4.) In support of its Motion, Dobbs Tire argued that the trial court lacked jurisdiction because the MHRA is not applicable to persons who live and work in Illinois, and because Appellant "failed to plead that discriminatory acts occurred in the State of Missouri." (*Id.* at ¶¶ 8-13.) Dobbs Tire did not deny that alleged discriminatory acts occurred in Missouri.

Dobbs Tire provided the trial court with a partial and redacted copy of a notice of an administrative case closure letter from the MCHR in a completely separate and unrelated matter brought by a resident of Illinois. (D86, pp. 1-5, Ex. A.) The trial court, without explanation, ultimately granted Dobbs Tire's Motion and dismissed the First Amended Petition with prejudice, thereby denying Appellant the opportunity to file a more definite pleading specifying which discriminatory acts and decisions he believes were committed in Missouri, and allowing him to further state the reasons behind that belief. (*See* D111.) Appellant appealed. (*See* D116, pp. 1-3.)

POINTS RELIED ON

I. The trial court erred in granting Dobb's Tire's Motion to Dismiss for lack of subject matter jurisdiction under Rule 55(a)(1) because the trial court had subject matter jurisdiction over Appellant's case under Article V, Section 14 of the Missouri Constitution in that it was a civil case.

J.C.W. v. Wyciskalla, 275 S.W.3d 249 (Mo. 2009)

State ex rel. Heartland Title Servs. v. Harrell, 500 S.W.3d 239 (Mo. 2016)

Mo. Const. art. V, § 14

II. The trial court erred in granting Dobbs Tire's Motion to Dismiss Appellant's First Amended Petition for failure to state a claim for relief under Rule 55(a)(6) because the MHRA prohibits unlawful discriminatory and retaliatory practices by employers such as Dobbs Tire, against "any individual" or "any other person" when discriminatory practices occur in Missouri, as Appellant alleged in his First Amended Petition.

Howard v. City of Kan. City, 332 S.W.3d 772 (Mo. banc 2011)

Igoe v. Dept. of Labor & Indust. Relations of Missouri, 152 S.W.3d 284 (Mo. 2005)

Lampley v. Missouri Comm'n on Human Rights, 2019 Mo. LEXIS 52 (Feb. 26, 2019)

State ex rel. Hollins v. Pritchett, 395 S.W.3d 600 (Mo. App. S.D. 2013)

Wormington v. City of Monett, 204 S.W.2d 264 (Mo. banc 1947)

III. The trial court erred by dismissing Appellant's First Amended Petition in lieu of other available remedies including transferring the case to a venue that it determined was proper and/or granting Dobbs Tire's request for Appellant to file a

more definite statement regarding where the alleged unlawful discriminatory practices occurred.

State ex rel. Heartland Title Servs. v. Harrell, 500 S.W.3d 239 (Mo. 2016)

Parks v. Rapp, 907 S.W.2d 286 (Mo. App. W.D. 1995)

IV. The trial court erred in granting Dobbs Tire's Motion to Dismiss Appellant's First Amended Petition for failure to state a claim for relief under Rule 55(a)(6) because Dobbs Tire's argument that applying the MHRA to Appellant's First Amended Petition would result in an extraterritorial application is simply not true.

Monteilh v. AFSCME, 982 A.2d 301 (D.C. 2009)

Wickenhauser v. Edward Jones & Co., 953 F.Supp. 286 (E.D. Mo. 1996)

ARGUMENT

Where the trial court has granted a motion to dismiss, the decision is reviewed *de novo*. *Conway v. CitiMortgage, Inc.*, 438 S.W.3d 410, 413 (Mo. banc 2014). When the trial court does not, as was the case here, specify its reason for dismissing a petition, this Court presumes that the trial court's judgment is based on the reason(s) stated in the motion to dismiss. *E.g. Avery Contracting v. Niehaus*, 492 S.W.3d 159, 162 (Mo. banc 2016). When this Court reviews the dismissal of a petition for failure to state a claim on which relief can be granted under Rule 55(a)(6), this Court assumes that all facts alleged in the petition are true and construes them liberally in favor of the plaintiff. *E.g. Conway*, 438 S.W.3d at 414. "The Court does not weigh the factual allegations to determine whether they are credible or persuasive." *Bromwell v. Nixon*, 361 S.W.3d 393, 398 (Mo. banc 2012). Rather, the Court reviews the petition "in an almost academic manner to determine if the plaintiff has alleged facts that meet the elements of a recognized cause of action or a cause of action that might be adopted in that case." *Nazeri v. Mo. Valley College*, 860 S.W.2d 303, 306 (Mo. banc 2003)(internal citations omitted).

I. The trial court erred in granting Dobb's Tire's Motion to Dismiss for lack of subject matter jurisdiction under Rule 55(a)(1) because the trial court had subject matter jurisdiction over Appellant's case under Article V, Section 14 of the Missouri Constitution in that it was a civil case.

This Court has stated that: "Missouri courts recognize two kinds of jurisdiction: subject matter jurisdiction and personal jurisdiction." *J.C.W. v. Wyciskalla*, 275 S.W.3d 249, 252 (Mo. 2009). Subject matter jurisdiction of Missouri's courts is governed by

Article V, Section 14 of the Missouri Constitution which provides that "[t]he circuit courts shall have original jurisdiction over *all* cases and matters, civil and criminal." *Id.* at 253. Based on that Constitutional provision, this Court concluded that "[so long as a] case is a civil case . . . the circuit court has subject matter jurisdiction." *Id.* at 254. Because Appellant's First Amended Petition presents civil claims for damages, it is a civil case and the trial court had subject matter jurisdiction under the Missouri Constitution.

Dobbs Tire's argument in support of its Motion to Dismiss was that the trial court lacked subject matter jurisdiction pursuant to the plain meaning of the MHRA's venue statute at Mo. Rev. Stat. § 213.111.1 and because Appellant lacked sufficient contacts with the State of Missouri. (D79, pp. 2-3, 4). Section 213.111.1 states that petitions under the MHRA "may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have been committed . . . ." Mo. Rev. Stat. § 213.111.1. Dobbs Tire incorrectly argued, as discussed further below, that "only the circuit court in the county in which the discriminatory conduct is alleged to have occurred has jurisdiction to consider a case arising under the MHRA" and "Plaintiff's Petition fails to plead the alleged discriminatory acts occurred in the State of Missouri." (D79, pp. 2-3.) Dobbs Tire's argument is not in accord with the Missouri Constitution which provides that trial courts have subject matter jurisdiction over all civil cases. *See* Mo. Const. art. V, § 14. Nor is it consistent with the purpose of the MHRA's venue provision or venue statutes in general. The purpose of venue statutes, as this Court recently reminded, is to "provide a convenient, logical and orderly forum for the resolution of

disputes, not to limit or control the types of parties and actions that can appear before Missouri courts." *State ex rel. Heartland Title Servs. v. Harrell*, 500 S.W.3d 239, 243-43 (Mo. 2016). The trial court had full authority to determine it had jurisdiction over Appellant's civil case, even if it concluded that venue was improper. In short, the MHRA's venue provision at § 213.111.1 does not remove subject matter jurisdiction from the trial court. It was error for the trial court to rely upon the venue statute in any way as the basis for finding that Plaintiff's claims lacked subject matter jurisdiction.

II. The trial court erred in granting Dobbs Tire's Motion to Dismiss Appellant's First Amended Petition for failure to state a claim for relief under Rule 55(a)(6) because the MHRA prohibits unlawful discriminatory and retaliatory practices by employers such as Dobbs Tire, against "any individual" or "any other person" when discriminatory practices occur in Missouri, as Appellant alleged in his First Amended Petition.

As this Court recently recognized, the MHRA is a remedial statute, and as such, "should be construed liberally to include those cases which are within the spirit of the law and all reasonable doubts should be construed in favor of applicability to the case." *Lampley v. Missouri Comm'n on Human Rights*, 2019 Mo. LEXIS 52, at *10 (Feb. 26, 2019)(quoting *Missouri Comm'n on Human Rights v. Red Dragon Rest., Inc.*, 991 S.W.2d 161, 166-67 (Mo. App. W.D. 1999) Under the MHRA, it is unlawful for an employer "[t]o fail or refuse to hire or to discharge any individual, or otherwise discriminate against **any individual** with respect to his compensation, terms, conditions, or privileges of employment because of such individual's . . . age . . . ." Mo. Rev. Stat. §

213.055 (1)(a)(emphasis added). The Missouri legislature specifically acted to limit the definition of "employers" subject to the MHRA by defining the word "employer" as "any person employing six or more persons within the state" as well as any person directly acting in the interest of an employer and the state itself and political subdivisions. Mo. Rev. Stat. § 213.010 (7). The MHRA further makes it an unlawful for an employer "[t]o retaliate or discriminate in any manner against **any other person** because such person has opposed any practice prohibited by this chapter." Mo. Rev. Stat. § 213.070 (1)(emphasis added). Unlike the word "employer," the legislature did not define the word "individual." It only defines "person" as including one or more individuals. Mo. Rev. Stat. § 213.010 (14). As this Court previously observed in *Howard v. City of Kan. City*, 332 S.W.3d 772, 780 n.7 (Mo. banc 2011), the legislature's use of the word "individual" in the MHRA is "broadly inclusive."

The aforementioned language of the MHRA is clear and unambiguous. There is no language in the MHRA that indicates an intent by the legislature to limit the scope of the statute to Missouri residents or persons who physically work within the State's boundaries. As this Court instructs, "where the language of the of the statute is unambiguous, courts must give effect to the language used by the legislature." *Keeney v. Hereford Concrete Prods.*, 911 S.W.2d 622, 624 (Mo. 1995). On the contrary, courts must not "read into a statute a legislative intent contrary to the intent made evident by the plain language." *Id.* Similarly, courts "cannot add statutory language where it does not exist." *Frye v. Levy*, 440 S.W.3d 405, 424 (Mo. 2014); *see also City of Wellston v. SBC*

Communications, Inc., 203 S.W.3d 189, 192 (Mo. banc 2006)("[W]e enforce statutes as written, not as they might have been written.")

The MHRA clearly and unambiguously prohibits discrimination and retaliation by employers in Missouri broadly against "any individual" or "any persons." There is no ambiguity in the term "any." *E.g. State v. Bouser*, 17 S.W.3d 130, 138-39 (Mo. App. W.D. 1999). As this Court observed in *Wormington v. City of Monett*, 204 S.W.2d 264, 267 (Mo. banc 1947), unless modified by context, the word "any" is "all comprehensive and "is the equivalent of 'every' and 'all.'" This Court also described the word "any" as "all comprehensive" and "the equivalent of 'every' and 'all.'" *North v. Hawkinson*, 324 S.W.2d 733, 744 (Mo. 1959). Thus, according to the plain language of the MHRA and the broad meaning of the word "any," the MHRA clearly prohibits discrimination and retaliation against any, every, and/or all employees of employers, regardless of whether or not the employee is a resident of Missouri or works for the employer in Missouri. There is no language in the MHRA that would even imply otherwise.

Appellant alleged in his First Amended Petition that Dobbs Tire was an employer subject to the MHRA. (*See* D73, pp. 1-10, ¶¶ 2-4, 8-9.) Dobbs Tire does not dispute its status as Appellant's employer or as an employer subject to the MHRA. Rather, it argues that the MHRA, by its terms, does not apply to Appellant as an Illinois resident who managed stores for them in Illinois. However, as described above, the language of § 213.055(1)(a) and § 213.070(1), clearly and unambiguously render discrimination and retaliation by an employer against "any" person or individual as an unlawful practice. That language is broad enough to include Appellant. There is no language in the MHRA

that modifies the word "any" to add a residency or work location requirement. Thus, under the plain meaning of the MHRA, Appellant's residency or work location do not prevent him from bringing and prevailing on his MHRA claims.

Although the MHRA does not impose a residency or location requirement on employees who may bring MHRA claims, it does specifically restrict when and where such claims can be brought. Section 213.111(1) of the MHRA states that a person who files a complaint alleging an unlawful practice pursuant to § 213.055 or § 213.070 may bring a civil action within ninety days of receiving a right to sue letter from the MCHR. **"Such an action may be brought in any circuit court in *any* county in which the unlawful discriminatory practice is alleged to have occurred."** *Id.* (emphasis added); *see also State ex rel. Hollins v. Pritchett*, 395 S.W.3d 600, 604 (Mo. App. S.D. 2013)(interpreting and applying the MHRA's venue statute).

This Court has previously addressed where an alleged unlawful discriminatory practice "occurs" for purposes of § 213.111(1). *Igoe v. Dept. of Labor & Indust. Relations of Missouri*, 152 S.W.3d 284 (Mo. 2005). In *Igoe*, the plaintiff alleged that the defendant failed to hire him as an administrative law judge because of his age and sex, and retaliation for a previous complaint of discrimination that he had filed. 152 S.W.3d at 285. The Circuit Court of the City of St. Louis denied the defendant's motion to transfer venue to Cole County, and the case was subsequently tried in the City of St. Louis. *Id.* at 286. On appeal, this Court held that venue was proper in Cole County instead of the City of St. Louis because of the MHRA's venue provision, which (as mentioned above) states that "an action may be brought in any circuit court in any county

in which the unlawful discriminatory practice is alleged to have occurred." *Id.* at 288. As the Court found, "all of the acts – the receipt and review of applications, the interviews, and the decision making – all occurred in Cole County," and the plaintiff did not allege that "any 'discriminatory practice' occurred, in whole or in part, in St. Louis." *Id.*

This Court's analysis regarding venue in *Igoe* is instructive in this case because by helping determine where an unlawful discriminatory practice can "occur," it helps determine whether the MHRA provides a remedy for that conduct. It is clear from this Court's analysis and decision in *Igoe* that an unlawful discriminatory practice can "occur" where the relevant acts, including the decision making, take place. *See Igoe*, 152 S.W.3d at 288; *see also Hollins*, 395 S.W.3d at 601-02 (if even one of the participants in one of the phone or email discussions that lead to decision to fail to hire plaintiff was in St. Louis City while participating in the discussion then venue in Circuit Court of St. Louis City on plaintiff's MHRA claim). It is also clear that unlawful discriminatory conduct can occur in more than one location, and proper venue may, therefore, exist in more than one location. *See Igoe*, 152 S.W.3d at 288-89. The alleged discriminatory conduct may occur "in whole, or in part," in a location, and if "in part," that is sufficient to establish proper venue in that location. *See id.* at 289. Thus, a plaintiff bringing a claim for relief under the MHRA may do so in a venue in which he alleges that any part of the decision-making process occurred.

In Appellant's First Amended Petition, Appellant clearly alleged that relevant acts, including the decision making process, took place in Missouri counties.[2] First, he alleged that Dobbs Tire has its head office in High Ridge, Jefferson County, Missouri. (D73, p. 2, ¶ 2.) He then alleged that both Dobbs Tire President and Chief Executive Officer David Dobbs and Dobbs Tire Director or Retail Operations Dustin Dobbs were both residents of St. Louis County, Missouri. (*Id.* at ¶¶ 1, 3-4.) Based on their positions, it is reasonable to infer from Appellant's allegations that both David Dobbs and Dustin Dobbs worked out of the head office in High Ridge, Missouri.

Appellant then alleged that Dobbs Tire, Dustin Dobbs, and/or David Dobbs improperly transferred expenses from another store to his store which improperly diminished his actual job performance record, refused to remedy the improper transfer, and subsequently demoted him by transferring him to a less profitable store. (*Id.* at pp. 4-5, ¶¶ 14-18.) It is reasonable to infer from the aforementioned allegations that such actions occurred in Missouri, either in St. Louis County where the individual decisionmakers resided or in High Ridge, Jefferson County, where their head office was

[2] Dobbs Tire incorrectly states in its Memorandum in Support of its Motion to Dismiss Plaintiff's First Amended Petition for Failure to State a Claim or Lack of Jurisdiction that Appellant "failed to plead the alleged discrimination occurred in the State of Missouri." *See* D80, p. 6. Based on the allegations cited herein and the related argument, it is clear that the trial Court erred in dismissing Appellant's First Amended Petition if it did so based on Dobbs Tire's incorrect assertion. Appellant clearly alleged that Dobbs Tire made discriminatory decisions and took discriminatory actions against him from a Missouri location.

located. Appellant specifically alleged that "one or more of the discriminatory decisions or actions taken against [Appellant]" as set out in Appellant's First Amended Petition "took place in the State of Missouri." (*Id.* at p. 2, ¶ 6.) Appellant alleged that his age and his cooperation with an investigation were contributing factors in the aforementioned actions and in his eventual constructive discharge. (*Id.* at pp. 5-8, ¶¶ 23-24, 37-39.) Lastly, Appellant alleged the ultimate fact that "some of the decisions and actions taken against [Appellant]" which lead to the constructive discharge "were done in St. Louis County." (*Id.* at pp. 5-6, ¶ 23.)

Based on the aforementioned allegations, Appellant clearly alleged that some of the discriminatory and/or retaliatory decisions and actions occurred in St. Louis County. These allegations were sufficient and this Court must take them as true. Since Appellant met the prerequisites for bringing an MHRA claim, for the reasons discussed herein, the trial court erred in dismissing his First Amended Petition for failure to state a claim. If the trial court believed that St. Louis County was not the proper venue, it should have exercised other available remedies as opposed to dismissing a sufficiently pled case.

III. The trial court erred by dismissing Appellant's First Amended Petition in lieu of other available remedies including transferring the case to a venue that it determined was proper and/or granting Dobbs Tire's request for Appellant to file a more definite statement regarding where the alleged unlawful discriminatory practices occurred.

As instructed by this Court, "when venue is improper, the circuit court has a 'ministerial duty' to transfer the case to a county where venue is proper." *Heartland Title*

Servs., 500 S.W.3d at 243; *see also e.g. Parks v. Rapp*, 907 S.W.2d 286, 292 (Mo. App. W.D. 1995)(improper venue is not a jurisdictional defect and the remedy for filing in an improper venue is transfer, not dismissal). If the trial court believed that St. Louis County was not the proper venue as Appellant alleged, it could have and should have transferred Appellant's case to a court of proper venue which may have included the other county identified in his First Amended Petition, Jefferson County, which was where the head office was located. The trial court could have also granted Dobbs Tire's request for an order that Appellant file a more definite statement regarding where the alleged acts of discrimination occurred as Dobbs Tire requested in its Motion to Dismiss. (D79, p. 4.) Instead, the trial court erred in taking the drastic step of dismissing Appellant's First Amended Petition.

IV. The trial court erred in granting Dobbs Tire's Motion to Dismiss Appellant's First Amended Petition for failure to state a claim for relief under Rule 55(a)(6) because Dobbs Tire's argument that applying the MHRA to Appellant's First Amended Petition would result in an extraterritorial application is simply not true.

Dobbs Tire argued in support of its Motion to Dismiss that Appellant lacked necessary contacts with the State of Missouri for the trial court to apply the MHRA because "[Appellant] is an Illinois resident, his place of employment was in Illinois, and the alleged discriminatory conduct occurred in Illinois." (D80, p. 7.) This entire argument is premised upon the erroneous assumption that Appellant is attempting to apply the MHRA extraterritorially and hold Dobbs Tire liable for conduct that occurred outside of Missouri. To the contrary and as discussed above, Appellant is simply

attempting to hold Dobbs Tire, a Missouri employer under the MHRA, liable under the MHRA for their discriminatory and retaliatory acts, some of which occurred in Missouri. *Compare Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 742 (Mo. 2007)(noting that "[i]t is beyond Missouri's authority to regulate conduct that occurs *wholly outside of Missouri*.")(emphasis added).

The cases upon which Dobbs Tire relied in support of its Motion and/or that Appellant anticipates it will rely upon to this Court regarding the sufficiency of contacts and/or extraterritorial application are readily distinguishable and do not support the trial court's decision to dismiss Appellant's First Amended Petition. For instance, in *Wickenhauser v. Edward Jones & Co.*, 953 F.Supp. 286 (E.D. Mo. 1996), the Eastern District of Missouri granted summary judgment to the employer on the plaintiff's MHRA claims after finding insufficient contacts with the State of Missouri where the plaintiff lived and worked in Illinois for a Missouri employer and none of the discriminatory acts were alleged to have occurred in any Missouri county." *Wickenhauser*, 953 F.Supp. at 289. Specifically, the District Court noted that "all of the alleged discriminatory acts occurred in Illinois and the individual who allegedly sexually harassed plaintiff was also employed in Illinois." *Id.* The District Court's finding in *Wickenhauser* that discriminatory acts took place exclusively in Illinois distinguish it from Appellant's case where he specifically alleged that discriminatory acts occurred in Missouri by Missouri residents who likely worked out of the head office located in Missouri.

Prior to this case, no Missouri appellate court had ever considered the applicability of the MHRA to an employee who worked for an employer under the MHRA, but who

lived and worked outside of Missouri. However, courts from other jurisdictions have found their state's anti-discrimination statutes to be applicable in factual situations similar to the facts of Appellant's case. *See Wilson v. CFMOTO Powersports, Inc.*, 2016 U.S. Dist. LEXIS 28975 (D. Minn. March 7, 2016); *Monteilh v. AFSCME*, 982 A.2d 301 (D.C. 2009). In *Monteilh*, the plaintiff worked for the defendant as a union organizer and field representative. He filed a charge of discrimination against the defendant under the District of Columbia Human Rights Act ("DCHRA") alleging age and race discrimination and retaliation. *Monteilh*, 982 A.2d at 301-02. The defendant's headquarters was in the District of Columbia, but the plaintiff had never worked for defendant in the District of Columbia and resided in California. *Id.* at 302. The headquarters had oversight responsibility of the regional offices in which the plaintiff worked. *Id.* The plaintiff alleged in his petition that the discriminatory and retaliatory actions were directed at him from the defendant's headquarters in the District of Columbia. *Id.*

The trial court initially dismissed the plaintiff's petition under the DCHRA because the plaintiff had never worked for defendant in the District of Columbia and because the alleged discrimination and retaliation did not affect a job position within the District of Columbia. *Id.* Recognizing the DCHRA's broad prohibition of discrimination against "any individual," the District of Columbia Court of Appeals held that actions could be brought under the DCHRA when an "employer has made a discriminatory decision in the District of Columbia although the effects have been felt elsewhere." *Id.* at 304. According to the Court of Appeals, interpreting the statute to apply only to

discriminatory acts "whose effects an employee has experienced inside the District" would be contrary to "the injunction that the DCHRA, as a 'remedial civil rights statute,' 'must be generously construed.'" *Id.* (quoting *Executive Sandwich Shoppe, Inc. v. Carry Realty Corp.*, 749 A.2d 724, 731 (D.C. 2000).

Similarly, it is well recognized that the MHRA, like the DCHRA, is a remedial statute which must be broadly interpreted in order to accomplish the greatest public good. *See Missouri Comm'n on Human Rights v. Red Dragon*, 991 S.W.2d at 166-67 (Mo. App. W.D. 1999 (quoting *Hogan v. Director of Revenue*, 968 S.W.2d 704, 706 (Mo. banc 1998). Also similar to the language of the DCHRA, the MHRA prohibits discrimination and retaliation against "any individual" without regard to the residency or work location. This Court should find the reasoning of the District of Columbia Court of Appeals persuasive in its review of the MHRA and whether Appellant stated a claim under the MHRA for which relief could be granted. Just as in *Monteilh*, the plain meaning of the statute allows for Appellant's claims against Dobbs Tire. Such an interpretation of the MHRA is faithful to the statute's language and its remedial purpose.

CONCLUSION

Because the trial court erred in granting Dobbs Tire's Motion to Dismiss, Appellant respectfully requests that this Court reverse that judgment, and remand the case to the trial court for further proceedings consistent with the Court's opinion.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the limitations set forth in Rule 84.06(b). According to the word count function of Microsoft Word, the foregoing brief, from the Table of Contents through the Conclusion, contains 5,833 words.

DOBSON, GOLDBERG, BERNS & RICH, LLP

By: /s/Amanda D. Anthony
Jerome J. Dobson, #32099
Amanda D. Anthony, #57834
5017 Washington Place, Third Floor
St. Louis, MO 63108
Tel: (314) 621-8363
Fax: (314) 621-8366
jdobson@dobsongoldberg.com
manthony@dobsongoldberg.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on May 31, 2019, the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Robert D. Younger
Dean S. Kpere-Daibo
MCMAHON BERGER PC
2730 N. Ballas Rd., Suite 200
St. Louis, MO 63131

/s/Amanda D. Anthony