WHAT IT MEANS TO BE EXCLUSIVE: THE OVERRULING OF KARST AND THE EFFECT ON THE WCA'S EXCLUSIVITY PROVISION

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INTRODUCTION

In *Daniel v. City of Minneapolis*, the Minnesota Supreme Court considered the question of whether the exclusivity provision of the Workers' Compensation Act ("WCA") prevents an employee from separately pursuing claims of disability discrimination under the Minnesota Human Rights Act ("MHRA"). 923 N.W.2d 637 (Minn. 2019).

In December 2015, Keith Daniel, a firefighter, sued the City of Minneapolis ("the City"), alleging claims under both the WCA and the MHRA. *Id.* at 643. He settled his workers' compensation claims with the City in June 2016, but continued to pursue his MHRA claims, which alleged that the City failed to provide him with a reasonable accommodation, specifically by prohibiting him from wearing prescribed tennis shoes, and retaliated against him for seeking the accommodation. *Id.* The district court denied the City's motion for summary judgment on these remaining MHRA claims, determining that the WCA's exclusivity provision did not bar Daniel from raising discrimination claims. *Id.*

The Minnesota Court of Appeals disagreed with the district court, reversing the district court's order and remanding the case. *Id.* at 644. In its opinion, the appellate court's reasoning relied heavily on the Minnesota Supreme Court's 1989 ruling in *Karst v. F.C. Hayer Co.*, which held that the WCA's exclusivity provision precludes an employee's MHRA claim against his former employer for disability discrimination. *Daniel v. City of Minneapolis*, No. A17-0141, 2017 WL 6418220, at *3 (Minn. Ct. App. Dec. 18, 2017) (citing *Karst* 447 N.W.2d 180, 186-87 (Minn. 1989)).

The Minnesota Supreme Court, however, granted Daniel's petition for review in an interlocutory appeal, reversed the court of appeals and remanded the case, and overruled its prior decision in *Karst*. *Daniel*, 923 N.W.2d at 641-42. Based on the plain language of the WCA and the MHRA, the Supreme Court held that an employee can pursue claims under both acts because the MHRA, which holds an employer liable for harm caused by discrimination, and the WCA, which holds an employer liable for work-related personal injuries, provide distinct causes of action. *Id*.

By overruling *Karst*, the state's seminal case on this issue, the Supreme Court has now shifted the landscape in how Minnesota courts will evaluate an employee's disability discrimination case involving a workplace injury.

THE FACTS

Keith Daniel worked for the Minneapolis Fire Department ("the Department") for 14 years as a firefighter. Id. at 642. Throughout his employment, Daniel experienced several work-related injuries, including multiple injuries to his right ankle and shoulders. Id. After suffering an ankle injury in August 2014 while performing rescue duties, Daniel received a prescription from his doctor for supportive "tennis shoes with arch support + high rescue boot high ankle" to increase ankle stability and avoid future injuries on the job. *Id*.

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Daniel thereafter sought workers' compensation benefits to pay for the costs of the prescribed shoes and shoe inserts. *Id.* Following an independent medical examination, in which a doctor concluded that Daniel's ankle issues were aggravated by numerous events at work such as walking on uneven surfaces and wearing heeled shoes, the City accepted liability for the claim in January 2015. *Id.*

With the permission of a Department captain, Daniel wore black tennis shoes, instead of the standard station shoes, in the station for approximately eight weeks. *Id.* However, in May 2015, the Department's Deputy Chief notified Daniel that he could no longer wear the tennis shoes because they did not comply with the Department's policy. *Id.*

Daniel did not suffer any ankle issues while wearing the supportive tennis shoes; however, when he returned to wearing the station shoes his ankle swelled. *Id.* Daniel later re-injured his ankle and hurt his shoulder after losing his footing while climbing down from a fire truck. *Id.* The Department placed Daniel on light-duty status but still did not allow him to wear his prescribed tennis shoes. *Id.* The Department later placed him on injury leave and instructed him that he could return to work if his work restrictions permitted him to wear footwear that complied with the Department's policy. *Id.*

The Department and Daniel had several meetings to discuss the issue while Daniel was on leave, but they could not agree on acceptable shoes for him to wear at work. *Id.* at 643. The Department told Daniel that he had to comply with the Department's uniform guidelines in order to collect his workers' compensation benefits and continue his employment. *Id.*

Upon suing the City, Daniel completed a function-capacity examination, the results of which prompted the City to seek early retirement benefits for him. *Id.* Daniel accepted the retirement benefits in March 2016, thereby ending his employment, but stated that he agreed to retire because he was informed that the Department did not have a position for him if he were to continue wearing tennis shoes. *Id.*

THE WCA'S EXCLUSIVITY PROVISION AND THE KARST CASE

Historically in Minnesota, if a statute specifies that its remedy is exclusive, a plaintiff cannot bring a separate claim arising under a different statute that is based on the same set of facts. *See, e.g.*, *Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 377-79 (Minn. 1990). Both the WCA and the MHRA contain exclusivity provisions. In pertinent part, the WCA's exclusivity provision establishes that "[t]he liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee . . . on account of such injury or death." Minn. Stat. § 176.031. Similarly, the MHRA's exclusivity provision states: "[A]s to the acts declared unfair by [the MHRA], the procedure herein provided shall, while pending, be exclusive." Minn. Stat. § 363A.04.

The Minnesota Supreme Court previously addressed the relationship, and possible tension, between these two exclusivity provisions in *Karst*. 447 N.W.2d at 184. In that case, the employee suffered separate work-related shoulder injuries that prevented him from completing his job as a warehouseman. *Id.* at 182. The employee then applied for and began receiving workers' compensation benefits. *Id.* His treating physician thereafter permitted him to return to work subject to certain lifting restrictions. *Id.* The employee asked his employer if he could return to work in either his normal or a modified position. *Id.* However, the employer refused to rehire him unless his physician agreed to remove all of the work restrictions. *Id.* at 183.

The *Karst* court held that the exclusivity provision under the WCA precluded the employee's claim for disability discrimination pursuant to the MHRA. *Id.* at 186. While acknowledging that the harm caused by the employer's refusal to rehire the employee was "conceptually distinct" from the work-related injuries he suffered during his employment, the Supreme Court concluded that any difference was ultimately "immaterial." *Id.* at 184. Rather, the Supreme Court focused on whether the WCA provided the employee a "remedy" for the employer's refusal to rehire him. *Id.* The court also highlighted the broad scope of the WCA's exclusivity provision, citing numerous cases in which the provision barred recovery under other theories. *Id.* at 185. It further emphasized that although Minnesota courts have established certain exceptions to the exclusivity provision, these exceptions were narrow in nature and the courts have traditionally refused to expand their scope without a clear mandate to do so from the legislature. *Id.*

Because the underlying statute for a disability discrimination claim was enacted in 1983—the same year that the WCA was amended—the *Karst* court referred to legislative history to ascertain the legislature's intent with respect to the new statute's impact on the WCA. *Id.* But in light of the legislature's silence on the issue, the Supreme Court concluded that the legislature did not intend to impose liability under the MHRA in addition to liability pursuant to the WCA. *Id.* at 186. The Supreme Court concluded by inviting the legislature to amend the WCA's exclusivity provision, thereby correcting its decision, if the court had improperly construed the legislature's intent. *Id.*

PROCEDURAL HISTORY

In December 2016, the District Court issued an order that denied cross motions for summary judgment filed by both Daniel and the City. *Daniel v. City of Minneapolis*, No. 27-CV-16-700, 2016 WL 8578367 (Minn. Dist. Dec. 29, 2016). The City's motion centered on the argument that under *Karst*, Daniel's MHRA claims were barred in their entirety by the WCA's exclusivity provision. *Id.* at *5. The City also

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emphasized that Daniel had already been compensated for his ankle injuries after agreeing to settle his workers' compensation claims in June 2016. *Id.*

The District Court analyzed the City's argument through the lens of the *Karst* decision but did "not find the *Karst* logic applicable to the facts at hand." *Id.* at *6. According to the District Court, the *Karst* line of cases typically involved facts in which an employer refused to rehire an employee after that employee sought treatment for work-related injuries. *Id.* The District Court determined that this was a key distinction because Daniel continued working for the City after suffering his ankle injuries and after receiving workers' compensation benefits. *Id.* Because of this on-going employment relationship between Daniel and the City, the District Court reasoned that the facts fell outside the context of failing to rehire. *Id.* at *6-7. Therefore, the District Court concluded that Daniel's MHRA claims were not barred by the WCA's exclusivity provision. *Id.* at *7.

Following the District Court's denial of its motion for summary judgment, the City appealed the order to the Minnesota Court of Appeals. *Daniel*, 2017 WL 6418220, at *1. The Court of Appeals reversed the District Court's order, concluding that the District Court lacked subject-matter jurisdiction because the WCA's exclusivity provision precludes jurisdiction over MHRA claims that arise from a WCA-compensable injury. *Id.*

The appellate court rejected each of Daniel's arguments. *Id.* at *3. First, the appellate court held that *Karst* remained binding precedent, rejecting the notion that subsequent amendments to the MHRA had "abrogated" this commanding authority on the issue. *Id.* It also noted that, despite the *Karst* court's invitation to the legislature to amend the WCA's exclusivity provision, the legislature had amended both acts since *Karst* was issued but had "taken no action to supersede *Karst*." *Id.* at *4.

Relying on *Hunter v. Nash Finch Co.*, Daniel had argued that his injuries under the WCA were "separate and distinct" from his injuries under the MHRA. *Id.* (citing *Nash*, 498 N.W.2d 759, 763 (Minn. Ct. App. 1993)). But the Court of Appeals deemed this reliance to be misplaced as *Hunter* was factually distinguishable because that case involved WCA and MHRA claims that were based on distinct physical injuries (that employee suffered separate injuries to his left and right hands) during the course of employment for two different employers. *Id*. (citing *Hunter*, 498 N.W.2d at 760-61).

In February 2018, the Minnesota Supreme Court granted review to readdress the tension between the two exclusivity provisions at issue in *Daniel*. The Employee Lawyers Association of the Upper Midwest and the National Employment Lawyers Association–Minnesota Chapter submitted amicus briefs in support of Daniel's position. There were no amicus briefs filed in suport of the City's position.

REMEDY VERSUS INJURY

While reluctant to overrule the nearly 30-year-old *Karst* decision, the Supreme Court ultimately decided that *Karst*'s holding was inconsistent with the plain language of both the WCA and the MHRA. *Daniel*, 923 N.W.2d at 647, 651. The Supreme Court considered the key statutory language of the WCA's exclusivity provision to be the phrase "any other liability . . . on account of *such injury*." *Id.* at 646 (quoting Minn. Stat. § 176.031). Whereas the *Karst* court focused on the concept of "the remedy" in holding that the WCA's exclusivity provision bars MHRA claims, in *Daniel*, the court focused its analysis on the meaning of "such injury." *Id.*

Utilizing the established principles of statutory interpretation, the Supreme Court narrowed its focus on the meaning of "injury" as construed within the WCA. *Id.* According to Minn. Stat. § 176.021, subd. 1, "Every employer is liable for compensation according to the provisions of [the WCA] and is liable to pay compensation in every case of *personal injury* . . . of an employee arising out of and in the course of employment without regard to the question of negligence." (Emphasis added.). The WCA defines "personal injury" as either a "physical injury" or a "mental impairment," which would include a diagnosis of post-traumatic stress disorder, that arises out of and in the course of employment. Minn. Stat. § 176.011, subd. 15(d), 16. The Supreme Court thereby determined that the word "injury," read in the context of the WCA's exclusivity provision, is limited to the discrete category consisting of a "personal injury." *Daniel*, 923 N.W.2d at 646. And based on this interpretation of the statutory language, the Supreme Court concluded that *Karst*'s emphasis on whether the WCA provided a remedy to the employee, without considering the personal injury itself, was misplaced. *Id.* at 647.

"ON ACCOUNT OF" VERSUS "SUCH INJURY"

In a dissenting opinion written by Justice Anderson, the dissent interpreted the same statutory language of the WCA's exclusivity provision, but instead focused on the phrase "*on account of* such injury." *Id.* at 655 (Anderson, J., dissenting) (emphasis added). The dissent reasoned that the underlying purpose of the exclusivity provision is to limit liability to injuries that arise out of or in the course of employment. *Id.* In other words, the WCA's exclusive remedy only extends to a claim that is made "on account of" the same injury that forms the basis of the employee's workers' compensation claim. *Id.*

Because the WCA does not define the phrase "on account of," the dissent relied on dictionary definitions to determine the phrase's plain meaning. *Id.* According to the dictionary, "on account of" also means "by reason of" or "because of." *Id.* (citing *Webster's Third New International Dictionary* 13 (2002)). The dissent therefore determined that

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liability under the WCA is "exclusive of" any other liability that an employer owes to an employee "by reason of" or "because of" the WCA-covered injury. *Id.* As a result, the dissent concluded that Daniel's failure to accommodate claim, which was based on allegations that the City failed to accommodate his ankle injuries, was barred because the claim was "by reason of" or "because of" his work-related injuries. *Id.*

However, the court's majority disagreed with the dissent's approach, determining that the phrase "on account of such injury," when read as a whole, necessarily means that an employer's liability under the WCA is exclusive of "any other liability" *only if* the injury itself is covered by the WCA. *Id.* at 646-47. Because the injury must arise out of and in the course of employment, whether an employee's claim is barred by the exclusivity provision inevitably depends upon the "exact nature and cause" of the injury. *Id.* at 647. Moreover, "any exclusivity challenge will hinge upon the *type of injury* sustained." *Id.* (quoting 9 Lex K. Larson, Larson's Workers' Compensation Law § 104.05[4] (Mathew Bender Rev. ed. 2017)).

DANIEL'S ALLEGED INJURY UNDER THE MHRA

In order to determine whether Daniel's injury under the MHRA was "distinct" from the physical injuries he suffered at work, and which were covered by the WCA, the Supreme Court next considered the injury he experienced based on the City's alleged failure to accommodate his disability. *Id.* at 648. A fundamental purpose of the MHRA is to protect employees from unlawful employment discrimination, including disability discrimination. *Id.* "It is the public policy of this state to secure for persons in this state, freedom from discrimination: in employment because of . . . disability" and "[t]he opportunity to obtain employment . . . without such discrimination . . . is hereby recognized and declared to be a civil right." Minn. Stat. § 363A.02, subd. 1(a)(1), subd. 2.

Daniel asserted that the City's failure to accommodate his disability not only prevented him from returning to work but also violated his civil rights by harming his dignity and self-respect as a disabled employee. *Daniel*, 923 N.W.2d at 648. The Supreme Court agreed that these injuries are covered by the MHRA because his MHRA claims were based on the City's allegedly intentional conduct in responding to Daniel's disability and the injuries that followed from that response. *Id.* In addition, because the MHRA's definition of "qualified disabled person" does not exclude people disabled as a result of work-related injuries, the Supreme Court determined that the fact that Daniel's disability resulted from a workplace injury was immaterial to his disability discrimination claim pursuant to the MHRA. *Id.* at 649 (citing Minn. Stat. § 363A.03, subd. 36).

The Supreme Court decided that the damage to Daniel's dignity and his loss of a fair employment opportunity caused by the City's alleged failure to accommodate his disability were "distinct" injuries from the ankle injury he suffered. *Id.* The Supreme Court further determined that the dissent's approach would conflate these two distinct injuries and leave Daniel no recourse for the City's purported MHRA violations. *Id.* Because Daniel's recourse under the dissent's view would depend on the "where, when, and how" he suffered his disabling injury, instead of the separate conduct of the City's alleged failing to provide an accommodation, the Supreme Court warned that the dissent's approach would effectively "immunize" workplace discrimination. *Id.*

COEXISTENCE OF THE MHRA AND THE WCA

After further interpreting the plain language of the MHRA and the WCA, and contrasting the broad remedies available under the MHRA against the WCA's more circumscribed remedies, the Supreme Court concluded that the legislature intended for these two exclusive acts to "coexist." *Id.* at 650. The Supreme Court found no conflict in allowing Daniel to pursue compensation for harms caused by the City's alleged unlawful conduct while also seeking compensation for the personal injuries he suffered during the course of his employment. *Id.*

Although the Supreme Court concluded that the MHRA and the WCA, along with their respective exclusivity provisions, could coexist, it recognized the possibility that damages for a discrimination claim could "overlap" with the compensation for a claim under the WCA. *Id.* at 653. In light of the risks of duplicative liability, the Supreme Courtcommented that though Daniel may bring concurrent claims pursuant to the MHRA and the WCA, he is not entitled to double recovery. *Id.*

CONCLUSION

Though the legislature did not amend the WCA's exclusivity provision in response to the *Karst* court's invitation, the development of anti-discrimination law in Minnesota over the past 30 years ultimately invited the Minnesota Supreme Court to reconsider its prior decision. *See id.* at 651. And the future implications of *Daniel* tend to reflect the past concerns from both sides of the argument.

On the one hand, the dissent in *Daniel* indicated that the majority's decision could lead to "troubling consequences." *Id.* at 658-59. Specifically, that the majority's analysis would effectively "gut" the WCA's exclusivity provision and result in higher risks of double recovery for employees and the inevitable expansion of failure to accommodate claims, along with the substantial costs and expenses associated

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with such litigation. *Id.* at 658-60. The dissent also asserted that the majority's decision will disrupt the fundamental, quid pro quo nature of the workers' compensation system. *Id.* at 660; *see also* Minn. Stat. § 176.001 ("The workers' compensation system in Minnesota is based on a mutual renunciation of common law rights and defenses by employers and employees alike."); *Meintsma v. Loram Maint. of Way, Inc.*, 684 N.W.2d 434, 438 (Minn. 2004) ("The exclusive remedy provision is part of the quid pro quo of the workers' compensation scheme in which the employer assumes liability for work-related injuries without fault in exchange for being relieved of liability for certain kinds of actions and the prospect of large damage verdicts." (quotation omitted))

On the other hand, some Minnesota courts had previously expressed apprehension that continued adherence to *Karst* would further undermine the modern approach toward anti-discrimination law. *See, e.g.*, *Oliver v. Minneapolis Community & Technical College*, No. 27-CV-13-21320 (Minn. Dist. Feb. 17, 2015) (stating that expanding *Karst* to preclude any disability remedy that was causally related to a compensable injury under the WCA would lead to tremendous absurdities). Indeed, the Supreme Court noted that *Karst*'s rationale could conceivably risk precluding other types of workplace discrimination claims that are based on another protected status but also resulted in a physical injury. *Daniel*, 923 N.W.2d at 649 n.11.

Given the legislature's silence in the immediate aftermath of *Karst*, it will be quite telling if the legislature were now to amend either the MHRA or the WCA in light of *Daniel*.