STATE OF MICHIGAN

COURT OF APPEALS

RANDY BLOCK, Personal Representative of the Estate of GERALD CRANE, and BYRON CENTER EDUCATION ASSOCIATION,

Plaintiffs-Appellees,

v

BYRON CENTER PUBLIC SCHOOLS and BYRON CENTER PUBLIC SCHOOLS BOARD OF EDUCATION,

Defendants-Appellants.

UNPUBLISHED
May 26, 2000

No. 218945
Kent Circuit Court
LC No. 99-000777-CK

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

In this breach of contract action, defendants appeal as of right the trial court order granting summary disposition for plaintiffs pursuant to MCR 2.116(I)(2). We affirm.

I

In their first issue, defendants argue that the trial court erroneously considered matters outside the record. This presents a question of law that is subject to de novo review. See *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 574; 603 NW2d 816 (1999).

After reviewing both the trial court's opinion and the lower court record, we find no error requiring reversal. A court is not prohibited from including facts outside the record in its opinion in order to provide context, as long as its ultimate decision is based only on facts contained in the record. See, e.g., *Syrkowski v Appleyard*, 420 Mich 367, 369, n 2; 362 NW2d 211 (1985). For purposes of this case, the trial court's conclusion that summary disposition for plaintiffs was proper could be based only on the pleadings.

Defendants assert that the court's conclusion that the parties' contract was predominately a promise to pay for past performance was improperly based on facts outside the record. Defendants

maintain that "[o]nly by adding these non-record facts could the court come to its conclusions that," for defendants, a key benefit of the agreement between defendants and Gerald Crane was Crane's resignation and that defendants continued to benefit despite Crane's death.

However, the pivotal fact upon which the trial court based its conclusion was that Crane's resignation had already taken place, a fact that was included in the complaint. The trial court's references to defendants' apparent motives, Crane's sexual orientation, and the events leading to Crane's resignation are merely contextual and do not alter in any way the fact that Crane had resigned. It is apparent from a simple perusal of the settlement agreement between defendants and Crane that a "key benefit" to defendants was the immediate and permanent cessation of Crane's employment with defendants. Specifically, the agreement provided that Crane's resignation would be effective immediately and that Crane would not apply for employment with defendants in the future. Because the trial court's conclusion that the decedent's resignation was a benefit to defendants was amply supported by the record, the trial court's extraneous explanation of *why* it was a benefit to defendants does not require reversal.

II

Next, defendants argue that the trial court erred in denying their motion for summary disposition. Defendants assert that their obligation to pay Crane's salary ended when Crane died because Crane was no longer able to seek alternate employment, as required by the parties' agreement.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. This Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(8) to determine whether the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. All factual allegations supporting the claim, and any reasonable inferences that can be drawn from the facts, are accepted as true. *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

We conclude that defendants' argument fails because, under the parties' agreement, the consideration for their obligation to make salary payments was not Crane's promise to make good-faith efforts to obtain employment during the applicable period. Paragraph 6 of the agreement provides:

> In consideration of the salary and insurance continuation stated above, Mr. Crane, on behalf of himself, his heirs and all those who might claim through him, agrees to waive and release any and all claims, except as specifically stated in paragraphs 4 and 5 above, which he has or may have, known or unknown, against the Byron Center School District, its Board of Education members, its administrators, employees and/or agents. This release includes, but is not limited to, all claims for discrimination, breach of contract, interference with contract, libel, slander, or violation of statutory or constitutional rights.

Thus, the contract specifically identifies Crane's waiver of any and all claims against defendants as the consideration for defendants' payment of Crane's salary and insurance. Because the agreement

binds both Crane and his heirs, Crane's death terminates neither the detriments nor the benefits of the parties' bargain. Accordingly, defendants' obligation to make the salary payments, as set forth in the agreement, did not end with Crane's death, and the trial court properly denied defendants' motion for summary disposition. See *id*.

III

Defendants further contend that the trial court erred entering judgment for plaintiffs without affording them an opportunity to file an answer and present its affirmative defenses. We disagree. Instead of filing an answer to plaintiffs' complaint, defendants opted to file a motion for summary disposition. By doing so, defendants opened the door for the trial court to render judgment on plaintiffs' complaint pursuant to MCR 2.116(I)(2). We have already determined that the trial court did not err in finding that plaintiffs were entitled to summary disposition. Defendants have not identified, either in the trial court or on appeal, any crucial facts or applicable defenses of which the trial court was unaware when it rendered its decision. Accordingly, reversal is not warranted.

IV

Finally, defendants argue that they are entitled to a new judge on remand. However, we have not found that remand is required. We briefly note, however, that even if remand were necessary, we would not find that disqualification of the trial judge is warranted, as the record is devoid of any indication of actual bias or prejudice. See *B & B Investment Group v Gitler*, 229 Mich App 1, 17-18; 581 NW2d 17 (1998).

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh