STATE OF MICHIGAN

COURT OF APPEALS

RONALD ENGLE,

Plaintiff-Appellant,

v

LIVONIA FIREFIGHTERS UNION, LOCAL 1164,

Defendant-Appellee.

UNPUBLISHED
April 15, 2004

No. 244334
Wayne Circuit Court
LC No. 01-139995-CZ

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10) in this case alleging tortious interference with a business relationship. We affirm.

On appeal, plaintiff contends that the trial court erred in determining that his claim was barred by res judicata under MCR 2.116(C)(7) as he was not required to include the current claim in his prior complaint against defendant and because the two actions were not part of the same transaction. We disagree. A trial court's decision regarding a motion for summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo to determine whether the moving party was entitled to judgment as a matter of law and whether res judicata is applicable. See *Haliw v City of Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001); *Rinas v Mercer*, 259 Mich App 63, 67; 672 NW2d 542 (2003).

Res judicata bars a second action "when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). The trial court entered a judgment on the merits in plaintiff's prior action against defendant by granting summary disposition in favor of defendant. See *Roberts v City of Troy*, 170 Mich App 567, 577; 429 NW2d 206 (1988). We find that plaintiff's claim could have been resolved in the prior action. In the current case, plaintiff claims that defendant took various actions over a period of four years to encourage Mayor Jack Kirksey to terminate his employment in order to prevent plaintiff from integrating the Livonia Fire Department. In the 1999 action, plaintiff claimed that defendant took various actions over the same period of time to interfere with his ability to function as Fire Chief. As both claims were based on the same set of facts, they constitute one transaction. Also, had plaintiff exercised

reasonable diligence, he could have amended his 1999 complaint to include the allegations regarding his termination, which occurred only two months after filing that complaint. See *Sewell, supra,* 463 Mich 575; *Peterson Novelties v City of Berkley,* 259 Mich App 1, 11; 672 NW2d 351 (2003).

Plaintiff's argument that he was not required to join these claims under MCR 2.203(A) does not affect our disposition of this case. Res judicata is broadly applied in Michigan. *Gose v Monroe Auto Equipment Co*, 409 Mich 147, 160; 294 NW2d 165 (1980). When a claim is barred by res judicata, the plaintiff loses all rights to remedies against the defendant "with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Jones v State Farm Ins Co,* 202 Mich App 393, 397; 509 NW2d 829 (1993), quoting 1 Restatement Judgments, 2d, § 24, p 196. Plaintiff chose not to amend his 1999 complaint to include allegations regarding his termination. Because of that choice, plaintiff has lost his chance to raise the claim.

Plaintiff also contends that the trial court erred in granting defendant's motion for summary disposition as there was a genuine issue of material fact. MCR 2.116(C)(10). We disagree. A trial court's decision regarding a motion for summary disposition is reviewed de novo. *Quality Products & Concept Co v Nagel Productions, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). A motion for summary disposition based upon a lack of a material factual dispute tests the factual support for a claim. *DeSanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). When testing this support, the pleadings, affidavits, depositions, admissions and other admissible evidence must be viewed in the light most favorable to the nonmoving party. *Quality Products & Concept Co*, *supra*, 469 Mich 369. Summary disposition is appropriate when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp,* 469 Mich 177, 183; 665 NW2d 468 (2003).

The elements of the tort of intentional interference with a contract or business relationship are (1) "the existence of a valid business relationship or expectancy," (2) defendant has knowledge of that relationship or expectancy, (3) defendant's intentional interference causing a breach or termination of that relationship or expectancy, and (4) damage to the plaintiff. *Mino v Clio School Dist,* 255 Mich App 60, 78; 661 NW2d 586 (2003). The question in this appeal is whether defendant intentionally interfered with plaintiff's relationship with the City of Livonia and whether that interference caused plaintiff's employment to be terminated. We find that even if defendant intentionally took affirmative acts to encourage Mayor Kirksey to terminate plaintiff's employment as Fire Chief, plaintiff has failed to provide evidence to corroborate his theory that the interference was improper or unjustified. See *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n,* 257 Mich App 365, 383; 670 NW2d 569 (2003). Plaintiff has also failed to provide evidence that defendant caused his termination by showing that Mayor's Kirksey's stated reasons for the termination did not amount to just cause.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly