NO. 24-1807

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

PHILLIP BERRY,

Appellant/Plaintiff,

v.

ST. LOUIS PUBLIC SCHOOLS,

Appellee/Defendant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
JUDGE RONNIE L. WHITE
CASE NO. 4:23-CV-01183

REPLY BRIEF OF APPELLANT/PLAINTIFF

JERRYL T. CHRISTMAS #45370MO
6101 Delmar Blvd.
St. Louis, MO 63112
314-588-7105
314-361-2525 Fax
christmaslaw@yahoo.com

Counsel for Appellant Phillip Berry

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I. Introduction

The issue on appeal in this employment discrimination case is whether the district court erred in dismissing Plaintiff's federal discrimination claims as untimely. The answer is yes, the district court erred, and should not have dismissed Plaintiff's claims, which were filed in the state court within the Equal Employment Opportunity Commission's ("EEOC's") 90-day time period. Appellant/Plaintiff Phillip Berry ("Berry") filed a petition for employment discrimination in violation of Missouri state law in St. Louis County Circuit Court against Appellee/Defendant St. Louis Public Schools ("STLPS") on August 24, 2022 ("Original Petition"). On September 21, 2022, Berry was issued a Notice of Right to Sue letter by the EEOC based on the same set of facts that were alleged in the state court complaint. Eighty-nine days later, on December 19, 2022, Berry filed his Second Amended Petition, adding federal discrimination claims to his state court lawsuit. Berry did not file a motion for leave to amend his complaint until January 10, 2023. On STLPS's motion to strike all Berry's claims as untimely, Berry's state law claims were dismissed, but the federal claims were not.

STLPS then removed the case to the U.S. District Court for the Eastern District of Missouri based on federal question jurisdiction, which court returned the matter to the state court for lack of jurisdiction, as it was unclear whether leave had

been granted regarding Berry's Second Amended Petition. Upon Berry's motion, the Circuit Court clarified that leave had been granted for Berry to file his Second Amended Petition and the federal claims contained in the Second Amended Petition were deemed filed as of December 19, 2022, the date Berry filed the Second Amended Petition in the Circuit Court. The case was removed again, and STLPS filed a Motion to Dismiss, which was granted by the district court. In granting the Motion to Dismiss, the district court incorrectly decided the operative date for Berry's Second Amended Petition was the date his Motion for Leave to Amend was filed, not the date his Second Amended Petition was filed, and dismissed the claims as untimely. The district court should not have dismissed Berry's claims, as they were filed within the 90-day EEOC time-period, and provided sufficient notice as to not prejudice STLPS.

II. The cases relied upon by STLPS are distinguishable

In support of its position that Berry's federal discrimination claims were untimely and that allowing Berry to proceed would prejudice STLPS, STLPS relies on *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 152 (1984); *Hales v. Casey's Marketing Co.*, 886 F.3d 730, 736 (8th Cir. 2018); *Kozlov v. Associated Wholesale Grocers, Inc.*, 818 F.3d 380, 395 (8th Cir. 2016); *Perry v. Seton Center, Inc.*, Civil Action Number 10-00920-CV-W-JTM, 2011 WL 13238695, at *1-2 (W.D. Mo. Jan. 24, 2011); *Norman v. Massey Enterprises*, No. 1:17 CV 194 SNLJ, 2019 WL

2357360, at *2 (E.D. Mo. June 4, 2019); and *Henderson v. Bolanda*, 253 F.3d 928, 932 (7th Cir. 2001). These cases are factually distinguishable from the present case.

In *Baldwin*, the plaintiff filed her right-to-sue letter with the district court within 90 days of receiving it from the EEOC but did not file a complaint until 130 days after issuance of the right-to-sue letter. 466 U.S. at 148. The district court dismissed the suit, holding the plaintiff's filing of the right-to-sue letter did not qualify as a complaint under Fed. R. Civ. P. 8 because there was no statement in the letter of the factual basis for the claims. *Id.* at 148-49. This Court reversed the district court, and the United States Supreme Court reversed this Court, agreeing with the district court that the filing of right-to-sue letter with the district court did not satisfy the requirement that a "complaint" be filed within 90 days. *Id.* at 150. The Supreme Court also noted that although the application of Fed. R. Civ. P. 15(c), which provides that amendment of a pleading "relates back" to the date of the original pleading, was not raised by the parties or the lower court, the complaint filed in that case could not "relate back" to filing of the right-to-sue letter.

> The rationale of Rule 15(c) is that a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitations were intended to provide. 3 J. Moore, Moore's Federal Practice para. 15.15[3], p. 15-194 (1984). Although the Federal Rules of Civil Procedure do not require a claimant to set forth an intricately detailed description of the asserted basis for relief, they do require that the pleadings "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson,*

> 355 U.S. 41, 47, 78 S. Ct. 99, 102, 2 L. Ed.2d 80 (1957). Because the initial "pleading" did not contain such notice, it was not an original pleading that could be rehabilitated by invoking Rule 15(c).

Id. at 149 n.3.

The present case is factually distinguishable from *Baldwin* because Berry's Second Amended Petition was filed within 90 days of the EEOC's issuance of his right-to-sue notice and does qualify as a "complaint" under Rule 8, because the Second Amended Petition provides a factual basis for Berry's discrimination claim. Additionally, both the Original Petition and the Second Amended Petition provided the requisite notice to Defendant such that Rule 15(c) is applicable. Berry did not merely file a copy of his right-to-sue letter, he filed a valid complaint which contained the requisite factual allegations. Applying *Baldwin* to the present facts, this is exactly the type of case where granting leave to amend and relating it back to the date of the Second Amended Petition's filing was warranted.

STLPS also cited *Henderson*, 253 F.3d at 932, to support its argument that the relation back doctrine does not apply when the original filing was untimely. In *Henderson*, the plaintiff filed two separate § 1983 actions related to the same alleged unlawful arrest, both of which were filed beyond the statute of limitations period. *Id.* at 931-32. The district court correctly dismissed the actions, which the Seventh Circuit affirmed. *Id.* In *Henderson*, the plaintiff did not file anything whatsoever until after the deadline for filing had passed. That is not the case here, where Berry

filed two filings in the state court within the 90-day EEOC time-period which provided the facts necessary to make his filing a valid complaint.

In *Hales*, 886 F.3d 730, the district court decided that the plaintiff's filing of an EEOC claim did not equitably toll the 90-day period for filing claims under the Iowa civil rights statute. *Id.* at 734. Because the plaintiff's lawsuit was filed in the district court after both the state law's 90-day period and the EEOC's 90-day limitation period (for the retaliation claim only; the hostile work environment claim was timely due to a separate EEOC filing), this Court affirmed the district court's dismissal of the claims as untimely. *Id.* at 735. The present case is distinguishable from *Hales* in that Plaintiff's Second Amended Petition was filed within the EEOC's 90-day limitation period. Similarly, in *Norman*, the district court dismissed the plaintiff's claims when the plaintiff did not file her state law or federal discrimination claims until after the 90-day time periods required by the EEOC and the Missouri Human Rights Act. 2019 WL 2357360, at *2. In *Hales* and *Norman*, there was no filing within the EEOC time-period and, thus, no notice to the defendants of the plaintiff's claims until after the 90-day period. That is not the case here.

STLPS cites *Kozlov*, 818 F.3d 380, and *Perry*, 2011 WL 13238695, in support of its position that leave to amend should not have been granted. In *Kozlov*, the district court denied a motion for leave to amend when the motion came four years after the filing of the complaint and two months prior to trial. 818 F.3d at 395. In

affirming the district court, this Court noted that, given the amount of time that had passed since the filing of the complaint and that the motion was made on the eve of trial and would cause prejudice and further delay, denial of leave to amend was appropriate. *Id.* In *Perry*, the plaintiff filed a discrimination suit under state law and 42 U.S.C. § 1981 in Missouri Circuit Court. 2011 WL 13238695, at *1. The case was removed, the plaintiff dropped her § 1981 claim, and the defendant filed a motion to dismiss based on the untimeliness of the filing of the state law discrimination claims under Missouri law. *Id.* The plaintiff's only response to the motion to dismiss was a motion for leave to amend to restore the § 1981 claim that had been previously dropped. *Id.* In denying leave to amend, the district court noted that "parties should usually be given at least one chance to amend their complaint." *Id.* at *2 (citing *Wisdom v. First Midwest Bank of Poplar Bluff*, 167 F.3d 402, 409 (8th Cir. 1999)). Because the plaintiff was seeking a second amendment, "such leniency" was "less essential." *Id.* Unlike the plaintiff in *Kozlov*, Berry is not seeking to amend his complaint four years after the original filing or on the eve of trial. Unlike *Perry*, Berry is not seeking to amend his complaint a second time, nor is he attempting to resume a claim that he has voluntarily dropped. *Kozlov* and *Perry* are factually distinguishable from the present case.

Here, Berry is seeking what justice requires—for the federal district court to recognize that his claims were timely filed and that allowing him to proceed would

not prejudice STLPS, who had more than enough notice to be made aware of the cause of action within the EEOC's 90-day time period. Unlike the cases cited in STLPS's brief, the granting of Berry's leave to amend and the decision to relate the amendment back to the date of its actual filing in the state court is warranted by the facts and does not prejudice STLPS. The fact that STLPS removed the case to the federal court based on federal question jurisdiction, not once but twice, underscores this conclusion.

CONCLUSION

In granting the Appellee's Motion to Dismiss, the trial court wrongly decided that Appellant's federal discrimination claims were untimely. For the reasons stated herein and in Appellant's opening brief, this Honorable Court should reverse the decision of the trial court and remand for further proceedings.

JERRYL T. CHRISTMAS
6101 Delmar Blvd.
St. Louis, MO 63112
314-588-7105
314-361-2525 Fax
christmaslaw@yahoo.com

Counsel for Appellant Phillip Berry

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(g)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 1737 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: January 23, 2025

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JERRYL T. CHRISTMAS
Counsel for Appellant Phillip Berry

STATEMENT OF COMPLIANCE WITH RULE LOCAL RULE 28A(h)(2)

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JERRYL T. CHRISTMAS
Counsel for Appellant Phillip Berry

CERTIFICATE OF SERVICE

I certify that on January 23, 2025, I electronically filed this Reply Brief with the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants are registered CM/ECF users and that service will be established by that system.

Date: January 23, 2025

JERRYL T. CHRISTMAS
Counsel for Appellant Phillip Berry