[Cite as *Fincham v. Geauga Cty. Bd. of Health*, 2011-Ohio-5338.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

JAMES R. FINCHAM, a.k.a. FINCHAM SOIL SERVICES,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2010-G-3001**
- vs -	:	
GEAUGA COUNTY BD. OF HEALTH, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Geauga County Court of Common Pleas, Case No. 08 P 001358.

Judgment: Affirmed.

Timothy H. Snyder, 12373 Kinsman Road, Suite 105, P.O. Box 386, Burton, OH 44021-0386 (For Plaintiff-Appellant).

Abraham Cantor, Johnnycake Commons, 9930 Johnnycake Ridge Road, Suite 4-F, Concord, OH 44060 (For Defendants-Appellees).

MARY JANE TRAPP, J.

{¶1} Appellant, James R. Fincham, appeals the decision of the Geauga County Court of Common Pleas granting summary judgment to appellees, Geauga County Board of Health ("GCBH"), Robert Weisdack, Richard Lang, J. David Benenati, Donald Bowers, Nan Burr, Melanie Eppich, Chris Livers, Janet O'Hara and Timothy Goergen. The ruling also denied both Mr. Fincham's initial partial motion for summary judgment relating to his requests for admissions, and a subsequent motion for summary

judgment. Mr. Fincham challenges the trial court's determination that all of the appellees are immune from suit, and that he could prove no set of facts that would allow him to prevail on the substance of his claims for fraud, defamation, intentional infliction of emotional distress, tortious interference with business relations, and civil conspiracy.

{¶2} Mr. Fincham's claims stemmed from a show cause hearing convened to address allegedly faulty reports he submitted to the GCBH. After a de novo review of the record, we agree with the trial court that the actions of the individual board members at the hearing did not fall outside of the scope of their authority so as to remove the cloak of immunity from suit. We also agree that there is no genuine issue of material fact as to whether the Health Commissioner acted with malice and in bad faith in issuing charges and providing information to the board during the hearing. Thus, we affirm the judgment of the trial court.

{¶3} **Substantive Facts and Procedural History**

{¶4} Mr. Fincham is a soil scientist, and is certified and registered as a soil professional. He makes his living by providing soil analysis services, with a particular focus on the identification of different soils and the suitability of various septic systems for those soils. At the time this case commenced, and pursuant to the Geauga County General Health District's ("Heath District") regulations, soil scientists were required to maintain a valid registration with the GCBH in order to perform or provide soil analysis services for the siting of septic disposal systems. Furthermore, soil scientists were required, under the regulations, to submit written reports of their findings and maintain those reports in their own files.

{¶5} The version of the Geauga County General Health District Regulation 3701-29-06A in effect at the time this suit commenced provided that "[w]henever the Health Commissioner finds that a soil professional is or has engaged in practices which are in violation of any provision of regulations 3701-29-01 to 3701-29-21 of the Household Sewage Disposal System Regulations or has provided information that is incorrect, the Board of Health shall give written notice to the registrant describing the alleged violation and state that an opportunity for a hearing will be provided by the Board of Health to show cause why his registration should not be suspended or revoked."

{¶6} During 2005 and 2006, Mr. Fincham received seven violation letters from the GCBH, citing a number of discrepancies between his reports for certain lots he had been hired to analyze and what was subsequently found on those lots. According to the GCBH, these discrepancies mostly related to misidentification of certain soil types, as well as failures to identify the presence of bedrock on particular properties. The violation letters were included in Mr. Fincham's file with the GCBH, and, on September 6, 2006, the GCBH sent Mr. Fincham notice of a show cause hearing that would be convened to address the seven violation letters and the discrepancies contained within his reports.

{¶7} The show cause hearing was held on December 18, 2006, and Mr. Fincham appeared with counsel. GCBH laid out the allegations against Mr. Fincham and asked him to address each of the discrepancies they had identified in his reports. Mr. Fincham was afforded the opportunity to defend his reports and to explain any discrepancies contained within them. At the end of the two-hour hearing, Mr. Weisdack,

the Geauga County Health Commissioner, called for a vote on a motion to suspend Mr. Fincham's registration. By a three to two vote, the GCBH voted to suspend Mr. Fincham's registration for a minimum of six months and to send record of his suspension to the American Registry of Certified Professionals in Agronomy Crops and Soils (ARCPACS).

{¶8} Mr. Fincham filed a timely appeal from the GCBH's decision in the Geauga County Common Pleas Court. Shortly thereafter, Mr. Weidack sent a letter to Mr. Fincham indicating that his office "had been notified by the State that after January 1, 2007, the registration of soils professionals at the county level is not permitted," and that "the December 18, 2006 Board of Health order is vacated in its entirety."[1] Upon receipt of this letter, Mr. Fincham voluntarily dismissed his appeal.

{¶9} Despite the fact that he had voluntarily dismissed his administrative appeal, and that the suspension had been vacated, Mr. Fincham filed a complaint alleging a variety of torts arising from the show cause hearing against the GCBH, Mr. Weisdack, Mr. Lang, Mr. Benenati, Mr. Bowers, Ms. Burr, and Ms. Eppich, individually and in their representative capacities as health board members. Ms. Livers, Ms. O'Hara, and Mr. Goergen were later substituted for Mr. Lang, Mr. Bowers, and Ms. Burr in their representative capacities, because the latter three's terms had expired.

{¶10} In his five-count complaint, Mr. Fincham sought compensatory and punitive damages for fraud, defamation, intentional infliction of emotional distress, civil conspiracy, and tortious interference with business relations. Mr. Fincham sought partial summary judgment on the issue of failure of all of the appellees, except for Mr.

[1] See Sub. H.B. No. 231; R.C. 3718.02.

Weisdack, to properly respond to his requests for admissions, and summary judgment on all counts against the appellees. Appellees also sought summary judgment on all counts.

{¶11} After briefing, the trial court issued a judgment entry granting the appellees' motion for summary judgment and overulling both of Mr. Fincham's motions for summary judgment. All counts of the complaint were dismissed. In an accompanying written decision, the trial court determined all defendants were "immune from liability pursuant to ORC 2744.02 and 2744.03." The trial court considered the immunity exceptions contained within R.C. 2744.02(B)(1)-(5), and determined that Mr. Fincham "failed to show the existence of any of those exceptions which are applicable to the Geauga County General Health District and the Board of Health."

{¶12} Further, as it related to the individual members of the GCBH, the trial court found that "none of the acts performed by those persons were outside the scope of their authority. The members were acting in a quasi-judicial function as they heard, commented upon, and voted upon whether to suspend Mr. Fincham's registration."

{¶13} Finally, as to the allegations that Mr. Weisdack acted with malice and in bad faith, the trial court found that there were "no genuine issues as to any material fact and that reasonable minds [could] come but to one conclusion and that conclusion is adverse to Mr. Fincham."

{¶14} Mr. Fincham filed a timely appeal with this court and we now review his six assignments of error:

{¶15} "[1.] The trial court erred to the prejudice of appellant by granting appellees' motion for summary judgment and denying appellant's motion for summary judgment on the basis of sovereign immunity.

{¶16} "[2.] The trial court erred to the prejudice of appellant by denying his motion for partial summary judgment against all appellees, except appellee commissioner.

{¶17} "[3.] The trial court erred to the prejudice of appellant by dismissing the fraud cause of action.

{¶18} "[4.] The trial court erred to the prejudice of appellant by dismissing the defamation cause of action.

{¶19} "[5.] The trial court erred to the prejudice of appellant by dismissing the tortious interference with business relations cause of action.

{¶20} "[6.] The trial court erred to the prejudice of appellant by dismissing the civil conspiracy cause of action."

{¶21} **Effect of the Dismissal of the Administrative Appeal**

{¶22} As an initial matter, we note that appellees raise the applicability of the doctrine of *res judicata* to the merits of this appeal. They argue that the procedure and outcome of the administrative hearing and any question regarding the hearing notice are not subject to collateral attack, because Mr. Fincham ultimately dismissed his appeal of the board of health's decision to suspend his registration.

{¶23} While this argument may have merit, appellees are raising this issue for the first time on appeal, and "[i]t is a well-settled rule of law that issues which were not previously raised at the trial court level cannot be raised for the first time on appeal**.**"

Tryon v. Tryon, 11th Dist. No. 2007-T-0030, 2007-Ohio-6928, ¶29, quoting *JP Morgan Chase Bank v. Ritchey*, 11th Dist. No. 2006-L-247, 2007-Ohio-4225, ¶27, citing *State v. Awan* (1986), 22 Ohio St.3d 120, paragraph one of the syllabus. Thus, we will not consider this aspect of appellees' arguments.

{¶24} **Summary Judgment Standard of Review**

{¶25} We review de novo a trial court's order granting summary judgment. *Hapgood v. Conrad*, 11th Dist. No. 2000-T-0058, 2002-Ohio-3363, ¶13, citing *Cole v. Am. Industries and Resources Corp*. (1998), 128 Ohio App.3d 546. "A reviewing court will apply the same standard a trial court is required to apply, which is to determine whether any genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law." Id., citing *Parenti v. Goodyear Tire & Rubber Co*. (1990), 66 Ohio App.3d 826, 829.

{¶26} "Since summary judgment denies the party his or her 'day in court' it is not to be viewed lightly as docket control or as a 'little trial'. The jurisprudence of summary judgment standards has placed burdens on both the moving and the nonmoving party. In *Dresher v. Burt* [(1996), 75 Ohio St.3d 280], the Supreme Court of Ohio held that the moving party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court that demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. The evidence must be in the record or the motion cannot succeed. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case but must be able to specifically point to some evidence of the type listed

in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. If the moving party has satisfied its initial burden, the nonmoving party has a reciprocal burden outlined in the last sentence of Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial. If the nonmoving party fails to do so, summary judgment, if appropriate shall be entered against the nonmoving party based on the principles that have been firmly established in Ohio for quite some time in *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112." *Welch v. Ziccarelli*, 11th Dist. No. 2006-L-229, 2007-Ohio-4374, ¶40.

{¶27} **Immunity of the GCBH**

{¶28} Chapter 2744 of the Ohio Revised Code, the Political Subdivision Tort Liability Act, contains a comprehensive statutory scheme for the tort liability of political subdivisions and their employees. The statutory framework begins with R.C. 2744.02(A)(1), a general grant of immunity to a political subdivision from civil liability. R.C. 2744.02(A)(1) provides:

{¶29} "(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function."

{¶30} **The Exceptions to Immunity**

{¶31} The statute then enumerates five exceptions to the general grant of immunity. These five exceptions, provided in R.C. 2744.02(B), remove immunity in cases of:

{¶32} 1) Injury, death or loss due to the negligent operation of a motor vehicle by an employee engaged within the scope of their employment and authority;

{¶33} 2) Injury, death, or loss caused by an employee's negligent performance with respect to proprietary functions of a political subdivision;

{¶34} 3) Injury, death, or loss as a result of negligent failure to keep public roads in repair or remove obstructions from public roads;

{¶35} 4) Injury, death, or loss due to the negligence of an employee occurring within or on the grounds of, and due to physical defects of, buildings used in connection with the performance of governmental functions; or

{¶36} 5) Injury, death, or loss to person or property if civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.

{¶37} **The Defenses**

{¶38} Finally, R.C. 2744.03 provides several defenses for political subdivisions and their employees. Liability will not be imposed in cases where:

{¶39} 1) An employee was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function;

{¶40} 2) Non-negligent conduct of an employee was required or authorized by law, or was necessary or essential to the subdivision or employee's exercise of powers;

{¶41} 3) The act or failure to act by an employee was within the employee's discretion, with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the employee's office or position;

{¶42} 4) The act or failure to act by a political subdivision or employee resulted in injury or death to an individual serving a criminal sentence by performing community service work for, or in, the political subdivision, or resulted in injury to or death of a delinquent child performing community service or community work for, or in, a political subdivision pursuant to an order of a juvenile court; or

{¶43} 5) Injury, death, or loss resulted from the exercise of judgment or discretion in acquisition, or use of, equipment, supplies, materials, personnel, facilities, and other resources, unless exercised maliciously, in bad faith, or wantonly or recklessly.

{¶44} **The Three-Tier Analysis for Political Subdivision Immunity**

{¶45} In *Colbert v. City of Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, the Supreme Court of Ohio interpreted the immunity statutes as setting forth a three-tier analysis. The court stated:

{¶46} "Determining whether a political subdivision is immune from tort liability pursuant to R.C. Chapter 2744 involves a three-tiered analysis. *Greene Cty. Agricultural Soc. v. Liming* (2000), 89 Ohio St.3d 551, 556-557. The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental function or proprietary function. Id. at 556-557; R.C. 2744.02(A)(1). However, that immunity is not absolute. R.C. 2744.02(B); *Cater v. Cleveland* (1998), 83 Ohio St.3d 24, 28.

{¶47} "The second tier of the analysis requires a court to determine whether any of the five exceptions to immunity listed in R.C. 2744.02(B) apply to expose the political subdivision to liability. Id. at 28. At this tier, the court may also need to determine whether specific defenses to liability for negligent operation of a motor vehicle listed in R.C. 2744.02(B)(1)(a) through (c) apply.

{¶48} "If any of the exceptions to immunity in R.C. 2744.02(B) do apply and no defense in that section protects the political subdivision from liability, then the third tier of the analysis requires a court to determine whether any of the defenses in R.C. 2744.03 apply, thereby providing the political subdivision a defense against liability." Id. at ¶7-9.

{¶49} Under the three-tier analysis, the end of inquiry is reached when the acts or omissions of a political subdivision do not fit under any of the five exceptions enumerated in R.C. 2744.02(B). In other words, the courts do not engage in the third-tier analysis regarding available defenses provided in R.C. 2744.03, if no exception under R.C. 2744.02(B) can be found to remove the general grant of immunity.

{¶50} This point, crucial to the instant case, was reiterated by the Supreme Court of Ohio as recently as 2008, in *O'Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574. "Our precedent regarding the three-tiered analysis to determine a political subdivision's immunity is well settled." Id. at fn. 2, citing *Cramer v. Auglaize Acres*, 113 Ohio St.3d 266, 2007-Ohio-1946, ¶14; *Colbert*, supra. "As our jurisprudence in the area of immunity has made clear, a political subdivision's immunity can be removed only through one of the enumerated exceptions found in R.C. 2744.02(B)(1) through (5). [*Colbert* at ¶8.] As appellee relied solely on R.C. 2744.02(B)(5), which has been shown

to be inapplicable, and as none of the other exceptions apply, [appellant agency] retains its immunity. *It is not necessary, therefore, to advance to the third tier of analysis as it pertains to [appellant agency]*." *O'Toole* at ¶71. (Emphasis added.)

{¶51} In the case *sub judice*, no doubt exists that the GCBH was performing a governmental function when it considered, voted upon, and imposed a suspension of Mr. Fincham's registration. The operation of the board of health is a governmental function pursuant to R.C. 2744.01(C). Therefore, unless an exception applies, the GCBH is immune from Mr. Fincham's claims.

{¶52} As it pertains to the GCBH, Mr. Fincham has failed to present evidence that any of the enumerated exceptions discussed above apply to the GCBH. Because no exception to immunity exists, there is no need to engage in the third tier of immunity analysis. See *O'Toole,* supra. Therefore, the GCBH was entitled to immunity from civil suit, and the trial court did not err in granting summary judgment in favor of the GCBH.

{¶53} **Immunity of the Individual Board Members**

{¶54} The immunity enjoyed by the political subdivisions is "extended, with three exceptions, to employees of political subdivisions under R.C. 2744.03((A)(6)." *O'Toole* at ¶47. However, for the individual employees of political subdivisions, the immunity analysis differs.

{¶55} "Instead of the three-tiered analysis described in *Colbert*, R.C. 2744.03(A)(6) states that an employee is immune from liability unless the employee's actions or omissions are manifestly outside the scope of employment or the employee's official responsibilities, the employee's acts or omissions were malicious, in bad faith, or wanton or reckless, or liability is expressly imposed upon the employee by a section of

the Revised Code." *Cramer* at ¶17. "[E]mployees can lose their immunity for acting 'with malicious purpose, in bad faith, or in a wanton or reckless manner.'" *O'Toole* at ¶48, citing R.C. 2744.03(A)(6)(b).

{¶56} Mr. Fincham brought suit against the members of the GCBH, individually and in their representative capacities. He alleged that they acted outside the scope of their authority, and in an "unjustified, dishonest, and reckless manner with wanton disregard and an actual intent to mislead or deceive another," thus exposing them to the potential for civil liability.

{¶57} A review of the transcript of the show cause hearing demonstrates that members of the GCBH conducted the show cause hearing in a manner consistent with their duties as board members. The GCBH informed Mr. Fincham of the allegations against him, reviewed the alleged discrepancies in his soil reports, allowed Mr. Fincham ample opportunity to defend himself, and properly conducted a vote to determine sanctions. All of these actions fell well within the duties of a health board member, and at no time did it appear that the individual board members deviated from their duties or conducted themselves in a manner inconsistent with the proper procedure or purpose of the show cause hearing.

{¶58} Mr. Fincham appears to have sued the individual board members solely as a result of their participation at the show cause hearing, and he does not allege liability based on any other actions taken by the board members.

{¶59} Since individuals engaged in the enforcement of health district regulations are entitled to governmental immunity pursuant to R.C. 2744.01(C)(2), we must determine whether their conduct fell within one of the exceptions.

{¶60} Mr. Fincham argues against the extension of immunity to the individual board members because he alleges that the board members levied the suspension against him with malice, yet he fails to support this assertion with any evidentiary quality materials demonstrating credible facts or evidence. Furthermore, the board cannot be said to have executed their duties with malice or intent to deeply harm Mr. Fincham simply because the act of suspending Mr. Fincham's registration resulted in professional harm -- a natural and acceptable consequence of registration suspension. Suspending registrations is clearly within the scope of their authority.

{¶61} **Quasi-Judicial Immunity**

{¶62} The board members are further protected under a theory of quasi-judicial immunity. The powers of a board of health are quasi-judicial in nature. See *State ex rel. Attorney Gen. v. Craig* (1903), 69 Ohio St. 236; *Marion Township v. Columbus* (1902), 12 Ohio Dec. 553. Therefore, in considering and ruling upon allegations of a violation of the health regulations, the members of the GCBH were acting as arbiters, and are entitled to immunity so as to ensure the integrity of the quasi-judicial process.

{¶63} Commissioner Weisdack also enjoys governmental immunity as he was acting within the scope of his employment as the Geauga County Health Commissioner. Mr. Fincham again failed to even allege any actions beyond those which Mr. Weisdack took in connection with the show cause hearing.

{¶64} Mr. Weisdack, as the health commissioner, investigated allegations of health regulation violations by Mr. Fincham, and brought these allegations to the attention of the GCBH. The United States Supreme Court has likened administrative officers to prosecutors, who are entitled to absolute immunity, to the extent they "initiate

administrative proceedings against an individual or corporation [ ] very much like the prosecutor's decision to initiate or move forward with a criminal prosecution. An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought." *Butz v. Economou* (1978), 438 U.S. 478, 515.

{¶65} Here, Mr. Weisdack initiated an administrative proceeding against Mr. Fincham and suggested an appropriate sanction to the GCBH – both within the scope of his employment and duties as the health commissioner.

{¶66} Because all individual appellees were entitled to immunity from civil suit, the trial court did not err in granting summary judgment in favor of all appellees. Mr. Fincham's first assignment of error is without merit.

{¶67} **Denial of Mr. Fincham's Motion for Partial Summary Judgment**

{¶68} In his second assignment of error, Mr. Fincham argues that the trial court erred to his prejudice in denying his motion for partial summary judgment based upon the failure of the GCBH and all individual appellees, save Mr. Weisdack, to respond to his requests for admission. He argues that the appellees failed to comply with Civ.R. 36(A) and therefore the matters contained within his requests for admission should have been deemed admitted. Mr. Fincham then asserts that he was entitled to summary judgment on the merits of his various claims, because those admissions conclusively established his case.

{¶69} Civ.R. 36(A)(1) addresses requests for admission, and states that "the matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of a printed copy of the request or within such shorter or

longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney." Unlike interrogatories which require verification by the party answering them, requests for admission require merely the signature of a party or his attorney. See Civ.R. 33(A)(3).

{¶70} Mr. Fincham argues that his requests for admissions should have been admitted as a matter of law, based on a perceived procedural failure of the appellees, save the health commissioner, to personally verify their responses to the requests for admission. He relies on our decision in *JPMorgan Chase & Co. v. Industrial Power Generation, Ltd.*, 11th Dist. No. 2007-T-0026, 2007-Ohio-6008, in which this court affirmed the trial court's decision to deem *unanswered* requests for admissions admitted, regardless of the fact the admissions went to the heart of the claims.

{¶71} *JPMorgan Chase,* however, is inapplicable to the case *sub judice*. Mr. Fincham submitted three sets of combined interrogatories and requests for admission to appellees, and, unlike the party in *JPMorgan Chase,* appellees indeed responded to each set. There was no requirement that the individual responding parties *verify* these responses. Any failure to provide a verification as to the answers to interrogatories has no bearing on the question of whether the responses to requests for admission complied with the rules. Mr. Fincham's attempt to engraft a new requirement onto Civ. R. 36 must fail. Therefore, the trial court did not err in overruling Mr. Fincham's partial motion for summary judgment, and Mr. Fincham's second assignment of error is without merit.

{¶72} Finally, although the resolution of Mr. Fincham's first two assignments of error is dispositive of this appeal, we will briefly consider the merits of his remaining assignments of error**.**

{¶73} **The Fraud Claim**

{¶74} In his third assignment of error, Mr. Fincham asserts that the trial court erred to his prejudice when it dismissed his claim for relief sounding in fraud. Mr. Fincham argues that Mr. Weisdack committed civil fraud when he advised the board members that the health regulations required soil reports to be true and accurate. Mr. Fincham suggests that the regulations do not contain a specific requirement of truth and accuracy.

{¶75} "The Supreme Court of Ohio has noted the following elements of a fraud claim:

{¶76} '(a) a representation or, where there is a duty to disclose, concealment of a fact,

{¶77} '(b) which is material to the transaction at hand,

{¶78} '(c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred,

{¶79} '(d) with the intent of misleading another into relying upon it,

{¶80} '(e) justifiable reliance upon the representation or concealment, and

{¶81} '(f) a resulting injury proximately caused by the reliance.'" *Harris v. Huff*, 11th Dist. No. 2008-T-0090, 2010-Ohio-3678, ¶¶125-131 quoting *Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 475. (Citations omitted.)

{¶82} The trial court noted that "although the regulations do not specifically require truth, the regulations' requirement that the reports be accurate in conjunction with the rest of the regulations would make [Mr. Fincham's] argument disingenuous. Futhermore, even if Mr. Weisdack incorrectly stated that the regulation required truth, such a statement hardly constitutes civil fraud." After independently reviewing the evidence, we agree with the trial court.

{¶83} Mr. Fincham failed to present any evidence that Mr. Weisdack knowingly uttered a falsity, with the intent of inducing reliance on Mr. Fincham's part, and that Mr. Fincham so relied. The show cause hearing transcript, in fact, demonstrates the opposite. Mr. Fincham did not rely on Mr. Weisdack's assertion that truth and accuracy were included in the regulations. Rather, he continuously asserted they were not. Furthermore, regulation 3701-29-06 A(F) specifically refers to accuracy and the board's power to convene a show cause hearing if a soil scientist's report is suspected of containing incorrect information. Therefore, Mr. Weisdack's statements regarding accuracy were not false.

{¶84} Mr. Fincham could not possibly have prevailed on the fraud cause of action, and therefore his third assignment of error is without merit.

{¶85} **The Defamation Claim**

{¶86} In his fourth assignment of error, Mr. Fincham argues that the trial court erred to his prejudice by dismissing the defamation cause of action. He asserts that statements made by the appellees during the show cause hearing constitute defamation, and that he was professionally and financially harmed as a result.

{¶87} The essential elements of the common-law action of defamation are "(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Akron-Canton Waste Oil v. Safety-Kleen Oil Servs.* (1992), 81 Ohio App.3d 591, 601, quoting 3 Restatement of the Law 2d, Torts (1977) 155, Section 558.

{¶88} The trial court held that "persons and officers testifying at the public hearing have a qualified privilege as to the content of their testimony." The trial court futher stated that "Mr. Fincham has not provided the Court with evidence that the testimony or statements were false." After independently reviewing the evidence, we agree with the trial court's determination.

{¶89} Mr. Fincham failed to present evidence of falsity. Even more crucial to this case is the fact that all the appellees were participating in a quasi-judicial hearing at the time the alleged false statements were made, and were, therefore, entitled to qualified immunity. Mr. Fincham has not asserted that the appellees made statements outside the confines of the show cause hearing. Furthermore, the transcript of the hearing was never, in fact, sent to ARCPACS. Therefore Mr. Fincham could not possibly have prevailed on the defamation cause of action and his fourth assignment of error is without merit.

{¶90} **The Tortious Interference Claim**

{¶91} In his fifth assignment of error, Mr. Fincham argues that the trial court erred to his prejudice by dismissing the tortious interference claim. Mr. Fincham asserts

that he lost a substantial number of anticipated business contracts as a result of the board's decision to suspend his registration.

{¶92} This court has held that the elements of a tortious interference with business relations claim are: "'(1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) lack of justification, and (5) resulting damages.'" *Joe Ann Tabor Revocable Trust v. WDR Properties*, Inc., 11th Dist. No. 2009-L-118, 2010-Ohio-2049, ¶27, quoting *Snyder v. Morgan*, 11th Dist. No. 2006-P-0065, 2007-Ohio-4630, ¶27.

{¶93} The trial court found that "[t]he lack of employment by septic installers was certainly incidental to Mr. Fincham's suspension, but there is no evidence that Defendants intentionally and maliciously sought to interfere with his business relationships." After independently reviewing the evidence, we fully agree.

{¶94} Moreover, Mr. Fincham provided no evidence that the business contracts existed prior to his suspension, and that the board members were specifically aware of those contracts and acted with the purpose of procuring the breach of these already established contracts. Mr. Fincham could not possibly have prevailed on a claim of tortious interference and, thus, his fifth assignment of error is without merit.

{¶95} **The Civil Conspiracy Claim**

{¶96} In his sixth assignment of error, Mr. Fincham alleges that the trial court erred to his prejudice when it dismissed the civil conspiracy cause of action. He argues that the board members and Mr. Weisdack acted in concert with the specific intention of harming him professionally and financially.

{¶97} The elements of a civil conspiracy claim are: "'(1) a malicious combination, (2) involving two or more persons, (3) causing injury to person or property, and (4) the existence of an unlawful act independent from the conspiracy itself.'" *State ex rel. Fatur v. Eastlake*, 11th Dist. No. 2009-L-037, 2010-Ohio-1448, ¶45, quoting *Gibson v. City Yellow Cab Co*. (Feb. 14, 2001), 9th Dist. No. 20167, 2001 Ohio App. LEXIS 518, *9. "'An underlying tort is necessary to give rise to a cause of action for conspiracy.'" *Ohio Ass'n of Pub. School Emps./AFSCME Local 4, AFL-CIO v. Madison Local School Dist. Bd. Of Edn.,* 190 Ohio App.3d 254, 2010-Ohio-4942*,* ¶62 quoting *Stiles v. Chrysler Motors Corp*. (1993), 89 Ohio App.3d 256, 266.

{¶98} The trial court found that Mr. Fincham "failed to present reliable, probative evidence that Defendants committed any wrongful acts that caused him injury." After independently reviewing the evidence, we agree with the trial court. We find that no evidence exists that the board engaged in wrongful acts. The board conducted the hearing and determined Mr. Fincham's sanction lawfully, and no other acts are alleged to have been committed by the board. Therefore, Mr. Fincham's sixth and final assignment of error is without merit.

{¶99} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.