

STATE OF MICHIGAN
COURT OF APPEALS

LEE ROY TEMROWSKI, JR.,

Plaintiff-Appellant,

v

ROBERT KENT and VALERIE LONG,

Defendants-Appellees.

UNPUBLISHED
September 9, 2021

No. 352207
Ingham Circuit Court
LC No. 19-000484-NO

Before: RONAYNE KRAUSE, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

Plaintiff, Lee Roy Temrowski, Jr., appeals by right the trial court’s order granting summary disposition to defendants, Robert Kent and Valerie Long, under MCR 2.116(C)(7) (governmental immunity). We affirm.

I. FACTS

Plaintiff is an attorney who specializes in litigation under the Michigan no-fault act, MCL 500.3101 *et seq.* Underlying this matter, plaintiff successfully represented a client against Allstate Insurance Company. One of that client’s medical providers had been the Michigan State University (MSU) Health Team. To enforce his attorney lien, plaintiff instructed Allstate to make checks out to the client and to plaintiff’s law firm jointly. Unfortunately, Allstate repeatedly disobeyed plaintiff’s instructions, instead making the checks, in relevant part, payable to MSU and plaintiff’s law firm jointly. After plaintiff returned numerous such checks (including checks involving other medical providers) to Allstate, defendant Long, a medical biller for MSU, contacted plaintiff by telephone to inquire into plaintiff’s client’s claims. Plaintiff informed Long about Allstate having made the checks out to his law firm and to MSU jointly.

Plaintiff contends that Long, on behalf of MSU, agreed to permit plaintiff to endorse and deposit the checks on MSU’s behalf, withhold a 20% commission instead of his usual 33% commission, and then send the remaining balance to MSU. Long agrees that she discussed that possibility with plaintiff, but she contends that she told plaintiff that she would have to speak to her supervisor. Long further contends that her supervisor instructed her to call plaintiff back and ask him to instead send all of the Allstate checks directly to MSU, but plaintiff did not answer his

phone, so Long left him a message asking him to send the Allstate checks to MSU. In any event, plaintiff endorsed the checks, deposited them into his law firm's account, retained a 20% contingency fee of \$68.40, and issued a check to MSU for the remainder of Allstate's payment.

According to Long, "[a] few weeks later, [she] noticed that the claims related to Plaintiff's client had only been paid in part, with a balance remaining," which Long thought was "unusual" given plaintiff's indication to her "that the checks he received from Allstate were for the full balance of his client's claims." Pursuant to the discretion she had as a medical biller, Long conducted a further investigation of the claims by requesting copies of the checks from MSU's claim processing system. She eventually decided to escalate the incident to her supervisor.

At some point thereafter, defendant Kent, an attorney in MSU's Office of General Counsel, became involved. According to Kent, another attorney in the same office "brought to [his] attention an incident involving a potential forgery or unauthorized endorsement of two checks on MSU's behalf by [plaintiff], resulting in MSU not receiving a portion of the debt it was owed." Kent then conducted an investigation. Approximately two months after plaintiff's phone call with Long, Kent left a voicemail at plaintiff's law firm inquiring into an outstanding balance of \$68.40 on plaintiff's client's account. Plaintiff responded with several lengthy and increasingly-vitriolic emails that, in part, denied any wrongdoing, offered to remit the full payment to MSU if MSU returned his original check "and we can continue to battle it out in court over the payment of your bills," and accused Long of being a liar. Kent indicated that he had confirmed with Long that no agreement had been reached regarding plaintiff's deposit of the checks on behalf of MSU and explained that he had "an ethical obligation to [his] client and to the State Bar to report the conduct you have engaged in." Plaintiff responded by asserting that Long was "nothing but a liar," reiterating that he would provide a full refund to Allstate upon receipt of a check from MSU but would not permit MSU to "stiff" him out of his 20%, accused Kent and MSU of greed and a desire to cheat him, and challenged Kent's "audacity to accuse me of 'ethical violations' when all [Kent] have to do sir is look in the mirror and it is you who is guilty of the ethical violations and not me."

Kent apparently did not further communicate with plaintiff, and he instead reported the matter to the MSU Police Department. An MSU Police detective spoke with Long and asked plaintiff to contact her to discuss the matter. Plaintiff maintained his innocence but otherwise declined to discuss the matter with the police. The MSU Police then forwarded the matter to the Ingham County Prosecutor's Office, which proceeded to charge plaintiff with two felony counts of uttering and publishing, MCL 750.249, and one misdemeanor count of larceny under \$200, MCL 750.356(5). Plaintiff voluntarily surrendered to the police and was bound over for trial after a preliminary examination. However, the prosecution then conceded that it did not have a provable case; the circuit court quashed the felony charges and granted the prosecution's request for noelle prosequi. The criminal matter was therefore dismissed.

Plaintiff then commenced this action. Plaintiff alleged claims of malicious prosecution, abuse of process, intentional infliction of emotional distress (IIED), and civil conspiracy against Kent and Long. Plaintiff also alleged claims of tortious interference with a contract and tortious interference with a business relationship against Kent, and claims of fraudulent misrepresentation and innocent misrepresentation against Long. Plaintiff served discovery requests on Kent and Long with his complaint. Among other things, plaintiff requested that Long admit that she authorized plaintiff to withhold a contingency fee, that defendants admit that they had instituted

allegations of criminal activity against plaintiff, that defendants had no probable cause to believe that plaintiff had violated the law, and that defendants made false statements to the MSU Police Department.

In lieu of an answer, defendants moved for summary disposition under MCR 2.116(C)(7) (governmental immunity) and (8) (failure to state a claim on which relief could be granted). Defendants also moved to stay discovery pending the outcome of their motion for summary disposition, arguing that plaintiff had served them with broad discovery requests, whereas their summary disposition motion was based on narrow grounds. The trial court refused to entirely deny plaintiff discovery, but it would limit discovery to what was necessary to resolve the summary disposition motion. The trial court asked plaintiff to identify what specific records he would need to respond to defendants' summary disposition motion. Plaintiff was unable to do so at the hearing, explaining that he would need to "make a list, look at their discovery for that . . ." He indicated that he was willing "to whittle down our discovery and be very, very specific." The trial court instructed plaintiff to send a more-specific discovery request to defendants. It then partially granted defendants' motion to stay discovery, "[a]llowing for discovery only for matters that pertain to Plaintiff responding to the pending motion for summary disposition." Plaintiff never availed himself of the opportunity to craft and serve a narrowed-down discovery request. Eventually, the trial court granted summary disposition in defendants' favor on the basis of governmental immunity.

II. STANDARDS OF REVIEW

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(8) should be granted only where the complaint is so legally deficient that recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party. *Id.* at 119. Only the pleadings may be considered when deciding a motion under MCR 2.116(C)(8). *Id.* at 119-120. Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id.* at 119. "Where summary disposition is granted under the wrong rule, Michigan appellate courts, according to longstanding practice, will review the order under the correct rule." *Spiek v Michigan Dep't of Transportation*, 456 Mich 331, 338 n 9; 572 NW2d 201 (1998).

The interpretation and application of statutes, rules, and legal doctrines is reviewed de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). Whether a claim is barred by governmental immunity is a question of law that we review de novo. *Ray v Swagger*, 501 Mich 52, 61; 903 NW2d 366 (2017). Decisions regarding discovery are discretionary with the trial court, and we review the trial court's decision to limit discovery for an abuse of discretion. *Augustine v Allstate Ins Co*, 292 Mich App 408, 419; 807 NW2d 77 (2011). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.* "A trial court necessarily abuses its discretion when it makes an error of law." *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552; 886 NW2d 113 (2016). Appellate courts will affirm a right result arrived at on the basis of wrong reasoning. *Kirl v Zinner*, 274 Mich 331, 336; 264

NW 391 (1936); *Fox v Roethlisberger*, 350 Mich 1, 4; 85 NW2d 73 (1957); *Mulholland v DEC Internat'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989).

III. DISCOVERY LIMITATIONS

Plaintiff argues that the trial court erred by staying discovery. We disagree.

