STATE OF MICHIGAN

COURT OF APPEALS

REVEREND MONROE WHITE,

Plaintiff-Appellant,

v

FIRST UNITED BAPTIST CHURCH, EDWARD CARTER, and ERNEST WHITAKER,

Defendants-Appellees.

UNPUBLISHED
July 16, 2002

No. 229713
Kalamazoo Circuit Court
LC No. 99-000674-CK

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

PER CURIAM.

In this action alleging breach of an employment contract, plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff contends that the trial court failed to properly apply the standard for deciding a motion under MCR 2.116(C)(10). We disagree. A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding the motion, the trial court considers the "affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.11(G)(5), in the light most favorable to the party opposing the motion." *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). If after such review the record fails to yield a genuine issue with respect to any material fact, summary disposition is properly granted. *Id*.

In challenging the trial court's application of this standard, plaintiff first suggests that the trial court improperly resolved the factual issue whether five of the votes cast in the vote whether to retain plaintiff as pastor of defendant First United Baptist Church were invalidly cast by persons who were not "active qualified members" of the congregation within the meaning of the church's rules of government. We review de novo a trial court's decision regarding a motion for summary disposition to determine if the moving party was entitled to judgment as a matter of law. *Id*.

Generally, in determining whether a genuine issue of material fact that would prevent summary disposition under MCR 2.116(C)(10) exists, the trial court must avoid making findings of fact. *Nesbitt v American Community Mut Ins Co*, 236 Mich App 215, 220; 225; 600 NW2d

427 (1999). However, because the validity of the challenged votes does not involve an ultimate fact issue on which a jury verdict could be based, it is not a genuine issue of material fact that would prevent summary disposition of this matter. See *Neal v Friendship Manor Nursing Home*, 113 Mich App 759, 763-764; 318 NW2d 594 (1982). Church rules require the attendance of 15 active qualified members to establish a quorum. Twenty-two persons voted sixteen to six in favor of the pastor's dismissal. Even disregarding the five disputed votes, and assuming that all five of the disputed votes were cast against plaintiff, the uncontested votes would still have supplied a valid margin of eleven to six in favor of plaintiff's dismissal. Because discounting these five votes would have neither changed the result of the vote nor affected its validity, the question whether those votes should have been counted could not be decisive of the outcome at trial. Hence, the question is not an issue of material fact and any error in the trial court's review of that issue was harmless. *Id*.; see also, MCR 2.613(A).

We similarly find no error in the trial court's determination that, although there was a genuine issue of fact regarding whether "Pastor Appreciation Day" had been improperly canceled, that issue was not a *material* issue of fact preventing summary disposition. As noted by the trial court, plaintiff failed to show that he would have suffered any actual damages from the cancellation. Although plaintiff argues that at trial, "member after member" of the church could have come forward and testified that it is customary for the faithful to make monetary gifts to their pastors on such occasions, our Supreme Court has held that "[a] litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Because plaintiff failed to offer such facts at the time of the motion, summary disposition of this issue was proper.

Plaintiff next argues that the trial court erred in its interpretation of the provision of the church's rules of government requiring that thirty days' notice be given before dissolution of the pastor-church relationship. Again, we disagree. Interpretation of unambiguous contractual language is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Here, the trial court correctly determined that the relevant rules unambiguously provide that, once the church decides that the relationship is to be dissolved, it must give the pastor thirty days' notice before terminating the relationship. There is nothing in language of the relevant provisions to suggest, as plaintiff argues, that the church must give thirty days' notice to its members before a vote on termination may be taken. The trial court did not err on this issue.

We similarly reject plaintiff's assertion that the trial court erred in granting defendants' summary disposition because the vote on plaintiff's termination was improperly conducted. Contrary to plaintiff's assertion, the church's constitution and by-laws do not require that the church's nominating committee act as tellers for the vote. Although the constitution and by-laws require that the nominating committee function as tellers at the annual election of church officers, the unambiguous language of these documents limits the committee's function in this regard to the annual election. There is nothing in the constitution and by-laws providing that the nominating committee must also act as tellers for other votes conducted at church business meetings, such as the vote to dissolve the relationship between the pastor and the church.

Plaintiff next claims that the vote on his termination was in violation of those provisions of the church's constitution and by-laws providing that special meetings can be held only if noticed at two successive worship services, and that the meeting that resulted in his termination was not so noticed. However, plaintiff fails to note that the vote was not taken at a special meeting, but rather at a regular business meeting of the church. Under the church's constitution and by-laws, regular church business meetings are conducted on the Saturday before the first Sunday of each month, and there are no special notice requirements for the regular meetings. The meeting in question was held on October 2, 1999, the Saturday immediately preceding the first Sunday in October 1999. Thus, it was a regular business meeting, not a special one, and no special notice was required.

Next, we note that although plaintiff correctly observes that the church's meetings are governed by Roberts' Rules of Order, he errs in his assertion that Article VI, Section 36 of Roberts' Rules of Order was violated through a "reconsideration," at the October 2, 1999 regular meeting, of the decision not to terminate his employment made on a vote taken at the July 25, 1999 regular meeting. The vote on October 2 was not a "reconsideration," in the technical sense, governed by Section 36. Rather, it was a vote on a previously rejected motion, governed by Article VI, Section 38, and proper under that section because the church conducts its business meetings more often than quarterly, and a regular business meeting intervened between the first and second votes. Hence, Roberts' Rules of Order were not violated by the renewal of the rejected motion.

Finally, plaintiff asserts that the trial court erred in failing to consider whether defendant First United Baptist Church was required, after the first year of plaintiff's service, to conduct a review of the church's spiritual and financial growth and consider the possibility of providing plaintiff with a pay increase. Contrary to plaintiff's assertion, however, the trial court specifically considered this issue and concluded that, "under the expressed language of the contract," which provides that such review and pay increase are no more than "possibilities," the church was under no contractual obligation to undertake a review of plaintiff's pay. We find no error in the trial court's interpretation of the express and unambiguous language of the parties' agreement. *Henderson*, *supra*.

We affirm.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra