STATE OF MICHIGAN

COURT OF APPEALS

TAMARA RIOPELLE,

Plaintiff-Appellant,

v

CHARLES WALLS, THIRTY-FOURTH DISTRICT COURT, and NANCY SCHUETTE,

Defendants-Appellees.

UNPUBLISHED
June 29, 1999

No. 205368
Wayne Circuit Court
LC No. 96-617409-CZ

Before: Markey, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(8) to defendant, thirty-fourth District Court ("the district court") in this wrongful discharge and tort action. Plaintiff also challenges the court's order granting defendant Charles Walls' motion for summary disposition. We affirm in part, reverse in part, and remand.

I

We first address plaintiff's negligence claim against defendants Walls and Nancy Schuette.[1] Plaintiff argues that both Walls and Schuette owed her a duty to properly administer the finances of the district court and that their malfeasance resulted in her discharge from employment, for which they are liable. We disagree.

A

The trial court granted Walls' motion for summary disposition under MCR 2.116(C)(8). Such a motion tests the legal sufficiency of a claim by the pleadings alone, and all factual allegations contained in the complaint must be accepted as true. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). The motion should be granted only when the claim is so clearly unenforceable as a matter of

law that no factual development could possibly justify a right of recovery. *Id*. Our review on appeal is de novo. *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998).

B

In count I of her complaint, plaintiff alleged that Walls and Schuette breached their duty to her to administer the finances of the court with reasonable care, and that this breach was the proximate cause of plaintiff's damages – specifically, the loss of her job. We agree with the trial court that Walls owed no duty to plaintiff individually.

Pursuant to the public-duty doctrine, public officials such as Walls and Schuette owe a duty to the general public, not to a specific individual. *Harrison v Director of Dep't of Corrections*, 194 Mich App 446, 456; 487 NW2d 799 (1992). An exception to this general rule is where the government employee has a "special relationship" with the plaintiff. *Id*. This Court has noted that, at a minimum, the existence of a special relationship requires (1) some contact between the governmental official involved and the victim, and (2) justifiable reliance by the victim on the promises or actions of the governmental agency or official. *Reno v Chung*, 220 Mich App 102, 105; 559 NW2d 308 (1996); see *Harrison, supra* at 457-460.

In the present case, plaintiff's complaint failed to allege that Walls and Schuette made any promises to her regarding their administration of the court's finances and her continued employment, or that they engaged in any action which would lead plaintiff to justifiably believe that her employment was contingent on their proper handling of the court's funds. Absent such promises or actions, and plaintiff's justifiable reliance on them, no special relationship between plaintiff and the individual defendants exists. Accordingly, Walls and Schuette owed to plaintiff no duty other than that which they owed to the general public. Insofar as plaintiff's complaint did not allege a special relationship between herself and the individual defendants, it failed to allege a prima facie case of negligence. *Reno, supra* at 309. Therefore, the trial court's grant of Walls' motion for summary disposition was proper.

C

Because we find that plaintiff failed to allege a prima facie claim of negligence, her challenge to the trial court's determination that plaintiff's claim against Walls is barred by the applicable statute of limitations is moot, and we need not address it.

II

We next address plaintiff's claim against the district court for an alleged violation of public policy. In count III of her complaint, plaintiff argues that she was terminated by the district court in an effort to divert attention from its own malfeasance, and that termination on this basis contravenes Michigan's public policy.

Our Supreme Court has recognized three situations in which the grounds for discharging an employee are so contrary to public policy as to be actionable, even when the employment is at will:

> First, an exception exists where there are explicit legislative statements prohibiting the discharge, discipline, or other adverse treatment of employees who act in accordance with a statutory right or duty. Second, such a cause of action has been found to be implied where the alleged reason for the discharge of the employee was the failure or refusal to violate a law in the course of employment. Finally, a cause of action has also been found to be implied where the alleged reason for the discharge was the employee's exercise of a right conferred by a well-established legislative enactment. [*Garavaglia v Centra, Inc*, 211 Mich App 625, 630 (1995), citing *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 695-696; 316 NW2d 710 (1982).]

In her complaint, plaintiff has not identified which of the three enumerated public policy exceptions she believes applies to her claim. Specifically, plaintiff has failed to identify specific legislation which prohibits discharge for these reasons, has failed to establish that she was exercising a right conferred by legislation, and has failed to allege that she was fired because she refused to violate the law. Accordingly, plaintiff has failed to state a valid claim that her discharge was a violation of public policy, and summary disposition was properly granted regarding this claim.

III

Plaintiff also argues that the district court is liable to her on a claim of false light invasion of privacy. We disagree, and hold that the district court is immune to plaintiff's claim.[2]

As a general rule, all governmental agencies are immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407; MSA 3.996(107). "'Governmental function' is an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f); MSA 3.996(101)(f). The district courts, including the thirty-fourth, are established by statute. MCL 600.8101; MSA 27A.8101,. MCL 600.8121(20). The district control unit is responsible for the operation and funding of the district courts. MCL 600.8104; MSA 27A. 8104, MCL 600.8105; MSA 27A.8105. Therefore, the operation and funding of the defendant district court are governmental functions, and the district court is immune from claims arising out of these activities.

Plaintiff insists that the district court's alleged dissemination of false information about her involvement in the embezzlement of court funds constitutes an ultra vires activity from which the district court is not immune. We disagree, and note that the governmental immunity granted to a governmental agency is based on the general nature of the activity of its employees, not the employees' specific conduct. *Payton v City of Detroit*, 211 Mich App 375, 392; 536 NW2d 233 (1995).

In the present case, the alleged tort of false light invasion of privacy occurred while the district court was engaged in the activity of investigating alleged malfeasance. Insuring that the district court is funded, and that the funds are managed properly, is an activity inherent in the task of operating and funding the court. Because the embezzlement investigation was undertaken within the context of court funding and operation, activities which are governmental functions, the district court is immune from any claims arising out of the investigation. Plaintiff's allegations that the district court knowingly falsely

implicated her does not alter this result, because there is no intentional tort exception to immunity for claims against government entities. *Id.*

Accordingly, we find that the trial court properly granted the district court's motion for summary disposition as to this issue.

IV

Plaintiff also alleges that the trial court improperly granted the district court's motion for summary disposition on her claims for breach of the terms of an express oral contract for just-cause employment.[3] We agree.

A

At the outset, we note that although the trial court granted the district court's motion under MCR 2.116(C)(8), the court considered evidence outside the pleadings, namely, the employee handbook to which plaintiff was allegedly subject. We decline to review the trial court's ruling under MCR 2.116(C)(10), however, because plaintiff was precluded from conducting any discovery and obtaining any factual support for her claim. Accordingly, we address this issue in light of MCR 2.116(C)(8), and review only the pleadings to determine whether plaintiff stated a claim on which relief could be granted.

B

"Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party." *Lytle v Malady*, 458 Mich 153, 163; 579 NW2d 906 (1998). This presumption may be overcome with proof of an express agreement, either oral or written, forbidding discharge absent just cause. *Rood v General Dynamics Corp*, 444 Mich 107, 119; 507 NW2d 591 (1993). In the present case, plaintiff bases her express contract claim on oral statements allegedly made by the Chief Judge of the district court which purported to guarantee plaintiff just-cause employment in return for the agreement of plaintiff, and other similarly situated employees, to forego unionization.

In order to overcome the presumption of employment at will, oral statements of job security must be clear and unequivocal, and must be based on more than an expression of an optimistic hope of a long employment relationship. *Rowe v Montgomery Ward & Co*, 437 Mich 627, 640, 645; 473 NW2d 268 (1991). When determining whether oral assurances of job security rise to the level of creating a just-cause employment contract, Michigan courts have generally required that any such discussions relate specifically to the particular employee and must precisely address whether that particular employee can be fired only for just cause. *See, e.g., Lytle, supra* at 171-172; *Rood, supra* at 134; *Rowe, supra* at 643; *Bracco v Michigan Technological University*, 231 Mich App 578, 595; 588 NW2d 467 (1998).

We now turn to the case before us. In her complaint, plaintiff alleged that in 1989, certain clerical and administrative staff of the district court organized a collective bargaining unit. Plaintiff and others who were not part of this union inquired into the nature of their employment relationship, and

specifically asked whether they should join the union, or seek out their own bargaining unit to obtain job security. In response, the district court promised that membership in a union was not necessary for job security. Specifically, plaintiff's complaint alleged the following:

> 25. That the chief judge, Henry Zabrowski, through court administration, expressly promised:
>
> A. That the union was not necessary to protect them in matters of job security, wages, or benefits;
>
> B. That plaintiff and the others did not have to pay union dues for the privilege of job security or good wages;
>
> C. *That the plaintiff and others would not be terminated without good cause and that the job security component of the collective bargaining agreement requiring good cause for termination would apply to them*; and,
>
> D. In the matter of all benefits, excepting wage rates, vacations, and sick pay, the collective bargaining agreement would apply to them [emphasis added].

We find that these alleged communications amount to more than general promises of job security or an optimistic hope that the employment relationship will be a lengthy one. According to plaintiff's complaint, Chief Judge Zabrowski *expressly stated* that plaintiff and others similarly situated would be considered *just cause* employees without the necessity of a collective bargaining unit. These alleged statements took place during what can reasonably be called negotiations between the district court and the employees, including plaintiff, who were not members of the newly-formed union, and specifically expressed that plaintiff would be terminated only for just cause. Taken in a light most favorable to plaintiff, *Simko, supra* at 650, we find plaintiff's complaint to be legally sufficient to state a claim of wrongful discharge based on an express contract of just-cause employment.[4] Summary disposition pursuant to MCR 2.116(C)(8) was improperly granted.

C

On appeal, the district court argues that plaintiff's claim fails as a matter of law because she failed to get any assurances of just-cause employment in writing, and because the employee handbook contains an express disclaimer of any intent to create an employment contract between the district court and its employees. We disagree.

The employee handbook provides in pertinent part :

> This Handbook, or any other written or verbal communication by the 34th District Court, is not intended as, and does not create, a contract of employment. Accordingly, the Court reserves the right to change, modify, or amend the provisions of this Handbook and any other personnel policy or procedure. No change in these

> personnel policies and procedures shall be effective unless it is in writing and personally signed by the Court Administrator and/or the Chief Judge.

Although this language purports to require that any change to the personnel policies be in writing, we hold that the district court's reservation of the right to amend the handbook at any time demonstrates an intent not to be bound by any provision in it, including the provision requiring that all changes to the policy be in writing. *Heurtebise v Reliable Business Computers, Inc*, 452 Mich 405, 413-414; 550 NW2d 243 (1996). Similarly, because the district court did not intend to be bound by any provision, the written disclaimer of an intent to contract is not binding on either the district court or the plaintiff. *Stewart v Fairlane Community Mental Health Centre*, 225 Mich App 410, 420; 571 NW2d 542 (1997).

D

We note that because discovery has not yet begun in this case, whether Chief Judge Zabrowski actually made the statements alleged in plaintiff's complaint has not been established. Indeed, we express no opinion regarding whether plaintiff could, after the completion of discovery, withstand a motion for summary disposition pursuant to MCR 2.116(C)(10). However, under MCR 2.116(C)(8), proof of these representations is not required to survive a motion for summary disposition. Rather, all plaintiff need do is present a claim which, with factual support, could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). Here, plaintiff has done so. Therefore, we reverse the trial court's grant of summary disposition on plaintiff's wrongful discharge claim.

V

We also find that the trial court erroneously granted defendant's motion for summary disposition on plaintiff's claim for violation of the Michigan Constitution. Specifically, plaintiff alleged in count IV of her complaint that the district court deprived her of her protected interests both in her employment and in maintaining her reputation without due process of law.

Const 1963, art 1, §17 provides that "[n]o person shall be . . . deprived of life, liberty or property, without due process of law." A public employee does not have a property interest in continued employment where the employment is at-will, rather than just-cause. *Manning v City of Hazel Park*, 202 Mich App 685, 694; 509 N.W.2d 874 (1993). In her complaint, plaintiff alleged that the district court summarily dismissed her.[5] If plaintiff had a just-cause contract of employment, the district court was required to comply with procedural due process before dismissing her. *Johnson v City of Menominee*, 173 Mich App 690, 695; 434 NW2d 211 (1988). Accordingly, plaintiff's complaint is sufficient to establish a claim on which relief could possibly be granted, and summary disposition pursuant to MCR 2.116(C)(8) was improper.

Finally, plaintiff argues that her complaint is sufficient to state a claim that she was deprived of a liberty interest without due process of law. To establish a constitutionally protected liberty interest, "the employee must show conduct of the governmental employer that might seriously damage the employee's

standing and associations in the community or that imposes a stigma or other disability that denies the employee the freedom to take advantage of other employment opportunities." *Manning*, *supra* at 695. Although plaintiff's allegations that the district court reported that she was being investigated for embezzlement might not ordinarily constitute a deprivation of a liberty interest, we again note that plaintiff was prevented from engaging in discovery. Consequently, plaintiff was prevented from adducing any evidence in support of her claim, and neither we nor the trial court has the benefit of knowing exactly what, if anything, the district court reported regarding plaintiff's alleged involvement in the embezzlement. Considering plaintiff's allegations in the light most favorable to her, however, we find that her complaint is sufficient to withstand the district court's motion for summary disposition pursuant to MCR 2.116(C)(8).

Affirmed in part, reversed in part, and remanded for reinstatement of count IV and those portions of count I alleging breach of an express contract of just-cause employment, and for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff

[1] Plaintiff's claims against Schuette were dismissed by stipulation of the parties. However, because plaintiff alleged that the same conduct of Schuette and Walls constituted negligence, our discussion of this claim applies equally to both individual defendants.

[2] We note that summary disposition of this claim was appropriate pursuant to MCR 2.116(C)(7) (claim barred by immunity), yet the trial court granted summary disposition pursuant to (C)(8) (failure to state a claim). This defect is not fatal, however, and we will address the issue pursuant to the correct subpart of the court rule. *Ellsworth v Highland Lakes Development Ass'n*, 198 Mich App 55, 57-58; 498 NW2d 5 (1993).

[3] We note that in her complaint, plaintiff also alleged that she had legitimate expectations of job security. However, plaintiff withdrew this claim at oral argument.

[4] The fact that plaintiff allegedly obtained the express promises of just-cause employment through Schuette, rather than from Chief Judge Zabrowski personally, is not fatal to plaintiff's claim. Defendant correctly notes that promises of job security made by a coemployee are ineffective to create just-cause employment. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 83-84; 480 NW2d 297 (1992). In the present case, plaintiff's complaint alleges that it was Chief Judge Zabrowski himself who promised plaintiff just cause employment, and that his promises were merely conveyed by court administration. Without question, Chief Judge Zabrowski had the authority to make such employment decisions. MCR 8.110(C)(3)(d).

[5] Plaintiff alleges she was terminated from employment. The district court responds that plaintiff's position was eliminated. Plaintiff responds that the district court's claim of position elimination is a pretext. Because of the lack of discovery, it is impossible to determine whether plaintiff was summarily

terminated or her position eliminated and, further, whether any elimination of her position was a pretext for a summary dismissal. Therefore, taking plaintiff's allegations in the light most favorable to her, we address this issue assuming that plaintiff was summarily dismissed.