MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

MOHAMMAD Q. NAJIB,	Respondent
v.	
MISSOURI COMMISSION ON HUMAN RIGHTS, ET AL.; and	Appellants
MERCY CLINIC JOPLIN.	Appellant

DOCKET NUMBER WD84344 consolidated with WD84443 and WD84454

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 8, 2022

Appeal From:

Circuit Court of Cole County, MO
The Honorable Jon Edward Beetem, Judge

Appellate Judges:

Division Three
Anthony Rex Gabbert, P.J., Lisa White Hardwick and Thomas N. Chapman, JJ.

Attorneys:

James Paul, St. Louis, MO	Counsel for Appellant Mercy Clinic
Andrew Metcalf, St. Louis, MO	Co-Counsel for Appellant, Mercy Clinic
Sara Rittman, Jefferson City, MO	Counsel for Appellants, Warren and MO. Commission

Attorneys:

Joan Swartz, Maplewood, MO	Counsel for Respondent for Respondent, Najib
Jenifer Snow, Maplewood, MO	Co-Counsel for Respondent, Najib
Ryan Shaughnessy, O'Fallon, IL	Co-Counsel for Respondent, Najib

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MOHAMMAD Q. NAJIB, Respondent,
v.
MISSOURI COMMISSION ON HUMAN RIGHTS, ET AL., Appellants; and MERCY CLINIC JOPLIN, Appellant.

WD84344 (consolidated with WD84443 and WD84454) **Cole County**

Before Division Three Judges: Anthony Rex Gabbert, P.J., Lisa White Hardwick and Thomas N. Chapman, JJ.

The Missouri Commission on Human Rights (the "Commission"); Alisa Warren, Executive Director of the Commission, in her official capacity (the "Executive Director"); and Mercy Clinic Joplin, LLC ("Mercy") appeal a judgment of the Circuit Court of Cole County, which (1) granted summary judgment in favor of Mohammad Najib ("Najib") on his petition for a permanent writ of mandamus; (2) directed the Commission to rescind and set aside the portion of its April 16, 2020 determination that denied Najib a right-to-sue letter; and (3) directed the Commission to issue Najib a right-to-sue letter on his allegations occurring on and after August 28, 2017.

The Commission and the Executive Director contend that the Commission was required to withhold issuance of a right-to-sue letter until it had made a determination that it had authority over Najib's complaint, and that Najib was not entitled to a right-to-sue letter because it was disputed whether the alleged employer in Najib's complaint was an "employer" under the Missouri Human Rights Act. Mercy contends that Najib failed to establish that he submitted a request for a right-to-sue letter after his complaint had been pending for 180 days; that the Commission had no authority to issue a right to sue letter until it had made a determination regarding whether Mercy qualified as an "employer" under the Missouri Human Rights Act; and that the Commission had authority to dismiss Najib's complaint after 180 days on the grounds that Mercy was either owned or operated by a religious organization.

AFFIRMED.

Division Three holds:

The circuit court did not err in ordering the Commission to issue to Najib a right-to-sue letter pursuant to section 213.111.1, RSMo, and to rescind the portion of the Commission's prior determination that denied a right-to-sue letter. The Commission had authority to (and was required to) issue to Najib a right-to-sue letter at Najib's request once 180 days had passed

without the Commission having completed its administrative processing of Najib's complaint. Although there was a dispute regarding whether Mercy met the definition of "employer" under the Missouri Human Rights Act, this dispute did not deprive the Commission of authority with respect to Najib's complaint. The Commission had authority to begin investigating and administratively processing Najib's complaint based on the allegations of the complaint. The Commission never made a determination regarding the disputed allegation within 180 days. At that point, pursuant to Najib's request for a right-to-sue letter, the Commission had no authority to continue processing Najib's complaint or to make determinations regarding the merits of the complaint. Rather, the Commission was required to issue the right-to-sue letter and terminate its proceedings pursuant to section 213.111.1.

A written request for a right-to-sue letter is not a nullity when such a request is made prior to the expiration of 180 days from the filing of a complaint. Rather, such a request serves the purpose of notifying the Commission of the complainant's election to forego administrative remedies in pursuit of the remedies available in a civil action. As such, requests made to the Commission prior to the expiration of 180 days become effective upon the expiration of 180 days.

Opinion by: Thomas N. Chapman, Judge March 8, 2022

* * * * * * * * * * * * * * * * * *

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