STATE OF MICHIGAN

COURT OF APPEALS

STEVEN HART, Plaintiff-Appellant, V COUNTY OF WASHTENAW, Defendant-Appellee. and WASHTENAW COUNTY SHERIFF'S DEPARTMENT AND SHERIFF JERRY L. CLAYTON, Defendants.	UNPUBLISHED November 15, 2011 No. 299418 Washtenaw Circuit Court LC No. 09-000676-NZ

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant Washtenaw County's[1] motion for summary disposition pursuant to MCR 2.116(C)(10) in this wrongful termination action. We affirm.

Plaintiff argues that the trial court erred by granting summary disposition in favor of defendant because there was a genuine issue of material fact as to whether the policy manual for the sheriff's department (the department) created a legitimate expectation that plaintiff, a part-time seasonal employee of the department,[2] would only be discharged for just cause. We disagree. A party may be entitled to summary disposition under MCR 2.116(C)(10) if, except as

[1] Because Washtenaw County is the only remaining defendant in the case, we refer to it as defendant herein.

[2] Plaintiff also worked full-time for the Harrison Township Fire Department as a firefighter and paramedic.

to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court's decision on a motion for summary disposition is reviewed de novo. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). "In opposition to the motion, the nonmoving party may not rest upon mere allegations or denials, but must proffer evidence of specific facts showing that there is a genuine issue for trial." *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). "In evaluating a motion for summary disposition brought under this subsection, a trial court is required to consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Veenstra*, 466 Mich at 164.

"Employment contracts for an indefinite duration are presumptively terminable at the will of either party for any reason or for no reason at all." *Rood v Gen Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993) (citation omitted). Plaintiff did not have a contract for any specific period of employment and no explicit contract providing for just cause termination. However, "employer policies and procedures may also become a legally enforceable part of an employment relationship if such policies and procedures instill 'legitimate expectations' of job security." *Id*. at 117, quoting *Toussaint v Blue Cross & Blue Shield of Mich*, 408 Mich 579, 615; 292 NW2d 880 (1980).

The determination of whether an employee had a "legitimate expectation" under *Toussaint* is a two-step process. See *Rood*, 444 Mich at 138-139. "The first step in analyzing a legitimate expectations claim under *Toussaint*, is to determine, what, if anything, the employer has promised. Promises, like contracts, may be either express or implied." *Rood*, 444 Mich at 138. "Not all policy statements will rise to the level of a promise." *Id*. at 139. If the employer merely says it will act in a certain way if it chooses to, this is not a promise. *Id*. "Also apparent in the definition of a promise is the need for specificity. The more indefinite the terms, the less likely it is that a promise has been made. And, if no promise is made, there is nothing to enforce." *Id*. at 139. If "a promise has been made, the second step is to determine whether the promise is reasonably capable of instilling a legitimate expectation of just-cause employment in the employer's employees." *Id*. "[O]nly policies and procedures reasonably related to employee termination are capable of instilling such expectations." *Id*. In ruling on a motion for summary disposition based on a legitimate expectations theory, our Supreme Court explained in *Rood*:

> [I]n all claims brought under the legitimate expectations theory of *Toussaint*, the trial court should examine employer policy statements, concerning employee discharge, if any, to determine, as a threshold matter, whether such policies are reasonably capable of being interpreted as promises of just-cause employment. If the employer policies are incapable of such interpretation, then the court should dismiss the plaintiff's complaint on defendant's motion for summary disposition. MCR 2.116(C)(10). If, however, the employer's policies relating to employee discharge are capable of two reasonable interpretations, the issue is for the jury. [*Rood*, 444 Mich at 140.]

Here, plaintiff has failed to demonstrate that the department's policies could reasonably be interpreted "as promises of just-cause employment." *Rood*, 444 Mich at 140. The department's policy manual did not expressly state terminations would be for just cause only, but instead provided for a loose disciplinary scheme that left much to the discretion of the employer. Where there is merely "a policy to act in a particular manner as long as the employer so chooses, [it] is grounds to defeat any claim that a recognizable promise in fact has been made." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 165; 579 NW2d 906 (1998). Simply because plaintiff asserts he relied on the disciplinary scheme in the department's policy manual "does not establish a promise of termination for just cause only. Nothing in the employment manual states that an employee would not be terminated except for one of the reasons listed in the disciplinary section." *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 240; 486 NW2d 61 (1992). Additionally, the disciplinary action section of the department's policy manual relied on by plaintiff does not include any information regarding a right to a hearing, the conduct of a hearing, if any, what standard is applied in making discipline determinations, or how the appropriate level of discipline is determined. As in *Lytle*, the policy in the present case "lacks both the specificity and commitment that raises an employer's policy to the level of a promise." *Lytle*, 458 Mich at 165. Because we find no promise has been made, "there is nothing to enforce" and we need not consider the second step of *Toussaint*. *Rood*, 444 Mich at 139.

To the extent plaintiff relies on the citizens complaint policy of the department's policy manual, this reliance is misplaced for two reasons. First, plaintiff has failed to present any evidence he was discharged because of a citizen's complaint made against him. Second, the citizen's complaint policy provides a guideline for investigating and resolving citizen complaints, not a promise relating to an expectation of just cause discharge. As in *Rood*, where our Supreme Court found a work performance section of an employee handbook did not relate to a promise of continued employment, we find that the department's policy for dealing with citizen complaints about officers does not "relate to or in any way promise continued employment." *Rood*, 444 Mich at 141. Therefore, plaintiff's argument in this regard is without merit.

Plaintiff next argues that his discharge violated public policy because he was responding to an emergency call for his other employer and, therefore, should not be disciplined for his failure to appear for a court date related to his employment with the department. Plaintiff has abandoned this issue. First, plaintiff has failed to identify any basis for the public policy exception he asks this Court to recognize. We must rely on objective sources to derive public policy exemptions and plaintiff has utterly failed to identify any objective source on which we may rely. See *Kimmelman v Heather Downs Mgt Ltd*, 278 Mich App 569, 573; 753 NW2d 265 (2008). Further, plaintiff cites to, but makes no attempt to apply, *Suchodolski v Mich Consol Gas Co*, 412 Mich 692, 695-696; 316 NW2d 710 (1982), where our Supreme Court recognized three categories of public policy exceptions to the general rule that an at-will employee may be terminated at any time. Finally, plaintiff does not provide a proper factual basis for his claim because he failed to provide documentation for some of his factual claims and relies on evidence not properly before this court for others. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002); see also MCR 7.210(A). "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). A party may not announce a position and leave it for the Court to rationalize it. *Wilson v Taylor*, 457 Mich 232, 243; 577

NW2d 100 (1998). Based on the foregoing, we find that plaintiff has abandoned his claim that his discharge violated public policy.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey