

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AZZAM ELDER,

Plaintiff-Appellee,

v

COUNTY OF WAYNE, ROBERT A. FICANO  
and GARY WORONCHAK,

Defendants,

and

BERNARD PARKER,

Defendant-Appellant.

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UNPUBLISHED

April 17, 2014

No. 313540

Wayne Circuit Court

LC No. 12-000503-CD

Before: HOEKSTRA, P.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

Now-former Wayne County Commissioner Bernard Parker sought summary disposition of former Wayne County Deputy Executive Azzam Elder’s claims against him based on governmental immunity. The circuit court dismissed all but one claim, allowing Elder to proceed to trial on his assertion that Parker intentionally interfered with his contractual or business relationship with the county, resulting in his termination. Elder alleged specific facts that Parker acted outside the scope of his authority in lobbying for Elder’s removal, avoiding Parker’s claim for immunity. We affirm.

**I. BACKGROUND**

Bernard Parker served as a Wayne County Commissioner through the end of 2012. Azzam Elder served as Wayne County Deputy Executive, appointed by Executive Robert Ficano and confirmed by the Wayne County Board of Commissioners, until the fall of 2011. Elder filed suit after his termination, claiming that the county, Ficano, the commission, and individual commissioners Gary Woronchak and Parker retaliated against him for refusing to cooperate in a cover-up following the Turkia Mullin severance-package scandal. In relation to Parker, Elder asserted that he had brought to light the complaints of various county vendors that Parker and his son had abused Parker’s public office by “harass[ing] and pressur[ing]” them “to engage in some

type of scheme.”<sup>1</sup> Elder alleged that Ficano told him that Parker was upset about these accusations and advised Ficano to terminate Elder for the good of the county. Ficano thereafter suspended Elder’s employment, but continued to meet with him in attempts to induce his participation in the cover-up. Ultimately, based on Ficano’s threats to interfere with his securing new employment, Elder resigned his post.

Elder filed a multicount complaint against the county and various officials, including Parker. His claims sounded in wrongful termination in retaliation for his whistleblowing activities. Elder claimed intentional infliction of emotional distress. He also claimed that defendants intentionally interfered with his contractual and advantageous business relationship with the county. In relation to the latter count, Elder specifically alleged that defendants “intentionally and improperly interfered with the contractual and/or advantageous business relationship [Elder] enjoyed with Defendant Wayne County and/or Ficano by inducing or causing a suspension and termination of [Elder’s] contract and/or advantageous business relationship with Defendants Wayne County and/or Ficano.” Parker interfered with his contractual or business relationship, Elder argued, by “demand[ing] a meeting with Defendant Ficano” to push for Elder’s termination because of Elder’s complaint about Parker’s misuse of his elected position.

In lieu of filing an answer, Parker filed a motion for summary disposition pursuant to MCR 2.116(C)(7) (immunity granted by law) and MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted). On November 5, 2012, the circuit court dismissed Elder’s whistleblower, wrongful termination, and intentional infliction of emotional distress claims against Parker based on (C)(8) for failure to plead facts upon which relief could be granted. The court declined to dismiss Elder’s claim of intentional interference with a contractual or business relationship, however. The court ruled that this count “cannot be dismissed based on governmental immunity where there is no showing that a meeting of a commissioner with the county executive to express displeasure with the deputy executive’s reports and urge the deputy’s termination is conduct within the scope of a commissioner’s employment.” The circuit court made no analysis of this claim under (C)(8). Parker then appealed the denial of his motion for summary disposition on this count, arguing only that he is entitled to governmental immunity.

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<sup>1</sup> Elder attached to his complaint the letter sent by Parker’s son that allegedly spurred the complaints of county vendors. Parker’s son wrote the letter on behalf of his company Bp3 and Associates, L.L.C. The letter expressed Parker’s son’s desire for “an opportunity to earn [the vendor’s] business as [the vendor’s] strategic business development firm in the Detroit area.” The letter described Bp3’s consulting and lobbying services, and extolled its “outstanding relationship with various elected officials [that] could prove to be a useful tool in [the vendor’s] tool box.”

## II. STANDARD OF REVIEW

We review de novo a circuit court's summary disposition ruling. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). Under MCR 2.116(C)(7), a defendant is entitled to summary disposition when a claim is barred because of immunity granted by law. *Dextrom v Wexford Co*, 287 Mich App 406, 429; 789 NW2d 211 (2010).

A summary disposition motion brought under subrule (C)(7) "does not test the merits of a claim but rather certain defenses" that may eliminate the need for a trial. *DMI Design & Mfg, Inc v ADAC Plastics, Inc*, 165 Mich App 205, 208; 418 NW2d 386 (1987) (2010). When reviewing a grant of summary disposition under subrule (C)(7), this Court accepts as true the plaintiff's well-pleaded allegations, and construes them in the light most favorable to the plaintiff. *Id.* at 208-209. "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts," whether immunity bars the claim is a question of law for the court. [*Nash v Duncan Park Comm*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 314017, issued March 20, 2014), slip op at 17.]

We also consider as true the documentary evidence submitted by the nonmoving party, unless affidavits or other appropriate documents specifically contradict them. *Seldon v Suburban Mobility Auth for Regional Transp*, 297 Mich App 427, 432-433; 824 NW2d 318 (2012). The individual immunity afforded to a government employee is an affirmative defense that the employee must raise and prove. *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008).

## III. ANALYSIS

Parker continues to argue that he is shielded from civil liability by governmental immunity. MCL 691.1407(5) of the governmental tort liability act (GTLA) provides:

A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

Parker is a legislator at the county level of government.<sup>2</sup> See Const 1963, art 7, § 8; MCL 46.11; *Lucas v Wayne Co Bd of Comm'rs*, 148 Mich App 702, 704; 385 NW2d 267 (1983). See also Wayne Co Charter, art III, § 3.111 ("The County Commission is the legislative body of the County and is vested with all legislative authority."). He is therefore immune from tort liability if his acts are within the scope of his legislative authority.

The determination whether particular acts are within [an elected official's] authority depends on a number of factors, including the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the

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<sup>2</sup> County commissioners also serve in an administrative role. Const 1963, art 7, § 8.

charter, ordinances, or other local law defining the official's authority, and the structure and allocation of powers in the particular level of government. [*Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988).]

The elected official's motive is irrelevant in determining whether he was acting within the scope of his authority. *American Transmissions, Inc v Attorney General*, 454 Mich 135, 143-144; 560 NW2d 50 (1997).

Wayne County Charter, art III, § 3.115 provides, in pertinent part:

In addition to other powers and duties prescribed in this Charter, the Commission may:

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- (4) Approve or reject appointments by the CEO of the Deputy CEO, department heads, their deputy directors, and members of boards and commissions in accordance with Article IV.

Section 3.118 of the charter continues:

Except insofar as is necessary in the performance of the duties of office or as otherwise provided by this Charter, a Commissioner or an employee of the Commission *shall not interfere, directly or indirectly, with the conduct of any executive department.* [Emphasis added.]

The board of commissioners has the power to act *as a unit* to approve or reject appointments made by the county executive for various appointed positions. Section 3.115(4) is a power given to the commission as a whole, not to any one commissioner. The commission's stance on any candidate Ficano offered for the position of deputy executive would be determined after a commission vote. See Wayne County Charter, art III, § 3.114(c) ("The vote on final adoption of any resolution or ordinance shall be by roll call by a majority . . ."). Parker's personal opinion of Elder, although it would have affected his vote, would not be representative of the commission's thoughts in voting on the appointment.

Moreover, Parker's conduct was not directed at a candidate for deputy executive; it involved a current appointee engaged in executive department business. The county charter only allows the commission to exercise its approval and rejection authority within 30 days after the chief executive submits an appointment to the commission. Wayne County Charter, art IV, § 4.385(2). Because Elder had been the deputy executive for several years, the commission no longer had authority to reject his appointment; Elder served at the sole pleasure of the appointing authority—Ficano. See Wayne County Charter, art IV, § 4.385(3).

Parker and the rest of the commission had no say over Elder's continued employment. Once a position is filled by appointment, no commissioner may interfere with the conduct of an executive department unless it "is necessary in the performance of his duties" as a county commissioner. As stated in the commentary accompanying the charter, § 3.118 "is a typical means of expressing the tenets embodied in the separation of powers doctrine." It makes it

“clear and undisputable that neither a Commissioner nor a Commission staff member has the power to directly . . . hire and fire executive branch employees.” Wayne County Charter, § 3.118, compiler’s comments.

Accepting as true that Parker demanded a private meeting with Ficano in which he lobbied for the termination of Elder’s employment, Parker’s conduct violated the Wayne County Charter. He acted alone to interfere with the inner workings of the Wayne County Executive’s office. Parker therefore acted outside the scope of his authority, excepting his actions from the protection of the governmental immunity statute.

This result is supported by *Brown v Mayor of Detroit*, 271 Mich App 692; 723 NW2d 464 (2006), vacated in part on other grounds 478 Mich 589 (2007). In *Brown*, a police officer sued the mayor of Detroit for slander. The allegation was based on the mayor’s response to a question from a television reporter, stating that the police officer’s allegations of misconduct against him were “lies” and that the officer was a “liar.” *Id.* at 703. This Court found that the mayor was protected from suit by governmental immunity because he made the alleged defamatory remarks while answering public questions about police department investigations. *Id.* at 723. This Court reasoned that the scope of the mayor’s authority included responses to questions about personnel and city issues, but it was “a very close question because a jury could find that [the mayor’s] statements to the press may very well have been part and parcel of his allegedly retaliatory conduct.” *Id.*

Unlike *Brown*, Parker’s statements were not made publicly or in response to a valid question from a journalist regarding issues over which Parker had authority. Instead, Parker’s comments were made privately to Ficano to interfere with Elder’s employment, a matter which is an exclusively executive function. Therefore, Parker’s alleged actions did not fall within the scope of his legislative authority as a Wayne County Commissioner and he is not protected from liability by governmental immunity.

We affirm.

/s/ Joel P. Hoekstra  
/s/ David H. Sawyer  
/s/ Elizabeth L. Gleicher