



**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI ex rel.  
STEPHANIE DALTON,**

**Appellant,**

**v.**

**MISSOURI COMMISSION ON HUMAN  
RIGHTS, et al.,**

**Respondents.**

**WD83336**

**OPINION FILED:  
December 29, 2020**

**Appeal from the Circuit Court of Cole County, Missouri  
The Honorable Jon E. Beetem, Judge**

**Before Division Two:** Lisa White Hardwick, Presiding Judge, and  
Thomas H. Newton and Karen King Mitchell, Judges

Stephanie Dalton appeals from a judgment dismissing her petition for a permanent writ of mandamus against the Missouri Commission on Human Rights and its Executive Director Alisa Warren (collectively, the MCHR). Dalton argues that the circuit court erred in dismissing her petition because the MCHR (1) acted unlawfully in failing to perform its statutory duty to investigate Dalton's claim of discrimination based on retaliation (Point I); (2) acted arbitrarily and capriciously in dismissing Dalton's retaliation claim without issuing a right-to-sue letter but issuing a right-to-sue letter on her subsequent sex discrimination claim, which was based on the

same underlying facts (Point II); and (3) violated Dalton's procedural due process rights (Point III). Finding no error, we affirm.

### **Background**

On November 8, 2016, Dalton began working for Legacy Pharmaceuticals Packaging, LLC, as Director of Human Resources, an executive-level position. Before Legacy hired Dalton, she was required to complete personality and behavioral assessments. As Director of Human Resources, Dalton was involved in searches to fill three other executive-level positions at Legacy. The applicants for those positions, who were all male, were not required to complete any pre-employment assessments. Dalton complained to Steve Meeker, the president of Legacy. Meeker responded that he could test whomever he wanted.

Meeker fired Dalton on September 6, 2017, less than two weeks after she complained about the pre-employment assessments. According to Dalton, Meeker said she had made a bad decision, which she believed referred to her complaint about being the only executive-level applicant required to complete the assessments. Meeker also said that Dalton had breached confidentiality.

On September 19, 2017, Dalton filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) on the basis of retaliation. Pursuant to a work-sharing agreement with the EEOC, Dalton's complaint was deemed simultaneously filed with the MCHR.<sup>1</sup> An EEOC investigator interviewed Dalton and, on September 28, 2017, the EEOC issued its dismissal and notice of rights, which stated,

Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

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<sup>1</sup> "Any complaint which is filed with the federal Equal Employment Opportunity Commission . . . shall be deemed filed with the [MCHR] on the date that such complaint is received by [the EEOC]." § 213.075.2. All statutory citations are to the Revised Statutes of Missouri, as updated through the 2017 Supplement.

The dismissal and notice of rights also said, “You may file a lawsuit against the respondent(s) under federal law based on this charge in federal . . . court.”

The EEOC transmitted Dalton’s retaliation complaint to the MCHR with a copy of the EEOC’s confidential internal memorandum summarizing Dalton’s interview and analyzing her charge. In the memorandum, the EEOC’s investigator recommended closing the charge based on “Not Reasonable Cause.” In support of this finding, the investigator stated that, after Dalton asserted that she was discharged for complaining about being required to take an assessment test, she

revealed that the reason for her discharge was because another female Supervisor who is older than her (along with other witnesses who according to [Dalton] sided with this Supervisor) informed the President [of Legacy] that [Dalton] had revealed need[-]to[-]know confidential information to employees that were not privileged. [Dalton] stated that [Legacy] told her that she was discharged for poor decision making. According to [Dalton, Legacy] had witnesses for her non-discriminatory discharge. [Legacy] replaced [Dalton] with another female employee. [Dalton] had no witnesses or documentation to support her allegation.

Based on these findings, the EEOC investigator concluded that “it is unlikely that further investigation would result in a cause finding[.]”<sup>2</sup> Based on its review of the EEOC’s materials, including the internal memorandum, the MCHR adopted the EEOC’s findings and terminated the MCHR’s proceedings in the case, thereby extinguishing Dalton’s ability to pursue her retaliation claim under the Missouri Human Rights Act (the Act).<sup>3</sup> Dalton and the MCHR agree that the MCHR’s decision was, in effect, a finding of no probable cause.

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<sup>2</sup> At the hearing before the circuit court, Dalton testified that although she believed she was terminated for making a complaint, before her employment was terminated she was told about allegations that she had breached confidentiality. When asked if she had breached confidentiality, she said, “no.” Dalton testified that she told the EEOC investigator that she believed the employer’s stated reason for her termination was false.

<sup>3</sup> A right-to-sue letter is a condition precedent to bringing a discrimination claim under the Act. §§ 213.075.1 and 213.111.1; *McDonald v. Chamber of Com. of Indep.*, 581 S.W.3d 110, 118 (Mo. App. W.D. 2019).

Dalton then filed a petition for a writ of mandamus or judicial review of the MCHR's decision. In her petition, Dalton alleges that the Act requires the MCHR to investigate her retaliation claim and she was prejudiced by the MCHR's failure to do so. Dalton asked the circuit court to issue a preliminary and permanent writ of mandamus to compel the MCHR to rescind the closure of her file and to investigate her claim.<sup>4</sup> After issuing a preliminary writ, the court held a hearing on Dalton's petition. Dalton introduced evidence of a second charge of discrimination she filed with the EEOC and the MCHR on November 30, 2017; the second charge was based on sex discrimination rather than retaliation. After Dalton's second charge of discrimination had been pending with the MCHR for more than 180 days, she requested a right-to-sue letter, which the MCHR issued.<sup>5</sup>

Following the hearing, the circuit court found,

The EEOC interviewed [Dalton], asking h[er] what evidence she had to support her claims. Based upon the record before the EEOC, [Dalton] apparently had no evidence to dispute the veracity of the reasons provided by the employer [that Dalton's employment was terminated because she disclosed confidential information in violation of employer's policies]. If [Dalton] could provide no evidence to support her claims, it is fair to say that she lacks probable cause. This justifies terminating the proceedings.<sup>¶</sup>

The court determined that the efforts of the EEOC constituted an investigation of Dalton's retaliation claim, that EEOC's investigation was performed pursuant to a work-sharing agreement with the MCHR, and that, although the MCHR did not conduct a separate investigation, it could rely on the EEOC's investigation. The court concluded that, via the work-sharing agreement, the

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<sup>4</sup> In addition, Dalton's petition states,

To the extent the MCHR's and Director Warren's actions in this case are authorized by statute or regulation, such statutes or regulations violate Mo. Const. Art. I, § 10, in that they deprive plaintiff of the rights given her by the Missouri Human Rights Act and Missouri Constitution without due process of law.

<sup>5</sup> The right-to-sue letter explained that the "administrative processing of this complaint, including determinations of jurisdiction, has not been completed."

MCHR had fulfilled its statutory obligation to investigate Dalton’s retaliation claim; thus, she was not entitled to a writ of mandamus. This appeal follows.

### **Standard of Review**

Dalton appeals the denial of a writ of mandamus. “An appeal will lie from the denial of a writ petition when a lower court has issued a preliminary order in mandamus but then denies a permanent writ.” *Bi-State Dev. Agency of Mo.-Ill. Metro Dist. v. Warren*, 581 S.W.3d 654, 660 (Mo. App. W.D. 2019) (quoting *State ex rel. Tivol Plaza, Inc. v. Mo. Comm’n on Human Rights*, 527 S.W.3d 837, 841 (Mo. banc 2017)). “An appellate court reviews the denial of a petition for a writ of mandamus for an abuse of discretion. An abuse of discretion in denying a writ occurs when the circuit court misapplies the applicable statutes.” *Id.* (quoting *Tivol Plaza*, 527 S.W.3d at 841).

“Mandamus is a discretionary writ, and there is no right to have the writ issued.” *Pub. Sch. Ret. Sys. of Sch. Dist. of Kansas City v. Mo. Comm’n on Human Rights*, 188 S.W.3d 35, 41 (Mo. App. W.D. 2006). “Mandamus will . . . issue [only] when there is a showing of a clear and unequivocal right to the relief requested, based on a breach of a ‘present, imperative, unconditional duty’ owed by the respondent.” *Id.* (quoting *State ex rel. Dehn v. Schriro*, 935 S.W.2d 641, 644 (Mo. App. W.D. 1996)). “The purpose of mandamus is to require the performance of a duty already defined by the law.” *Maxwell v. Daviess Cnty.*, 190 S.W.3d 606, 610 (Mo. App. W.D. 2006). “Thus, mandamus enforces existing rights, but may not be used to establish new rights.” *Id.* “Mandamus will . . . issue to coerce [only] a ministerial act and ‘cannot be used to control the judgment or discretion of a public official.’” *Pub. Sch. Ret. Sys. of Sch. Dist. of Kansas City*, 188 S.W.3d at 41 (quoting *State ex rel. Mo. Growth Ass’n v. State Tax Comm’n*, 998 S.W.2d 786, 788 (Mo. banc 1999)). And “[t]he writ will not issue . . . unless prejudice results from the failure to follow proper procedure.” *Id.* Therefore, to prevail, Dalton must demonstrate that the MCHR had

a clear duty under current law to conduct its own inquiry into her retaliation claim and that she was prejudiced by the MCHR's failure to do so.

This case also requires us to interpret a statute. “The interpretation of statutory language is a question of law, and our review of it is de novo.” *Maxwell*, 190 S.W.3d at 610; *Wilson v. City of Kansas City*, 598 S.W.3d 888, 894 (Mo. banc 2020) (same).

### Analysis

Dalton raises three points on appeal. She argues that the circuit court erred in dismissing her writ petition because the MCHR (1) acted unlawfully in failing to perform its statutory duty to investigate her retaliation claim (Point I); (2) acted arbitrarily and capriciously in dismissing Dalton's retaliation claim without issuing a right-to-sue letter but issuing a right-to-sue letter on her subsequent sex discrimination claim, which was based on the same underlying facts (Point II); and (3) violated Dalton's procedural due process rights (Point III). We address each point in turn.

#### **I. The court did not err in denying Dalton's writ petition because the MCHR fulfilled its statutory duty to investigate Dalton's claim of retaliation.<sup>6</sup>**

In her first point, Dalton argues that the circuit court erred in denying her writ petition because the MCHR acted unlawfully in failing to perform its statutory duty to investigate her retaliation claim. Dalton's first point raises a narrow issue—whether the MCHR's reliance on the EEOC's interview of her and the MCHR's failure to conduct its own investigation of her retaliation

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<sup>6</sup> In her petition to the circuit court, Dalton also requested judicial review, and she begins the argument portion of her appellate brief with the standard for judicial review under § 536.150. As a person aggrieved by a decision of the MCHR, Dalton had the right to seek judicial review of that decision under § 536.150, which she did. Under § 536.150, a person may seek review of an administrative decision “by suit for . . . mandamus . . . or appropriate action.” The only specific relief sought in Dalton's petition was for a writ of mandamus, directing the MCHR to conduct further investigation. She also prayed generally “for all other relief the court deems just.” On appeal, she asks this court to reverse the circuit court's decision and either make the preliminary writ permanent, and order the MCHR to conduct an investigation, or, because more than 180 days have passed, remand the matter to the MCHR with direction to issue the right-to-sue letter. The circuit court held an evidentiary hearing at which Dalton testified. Thus, her claim was judicially reviewed. In upholding the MCHR's actions, the circuit court concluded that the efforts by the EEOC constituted an investigation upon which the MCHR could rely and that Dalton “apparently had no evidence to dispute the veracity of the reasons [for termination] provided by the employer” and therefore “lacks probable cause.”

claim was unlawful. Thus, the only question presented for our review is whether, as a matter of law, the MCHR's handling of Dalton's retaliation complaint constituted an investigation within the meaning of the Act and its implementing regulations.<sup>7</sup> We conclude that the MCHR fulfilled its statutory duty to investigate Dalton's complaint.

Among other things, the MCHR is authorized “[t]o receive, investigate, initiate, and pass upon complaints alleging discrimination in employment” and “[t]o cooperate, act jointly, [and] enter into cooperative or work-sharing agreements with the [EEOC] . . . to achieve the purposes of th[e Act].” §§ 213.030.1(7) and (12). “[A]ny person claiming to be aggrieved by an unlawful discriminatory practice shall make, sign and file with the [MCHR] a verified complaint in writing, within one hundred eighty days of the alleged act of discrimination . . . .” § 213.075.1. After receiving a complaint, the MCHR shall “promptly investigate the complaint” to determine whether “probable cause exists for crediting the allegations of the complaint.” § 213.075.3. “The investigation . . . shall be conducted according to such rules, regulations and guidelines as the commission shall prescribe.” *Id.* The MCHR's regulations state, in relevant part, “[i]nvestigations shall be accomplished by methods including, but not limited to, fact-finding conferences, personal interviews, written interrogatories, tests, requests for production of documents, books or papers, or other materials and reviews of investigations of other civil rights agencies.” 8 C.S.R.

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<sup>7</sup> Dalton's narrow framing of the issue is consistent with the Court's holding in *Martin-Erb v. Missouri Commission on Human Rights*, 77 S.W.3d 600 (Mo. banc 2002). There, the MCHR's executive director made a no-probable-cause finding and closed the complaint. *Id.* at 603. The complainant sought a writ of mandamus to compel the MCHR to follow its procedures, but the circuit court dismissed her petition, finding that the executive director's decision was unreviewable. *Id.* The Supreme Court disagreed, finding that, “while a court cannot compel the executive director to exercise her discretion so as to reach a particular result, it can compel her to follow the procedures set out in agency regulations for making the ‘probable cause’ determination, for the ‘[r]ules of a state administrative agency duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding upon the agency adopting them.’” *Id.* at 607 (quoting *Mo. Nat. Educ. Ass'n v. Mo. State Bd. of Mediation*, 695 S.W.2d 894, 897 (Mo. banc 1985)). “A failure to follow proper procedures in the exercise of discretion is an abuse of discretion controllable by mandamus, and the circuit court can compel her to exercise that discretion ‘so as to conform to lawful and just methods of procedure.’” *Id.* (quoting *Mangieracina v. Haney*, 141 S.W.2d 89, 92 (Mo. App. 1940)).

§ 60-2.025.(9) (2017). The question is whether the MCHR’s reliance on Dalton’s interview, conducted by an investigator for the EEOC, constitutes an investigation under the relevant statute and applicable rules.

The “primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.” *Karney v. Dep’t of Labor and Indus. Rels.*, 599 S.W.3d 157, 162 (Mo. banc 2020) (quoting *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009)). We “resort[] to other rules of statutory interpretation only when the plain meaning of the statute is ambiguous or defeats the purpose of the statute.” *Id.* As to investigations, we find the plain language of the Act and its implementing regulations unambiguous. “Without ambiguity, [we are] bound to give effect to the intent reflected in the [Act’s] plain language and cannot resort to other means of interpretation.” *Id.*

The Act plainly authorizes the MCHR to investigate complaints of discrimination and, in doing so, to enter into work-sharing agreements with the EEOC. §§ 213.030.1(7) and (12). And the regulations state, “[i]nvestigations shall be accomplished by methods *including, but not limited to*, . . . personal interviews . . . and reviews of investigations of other civil rights agencies.” 8 C.S.R. § 60-2.025.(9) (emphasis added). Neither the Act nor its implementing regulations define the term “investigate” or “investigation,” and nothing in the Act or regulations mandates that a particular investigative method be employed.<sup>8</sup> Instead, the decision of how to investigate a complaint is left largely to the MCHR’s discretion.

In support of a broad interpretation of the word “investigate,” Dalton contends that, once a complainant files a retaliation complaint with the EEOC/MCHR, an investigation is undertaken,

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<sup>8</sup> Dalton’s reliance on *State ex rel. Nixon v. Smith*, 280 S.W.3d 761 (Mo. App. W.D. 2009) is misplaced. There, this court addressed the Attorney General’s obligation to investigate before suing under the Missouri Incarceration Reimbursement Act (MIRA) for the costs of an inmate’s incarceration. That case is limited to the MIRA and has no bearing on the MCHR’s obligation to investigate a charge of discrimination under the Act.

and a right-to-sue letter is issued, the subsequent lawsuit may be broader than the initial complaint. Because a plaintiff may sue parties or on grounds uncovered during the investigation, Dalton argues that the investigation is intended to be more thorough than that provided here. But the fact that a subsequent suit may encompass claims the complainant did not identify in the initial complaint filed with the EEOC/MCHR does not change the plain language of the Act. While there may be cases where additional facts are discovered during the investigation, that does not mean that the MCHR's obligation to investigate should be interpreted to mean that, when facts are discovered that significantly undercut the claimant's allegations, the MCHR cannot rely on those facts to determine that no additional investigation is warranted.

Dalton's complaint was deemed filed with both the EEOC and the MCHR, and an EEOC investigator personally interviewed Dalton. The EEOC provided the MCHR with a copy of EEOC's confidential internal memorandum summarizing Dalton's interview and analyzing her charge. The memorandum reflected Dalton's acknowledgement that Legacy had articulated a non-discriminatory basis for her termination, that witnesses would support the non-discriminatory basis for her firing, and that she had no witnesses or documentation to support her belief that the termination was retaliatory. The EEOC investigator found that the case should be closed because "it is unlikely that further investigation would result in a [probable] cause finding[.]" After reviewing the investigation conducted by the EEOC, the MCHR adopted the findings of that investigation and terminated its proceedings on Dalton's retaliation claim. As a matter of statutory construction, the circuit court was correct in concluding that "the efforts of the EEOC constituted an investigation."<sup>9</sup> Thus, Dalton failed to demonstrate that the MCHR violated its duty to investigate by failing to conduct a separate inquiry into her retaliation claim.

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<sup>9</sup> In support of her argument that the plain meaning of "investigate" means more than an interview, Dalton cites a number of dictionary definitions suggesting that to investigate means to conduct a systematic inquiry. But we

Dalton next argues that, even if an interview of the complainant, such as that conducted by the EEOC, can be sufficient to satisfy the requirement of an investigation, the MCHR's statutory obligation to conduct an "investigation" was not satisfied here because (1) the MCHR is not authorized to rely on the EEOC's investigation or findings; and (2) the interview was conducted before the employer was notified of the complaint and responded to it. We disagree.

The term investigation is undefined but "shall be accomplished by methods including, but not limited to, . . . personal interviews . . . and *reviews of investigations of other civil rights agencies.*" 8 C.S.R. § 60-2.025.(9) (emphasis added). Thus, the implementing regulations clearly allow the MCHR to rely on the investigation of the EEOC. Further, nothing in the Act or regulations requires the MCHR to await a response from the employer before concluding an investigation. At some point, the MCHR has sufficient information to decide how to proceed with a complaint. And we are not prepared to say, as a matter of law, that an investigation will always be deficient where the MCHR decides how to proceed with a complaint without first receiving a response from the employer.<sup>10</sup>

Even assuming that the MCHR breached its duty to investigate Dalton's retaliation claim—a finding we do not make—Dalton failed to show that she was prejudiced by the MCHR's actions. To establish prejudice, Dalton had to show that the MCHR would have found probable cause with

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cannot substitute those definitions for the plain language of the regulation, which clearly states, "[i]nvestigations shall be accomplished by methods including, but not limited to, . . . personal interviews . . . and reviews of investigations of other civil rights agencies." 8 C.S.R. § 60-2.025.(9). Thus, the regulations clearly give the MCHR the discretion to determine how to conduct an investigation.

<sup>10</sup> Some arguments in the body of Dalton's brief appear to raise issues of whether the MCHR acted arbitrarily and capriciously or abused its discretion in relying solely on the EEOC's interview of Dalton to make a no-probable-cause finding because the EEOC's interview provided insufficient information from which the MCHR could make that finding. But "[i]ssues that are raised only in the argument portion of the brief and are not contained in the point relied on are not preserved for appellate review." *Hawley v. Tseona*, 453 S.W.3d 837, 842 n.6 (Mo. App. W.D. 2014) (quoting *Manzella v. Dir. of Revenue*, 363 S.W.3d 393, 395 (Mo. App. E.D. 2012)). Thus, our holding is limited to the narrow issue Dalton raised in her first point—whether, as a matter of law, the MCHR's handling of Dalton's retaliation complaint constituted an investigation.

respect to her retaliation claim had the MCHR conducted its own inquiry into that claim. *See Pub. Sch. Ret. Sys. of Sch. Dist. of Kansas City*, 188 S.W.3d at 44-45 (concluding that, to show prejudice from the MCHR's failure to notify a respondent of a complaint so as to afford the respondent an opportunity to present its position and prevent the issuance of a right-to-sue letter, the respondent "had to show that a determination of no probable cause would have been made by the MCHR and the proceeding dismissed within 180 days of the filing of the complaint, but for the alleged breach of the MCHR's duty to give notice"). Based on the record before us, Dalton failed to show that, if the MCHR had conducted its own inquiry into her retaliation claim, the MCHR would have found probable cause.

