

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI ex rel. STEPHANIE DALTON,

Appellant,

v.

MISSOURI COMMISSION ON HUMAN RIGHTS, et al.,

Respondents.

DOCKET NUMBER WD83336

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 29, 2020

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

JUDGES

Division Two: Hardwick, P.J., and Newton and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Joshua Pierson, St. Louis, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, Jefferson City, MO, and Amanda R. Langenheim, Assistant Attorney General, Kansas City, MO, Attorneys for Respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI ex rel. STEPHANIE DALTON, Appellant,
v.
MISSOURI COMMISSION ON HUMAN RIGHTS, et al., Respondents.

WD83336

Cole County

Before Division Two Judges: 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; (2) acted arbitrarily and capriciously in dismissing her 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; and (3) violated her procedural due process rights. Finding no error, we affirm.

AFFIRMED.

Division Two holds:

1. A party may appeal the denial of a writ petition when a lower court has issued a preliminary writ but denies a permanent writ; we review the denial of a writ petition for abuse of discretion, which occurs when the lower court misapplies the law.
2. Mandamus is a discretionary writ and will issue only when there is a clear, unequivocal, and present right to the relief requested and prejudice would result from failure to grant relief.
3. The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue. We review questions of statutory interpretation *de novo*.
4. The Missouri Human Rights Act (the Act) requires the MCHR to investigate complaints of employment discrimination to determine whether there is probable cause to credit the allegations. In doing so, the MCHR is authorized to enter into work-sharing agreements with the Equal Employment Opportunity Commission (EEOC). Any complaint filed with the EEOC is deemed filed with the MCHR.

5. The Act and implementing regulations do not define the term “investigate” or “investigation,” but the regulations plainly authorize several investigative methods including, but not limited to, personal interviews and reviews of investigations of other civil rights agencies. Thus, the regulations clearly give the MCHR the discretion to determine how to conduct an investigation and to rely on an investigation conducted by the EEOC.
6. Dalton’s retaliation 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 claim. The memorandum reflected Dalton’s acknowledgement that her former employer 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.
7. 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 MCHR’s reliance on the interview of Dalton conducted by an EEOC investigator constituted an investigation under the Act and regulations. Thus, Dalton failed to demonstrate that the MCHR violated its duty to investigate by failing to conduct a separate inquiry into her retaliation claim.
8. Even assuming that the MCHR had breached its duty to investigate Dalton’s retaliation claim—a finding we do not make—she 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 respect to her retaliation claim had the MCHR conducted its own inquiry into that claim. Based on the record before us, Dalton failed to make that showing. Thus, the circuit court did not err in denying Dalton’s writ petition.
9. 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.
10. The 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.
11. The MCHR is authorized to issue a right-to-sue letter only 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.
12. 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 of Dalton’s sex discrimination claim within 180 days and Dalton requested the letter.

13. The MCHR did not violate Dalton’s procedural due process rights because: (1) nothing in the Act requires the MCHR to hold a hearing before it grants or denies a right-to-sue letter; (2) the Act does not afford Dalton an automatic right to a civil suit for damages; she must first obtain a right-to-sue letter, and nothing in the Act requires the MCHR to issue a right-to-sue letter in every case; and (3) Dalton received all the due process to which she was entitled.

14. In a non-contested case, the claimant must try her claim in court rather than before the agency. Dalton appealed the MCHR’s decision in circuit court, which held an evidentiary hearing on Dalton’s petition, and she testified.

Opinion by: Karen King Mitchell, Judge

December 29, 2020

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.