

STATE OF MICHIGAN
COURT OF APPEALS

PROFESSIONAL RESOURCE NETWORK,
MARIE HEUHUS, also known as MARIE HEUHS,
and KERRY HEUHUS, also known as KERRY
HEUHS,

Plaintiffs-Appellees,

v

CHANTEL WOJICK, also known as CHANTEL
WOJCIK,

Defendant-Appellant,

and

VAN BUREN/CASS AREA HEALTH
DEPARTMENT, and JEFF ELLIOT, also known as
JEFFREY ELLIOT,

Defendants.

Before: LETICA, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Defendant Chantel Wojcik¹ appeals as of right the trial court’s order denying her motion for summary disposition with regard to the application of governmental immunity to her tortious interference and defamation claims.² Finding no errors warranting reversal, we affirm.

¹ For ease of reference, the singular “defendant” is a citation to Wojcik.

² The trial court dismissed plaintiffs’ claim of intentional infliction of emotional distress, and it is not at issue in this appeal.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of an alleged Medicaid funding dispute. Under the Medicaid system, the federal government provided Medicaid funding for dental services, but the state was nonetheless required to make a contribution. Therefore, the authorized federal Medicaid payment was compared to the average commercial rate for the claimed treatment. The difference between the average rate for the treatment and the federal Medicaid payment was made with non-federal dollars or a local match. Therefore, local health departments made payments or acquired donations to fund dental services. However, the federal regulations precluded a health care provider from submitting a donation unless it was “bona fide.” 42 CFR 433.54(e). If the provider donation was directly or indirectly returned to the provider, the donation amount was not bona fide and would be deducted from the state’s medical assistance expenditures. *Id.*

Plaintiffs entered into a contract in 2012 with Van Buren/Cass Area Health Department (Health Department) as authorized by the health director, Jeffrey Elliott (Elliott). This contract provided that Professional Resource Network (PRN) would furnish dental services to low-income individuals, and the Health Department would sponsor PRN to make it eligible for Medicaid funding. PRN would be eligible for payment through the State of Michigan Dental Adjustment Payment Program (DAPP). The contract also provided that the Health Department would refer eligible patients to PRN for dental services “when deemed necessary.”³ On a quarterly basis, plaintiffs were notified of the amount required for participation in the DAPP. Plaintiffs made the necessary payment to defendant, and she made an electronic transfer to the State of Michigan.

In 2017, plaintiffs alleged that defendant did not respond to several communications regarding the Medicaid funding for the previous quarter. Without the Health Department’s participation, plaintiffs would be ineligible to receive their Medicaid funding. Consequently, plaintiffs directly sent the required funds that were to be submitted by the Health Department to the State of Michigan by cashier’s check with a reference to the Health Department’s name.

This direct payment to the State of Michigan then caused a series of events. First, it caused defendant to reach out to David Miller of the Michigan Department of Health and Human Services (DHHS) to inform him that the Health Department did not authorize the check sent by plaintiffs. Then, according to plaintiffs, defendant “intentionally and deliberately made statements about PRN and its members” to the board of the Health Department during a July 2017 board meeting. In their complaint, plaintiffs alleged that the statements defendant made were that:

- a. PRN was not a real business and did not have a tax id;
- b. That the contract with PRN was entered without authorization and in attempts to defraud the county; and

³ Plaintiffs did not operate a dental clinic in the Van Buren/Cass Area. However, this fact apparently did not bar the Health Department from sponsoring PRN or preclude local residents from “crossing lines” to seek dental treatment.

c. That the members of PRN had been prosecuted and plead guilty to Medicaid Fraud.

According to plaintiffs, these statements resulted in the board terminating the contract with PRN in violation of the 90-day notice provision. Subsequently, notice of the cancellation was sent to the State of Michigan, and the State of Michigan revoked Medicaid eligibility for PRN. However, after a review by corporation counsel, Elliott was directed to reinstate the contract. PRN had already been removed from the Medicaid program because of the action initiated by defendant.

Plaintiffs raised claims for tortious interference with a contract and business expectancy and defamation against defendant, citing the cancellation of the contract as a result of defendant's statements which in turn caused their termination from the DAPP. Plaintiffs asserted that the statements defendant made to the board were defamatory and that she intentionally interfered with the contractual/business relationship of the parties because of a deterioration in a sexual relationship with her superior. Defendant moved for summary disposition, arguing that she was protected by governmental immunity, that plaintiffs did not have a valid contract/business relationship, and that her statements were protected by an absolute or qualified privilege. The trial court denied defendant's motion for summary disposition under MCR 2.116(C)(7) premised on governmental immunity, concluding that there were genuine issues of material fact regarding whether her actions were undertaken in good faith or with malice pertaining to the intentional tort claims of tortious interference and defamation. The trial court also denied the request for dismissal of the defamation claim premised on privilege, citing genuine factual issues regarding the existence of good faith. This appeal followed.

II. STANDARD OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Bennett v Russell*, 322 Mich App 638, 642; 913 NW2d 364 (2018). Summary disposition is appropriate pursuant to MCR 2.116(C)(7) when the moving party is entitled to "immunity granted by law." When reviewing a motion for summary disposition premised on immunity, this Court examines the affidavits, depositions, admissions and other documentary evidence to determine whether the moving party is entitled to immunity as a matter of law. *Margaris v Genesee Co*, 324 Mich App 111, 115; 919 NW2d 659 (2018). The evidence is viewed in the light most favorable to the nonmoving party. *Id.*

III. SCOPE OF THE APPEAL

As a preliminary matter, we note that defendant only raised one issue in her statement of question presented, specifically whether defendant was entitled to governmental immunity as a matter of law of plaintiffs' claims of tortious interference and defamation. Despite this limited statement of the issue, within the brief's discussion section, defendant alleged that summary disposition of the tortious interference claim was proper because there was no valid contract. Also in the discussion section of the brief, defendant claimed that the defamation claim should have been dismissed because the defamatory statements were not particularly identified, truth was a defense, and privilege applied. In light of defendant's failure to include these issues in the statement of questions presented, we decline to address them. MCR 7.215(C)(5). More importantly, defendant was entitled to file an appeal of right arising from a final order addressing

governmental immunity. MCR 7.202(6)(a)(v). The validity of a contract for purposes of the tortious interference claim is not appealable as of right. Furthermore, in the trial court, the parties agreed that the written contract and its terms were not illegal. Rather, the parties submitted that it was the manner of the execution of the contract that was problematic. A party may not harbor error as an appellate parachute by deeming an issue as proper in the trial court, but raising it as error on appeal. *Auto-Owners Ins Co v Compass Healthcare PLC*, 326 Mich App 595, 613; 928 NW2d 726 (2018). Finally, we do not address plaintiffs’ challenge to jurisdiction of the defamation claim pertaining to governmental privilege because we limit our resolution to the trial court’s decision to deny summary disposition premised on governmental immunity. See MCR 7.202(6)(a)(v).

IV. GOVERNMENTAL IMMUNITY

Defendant contends that the trial court erred when it denied her request for summary disposition of the tortious interference⁴ and defamation claims because she did not display malice by disclosing the unauthorized and unlawful “donation” by plaintiffs and was entitled to governmental immunity. We disagree.

The Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq.*, grants immunity from tort liability to an “officer and employee of a governmental agency” if certain requirements are met. MCL 691.1401(2). To determine whether an employee is entitled to governmental immunity, the following factors are examined and applied by the court:

⁴ “In Michigan, tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy.” *Knight Enterprises v RPF Oil Co*, 299 Mich App 275, 279; 829 NW2d 345 (2013) (quotation marks and citations omitted). A plaintiff bringing a tortious interference with a contract or contractual relation must show “(1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant.” *Id.* at 280 (quotation marks and citations omitted). A plaintiff who raises this intentional tort must “allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.” *Id.* (quotation marks and citations omitted). “[I]t is an essential element of a claim of tortious interference with a contract that the defendants unjustifiably instigated or induced the party to breach its contract.” *Id.* at 281 (quotation marks and citation omitted). To establish the intentional tort of defamation, a plaintiff must show “(1) a false or defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication (defamation per quod).” *Mino v Clio Sch Dist*, 255 Mich App 60, 72; 661 NW2d 586 (2003). Because defendant obtained an appeal of right premised on governmental immunity, we do not reach the issue of whether the elements of the intentional torts are supported by proofs.

(1) Determine whether the individual is a judge, a legislator, or the highest-ranking appointed executive official at any level of government who is entitled to absolute immunity under MCL 691.1407(5).

(2) If the individual is a lower-ranking governmental employee or official, determine whether the plaintiff pleaded an intentional or a negligent tort.

* * *

(4) If the plaintiff pleaded an intentional tort, determine whether the defendant established that he is entitled to individual governmental immunity under the *Ross* [*v Consumers Power Co*, 420 Mich 567, 633-634; 363 NW2d 641 (1984)] test by showing the following:

(a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,

(b) the acts were undertaken in good faith, or were not undertaken with malice, and

(c) the acts were discretionary, as opposed to ministerial. [*Odom v Wayne Co*, 482 Mich 459, 479-480; 760 NW2d 217 (2008).]

In this case, the trial court properly concluded that defendant was not entitled to absolute immunity under MCL 691.1407(2) because there was a question of fact regarding whether defendant's acts were undertaken in good faith, and therefore, precluded immunity as a matter of law.

A lack of good faith has been characterized as “malicious intent, capricious action or corrupt conduct or willful and corrupt misconduct.” *Odom*, 482 Mich at 474 (quotation marks and citation omitted). The *Odom* Court also described a lack of good faith as “malice or wantonness or a reckless indifference to the common dictates of humanity.” *Id.* at 475 (quotation marks, citation, and emphasis omitted). It also stated that willful misconduct is “conduct or a failure to act that was intended to harm the plaintiff” and wanton misconduct as “conduct or a failure to act that shows such indifference to whether the harm will result as to be equal to a willingness that harm will result.” *Id.* (quotation marks and citation omitted). Our Supreme Court instructed that these definitions were a “useful guide for a trial court considering a defendant’s motion for summary disposition based on individual governmental immunity.” *Id.* Therefore, the *Odom* Court instructed that “the proponent of individual immunity must establish that he acted without malice.” *Id.* Finally, the *Odom* Court stated: “The good-faith element . . . is subjective in nature. It protects a defendant’s honest belief and good-faith conduct with the cloak of immunity while exposing to liability a defendant who acts with malicious intent.” *Id.* at 481-482.

Defendant asserts that she acted in good faith when she addressed the board on July 12 about her concerns with the contract and that she had a good-faith belief that her statements to the board were privileged. She claimed to act in good faith by bringing to the board’s attention this allegedly invalid contract and illegal payment scheme. However, defendant purportedly had a five-year working relationship with plaintiffs and met with them for lunch. She did not raise with

plaintiffs the issue of the propriety of plaintiffs' business and the payment that transpired while she was on vacation. Defendant did not establish an in-house meeting with her superior, auditor, and counsel.⁵ Instead, defendant apparently conducted limited research and concluded that plaintiffs had been indicted for Medicare fraud. However, those documents actually indicated that a dentist previously employed by the Heuhs in a prior practice unrelated to PRN had been convicted of an offense, and the Heuhs entered into a settlement agreement to repay funds arising from the employee's impropriety. Despite this, defendant represented that the corporate structure was designed to defraud the Health Department.

Moreover, she never questioned the validity of the contract during the five years she abided by the agreement. Defendant's acts must be "undertaken in good faith, or were not undertaken with malice." *Id.* Arguably, defendant would have discovered in that time period whether the contract was valid⁶ because she did "most of the leg work" to enter into the contract and was responsible for all the financials of the Health Department. Additionally, she advised the board that they had not approved the PRN contract, but apparently, the contract was approved by Elliott and he had the authority to execute contracts.

The evidence established that defendant, in her course of conduct, made payments for five years, Elliott had authority to execute health contracts, and the contract existed for the five years in which PRN received Medicaid funding, yet defendant failed to question the contract earlier. When she finally did raise an issue with the contract to the board, she did so by allegedly defaming PRN. Further, the only time that she raised an issue with the contract was when her affair with her superior ended. The events that precipitated the termination of PRN's contract occurred in proximity to defendant's affair with her superior ending, her vacation and an alleged lack of notice of an employee to fulfill her duties, and PRN sending a check directly to the State of Michigan.

These circumstances create a question of fact whether defendant acted in good faith when she raised concerns to the board about the contract. It also raises a question of fact with regard to whether defendant acted in good faith by bringing allegedly false statements to the board about PRN. See *Blue Harvest, Inc v Dep't of Transp*, 288 Mich App 267, 271; 792 NW2d 798 (2010) ("If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law.") (quotation marks and citation omitted). Indeed, the trial court found that the

⁵ Additionally, defendant made an initial report to the police, but was advised that the matter presented an issue of policies and procedures that should be addressed internally. Consequently, defendant telephoned the officer's supervisor, a second conversation occurred, and a report was taken. Nonetheless, defendant was again apprised that she should address the situation with her superiors. Although police reports are generally inadmissible hearsay, see MRE 801(c), MRE 802, defendant attached the report as an appendix. Thus, we view its import as merely further signifying a factual issue regarding malice. Despite being apprised that it was an internal matter of policy and procedure, defendant went public with the information allegedly upon an apparently limited investigation.

⁶ We again note that there is a distinction between the validity of the contract between plaintiffs and the Health Department, and the execution of the agreement in light of the federal regulations.

existence and termination of defendant's relationship with her superior created a question of fact whether "she may have acted out of malice towards [sic] her boss." The trial court also stated that the evidence of her intentions was for a trier of fact to decide whether defendant acted with malice. We agree. Therefore, the trial court did not err when it denied defendant's motion for summary disposition premised on governmental immunity.

Affirmed.

/s/ Anica Letica

/s/ Kirsten Frank Kelly

/s/ James Robert Redford