Based on Dalton's argument that additional facts are often discovered during the investigation, combined with her failure to identify any additional evidence that might have been discovered during further investigation, Dalton's position appears to be that the MCHR bears the burden to substantiate her claim and provide information upon which she can rely in later litigation. Stated another way, Dalton argues that, if a complainant's charge of discrimination states a claim, the MCHR must attempt to substantiate that claim, even if evidence comes to light early in the process that undercuts the complainant's allegations. We are not prepared to say as a matter of law that the Act requires the MCHR to continue to investigate complaints even after significant information is discovered that undercuts the validity of the claim.

For the foregoing reasons, the MCHR fulfilled its statutory duty to investigate Dalton's retaliation complaint; thus, the court did not err in denying her writ petition.

Point I is denied.

**II. Issuing a right-to-sue letter on Dalton’s sex discrimination claim does not demonstrate that the MCHR acted arbitrarily or capriciously in dismissing her retaliation claim.**

For her second point, Dalton asserts that the circuit court erred in dismissing her writ petition because the MCHR acted arbitrarily and capriciously in dismissing Dalton’s retaliation claim as evidenced by issuing a right-to-sue letter on her subsequent sex discrimination claim where both claims were based on the same underlying facts.<sup>11</sup> The MCHR’s actions were neither arbitrary nor capricious.

The MCHR is required to issue a right-to-sue letter when (1) a complaint has been filed with the MCHR, (2) 180 days have passed since the filing of the complaint without the MCHR having completed its review, (3) and the complainant submits a written request for a right-to-sue letter. § 213.111.1; 8 C.S.R. § 60-2.025.(7)(B)(6).<sup>12</sup> Dalton’s two complaints—one based on retaliation and the other based on sex discrimination—have different elements and defenses. Thus, the investigation of each claim may differ, resulting in different time lines for completion. The fact that the MCHR had access to the EEOC’s investigation of Dalton’s retaliation claim but the

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<sup>11</sup> Although the two claims are factually intertwined, they are not based on the exact same facts. In support of her sex discrimination claim, Dalton alleges that she was required to complete a personality and behavioral assessment before she was hired for an executive-level position, while male applicants for similar positions were not required to complete such assessments. Though her retaliation claim is based on her allegation that she was fired for complaining about what she perceived to be discriminatory conduct, it is her complaint and not the assessments themselves that are the basis for the retaliation claim.

<sup>12</sup> Section 213.111 states,

If, after one hundred eighty days from the filing of a complaint alleging an unlawful discriminatory practice . . . , the commission has not completed its administrative processing and the person aggrieved so requests in writing, the commission *shall* issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil action within ninety days of such notice against the respondent named in the complaint.

§ 213.111.1 (emphasis added). And 8 C.S.R. § 60-2.025.(7)(B)(6) provides that when the MCHR “has not completed its administrative processing within one hundred and eighty (180) days from the filing of the complaint and the person aggrieved requests in writing a notice of the right to bring a civil action in state court, the executive director . . . will administratively close the complaint and issue the notice.”

MCHR's investigation of her sex discrimination claim was ongoing does not mean that the MCHR acted arbitrarily or capriciously.

Likewise, the fact that the MCHR issued a right-to-sue letter on Dalton's sex discrimination claim but not on her retaliation claim does not reflect arbitrary or capricious action in view of the MCHR's mandate to issue a right-to-sue letter if 180 days have passed without the MCHR having completed its review, as happened here. And, in view of the MCHR's mandate, issuance of a right-to-sue letter on Dalton's sex discrimination claim because 180 days had passed is not a finding by the MCHR that Dalton's sex discrimination claim has merit. Thus, the premise of Dalton's second point—that, if there was sufficient evidence to issue a right-to-sue letter on her sex discrimination claim, then there was sufficient evidence to do the same with respect to her retaliation claim—fails because the right-to-sue letter was not issued because the MCHR found probable cause; rather, the letter was issued because the MCHR did not complete its investigation within 180 days and Dalton requested the letter. The mere fact that the MCHR issued Dalton a right-to-sue letter for her subsequent and separate complaint of sex discrimination does not render the MCHR's decision on her earlier retaliation complaint arbitrary or capricious.<sup>13</sup>

Point II is denied.

### **III. The MCHR did not violate Dalton's procedural due process rights.**

In her final point, Dalton contends that the circuit court erred in dismissing her petition because the MCHR violated her procedural due process rights. Specifically, Dalton argues that the Act creates a cognizable property interest—a suit for damages—and the MCHR denied Dalton

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<sup>13</sup> Dalton also argues that the Cole County Circuit Court's judgment in *Shahib v. Missouri Commission on Human Rights and Warren*, 18AC-CC00481 (filed Nov. 27, 2018), dictates a finding that the MCHR acted arbitrarily and capriciously in the present case. We disagree. The judgment of a circuit court is not binding on an appellate court, and we do not have the record in *Shahib* before us to compare the two cases. *White v. White*, 293 S.W.3d 1, 14 (Mo. App. W.D. 2009) (citing to Mo. Const. art. V, §§ 2-4 in holding that circuit court judgments are not binding authority). Moreover, the circuit court's judgment in *Shahib* appears to rest on an admission made by an MCHR witness in that case (Appellant's App., p. A.26); no such admission was made here.

the right to file a suit for damages on her retaliation claim without first affording her due process in the form of notice and a hearing.

Dalton’s third point fails for three reasons. First, nothing in the Act requires the MCHR to hold a hearing before it grants or denies a probable cause letter. If Dalton finds the lack of an administrative hearing requirement problematic, she could have challenged the constitutionality of the Act, which she did in her petition, but not on appeal. “Issues not raised on appeal are considered waived.” *State v. Lucas*, 452 S.W.3d 641, 643 n.3 (Mo. App. W.D. 2014) (quoting *Brunig v. Humburg*, 957 S.W.2d 345, 347 n.2 (Mo. App. E.D. 1997)).

Second, Dalton’s third point is based on a faulty premise—that she has a right to a civil suit for damages based on her retaliation claim. The Act does not afford her that right because the Act does not give a claimant an automatic right to sue; the claimant must first obtain a right-to-sue letter from the MCHR. And nothing in the Act requires the MCHR to issue a right-to-sue letter in every case. To the contrary, the Act authorizes the MCHR to issue a right-to-sue letter only where

after one hundred eighty days from the filing of a complaint . . . the commission has not completed its administrative processing and the person aggrieved so requests in writing, the commission shall issue . . . a letter indicating his or her right to bring a civil action . . . . The commission may not at any other time or for any other reason issue a letter indicating a complainant’s right to bring a civil action.

§ 213.111.1.

Third, as Dalton acknowledges in her brief, the MCHR issued its decision in a non-contested case, meaning it is “a decision that is not required by law to be determined after a hearing.” *State ex rel. Robison v. Lindley-Myers*, 551 S.W.3d 468, 471 (Mo. banc 2018) (quoting *Furlong Cos., Inc. v. City of Kansas City*, 189 S.W.3d 157, 165 (Mo. banc 2006)). In a non-contested case, the claimant must try his or her claim in court rather than before the agency. *Id.* That is precisely what Dalton did. She sought review of the MCHR’s decision to circuit court

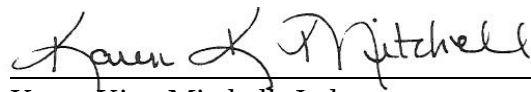
under § 536.150. The court held an evidentiary hearing on Dalton's petition, and she testified. Based on the evidence presented, the court denied the relief Dalton sought.

For these reasons, the MCHR did not violate Dalton's due process rights.

Point III is denied.

### **Conclusion**

The circuit court did not err in denying Dalton's petition; therefore, we affirm the circuit court's judgment.

  
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Karen King Mitchell, Judge

Lisa White Hardwick, Presiding Judge, and Thomas H. Newton, Judge, concur.