

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

Factual and Procedural History

Employer is a Missouri corporation with its principal place of business located in Kansas City, Missouri. In 2013, Employee, a resident and citizen of Louisiana, began working for Employer. Employee worked for Employer from her home in Louisiana and has never worked for Employer while physically located in the state of Missouri.

Throughout her employment, Employee communicated with her supervisors electronically via email or phone to her supervisors' locations in Missouri. At all times relevant to the allegations in her petition, Employee was a female over the age of forty and suffered from Dyslexia.

Employee alleges that during her employment as a recruiter, she was subject to numerous discriminatory acts at the hands of her primary supervisor ("Supervisor")¹ in violation of the MHRA, §§ 213.010-.137.² Employee alleges that she was a top recruiter for Employer but that Supervisor micromanaged her work and would never consider ideas she presented to him. Employee alleges that Supervisor treated younger, male, and non-disabled employees better than her. When Employee complained to Employer about Supervisor's behavior, specifically stating she thought she was being discriminated against because of her age, sex, and disability, Employer failed to take corrective action. On November 1, 2022, Supervisor demoted Employee and stripped her of recruiting

¹ Pursuant to Missouri Supreme Court Operating Rule 2.02(c), we do not identify the names of non-party witnesses.

² All statutory references are to THE REVISED STATUTES OF MISSOURI (2016), as supplemented through November 1, 2022, unless otherwise indicated.

duties. Employee alleges Supervisor made the decision to demote her while Supervisor was located in Missouri.

On December 8, 2022, Employee timely filed a Charge of Discrimination with the Missouri Commission on Human Rights, alleging discrimination and retaliation under the MHRA. On August 29, 2023, the Commission issued Employee a notice of her right to sue Employer.

Employee then filed a petition against Employer and subsequently filed an amended petition on January 12, 2024. On January 19, 2024, Employer moved the circuit court to dismiss Employee's amended petition, alleging that Employee had failed to state a claim upon which relief may be granted because the MHRA applies only within the boundaries of Missouri, and Employee is a Louisiana citizen and resident.

The circuit court dismissed Employee's petition without prejudice but did not state the reason for its decision. Employee timely appealed, arguing the circuit court erred in granting the motion to dismiss because she had stated an actionable claim under the MHRA.³

³ Although Employee appealed from a dismissal without prejudice, this Court has jurisdiction to review her appeal. "The general rule is that a dismissal without prejudice is not a 'final judgment' and, thus, is not appealable." *Duvall v. Mo. Bd. of Prob. & Parole*, 708 S.W.3d 878, 883 (Mo. App. W.D. 2025). However, an exception exists where the plaintiff elects to stand on their petition as filed:

When the effect of the order is to dismiss the plaintiff's action and not the pleading merely, then the judgment entered is final and appealable. The dismissal without prejudice for failure of the petition to state a claim, when the party elects not to plead further, amounts to a determination that the plaintiff has no action. In such a case, the judgment of dismissal—

Standard of Review

This Court reviews the [circuit] court’s grant of a motion to dismiss *de novo*. A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition. When considering whether a petition fails to state a claim upon which relief can be granted, this Court must accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorably to the pleader. When the circuit court does not specify its reasons for dismissing a plaintiff’s petition, this Court presumes the circuit court’s dismissal was based on one of the reasons stated in the motion to dismiss. The circuit court’s dismissal will be affirmed if justified on any ground advanced in the motion to dismiss.

Tuttle v. Dobbs Tire & Auto Ctrs., Inc., 590 S.W.3d 307, 310 (Mo. banc 2019) (citation modified).

Analysis

Employee raises two points on appeal. In Point I, Employee argues the circuit court erred in dismissing her petition because the plain text of the MHRA does not require that an employee suffer adverse employment action while present in the state of Missouri. Point II argues the circuit court erred in dismissing her petition because she

albeit without prejudice—amounts to an adjudication on the merits and may be appealed.

Mahoney v. Doerhoff Surgical Servs., Inc., 807 S.W.2d 503, 506 (Mo. banc 1991) (citations omitted); *see also Est. of Williams v. Bauman*, 660 S.W.3d 658, 662 (Mo. App. W.D. 2023) (“The judgment is final because the plaintiffs’ decision to stand on their petition as filed and to appeal, rather than bring another action, estops the plaintiffs from bringing another action in the future for the same cause.” (citation modified)). In this case, Employee did not seek leave from the circuit court to further amend her petition but instead chose to stand on the allegations in her petition and appeal. Therefore, the circuit court’s dismissal without prejudice is final, and this Court has jurisdiction to review Employee’s appeal.

suffered adverse employment action as required by the MHRA. Because both points turn on the same analytical framework set forth in *Tuttle*, we address them together.

“The MHRA protects important societal interests by prohibiting unlawful employment practices on the basis of race, color, religion, national origin, sex, ancestry, age, or disability.” *Kader v. Bd. of Regents of Harris-Stowe State Univ.*, 565 S.W.3d 182, 186 (Mo. banc 2019) (emphasis omitted) (quoting *Howard v. City of Kansas City*, 332 S.W.3d 772, 779 (Mo. banc 2011)); *Tuttle*, 590 S.W.3d at 310; § 213.055.1(1)(a) (It is an “unlawful employment practice . . . [f]or an employer, because of the race, color, religion, national origin, sex, ancestry, age or disability of any individual[,] [t]o fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . .”). An “unlawful discriminatory practice” is “any act that is unlawful under this chapter.” *Tuttle*, 590 S.W.3d at 310 (quoting § 213.010(18) (2016)). “The MHRA requires that a person be aggrieved by an unlawful discriminatory practice before filing a complaint with the MCHR.” *Id.* (citing §§ 213.075.1, 213.111.1 (2016)).

Although “aggrieved” is not defined by the MHRA, our Supreme Court has held that to bring an actionable claim under the MHRA, a plaintiff must have suffered an adverse impact from an unlawful discriminatory practice *while physically present in the state of Missouri*. *Id.* at 310-11 (“*Tuttle* was not aggrieved until the alleged discriminatory practice resulted in an adverse impact, but that adverse impact *occurred in Illinois*. *Tuttle* does not dispute that the manner in which he was aggrieved is his loss of wages in Illinois, benefits of his employment in Illinois, and mental anguish arising from his constructive discharge from his Illinois job. Taking all of these allegations as true, all

of the adverse impact alleged by Tuttle *occurred in Illinois*.” (emphasis added)); *State ex rel. Anheuser-Busch, LLC v. Moriarty*, 589 S.W.3d 567, 571 (Mo. banc 2019) (“Because Tuttle’s claims of adverse impact—specifically the loss of Illinois wages, loss of benefits of his Illinois employment, and mental anguish arising from his discharge from his Illinois job—all *occurred outside of Missouri*, the MHRA does not provide a remedy.” (emphasis added)).

That construction of the MHRA, the Supreme Court has held, is supported by “the longstanding presumption that Missouri statutes, absent express text to the contrary, apply only within the boundaries of this state and have no extraterritorial effect.” *Tuttle*, 590 S.W.3d at 311 (citing *Rositzky v. Rositzky*, 46 S.W.2d 591, 595 (Mo. 1931); *Stanley v. Wabash St. L. & P. Ry. Co.*, 13 S.W. 709, 710 (Mo. 1890)). Thus, it is well-settled law that Employee must plead she suffered an adverse impact while *physically present* in the state of Missouri in order to survive a motion to dismiss.⁴

⁴ Employee cites *State ex rel. Hollins v. Pritchett*, 395 S.W.3d 600 (Mo. App. S.D. 2013), for the proposition that a plaintiff can bring a claim under the MHRA if an employer made a discriminatory decision in Missouri, regardless of whether the employee is physically present in Missouri at the time she suffered discrimination. *Pritchett* involved a single point on appeal challenging proper venue under the MHRA. *Id.* at 601. “While the location of an employer’s decision-making may be an appropriate inquiry in determining the proper venue to file a lawsuit under the MHRA, it is inapposite to the present case. Venue is a relevant consideration only once a claim upon which relief can be granted is established.” *Tuttle v. Dobbs Tire & Auto Ctrs., Inc.*, 590 S.W.3d 307, 311 n.9 (Mo. banc 2019). Venue is not at issue in this appeal, so *Pritchett*’s discussion of the decision-making process occurring in Missouri is not relevant here.

Employee first contends that *Tuttle* is not controlling precedent. Puzzlingly, she cites *Tuttle* as the applicable Missouri Supreme Court governing law in her brief, yet urges this Court to ignore the *Tuttle* holding for several reasons.

First, Employee argues that requiring a plaintiff to suffer an adverse impact within the territorial boundary of Missouri is “legally wrong,” required the *Tuttle* court to “add words” to the MHRA’s text, and is not within the spirit of the Act.⁵ *Even if* this court were to agree with Employee, as an intermediate court of appeals, “[w]e are constitutionally bound to follow the most recent controlling decision of the Supreme Court of Missouri.” *State v. Clinch*, 335 S.W.3d 579, 584 (Mo. App. W.D. 2011) (quoting *State v. Keightley*, 147 S.W.3d 179, 184-85 (Mo. App. S.D. 2004)). Missouri Supreme Court precedent, including the decision in *Tuttle*, is binding on this Court. Further, the *Tuttle* legal principles were reaffirmed in *Moriarty*, when the Supreme Court

⁵ Many of the arguments Employee brings on appeal are identical to the arguments set forth in the dissenting opinion in *Tuttle*. *See Tuttle*, 590 S.W.3d at 312-15 (Draper, C.J., dissenting) (arguing that the plain text of the MHRA does not require a plaintiff to demonstrate she suffered an adverse impact in Missouri, that an employer’s discriminatory decision made in the state of Missouri is sufficient to bring an actionable claim, and that the purpose of the Act is to regulate the conduct of Missouri employers); *see also State ex rel. Anheuser-Busch, LLC v. Moriarty*, 589 S.W.3d 567, 571-72 (Mo. banc 2019) (“Like *Tuttle*, Esser alleges he can invoke the protections of the MHRA because the alleged discriminatory decision making process occurred in Missouri. Several adverse impacts allegedly arose from this process, including lower performance reviews in regards to his Iowa job, loss of wages and employment benefits from his Iowa job, emotional distress because of actions taken toward his Iowa job, and demotion from his Iowa job. . . . Taking all of Esser’s allegations as true, the only place where he may have been aggrieved or suffered an adverse impact from an allegedly discriminatory practice is Iowa.”). The majority of the Missouri Supreme Court rejected these arguments in *Tuttle*, and we are thus required to reject Employee’s arguments for the same reasons.

held that *Tuttle*'s legal reasoning "applie[d] with equal force" where a plaintiff alleged unlawful discrimination, but any adverse impact he suffered occurred outside the state of Missouri. 589 S.W.3d at 571. "If these precedents require reexamination, the issue should be properly preserved and addressed by the Supreme Court of Missouri." *State v. Bodine*, 702 S.W.3d 514, 517 (Mo. App. S.D. 2024).

Employee next argues that, even if *Tuttle* is controlling precedent, that case is distinguishable because she worked *from her home*, while the plaintiff in *Tuttle* worked *in-person* at an Illinois "brick and mortar" location. In *Tuttle*, an Illinois resident and employee sued his former employer, a corporation formed and headquartered in Missouri, alleging discrimination and retaliation under the MHRA because of his age. *Tuttle*, 590 S.W.3d at 309-10. Defendant Dobbs Tire operated multiple locations in Missouri and Illinois, but *Tuttle* worked exclusively at an Illinois store location. *Id.* at 309. *Tuttle* alleged he suffered age discrimination and retaliation during the course of his employment at the Illinois store. *Id.* at 309-10. *Tuttle*'s central argument on appeal was that he had brought an actionable claim under the MHRA because, though he himself was never physically located in Missouri when he suffered discrimination, certain discriminatory decisions or actions made against him by his employer occurred in Missouri. *Id.* at 312. Rejecting *Tuttle*'s argument, the Supreme Court held that "the express language of the MHRA, coupled with the presumption against extraterritorial application of [the] laws [of the state of Missouri], preclude[d] th[e] Court from applying the MHRA to his claims" and affirmed the circuit court's dismissal of his petition because any discriminatory act *Tuttle* suffered occurred in Illinois, not Missouri. *Id.*

The issues raised in this appeal are directly analogous to *Tuttle*—Employee seeks to recover under the MHRA for alleged discriminatory acts she suffered at the hands of a Missouri corporation, but all of the alleged discriminatory acts occurred while she was physically located outside of the state of Missouri. That Employee worked remotely from her home in Louisiana rather than at a “brick and mortar” location in Louisiana is of no consequence. The territorial location in which the employee suffered an adverse impact, not the nature of that location, determines whether an employee has an actionable claim under the MHRA. *See id.* at 312 (holding the plaintiff must have suffered an adverse impact in Missouri to bring an actionable claim); *see also Moriarty*, 589 S.W.3d at 572 (“Because Esser [who also worked remotely from a home office in Iowa] was aggrieved solely in Iowa, the MHRA does not provide him with relief.”).

Employee has failed to plead facts in her amended petition that entitle her to relief under the MHRA.⁶ “While [Employee] may have been aggrieved, [s]he was aggrieved in [Louisiana].” *Tuttle*, 590 S.W.3d at 312. This Court cannot apply the MHRA to a “purely extraterritorial event.” *Id.* As such, Employee has failed to state a claim upon which relief can be granted.⁷ Therefore, the circuit court did not err in dismissing Employee’s amended petition.

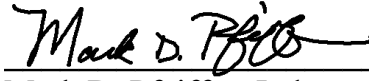
Points I and II are denied.

⁶ “Missouri is a fact-pleading state.” *Tuttle*, 590 S.W.3d at 311 n.8. It is not sufficient for Employee to have pleaded the requisite elements for discrimination and retaliation claims under the MHRA. She must also specify the “*act[s] or adverse impact[s]* that occurred in Missouri.” *Id.* (emphasis added).

⁷ Our decision today in no way prevents Employee from seeking a remedy under Louisiana or federal law, should one exist.

Conclusion

The judgment of the circuit court is affirmed.

A handwritten signature in black ink, appearing to read "Mark D. Pfeiffer", written over a horizontal line.

Mark D. Pfeiffer, Judge

Alok Ahuja, Presiding Judge, and Karen King Mitchell, Judge, concur.