STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0390
A18-0391

Paul Roberts,
Appellant (A18-0390, A18-0391),

vs.

HydraMetrics, LLC,
Respondent (A18-0390),

Rollin Thornton, et al.,
Respondents (A18-0391).

Filed February 11, 2019
Affirmed
Hooten, Judge

Anoka County District Court
File Nos. 02-CV-16-6188, 02-CV-16-6190

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Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In these consolidated appeals, appellant, who owns a one-third interest in respondent company, challenges the summary judgment granted by the district court in favor of respondents, respondent company, and its two other owners, dismissing claims arising from his termination as CEO. We affirm.

FACTS

Appellant Paul Roberts founded respondent HydraMetrics, LLC, with Kevin McGauley in October of 2003. Shortly after, respondent Rollin Thornton bought into the company. Appellant, McGauley, and Thornton each owned a one-third interest in the company. Appellant and McGauley each contributed $1,000 as capital investment to HydraMetrics while Thornton contributed $300,000. As a condition of Thornton investing in the company, he required that appellant and McGauley sign a Non-Competition and Confidentiality Agreement (NCA) and a Member Control Agreement (MCA). Effective 2010, following pressure from his co-owners and concern about his job performance, McGauley sold his share in HydraMetrics to respondent Paul Bechtold, who was then a non-owner employee of the company. In July of 2011, HydraMetrics passed a compensation resolution authorizing certain bonuses for appellant, with a stipulation that one category, the "Tier four" bonus, would be deferred until Bechtold paid McGauley the balance of what he owed for the sale of McGauley's ownership interest. The balance was originally due in October of 2014, but the final payment was pushed back multiple times. The compensation resolution did not contemplate a schedule of payments, but simply read

that, "Until the purchase agreement of Kevin McGauley's shares has been fully paid out by Paul Bechtold, the Tier four bonus will be accrued as deferred compensation and not recognized or paid."

Appellant was terminated from his position as CEO of HydraMetrics in January of 2016, but retained his ownership interest. In May of 2016, appellant demanded immediate payment of his Tier four bonus from HydraMetrics. In November of 2016, appellant brought a lawsuit against HydraMetrics, raising claims of: wrongful termination, employment-based minority-shareholder oppression, and failure to pay compensation owed after discharge. Appellant later brought an additional lawsuit against Thornton and Bechtold (together the Individual Respondents) raising claims of: breach of fiduciary duty, unfair prejudice, tortious interference, and civil-conspiracy. In June of 2017, during the pendency of this litigation and following Bechtold's final payment to McGauley, HydraMetrics paid appellant his accrued Tier four bonus. The district court granted summary judgment for both HydraMetrics and the Individual Respondents. These consolidated appeals follow.

D E C I S I O N

Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "On appeal, we review a grant of summary judgment 'to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law.'" *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quoting *K.R. v. Sanford*, 605 N.W.2d 387, 389 (Minn. 2000)). In our review, we

view the evidence in the light most favorable to the nonmoving party. *Elec. Fetus Co. v. City of Duluth*, 547 N.W.2d 448, 452 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996).

I. The district court did not err by concluding that appellant was an at-will employee who had no reasonable expectation of lifetime employment.

Appellant raises two distinct claims for relief. First, appellant argues that HydraMetrics breached his contract for lifetime employment with the company. Second, appellant asserts that the district court erred by determining that he was not entitled to equitable relief regarding his claim of employment-based minority shareholder oppression.

Appellant claims that he had a contract for lifetime employment with HydraMetrics, and that HydraMetrics breached that contract by firing him from his position as CEO. He argues that as an owner of the business, he had a reasonable expectation of continued employment, and that "expectation of continuing employment creates a contract between the owner and the company."

In a well-reasoned order rejecting appellant's claims, the district court correctly recognized that, "The doctrine of wrongful termination and the doctrine of employment-based shareholder oppression are distinct theories of relief." *See Gunderson v. All. of Comput. Prof'ls, Inc.*, 628 N.W.2d 173, 190 (Minn. App. 2001), *review granted* (Minn. July 24, 2001) *and appeal dismissed* (Minn. Aug. 17, 2001). This court in *Gunderson* explicitly distinguished between wrongful-termination and employment-based shareholder-oppression claims. *Id.* at 189–90. This distinction comes from the different sources of the claims. *See id.* (noting that the doctrine of wrongful termination can arise

from either breach of contract or tort, while employment-based shareholder oppression is an equitable doctrine).

The *Gunderson* court framed the proper analysis of these claims as such:

> The wrongful-termination doctrine affords discharged employees of *all* corporations a remedy in the form of wages and/or reinstatement, regardless of whether they are also shareholders, if they can establish the existence of an express or an implied contractual agreement or a promise inducing reliance. The threshold question in wrongful-termination cases, therefore, is whether a contractual agreement or a promise inducing reliance existed.
>
> The oppression doctrine, on the other hand, affords closely-held-corporation shareholders relief when the controlling shareholders frustrate their reasonable expectations as shareholder-employees. Accordingly, the threshold question in the context of a claim of shareholder oppression based on the termination of employment is whether a minority shareholder's expectation of continuing employment is reasonable.

Id. at 190 (citations omitted).

This conflicts somewhat with a decision that came from this court roughly nine years before *Gunderson* was decided. *See Pedro v. Pedro*, 489 N.W.2d 798, 802–03 (Minn. App. 1992) (*Pedro II*) (affirming because under "the unique facts" of the case the district court's "award of future damages for lost wages is wholly consistent with the court's broad equitable powers . . . and is warranted based upon its finding of a contract for lifetime employment").[1] To the extent that *Gunderson* conflicts with the court's decision

[1] This opinion was the result of the second appeal arising from the same matter. *See Pedro v. Pedro*, 463 N.W.2d 285 (Minn. App. 1990) (*Pedro I*), *review denied* (Minn. Jan. 24, 1991).

in the *Pedro* cases, the court in *Gunderson* implied that *Pedro* may have been analyzed incorrectly.[2] *See Gunderson*, 628 N.W.2d at 190.

Appellant argues that because *Pedro II* was cited by this court as recently as 2017, it is still good law. *See Blum v. Thompson*, 901 N.W.2d 203, 216 (Minn. App. 2017), *review denied* (Minn. Oct. 25, 2017). But the court in *Blum* did not cite *Pedro II* for its analysis of whether a contract for lifetime employment existed because *Blum* did not involve either a claim for wrongful termination or a claim of employment-based shareholder oppression. *Id.* at 216–20. In relevant part, *Blum* dealt with a common-law claim for breach of fiduciary duty, where the district court sua sponte rejected the claim on the grounds that monetary damages were not available. *Id.* at 216. The *Blum* court cited both *Pedro I* and *Pedro II* in its reversal of the district court on this point. *Id.* (citing *Pedro II*, 489 N.W.2d at 802 & n.1; and *Pedro I*, 463 N.W.2d at 288). *Blum* also cited to these cases for general propositions of law involving the standard of review for reviewing compliance with fiduciary duties, the scope of permissible equitable relief, and what courts consider to determine the permissible source of reasonable expectations. *Id.* at 218–20.

While appellant cites to *Gunderson* for the proposition that the "expectation of continuing employment creates a contract between the owner and the company," the case does not support this argument, and in fact contradicts appellant's assertion. As noted

[2] The court approvingly cited a law review comment in its analysis, and included an explanatory parenthetical that read, "concluding that the *Pedro I* court 'extended the law too far in its efforts to compensate a sympathetic plaintiff.'" *Gunderson*, 628 N.W.2d at 190 (citing Sandra L. Schlafge, Comment, Pedro v. Pedro: *Consequences for Closely Held Corporations and the At-Will Doctrine in Minnesota*, 76 Minn. L. Rev. 1071, 1089–96 (1992)).

above, *Gunderson* explicitly requires separate analyses of wrongful termination (which considers express or implied contracts) and employment-based shareholder oppression (which considers the reasonable expectations of minority shareholders). *Gunderson*, 628 N.W.2d at 190.

We therefore conclude that the district court correctly determined that *Gunderson* presents the appropriate framework to analyze appellant's claims.

Breach of Contract for Lifetime Employment

We next consider whether the district court erred in granting summary judgment for HydraMetrics on appellant's wrongful-termination claim.

Under Minnesota law, without an express or implied agreement, employment is presumed to be at-will. *Aberman v. Malden Mills Indus., Inc.*, 414 N.W.2d 769, 771 (Minn. App. 1987) ("Unless otherwise agreed between the parties, the employment relationship is at will."). Without a specific agreement to the contrary, even a contract for "permanent employment" is presumed to be at-will. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 628 (Minn. 1983). To overcome this presumption, an employee must present "objective evidence that the employer clearly intended to create a lifetime-employment contract." *Gunderson*, 628 N.W.2d at 181–82 (citing *Aberman*, 414 N.W.2d at 771). "General statements about job security, company policy, or an employer's desire to retain an employee indefinitely are insufficient to overcome the presumption that employment is at will." *Id.* at 182.

Appellant clearly was an at-will employee. Appellant argues that the MCA provides for such a contract in and of itself. Appellant also argues that the NCA that he signed,

which expressly classifies appellant as an "at-will" employee of HydraMetrics, is not dispositive of the question. Appellant argues that, if the NCA did create an at-will employment contract, the parties' conduct modified that contract so as to guarantee him lifetime employment. And finally, he argues that genuine issues of material fact exist that preclude summary judgment.

Again, this court begins with the presumption that appellant was an at-will employee. *Aberman*, 414 N.W.2d at 771. We next consider the written agreements between the parties. *See Gunderson*, 628 N.W.2d at 182 (directing that courts consider oral and written negotiations between the parties to determine the existence of an express or implied contract for lifetime employment).

Here, appellant signed the NCA on November 14, 2003. This agreement labeled appellant as "Employee" and HydraMetrics as "Employer." It contains the following clauses:

> WHEREAS, Employer desires to employ Employee and Employee desires to accept employment with Employer on an at-will basis
>
> . . . .
>
> 7. Nothing contained in this Agreement shall be deemed to bind Employee to remain employed by Employer for any period of time or to assure Employee of continued employment by Employer. Employer has the right to terminate Employee's employment at any time, for any reason, with or without cause or notice.

Just three days later, on November 17, 2003, appellant, McGauley, and Thornton signed the MCA, which contained a covenant that "[a]s a material part of the consideration

for the execution of this Agreement" appellant and McGauley would "contemporaneously . . . enter into a Non-competition and Confidentiality Agreement" with HydraMetrics. As the district court correctly determined, these two documents further add to the initial presumption that appellant was an at-will employee of HydraMetrics.

Appellant argues that the MCA contained language which guaranteed him lifetime employment. Appellant cites to language in the MCA that supposedly evidences an intent that appellant act as a full-time employee of HydraMetrics. It reads that

> all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby, each Member hereby covenants and agrees not to (a) take any action to file a certificate of dissolution, (b) withdraw or attempt to withdraw from the Company . . . .

But this falls far short of "clear and unequivocal language by the employer evidencing an intent to provide job security" that caselaw requires to overcome the baseline presumption that appellant was an at-will employee. *Gunderson*, 628 N.W.2d at 182. This is especially true given that the NCA, which expressly categorized appellant as an at-will employee, was referenced as consideration for Thornton signing the MCA.

As part of this argument, appellant asserts that statements about his employment create "a genuine issue of material fact." But there is nothing in the record that could lead a reasonable fact-finder to rule in his favor on the issue, even viewing the evidence in the light most favorable to appellant. *See Cederstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 216, 224 (Minn. 1962) (holding that no reasonable fact-finder could conclude that employer's promise to give employees "job[s] as long as they wished until retirement" was

sufficient to create more than at-will employment). And there is no language in the agreement that overcomes appellant's explicit agreement accepting "at-will" employment, and consenting that he could be fired "at any time, for any reason, with or without cause or notice."

Appellant also argues that if he was an at-will employee initially, the parties' conduct modified the contract to grant him lifetime employment. HydraMetrics argues that this court should not consider modification because appellant did not argue the theory in his complaint. It is well-settled law that appellants cannot raise new arguments on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But while appellant did not specifically argue modification in his complaint, he did make the argument to the district court in his motion opposing summary judgment. Therefore, the question of whether the parties' conduct modified appellant's employment contract is properly before this court.

But that does not mean the argument has merit. A contract may be modified by the conduct of the parties after that contract is executed. *See Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449, 453 (Minn. App. 2005). But to modify an at-will employment contract into one requiring cause for termination, the parties must "make clear their intent to do so." *Pine River*, 333 N.W.2d at 629.

Here, appellant has failed to present any evidence of clear intent to modify appellant's employment contract. Appellant argues that the fact that he was an owner and that he did not follow some of the requirements within the employee handbook shows an intent to modify the contract. But appellant was an owner of HydraMetrics at the time that

he signed the original NCA and MCA. Appellant's ownership does not evidence an intent to modify the contract because it was a condition that existed at the time the parties executed the original contract. While appellant's failure to comply with some of the policies within the employee handbook could lend support to appellant's modification argument, it falls short of the clear intent necessary to modify the explicit language of the NCA and MCA, especially given the language in the MCA providing that the agreement could only be modified with unanimous consent of the members.

We therefore affirm the district court's grant of summary judgment on this question, and hold that appellant was not wrongfully terminated because he was an at-will employee and had no contract for lifetime employment.

Equitable relief for "common law expectation of continued employment"

Appellant's second argument requires a slightly different approach. Appellant did not raise Minn. Stat. § 322B.833 (2016)[3] or request equitable relief in his complaint. Before the district court granted summary judgment, appellant moved the court for leave to amend the complaint to explicitly add such a claim. The district court considered this motion and the underlying claim on the merits, and denied appellant's request to amend his complaint on the ground that the equitable claim could not survive summary judgment.

[3] Appellant asserted statutory claims under Minn. Stat. § 322B.833 against limited liability company HydraMetrics and the Individual Respondents. The 2016 version of the Minnesota Limited Liability Company Act (MLLCA), Minn. Stat. §§ 322B.01–.975 (2016), was in effect at the time this action was initiated. The MLLCA has been repealed and replaced by the Minnesota Revised Uniform Limited Liability Company Act (MRULLCA). 2014 Minn. Laws ch. 157, art. 1, §§ 1, 91. No party argues that the MRULLCA applies, and so we apply the MLLCA to this action. *See* Minn. Stat. § 322C.1204 (2018) (providing staggered effective dates for application of the new act).

"Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). "Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500–01 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003). It is not an abuse of discretion to deny a motion to amend where the proposed claim would not survive summary judgment. *Johnson v. Paynesville Farmers' Union*, 817 N.W.2d 693, 714 (Minn. 2012). Therefore, whether or not the district court erred in denying appellant's motion to amend his complaint turns on whether the district court was correct in its ruling that the claim could not survive summary judgment. *See id.*

The district court concluded that the presumption that the parties' written agreement reflected their reasonable expectations was further supported by the explicit language of the NCA and MCA that appellant signed, categorizing appellant as an at-will employee. The district court determined that the language of the MCA contemplating appellant's full-time employment at HydraMetrics simply imposed requirements on appellant while he was employed at HydraMetrics, and that "[o]nly a strained reading of the MCA could lead to a conclusion that it created an expectation of continuing employment." The district court also determined that there was no evidence to support that any of the other members shared appellant's expectation of continued employment, that appellant's initial contribution and "sweat equity" was insufficient to create an inference of continued employment, and that

the offhand comments from HydraMetrics's attorney were insufficient to justify any kind of reasonable expectation of continued employment.

Appellant argues that he had a reasonable expectation of continued employment for as long as he was a member of HydraMetrics, and that he is entitled to equitable relief under Minn. Stat. § 322B.833. He also argues that there are genuine issues of material fact which should have precluded the district court's grant of summary judgment.

Addressing appellant's first argument, "the threshold question in the context of a claim of shareholder oppression based on the termination of employment is whether a minority shareholder's expectation of continuing employment is reasonable." *Gunderson*, 628 N.W.2d at 190. Appellant cites a great deal of caselaw to support the proposition that "an owner of a closely held company has an expectation of continuing employment." But the cases that appellant cites do not directly support this argument. In all of these cases, courts held that owner-employees of a closely held corporation *may* have, or *typically* have an expectation of continuing employment. Appellant does not cite to a single case holding that owner-employees in such cases have a *per se* reasonable expectation of continuing employment.

Appellant does cite to numerous facts that could support a conclusion that he had a reasonable expectation of continuing employment. He was a co-founder of HydraMetrics, he worked there for 12 years, he took no salary for the first few months that he worked there, and he did not follow some of the requirements contained in the employee handbook. But none of this would be sufficient to overcome the presumption created by the document

he signed that explicitly allowed HydraMetrics "the right to terminate [appellant's] employment at any time, for any reason, with or without cause or notice."

Appellant argues that under *Gunderson*, "written agreements are not dispositive of shareholder expectations in all circumstances." *See* 628 N.W.2d at 186. This is an accurate statement of law. But *Gunderson*, just a few lines later, reiterated that "written agreements should, nonetheless, be honored to the extent they specifically state the terms of the parties' bargain." *Id.*; *cf.* Minn. Stat. § 302A.751, subd. 3a (2018) (noting that when considering whether to grant equitable relief in a shareholder dispute within a closely held corporation "any written agreements, including employment agreements and buy-sell agreements, . . . between or among one or more shareholders and the corporation are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements").

Appellant has failed to present any facts or circumstances which can overcome the presumption that his written agreements with HydraMetrics "reflect the parties' reasonable expectations." Minn. Stat. § 322B.833, subd. 4. We therefore affirm the district court's denial of appellant's motion to amend, as the claim could not survive summary judgment because no reasonable fact-finder could conclude that appellant had a reasonable expectation of continued employment.

II. The district court did not err in concluding that Bechtold making his final payment to McGauley was a condition precedent to HydraMetrics's payment of the Tier four bonus to appellant.

Appellant argues that HydraMetrics failed to pay him the "Tier four" bonus he was due when he was discharged, and that "interest, penalties, costs, and fees" are owed to him now even though the bonus itself has since been paid. Minn. Stat. § 181.13(a) (2018)

provides for civil penalties when an employer fails to pay wages "actually earned and unpaid at the time of the discharge." This is "a timing statute, mandating not *what* an employer must pay a discharged employee, but *when* an employer must pay a discharged employee." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 125 (Minn. 2007). "[W]ages that an employee has actually earned are defined by the employment contract between the employer and the employee." *Id.* at 127. "To recover under the statute the employee must establish an independent, substantive legal right . . . to the particular wage claimed." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 837 (Minn. 2012). Because Minn. Stat. § 181.13(a) provides for a civil penalty, it must be strictly construed. *Lee*, 741 N.W.2d at 125.

The district court concluded that summary judgment on appellant's claim was appropriate because Bechtold making his final payment to McGauley was a condition precedent to the Tier four bonus, and so the bonus was not "earned" under the statute when appellant made his demand for payment. While we frame our analysis slightly different, the district court was correct in its conclusion.

As noted, for section 181.13(a) to apply, "the employee must establish an independent, substantive legal right . . . to the particular wage claimed." *Caldas*, 820 N.W.2d at 837. Here, the agreement providing for appellant's compensation contained the following passage: "Until the purchase agreement of Kevin McGauley's shares has been fully paid out by Paul Bechtold, the Tier four bonus will be accrued as deferred compensation and not recognized or paid." Under the plain language of the agreement, appellant had no substantive legal right to the bonus until Bechtold made his final payment.

And it is not contested that once Bechtold made his final payment, appellant received his Tier four bonus in full.

We therefore affirm the district court's grant of summary judgment for HydraMetrics on this issue on the grounds that appellant did not have a substantive legal right to his Tier four bonus until Bechtold made his final payment for the purchase of McGauley's shares in the company.

III. The district court did not err by determining that the Individual Respondents did not breach their fiduciary duty to appellant.

Appellant makes further claims that are all settled by the dispositive questions about his employment. In the first of these claims, appellant argues that the Individual Respondents violated their fiduciary duty towards him by frustrating his reasonable expectation of continued employment. Members in a closely held corporation do owe each other a fiduciary duty to act in "an honest, fair, and reasonable manner in the operation of the corporation," and Minnesota recognizes a common-law claim for breach of that duty. *Gunderson*, 628 N.W.2d at 185 (quotation omitted).

This claim is based upon a premise that appellant had a reasonable expectation of continued employment and is simply targeted toward the Individual Respondents instead of HydraMetrics. It does not merit separate analysis. If appellant had a reasonable expectation of continued employment, then he would be entitled to relief from HydraMetrics under his claim of employment-based shareholder oppression. If he did not have a reasonable expectation of continued employment, then he is not entitled to relief from the Individual Respondents under this theory either. And because we have already

ruled that appellant did not have a reasonable expectation of continued employment, the Individual Respondents could not breach their fiduciary duty to appellant by frustrating his subjective expectation of lifetime employment.

Appellant also argues that the Individual Respondents breached their fiduciary duty by interfering with appellant's relationship with HydraMetrics. This argument appears to simply reassert appellant's immediately preceding claim. But again, if appellant was an at-will employee with no reasonable expectation of continued employment, then the Individual Respondents were free to fire him without any reason at all. To the extent that appellant intends to raise any claim beyond this, it is unclear what he is arguing or why he could be entitled to relief.

We therefore affirm the district court's ruling that the Individual Respondents did not breach any fiduciary duty that they owed to appellant.

IV. The district court did not err by concluding that the Individual Respondents did not violate Minn. Stat. § 322B.833 as a matter of law.

Appellant next argues that the district court erred when it concluded that the Individual Respondents did not act in an unfairly prejudicial manner toward him and summarily dismissed his claim under Minn. Stat. § 322B.833. This statute authorizes a court to grant equitable relief when a governor acts "fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members." Minn. Stat. § 322B.833, subd. 1(2)(ii). Conduct that is "unfairly prejudicial . . . frustrates the reasonable expectations of shareholders in their capacity as shareholders." *Berreman v. W. Publ'g Co.*, 615 N.W.2d 362, 374 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000).

Appellant's claim here appears to be yet another argument premised on his assertion that he had a reasonable expectation of lifetime employment. Appellant does not make any distinct arguments about his expectation in this section, and again this claim does not merit a separate analysis. We therefore affirm the district court's grant of summary judgment in favor of the Individual Respondents on this issue.

V. The district court did not err by concluding as a matter of law that the Individual Respondents did not tortiously interfere with appellant's employment.

Appellant also argues that the Individual Respondents tortiously interfered with his employment contract with HydraMetrics. "To establish a prima facie case of tortious interference with contract, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract by the alleged wrongdoer; (3) intentional procurement of the contract's breach; (4) absence of justification; and (5) damages caused by the breach." *Metge v. Cent. Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 500 (Minn. App. 2002). A corporate officer or agent may be personally liable for tortious contract interference if he or she acts outside the scope of his or her duties. *Nordling v. N. States Power Co.*, 478 N.W.2d 498, 506 (Minn. 1991). While "malice may not be an element of the tort of tortious interference, it is often persuasive evidence on whether the defendant's conduct was proper and justified or improper and not justified." *Id.* (citing *Stephenson v. Plastics Corp. of Am.*, 150 N.W.2d 668, 680 n.17 (Minn. 1967)). "The burden of proving actual malice is on the plaintiff." *Id.* at 507.

The district court concluded that appellant failed to make a sufficient showing of malice on the part of the Individual Respondents such that a reasonable fact-finder could

conclude that they tortiously interfered with appellant's employment contract. Appellant argues that the district court erred because there was evidence in the record of malice, but does not identify what that evidence is or even assert what it hypothetically could be. But while appellant argues that the district court made a factual determination that the Individual Respondents did not act out of malice, a better characterization of the district court's ruling is that it determined that appellant simply did not meet his burden of showing malice. Appellant has also failed to identify anything in the record that could create a genuine issue of material fact as to whether the Individual Respondents were motivated by actual malice. We therefore affirm the district court's grant of summary judgment on the issue of whether the Individual Respondents tortiously interfered with appellant's employment.[4]

Affirmed.

[4] The district court granted summary judgment on appellant's civil-conspiracy claim because that claim was predicated on the tortious-interference argument. Because we affirm the district court's grant of summary judgment dismissing appellant's tortious-interference claim, we also affirm the district court's grant of summary judgment dismissing appellant's civil-conspiracy claim.