

STATE OF MICHIGAN
COURT OF APPEALS

DARNELL C. PETTWAY,

Plaintiff-Appellant,

v

DETROIT JUDICIAL COUNCIL, CITY OF
DETROIT, THIRTY-SIXTH DISTRICT COURT,
THIRTY-SIXTH DISTRICT COURT CHIEF
DEPUTY ADMINISTRATOR and THIRTY-
SIXTH DISTRICT COURT SUPERVISOR,

Defendants-Appellees.

UNPUBLISHED

April 19, 2002

No. 226616

Wayne Circuit Court

LC No. 99-900041-CZ

Before: Talbot, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right challenging the trial court's order granting summary disposition in favor of defendants Detroit Judicial Council and the City of Detroit pursuant to MCR 2.116(C)(8).¹ We affirm.

Plaintiff commenced this action alleging sexual orientation discrimination, retaliation, intentional infliction of emotional distress, and tortious interference with a business relationship and/or expectancy against the Thirty-Sixth District Court, his district court supervisors, the Detroit Judicial Council and the City of Detroit. At the time he filed the action, plaintiff worked as a court reporter for the Thirty-Sixth District Court.

Plaintiff first contends on appeal that he has a private right of action against the Detroit Judicial Council and the City of Detroit for sexual orientation discrimination under § 27-3-1 of the Detroit Human Rights Ordinance. Plaintiff does not dispute that the ordinance applies only to discriminatory acts by employers, but challenges the trial court's determination that the Detroit Judicial Council and the City of Detroit were not his employers. We review de novo a trial court's decision to grant summary disposition. *Gyarmati v Bielfield*, 245 Mich App 602,

¹ In a separate order, the trial court granted summary disposition in favor of the remaining defendants, the Thirty-Sixth District Court, the Chief Deputy Administrator of the Thirty-Sixth District Court (Paul Kanan), and the Supervisor of the Thirty-Sixth District Court (Ruth Whitby). Plaintiff does not challenge the trial court's decision with regard to these defendants.

604; 629 NW2d 93 (2001). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). In deciding a motion under subrule (C)(8), a court considers only the pleadings and accepts all of the well-pleaded factual allegations as true and construes them in the light most favorable to the nonmoving party. A motion under subrule (C)(8) may be granted only when the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

After reviewing the pleadings, we are convinced that no factual development could justify plaintiff's recovery against the Detroit Judicial Council or the City of Detroit. We find it clear that the district court, not the Detroit Judicial Council or the City of Detroit, had responsibility for all court operations, including personnel matters relating to court employees. *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 299-302; 586 NW2d 894 (1998).² Plaintiff has not alleged that the district court has chosen to share authority over personnel matters with the Detroit Judicial Council or the City of Detroit. *Id.* at 303. Accordingly, the Thirty-Sixth District Court constitutes plaintiff's employer, not the Detroit Judicial Council or the City of Detroit. Because the Detroit Human Rights Ordinance applies only to discriminatory conduct by employers, we conclude that the trial court properly granted the Detroit Judicial Council and City of Detroit summary disposition of plaintiff's claim under the Detroit Human Rights ordinance pursuant to MCR 2.116(C)(8).³

Plaintiff next argues that the trial court erred in determining that his intentional tort claims were barred by governmental immunity. The applicability of governmental immunity is a question of law that we review de novo on appeal. *Baker v Waste Management of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995). Plaintiff claimed that employees of the Thirty-Sixth District Court committed repeated acts of discrimination against him on the basis of his sexual orientation. Plaintiff made no such specific allegations, however, against employees of the Detroit Judicial Council or the City of Detroit.⁴ Because plaintiff failed to allege that

² In 1996, the Legislature amended MCL 600.8273 and 600.8274 to provide that Thirty-Sixth District Court employees, who formerly had been employees of the state judicial council, would become employees of the Detroit Judicial Council or the City of Detroit. In *Judicial Attorneys Ass'n, supra* at 299-304, the Supreme Court concluded that the Legislature's amendments to §§ 8273 and 8274 unconstitutionally violated the separation of powers doctrine by infringing on the judiciary's authority over court administration.

³ Because the Detroit Judicial Council and the City of Detroit do not qualify as plaintiff's employers, we need not address plaintiff's claim that he has a private right of action under the Detroit Human Rights ordinance. We acknowledge, however, that this Court has previously determined that a City of Detroit employee has a private cause of action for sexual orientation discrimination under the Detroit city charter. *Mack v Detroit*, 243 Mich App 132; 620 NW2d 670 (2000), lv gtd 464 Mich 874 (2001).

⁴ Plaintiff alleged many instances of discrimination by his peers and supervisors at the Thirty-Sixth District Court that caused him emotional distress. It was undisputed that plaintiff's supervisors were Kanan and Whitby. Plaintiff made no allegation that either Kanan or Whitby were employees of the Detroit Judicial Council or City of Detroit. Furthermore, in light of our conclusion that neither the Detroit Judicial Council nor City of Detroit constituted the employer of the Thirty-Sixth District Court's employees, any such allegation would lack merit.

employees of the Detroit Judicial Council or the City of Detroit engaged in any acts outside of the scope of their governmental functions, we conclude that these defendants were entitled to summary disposition premised on governmental immunity. MCL 691.1407.

Affirmed.

/s/ Michael J. Talbot

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder