

STATE OF MICHIGAN
COURT OF APPEALS

LES L. SCHNEIDER,

Plaintiff-Appellant,

and

MICHAEL SAVAGE and LAURENCE RIDDLE,

Plaintiffs,

v

SHIAWASSEE COUNTY BOARD OF
COMMISSIONERS,

Defendant-Appellee.

UNPUBLISHED
January 26, 2012

No. 299920
Shiawassee Circuit Court
LC No. 10-000160-CZ

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Plaintiff Les L. Schneider¹ appeals as of right from the trial court's order granting summary disposition to defendant Shiawassee County Board of Commissioners. We affirm.

I

In 2009, there were four members of the Shiawassee County Veterans' Affairs Committee ("VA Committee"), as appointed by defendant: Michael Savage, Laurence Riddle, Ronald Anderson, and plaintiff. Anderson resigned on July 9, 2009, and Savage's term was to expire on December 31, 2009; thus, defendant would need to fill the vacancies. On December 17, 2009, defendant expanded the VA Committee from four to five members and appointed three individuals to fill the open positions; the county clerk swore in the new VA Committee members

¹ The term "plaintiff" in this opinion refers to Les L. Schneider, only. Plaintiffs Michael Savage and Laurence Riddle are not involved in this appeal.

on January 6, 2010. Questioning the validity of the appointments, Savage, Riddle, and plaintiff did not recognize the three appointees or allow them to participate in the January committee meetings, and they continued to treat Savage as a member of the VA Committee despite the expiration of his term.

On January 14, 2010, three days after the first committee meeting where the new appointees were not recognized, defendant's chairperson sent out a "Notice of Hearing for Removal of Officer" to plaintiff and Riddle. The notice provided in pertinent part:

The charges of official misconduct and neglect of duty result from the following facts and circumstances:

On January 11, 2010, at a regularly scheduled meeting of the County Veterans Affairs Committee, Les L. Schneider², who acted as Chairperson of the Veterans Affairs Committee (a) refused to recognize the Board of Commissioners' appointments of John Pajtas, Sara Edwards, and Ronald Elder as members of the County Veterans Affairs Committee, (b) refused to allow a vote on a duly made and seconded motion to elect a Chairperson, (c) continued the meeting of the County Veterans Affairs Committee without a quorum present, and purported to take official action, and (d) continued to recognize Michael Savage as a member of the County Veterans Affairs Committee, even though his term of office expired on December 31, 2009, and he was replaced by a new appointee. Les L. Schneider engaged in this official misconduct and neglect of duty notwithstanding written legal direction given by the County Attorney.

You will be given a full opportunity to be heard on this matter. You may be represented by an attorney at your own expense.

The notice set the hearing for January 28, 2010, at 4:00 p.m.

At the January 28, 2010, hearing, plaintiff and Riddle were present and represented by counsel.³ Following the hearing, defendant's members approved a motion to remove plaintiff and Riddle from their appointments to the VA Committee. Plaintiff and Riddle were notified of the decision via letters.

Plaintiff, Savage, and Riddle sued defendant, claiming wrongful termination and seeking a temporary restraining order and equitable relief preventing defendant from removing them from the VA Committee. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(5) (lack of legal capacity to sue due to lack of standing), MCR 2.116(C)(8)

² The Notice of Hearing sent to Riddle identifies him as the actor responsible for the same conduct.

³ According to the parties, there is no record of the hearing, although plaintiff acknowledges his and his attorney's presence at the hearing in his complaint.

(failure to state a claim upon which relief can be granted), and MCR 2.116(C)(10) (no genuine issue of material fact) and issued sanctions against Savage. The court later denied plaintiff, Savage, and Riddle's motion for reconsideration.

II

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(5), as well as whether a party has standing, which is a question of law. *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000). "In reviewing a grant of a motion for summary disposition pursuant to MCR 2.116(C)(5), we must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Rhode v Ann Arbor Pub Sch*, 265 Mich App 702, 705; 698 NW2d 402 (2005).

A motion brought pursuant to MCR 2.116(C)(8) examines the pleadings alone and tests the legal sufficiency of the claim. *Dalley v Dykema Gossett*, 287 Mich App 296, 304; 788 NW2d 679 (2010). This motion tests whether the complaint states a claim as a matter of law, and the motion should be granted if "no factual development could possibly justify a right of recovery." *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998). "All factual allegations supporting the claim, and any reasonable inference or conclusions that can be drawn from the facts, are accepted as true." *Averill v Dauterman*, 284 Mich App 18, 21; 772 NW2d 797 (2009), quoting *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

III

On appeal, plaintiff contests the trial court's grant of summary disposition under MCR 2.116(C)(5), (C)(8) and (C)(10). Initially, we note that under the limited, prudential doctrine concerning standing recently announced in *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010), which was issued just days after the trial court ruled in this case, plaintiff does have standing to file a claim against defendant. However, the trial court's dismissal on the basis of standing does not warrant relief because, as discussed below, the trial court properly granted summary disposition under MCR 2.116(C)(8) and (10).

MCL 35.621 authorizes a county board of commissioners to create a county department of veterans' affairs under the administration of a committee comprised of three to five members who are appointed to staggered four-year terms by the county board of commissioners. The statute contains no provisions either allowing or prohibiting removal of the appointees.

Those persons holding public office or occupying a place of public employment in Michigan do not have a property right in that position:

The question of property right in public office has been definitely settled in this State.

A public office cannot be called ‘property,’ within the meaning of these constitutional provisions (United States Constitution, Fifth Amendment-due process, and Fourteenth Amendment-equal protection of law). If it could be, it would follow that every public officer, no matter how insignificant the office, would have a vested right to hold his office until the expiration of the term. Public offices are created for the purposes of government. They are delegations of portions of the sovereign power for the welfare of the public. They are not the subjects of contract, but they are agencies for the state, revocable at pleasure by the authority creating them, unless such authority be limited by the power which conferred it. [*Detroit v Division 26 of Amalgamated Ass’n of Street, Electric R & Motor Coach Employees of America*, 332 Mich 237, 251; 51 NW2d 228 (1952), quoting *Attorney General, ex rel. Rich v Jochim*, 99 Mich 358, 367; 58 NW 611 (1894).]

Plaintiff did not have a property right in his VA Committee position. See *id.* Plaintiff’s position was a delegation of authority from the county board of commissioners and was revocable by the authority that created it. See *id.*

MCL 46.11 sets out additional powers granted to county boards of commissioners. That statute provides in pertinent part:

A county board of commissioners, at a lawfully held meeting, may do 1 or more of the following: . . .

* * *

(n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board’s opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are preferred to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel.

Consistent with today’s statutory language, our Supreme Court noted the following:

[s]o far as time and notice of hearing are concerned the board of supervisors do not act in strictness as a court, but as a public board authorized to use their own times and methods subject only to the condition that no one shall be removed without charges and reasonable notice, nor without a full opportunity to be heard. [*Gager v Chippewa Supervisors*, 47 Mich 167, 169; 10 NW 186 (1881).]

Revocation of plaintiff's position was allowable based solely on defendant's opinion and satisfaction that plaintiff was guilty of misconduct or neglect following notice of the charges, notice of the hearing, and an opportunity to be heard at that hearing. See MCL 46.11(n).

Plaintiff failed to state a claim on which relief could be granted, and no genuine issue of material fact existed as to whether defendant followed proper procedure in removing plaintiff from the VA Committee. As such, the trial court properly granted summary disposition for defendant.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro