STATE OF MICHIGAN

COURT OF APPEALS

PAMELA ANDERSON,

Plaintiff-Appellant,

v

CITY OF INKSTER, TWENTY-SECOND DISTRICT COURT, and JUDGE SYLVIA JAMES,

Defendants-Appellees.

UNPUBLISHED
July 29, 2014

No. 314941
Wayne Circuit Court
LC No. 12-009443-CZ

Before: MARKEY, P.J., and OWENS and RIORDAN, JJ.

PER CURIAM.

Plaintiff sued defendants for alleged violations of the Whistleblowers' Protection Act (WPA), MCL 15.631 *et seq*., and the Civil Rights Act (CRA), MCL 37.2101 *et seq*. The trial court granted defendants' motions for summary disposition under MCR 2.116(C)(8) (failure to state a claim) and (10) (no genuine issue of material fact). Plaintiff appeals by right. After plaintiff filed her brief on appeal, defendant Sylvia James notified this Court that she had filed for bankruptcy, and this appeal was stayed with respect to James. We affirm the grant of summary disposition to the city of Inskster and the 22nd District Court.

In 2011, the Judicial Tenure Commission filed a formal complaint against defendant James, then the judge for the 22nd District Court, alleging that she had committed various improprieties. Defendant James was suspended with pay while the investigation was pending. Plaintiff was a court administrator at the time. Plaintiff alleges that she participated in the investigation of defendant James, who plaintiff contends, "reacted with displeasure" to plaintiff's involvement in the investigation. Plaintiff accused defendant James of raising baseless allegations against her. In particular, plaintiff draws attention to a letter sent by defendant James to residents of the city of Inkster soliciting their votes in an upcoming election.[1] In the letter, defendant James disputes the basis of the investigation. She also alleges that her "defense was hampered" because plaintiff shredded documents from defendant James's office. Plaintiff also alleges that defendant James sent the letter "to all of the African-American Judges in all of the

[1] James was not reelected.

nearby counties, in a further attempt to poison any future job opportunities" for plaintiff. Plaintiff further alludes to a website that "contains similar information."

Shortly after plaintiff filed her complaint, defendants 22nd District Court and city of Inkster moved the trial court for summary disposition under MCR 2.116(C)(8) and (10). They argued that they could not be held liable for defendant James's actions while she was suspended because the doctrine of respondeat superior did not apply. Plaintiff argued that the doctrine did apply. The trial court granted the motion, concluding that defendant James had not acted within the scope of her employment with the district court because the letter was written while she was suspended and it was part of her reelection campaign.

Plaintiff first argues that the trial court erred by holding that the WPC and the CRA contain an "actively working" exception, and therefore defendants 22nd District Court and city of Inkster could not be held liable under those statutes as employers. A trial court's decision on a motion for summary disposition is reviewed de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012).

The legal sufficiency of the complaint is tested under MCR 2.116(C)(8). A court must accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Summary disposition may be granted only if the claims are clearly unenforceable as a matter of law and no factual development could possibly justify recovery. *Id*. When deciding a motion brought under this section, a court considers only the pleadings. *Id*. at 119-120.

Summary disposition may be granted under MCR 2.116(C)(10) where, viewing the evidence then before the court in the light most favorable to the party opposing the motion, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*.

The crux of plaintiff's suit is her allegation that defendant James's reference to her in the letter in issue violated the WPA and CRA. Plaintiff argues that the trial court incorrectly read an "actively working" exception in those statutes, so that defendant James was insulated from liability while she was suspended. However, as defendants argue, this is a mischaracterization of the trial court's finding. Rather than reading an "actively working" exception into the statutes, the trial court found that when defendant James wrote and disseminated the letter, she had not acted within the scope of her employment, because she had effectively been divested of her power as a judge and because the letter was a campaign letter.

"An employer is generally liable for the torts its employees commit within the scope of their employment." *Hamed v Wayne Co*, 490 Mich 1, 10-11; 803 NW2d 237 (2011). In turn, an employer is not liable for the torts an employee commits when acting beyond the scope of the employer's business. *Id*. at 11. To act "within the scope of employment" means to engage in the services of one's master, or while about the master's business. *Id*.

In *Hamed*, a county deputy sexually assaulted the plaintiff while she was an inmate at the jail. *Id*. at 6. The plaintiff sued the county, alleging that it was vicariously liable. *Id*. at 7. Our Supreme Court held that "[i]ndependent action, intended solely to further the employee's individual interests, cannot be fairly characterized as falling within the scope of employment." *Id*. at 11. The Court found that the deputy's "sexual assault was an independent action accomplished solely in furtherance of [his] own criminal interests." *Id*. The Court added that the county had not benefited from the deputy's sexual assault. *Id*.

Plaintiff argues that *Hamed* is inapplicable to the present case because it involved a "public accommodation" claim brought under a different section of the CRA. However, this factual distinction does not render inapplicable the Court's holding regarding the doctrine of respondeat superior. The *Hamed* Court's consideration of the general tenants of the doctrine is not restricted to cases involving the underlying tort in that case. Thus, the trial court properly relied on *Hamed* for its holding regarding the doctrine of respondeat superior.

Moreover, the campaign activities of an incumbent judge, suspended or otherwise, are not within the scope of employment as a judge. Defendant James did not write the letter while she was engaged in judicial activities, from which she was suspended. Further, she wrote the letter to further her reelection campaign, which was an individual interest, not an interest of the court. The letter did not benefit either the court or the city.

Finally, plaintiff contends that the motion for summary disposition was premature because discovery was not completed. We disagree. A motion under MCR 2.116(C)(8) or (10) may be made at any time. MCR 2.116(B)(2), (D)(4). Furthermore, plaintiff presents no argument whatsoever regarding what factual support for her claims might be uncovered by further discovery. See *Liparoto Constr Co v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34; 772 NW2d 801 (2009) (holding summary disposition is not premature where there is no fair likelihood that further discovery will yield support for the nonmoving party's position). Plaintiff has abandoned this claim by failing to brief its merits. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). [2]

We affirm.

/s/ Jane E. Markey
/s/ Donald S. Owens
/s/ Michael J. Riordan

[2] We will not address plaintiff's assertion of error regarding the court's consideration of defendant James's First Amendment rights given the stay issued pending the resolution of her bankruptcy proceedings.