STATE OF MICHIGAN

COURT OF APPEALS

RONALD ENGLE,

Plaintiff-Appellant,

v

ALAN BRANDEMIHL, MAYOR JACK B. KIRKSEY, and MIA RUTAN,

Defendants-Appellees.

UNPUBLISHED
January 15, 2004

No. 243771
Wayne Circuit Court
LC No. 02-219551

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

This case is one in a series of lawsuits filed by plaintiff concerning the termination of his employment as the Fire Chief of the City of Livonia Fire Department. In the instant case, plaintiff brought suit against Alan Brandemihl, the city's current Fire Chief, Jack Kirksey, the city's current Mayor, and Mia Rutan, the city's Director of the Department of Human Resources, alleging tortious interference with a contractual relationship. Defendants sought summary disposition, arguing that plaintiff failed to state a claim on which relief could be granted, and that plaintiff's claims are barred by res judicata or collateral estoppel as well as by governmental immunity. The trial court granted defendants' motion for summary disposition. Plaintiff now appeals as of right. We affirm.

FACTUAL BACKGROUND

The city of Livonia hired plaintiff as its Fire Chief in September 1993. After his hire, plaintiff learned that the city had entered into a consent decree with the federal government, which required the city to diversify it fire department. In 1995, plaintiff informed the fire department supervisory staff that he intended to carry out the consent decree. Also in 1995, defendant Jack E. Kirksey was elected Mayor of Livonia. According to plaintiff, during this time, mayor-elect Kirksey met with defendant Alan Brandemihl and several other firefighters union members concerning the removal of plaintiff as Fire Chief. According to plaintiff, after the 1995 meeting, a campaign was launched aimed at removing plaintiff from his position as Fire Chief.

In November 1998, then Fire Marshall Rockney Whitehead was nearing retirement and plaintiff met with Kirksey to discuss Whitehead's replacement. It was acknowledged that Joel Williamson was nearest in seniority to be promoted, but Kirksey had reservations and concerns

about Williamson's qualifications and abilities to hold the position and he directed plaintiff to by-pass Williamson and promote someone else. Plaintiff disregarded the directive and promoted Williamson to the position. After learning of this, Kirksey rescinded the promotion. Plaintiff thereafter instituted suit against the city, Kirksey, and other individuals, claiming in part that the defendants tortiously interfered with plaintiff's employment contract. Defendant's sought summary disposition and the circuit court granted dismissal of plaintiff's complaint with prejudice.

In the meantime, in February 1999, plaintiff submitted a letter announcing his intention to take medical leave, which he subsequently changed to a request for worker's compensation benefits. The claim was tried and denied by the worker's compensation appellate commission. In October 1999, Kirksey and the city determined that plaintiff was fit to return to work and ordered plaintiff to return as of October 25, 1999. On that day, plaintiff was provided with a letter of termination. Among the reasons for plaintiff's termination were (1) promoting an individual against the direction of his supervisor, (2) performing a tainted and inappropriate investigation, (3) inconsistent statements at the civil service hearing, (4) inappropriate use of city equipment, (5) inability to command the fire department, and (6) destruction of city records. Plaintiff challenged his termination before the city's civil service commission and the commission upheld plaintiff's termination.

Plaintiff thereafter instituted suit against the city and Mayor Kirksey with a multi-count complaint including a count for superintending control. The trial court dismissed plaintiff's claim for superintending control and then granted summary disposition to the defendants on the remaining counts.[1] Plaintiff appealed to this Court and a panel of this Court affirmed. *Engle v City of Livonia*, unpublished opinion per curiam of the Court of Appeals, issued September 16, 2003 (Docket No. 240206).

On June 7, 2002, plaintiff brought the present suit against the present defendants alleging tortious interference. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8). On August 23, 2002, the trial court held a hearing at which it concluded:

> I don't really see any prima facie allegations here that are substantiated by any facts to support a claim in this case. And I really just don't see any merits [sic] to it. In addition to the arguments made by the Defendants in the case, and even the newly added Defendants, I don't really see a prima facie case. So I don't think that even allowing discovery, a prima facie case could be made out. So, I'm going to grant the motion for summary judgment as to all the defendants.

Thereafter the trial court entered an order granting summary disposition to defendants.

STANDARD OF REVIEW

[1] The remaining allegations included civil rights violations, harassment, respondeat superior, breach of contract, statutory violations, libel, and slander.

Defendants brought their motion for summary disposition under MCR 2.116(C)(7) and (8). However, the trial court did not identify on what ground it granted summary disposition. A motion for summary disposition under MCR 2.116(C)(7) is appropriate where a claim is barred because of immunity by law. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone and may not be supported with documentary evidence. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). Where, as here, the parties provided evidentiary support for their positions, review under MCR 2.116(C)(10) is warranted. A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim. When deciding a motion under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76l 597 NW2d 517 (1999). On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

ANALYSIS

Plaintiff argues that the three defendants in this case sought to have plaintiff discharged from his position of Fire Chief in the city of Livonia because they wanted to maintain an all-white fire department. Plaintiff argues that each defendant took some action to interfere with plaintiff's contractual relationship as Fire Chief in order to have him discharged.[2]

The elements of a cause of action for tortious interference with a contract or a business relationship include (1) a contract or a business relationship, (2) knowledge by the defendant of the contract or the business relationship, (3) intentional and improper interference by the defendant, inducing or causing a breach, disruption or termination of the contract or business relationship, and (4) resultant damage to the party whose contract or business relationship has been breached, disrupted or terminated. *Mino v Clio School District*, 255 Mich App 60, 78; 661 NW2d 586 (2003); *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994). The burden is on the plaintiff to prove improper and unjustified interference. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 96; 443 NW2d 451 (1989). Only those who are not parties to the contract may be said to interfere with the performance of the contract. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287; 393 NW2d 610 (1986). Thus, in order to maintain a tortious interference claim, a plaintiff must also establish that the defendant was a third party to the contract or business relationship. See *Feaheny v Caldwell*, 175 Mich App 291; 437 NW2d 358 (1989); *Reed v Michigan Metro Girl Scout council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). It is settled that corporate agents are not liable for tortious interference with the

[2] Plaintiff's primary allegations are that (1) he notified his staff of the need to comply with the consent decree, (2) immediately following his decision, union officials met with Mayor Kirksey asking for plaintiff's discharge, (3) they believed they had an agreement with Kirksey, (4) they brought unsubstantiated allegations against plaintiff, (5) Brandemihl was involved in the ongoing effort to remove plaintiff, (6) Rutan was a party to the efforts to have plaintiff discharged, and (7) Mayor Kirksey agreed to maintain an all-white fire department and to discharge plaintiff.

corporation's contracts unless the agents acted solely for their own benefit. *Feaheny*, *supra*; *Reed*, *supra*.

A fatal flaw in plaintiff's current claim against defendant Kirksey is his failure to establish that Kirksey stood as a third party to the contractual relationship. Kirksey, as Mayor of the city of Livonia, is also the Director of Public Safety. His signature appears on the letter of termination terminating plaintiff's employment as Fire Chief. In this capacity, Kirksey was plaintiff's superior and was responsible for terminating plaintiff's employment. In terminating plaintiff's employment, Kirksey was acting on behalf of the city. Plaintiff remained Fire Chief under Kirksey's office for several years before he was eventually terminated. While plaintiff alleges that Kirksey terminated plaintiff because of pressure to maintain an "all-white" fire department, there is no evidence that Kirksey acted solely for his own benefit when he terminated plaintiff. Kirksey gave reasons for plaintiff's termination and the city's civil service commission upheld plaintiff's termination. Although plaintiff challenges the reasons for his termination and claims the reasons were mere pretexts for Kirksey's desire to maintain an all-white fire department, plaintiff presented no evidence that Mayor Kirksey acted solely for his own benefit such that he should be liable for tortious interference. The trial court correctly granted summary disposition with regard to Kirksey.

With regard to defendants Brandemihl and Rutan, Brandemihl is the current Fire Chief and at the time plaintiff was terminated, Brandemihl was one of three individuals acting in the capacity of Fire Chief. Rutan is the current Director of Human Resources of the city. It presumably can be said that while these individuals were not direct superiors of plaintiff, their responsibilities did require them to exercise their independent judgment in evaluating plaintiff's performance and making a recommendation to the mayor. In that regard, plaintiff has not demonstrated that Brandemihl and Rutan were third parties to plaintiff's employment contract.

Regardless whether Brandemihl and Rutan were third parties to the contract, plaintiff failed to present evidence of intentional and improper interference causing termination of the contract. With regard to Rutan, plaintiff alleged that Rutan knew of the demand that plaintiff be discharged in order to maintain an all-white fire department, Rutan aided in and agreed with maintaining an all-white fire department, and Rutan participated in the processing of the various pretexts used in terminating plaintiff. These allegations fail to support a claim against Rutan of interference with plaintiff's contract. Even if Rutan agreed with having an all-white fire department, there is nothing to indicate that Rutan took any improper action against plaintiff. While plaintiff alleges that Rutan participated in processing allegations against plaintiff, he offered no evidence to support this claim.

With regard to Brandemihl, it is apparent from the record that Brandemihl was in attendance at a meeting at which he and several other individuals requested the termination of plaintiff's employment. While plaintiff alleges Brandemihl wanted plaintiff discharged because of plaintiff's attempt to integrate the fire department, there is no evidence to advance this theory. While plaintiff alleges that Brandemihl took part in a conspiracy to remove plaintiff, there is likewise nothing to support this. Under the circumstances, the trial court correctly granted summary disposition to defendants.

While the trial court did not address the issue whether defendants were immune from liability in this case, we will briefly address it. It is a long-standing rule in Michigan that judges,

legislators, and highest-level executive officials enjoy absolute immunity from all tort liability when they are acting within the scope of their executive authority. MCL 691.1407(5); *Ross v Consumers Power Co*, 420 Mich 567, 632; 363 NW2d 641 (1984); see also *Marrocco v Randelett*, 431 Mich 700; 433 NW2d 68 (1988). Plaintiff does not appear to argue that the three defendants in this case were not "highest-level executive officials"; instead, plaintiff argues that defendants were acting outside of their executive authority when they tortiously interfered with plaintiffs contractual relations. Because plaintiff failed to support a claim of tortious interference, plaintiff's argument concerning whether defendants were acting outside their executive authority is without merit.[3]

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage

[3] Because of our disposition of this case, we need not address the argument concerning whether plaintiff's claim was barred by res judicata or collateral estoppel.