IN THE SUPREME COURT OF THE STATE OF DELAWARE

GLORIA T. NYE,	§	
	§	No. 315, 2005
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and for
v.	§	New Castle County
	§	
UNIVERSITY OF DELAWARE and	§	C.A. No. 02C-12-065
MELVIN D. SCHIAVELLI	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: December 21, 2005
Decided: January 31, 2006
Revised: April 4, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 4th day of April 2006, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

(1) Appellant plaintiff Gloria T. Nye ("Mrs. Nye"), as widow and executrix of Dr. John C. Nye ("Dr. Nye"), appeals the Superior Court's granting of summary judgment in favor of the University of Delaware ("the University") and Dr. Melvin D. Schiavelli ("Dr. Schiavelli") on five causes of action related to Dr.

Nye's employment.[1] Mrs. Nye argues that summary judgment was inappropriate because there is a genuine dispute about material facts. Two alleged agreements are at issue in this case. We affirm the Superior Court's judgment on all claims involving alleged breaches of Dr. Nye's contract of employment as Dean of the College of Agriculture and Natural Resources. We reverse and remand for further proceedings regarding the University's alleged breach of a separate promise to pay Dr. Nye during a period of "administrative leave," because material issues of fact preclude summary judgment on that claim.

(2) Dr. Nye was Dean of the College of Agriculture and Natural Resources at the University of Delaware from 1991 to 2001, and served two full five-year terms. A Dean at the University undergoes a review process near the end of each five-year term, but serves as Dean at the will of the administration. During Dr. Nye's first review, the review committee recommended he continue as Dean for another term, but only if he improved his communications with the staff and faculty of his college. Near the end of his second term, almost half the tenured faculty in his college signed and submitted to the University administration a petition of no-confidence, stating their dissatisfaction with Dr. Nye because his

[1] Appellant voluntarily dismissed her claim against Dr. Thomas M. DiLorenzo after discovery, although his name remained on Appellant's Notice of Appeal and briefs. The five causes of action alleged against the remaining defendants are (1) The University breached its covenant of good faith and fair dealing; (2) Provost Schiavelli's letter to Dr. Nye established a valid contract which was breached; (3) The University is estopped to deny administrative leave pay; (4) withholding of administrative leave pay violates Delaware's Wage Payment and Collection Act; and (5) Dr. Schiavelli tortiously interfered with Dr. Nye's contract.

communications within the college had not improved. As Provost, Dr. Schiavelli initiated Dr. Nye's second review near the end of his five-year term as Dean. A review committee normally gives only an advisory written opinion to the Provost, who in turn advises the President, who makes the ultimate decision on a Dean's reappointment. Dr. Schiavelli appointed Dr. DiLorenzo as chair of the review committee.

(3) There are disputes of fact as to how the committee reached its decision, but for the reasons we explain below, several of these disputed facts are immaterial. Only material disputes are sufficient to deny summary judgment.[2] Mrs. Nye accuses Dr. Schiavelli of improperly influencing the committee's decision to recommend Dr. Nye not serve a third term as Dean. It is undisputed that after the review committee orally shared its decision with Dr. Schiavelli, he relayed that decision to Dr. Nye. It is also undisputed that the review committee did not produce a written statement memorializing Dr. Nye's poor communications within his college or his faculty's unprecedented petition for his removal. It is also undisputed that Dr. Nye was not reappointed as Dean of the College. What is disputed is whether Dr. Nye voluntarily decided to not pursue a third term, whether the administration made that decision, or whether it was a shared or compromise

[2] Superior Court Civil Rule 56(c).

decision. It is clear that Dr. Nye and Dr. Schiavelli wrote an e-mail to the faculty together announcing that Dr. Nye would not serve a third term as Dean.

(4) It is undisputed that the final outcome was that Dr. Nye and Dr. Schiavelli agreed that Dr. Nye would finish his second term as Dean, then begin working for one year as Director of Cooperative Extension, and thereafter take one year of paid administrative leave. Dr. Schiavelli knew that Dr. Nye was exploring other employment opportunities outside the University. At oral argument, counsel for the University conceded an inference could be drawn that the arrangement was a "quiet plan to exit." Whether the purpose of one year's paid administrative leave was for the purpose of preparing for Dr. Nye's return to the faculty, or whether it was a severance arrangement in return for his agreement not to challenge the administration's decision not to reappoint him as Dean, cannot be decided on the present record. Dr. Nye finished his second term as Dean and began his position as Director. As Dean, Dr. Nye regularly received annual pay increases of inconsistent amounts. He did not receive an annual pay increase as Director. While Dr. Nye was serving as Director he died – before beginning his administrative leave with pay.

(5) Mrs. Nye, as widow and as executrix, seeks: first, the difference between Dr. Nye's salary as Director and the alleged increase in salary he would have received had he served a third term as Dean;[3] and second, the compensation Dr. Nye would have received during his one year administrative leave: $162,500. After reviewing the admissible evidence, the Superior Court held that the plaintiff had not established a claim that was sufficient to survive summary judgment, and granted the Defendants' motion.

(6) "This Court reviews *de novo* the Superior Court's grant of summary judgment both as to facts and law to determine whether or not the undisputed facts, viewed in the light most favorable to the opposing party, entitle the moving party to judgment as a matter of law."[4] However, if the record was curtailed by pre-trial rulings, this Court reviews evidentiary rulings of the trial judge for abuse of discretion.[5] An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances, so ignored recognized rules of law or practice so as to produce injustice.[6] As a court reviewing for abuse of discretion, we may not substitute our own notions of what is right for those of the trial judge if

[3] The Court had not proceeded to a stage in the proceedings to calculate the exact damages, but the parties estimate the amount of Dr. Nye's foregone pay increase at around $6,000.
[4] *Motorola, Inc. v. Amkor Tech.*, 849 A.2d 931, 935 (Del. 2004) (citing *Rhudy v. BottleCaps, Inc.*, 830 A.2d 402, 405 (Del. 2003)).
[5] *See E.A.W. v. L.W.*, 280 A.2d 714 (Del. 1971). *See also Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994); *ABB Flakt, Inc. v. Nat'l Union Fire Ins. Co.*, 731 A.2d 811, 815 (Del. 1999).
[6] *Lilly*, 649 A.2d at 1059. (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (1988)).

her judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.[7] We review *de novo* the Superior Court's summary judgment ruling based on the facts before it.[8]

(7) Mrs. Nye has not met her burden of showing that her allegations against Dr. Schiavello, even if true, support a claim for which relief can be granted. Mrs. Nye claims that (i) Dr. Schiavelli did not follow the University's procedure when the administration did not reappoint Dr. Nye for a third term as Dean, and (ii) those procedural irregularities amounted to a breach of the University's covenant of good faith and fair dealing. Mrs. Nye has failed to show, however, that but for the deviation from procedure, the administration would have appointed Dr. Nye to a third term. She has failed to adduce any admissible evidence that Dr. Schiavelli falsified or manipulated Dr. Nye's record in order to deprive him of reappointment as Dean. Although the University's procedures did require both a written report and explicit decision from the President in order to reappoint a Dean, the undisputed evidence is that despite the absence of a report and explicit presidential decision, Dr. Nye and Dr. Schiavelli reached an agreement for Dr. Nye to take a different position at the University.

(8) Mrs. Nye's claim for Dr. Nye's foregone salary increase fails for several reasons. First, under the facts presented, there was no need for the

[7] *Chavin v. Cope*, 243 A.2d 694, 695 (Del. 1968).
[8] *Matas v. Green*, 171 A.2d 916 (Del. 1916).

committee to issue a written report or for President Roselle to make a decision, because Dr. Nye agreed to serve as Director of Cooperative Extension after he completed his second term. Mrs. Nye claims that Dr. Nye did not make that agreement, but offers no evidence to support this contention. Dr. Nye and Dr. Schiavelli jointly prepared an e-mail to the faculty stating that he would not serve a third term as Dean, and the record shows that Dr. Nye did, in fact, serve as Director of Cooperative Extension. There is no evidence in the record that Dr. Nye attempted to seek reappointment as Dean for a third term. Second, an employer's alleged failure to follow written policy or procedure, by itself, will not support a viable claim for breach of implied covenant of good faith and fair dealing, because Delaware adheres to the employment at-will doctrine, and has set a high threshold for an actionable breach of that covenant.[9]

(9) Mrs. Nye must adduce some evidence of bad faith or ill will.[10] Mrs. Nye has not. We conclude that the Superior Court properly granted summary judgment on the claim of breach of good faith and fair dealing.

(10) Mrs. Nye's related contention is that Dr. Schiavelli tortiously interfered with Dr. Nye's employment contract to remain as Dean. Specifically, Mrs. Nye contends Dr. Schiavelli acted outside the scope of his authority when he told Dr. DiLorenzo not to prepare a report from the committee and when he told

[9] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 103 (Del. 1992).
[10] *See Geddiss v. University of Delaware*, 2001 U.S. Dist. Lexis 9058 (D. Del. 2001).

President Roselle that Dr. Nye had decided not to pursue a third term as Dean. This claim also fails. First, as a matter of law, a party cannot tortiously interfere with a contract to which it is also a party.[11] Dr. Schiavelli, as Provost, was acting as an agent of the University, and therefore cannot be liable for tortious interference of a contract to which he was acting (in that capacity) as a party.[12] The only exception to this rule would be if the Provost acted outside his authority, but Mrs. Nye offered no such evidence. Second, Mrs. Nye has not had adduced evidence of the *prima facie* elements of a claim for tortious interference.[13] Mrs. Nye offers vague out-of-court statements of Dr. Schiavelli which, she then suggests, a finder of fact could interpret to find Dr. Schiavelli intended to interfere with Dr. Nye's contract. Where a plaintiff opposing a motion for summary judgment has had fair opportunity to conduct discovery to explore the defendant's subjective state of mind, yet cannot point to any evidence indicating that the defendant intended to deceive or to interfere, plaintiff cannot prevail.[14] We find no evidence of an intent to deceive or interfere even when the record is viewed in a

[11] *Gilbert v. El Paso Co.*, 490 A.2d 1050, 1058 (Del. Ch. 1984).
[12] *Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood*, 752 A.2d 1175, 1182-83 (Del. Ch. 1999).
[13] The elements of a claim for tortuous interference with contractual relations are: (1) contract, (2) defendant's knowledge of the contract, (3) and intentional act that is a significant factor in causing the breach of the contract, (4) lack of justification and causing the breach, and (5) injury. *See Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571 (1998).
[14] *Murphy v. Godwin*, 303 A.2d 668, 673 (Del. Super. 1973); *see also Gilbert v. El Paso Co.*, 490 A.2d 1050, 1058 (Del. Ch. 1984).

light most favorable to Mrs. Nye. We conclude that the Superior Court properly granted summary judgment in favor of Dr. Schiavelli.

(11) Mrs. Nye claims that the Defendants contracted for Dr. Nye to receive the amount of $162,500 (equal to one year's salary), to be paid during his administrative leave.[15] The parties dispute the nature of this bargain. The University contends administrative leave always ends with an employee returning to work, and that employees are expected to prepare themselves for the work they plan on doing upon their return (*i.e.*, teaching). Mrs. Nye responds by making several alternative contentions: that the administrative leave was paid vacation, or Dr. Nye earned administrative leave over his prior ten years of service as Dean, or the administrative leave with pay was a severance arrangement in exchange for Dr. Nye not seeking a third term as Dean. Mrs. Nye points out that the University's communications to Dr. Nye regarding the administrative leave lacked any explicit enumeration of duties he would be required to perform during the administrative leave or afterwards. Therefore, Mrs. Nye contends, the University did not expect Dr. Nye to perform any duties during administrative leave in return for the payment of $162,500. The University responds that by custom there was an expectation of Dr. Nye to retool and prepare for a return to the faculty.

[15] In a related claim, the Plaintiff contends that under Delaware's Wage Payment and Collection Act ("WPCA") 19 Del. C. Chapter 11, Dr. Nye earned administrative leave as compensation by completing two terms as Dean.

Nevertheless, the unique facts of the case permit and inference that the parties reached a compromise on a dispute arising from Dr. Nye's continuation of his employment as Dean, but Dr. Nye died before the agreed compensation was scheduled to be paid.

(12) On the record before us, we find disputes of material facts that preclude summary judgment on the claim for administrative leave pay. Under the admissible evidence presented, an inference can be drawn that, in Dr. Nye's particular case, the administrative leave was compensation due whether or not Dr. Nye performed further personal service or even lived to personally collect it. Although severance pay is not a "wage" subject to collection under the Wage Payment and Collection Act ("WPCA"),[16] it is a benefit or wage supplement.[17] Mrs. Nye has presented sufficient evidence from which a breach of a contract to pay Dr. Nye $162,500 and a violation of the Wage Payment and Collection Act may be inferred. Whether such a contract was agreed to is for the trier of fact in this case to decide.[18] Accordingly, we hold that the Superior Court erred in

[16] See *Commons v. Green Grant Co.*, 394 A.2d 753 (Del. Super. 1978) (Wages does not include severance pay.)
[17] *See* 19 *Del. C.* § 1109.
[18] The Superior Court granted summary judgment on the WPCA claim because Mrs. Nye's claim is based upon a personal services contract that terminated upon Dr. Nye's death. We have concluded that this finding cannot be made by way of summary judgment. The University further contends that Mrs. Nye cannot bring a private cause of action under § 1109 and that any claim under the Wage Payment and Collection Act is time-barred. These defenses were not addressed by the Superior Court and we decline to consider them in the first instance in this appeal.

granting summary judgment in favor of the University depriving Mrs. Nye of a trial on her claim for her late husband's "administrative leave" pay. In all other respects, we affirm the judgment of the Superior Court.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED in part; and REVERSED in part. This matter is remanded for further proceedings consistent with this Order.

BY THE COURT

/s/ Henry duPont Ridgely
Justice