In general, Michigan permits broad discovery into any unprivileged matter that is relevant to the subject matter of the litigation, subject to restrictions against fishing expeditions. *Augustine*, 292 Mich App at 419-420. However, Michigan's commitment to broad and far-reaching discovery is not unlimited. Summary disposition is usually premature when discovery is incomplete, but it may nevertheless be proper if there is no reasonable likelihood that further discovery would yield helpful evidence. *Bodnar v St John Providence, Inc*, 327 Mich App 203, 231; 933 NW2d 363 (2019). The party opposing summary disposition must provide more than speculation that additional discovery could be beneficial. *Caron v Cranbrook Ed Community*, 298 Mich App 629, 645-646; 828 NW2d 99 (2012). Furthermore, trial courts may impose restrictions or limitations upon discovery "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." MCR 2.302(C). Trial courts should "protect the interests of the party opposing discovery so as not to subject that party to excessive, abusive, or irrelevant discovery requests." *Cabrera v Ekema*, 265 Mich App 402, 407; 695 NW2d 78 (2005).

As an initial matter, to the extent defendants' motion for summary disposition was premised upon MCR 2.116(C)(8), additional discovery would by definition be irrelevant, because such a motion must be decided solely on the pleadings. *Maiden*, 461 Mich at 119-120. Furthermore, critically, the trial court did not deprive defendant of meaningful discovery. Its order limiting discovery was explicitly limited in time to the outcome of defendants' motion for summary disposition; if plaintiff had prevailed, discovery would have continued as normal. Finally, the trial court expressly permitted plaintiff discovery "for matters that pertain to plaintiff responding to the pending motion for summary disposition." To the extent defendants' motion for summary disposition was premised on MCR 2.116(C)(7), plaintiff was therefore fully entitled to any discovery that would bear upon whether defendants did or did not enjoy governmental immunity for their conduct. Plaintiff was given a full opportunity to present a revised discovery request on that basis; he simply chose not to do so.

We find no abuse of discretion in the trial court's decision to temporarily limit discovery to matters relevant to the outstanding motion until the disposition of that motion. Plaintiff could have submitted a revised discovery request tailored to addressing the motion, but he did not. Indeed, plaintiff could conceivably have re-submitted the same discovery request with an explanation for why everything therein was necessary to address the motion for summary disposition. "[E]rror requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998). To the extent that defendants failed to respond to plaintiff's discovery requests, we conclude that plaintiff created the error by failing to follow the trial court's instructions to engage in limited discovery.

IV. GOVERNMENTAL IMMUNITY

Under the Governmental Tort Liability Act (GTLA), MCL 691.1407, governmental agencies and their employees generally are immune from tort liability, and can be held liable only when the circumstances fall within the statutory exceptions. MCL 691.1407; *Beals v Michigan*, 497 Mich 363, 370; 871 NW2d 5 (2015). The analysis for determining governmental immunity for an employee depends upon whether the conduct of the employee is alleged to have been a negligent or an intentional tort. Our Supreme Court in *Odom v Wayne Co*, 482 Mich 459, 479-480; 760 NW2d 217 (2008),¹ provided the following analytical framework:

(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.

(3) If the plaintiff pleaded a negligent tort, proceed under MCL 691.1407(2) and determine if the individual caused an injury or damage while acting in the course of employment or service or on behalf of his governmental employer and whether:

(a) the individual was acting or reasonably believed that he was acting within the scope of his authority,

(b) the governmental agency was engaged in the exercise or discharge of a governmental function, and

(c) the individual's conduct amounted to gross negligence that was the proximate cause of the injury or damage.

(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 (On Rehearing)*, 420 Mich 567; 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,

¹ Plaintiff argues that *Odom* has been “effectively nullified by statute” and that 2013 PA 173 abolished any distinction between discretionary and ministerial acts in MCL 691.1407(2). However, 2013 PA 173 did nothing of the sort; it renumbered an irrelevant subsection of MCL 691.1407 and added an exception regarding the MISS DIG utility safety notification system. In fact, *Odom* quoted MCL 691.1407(2), and the language quoted is precisely identical to the language found in MCL 691.1407(2) today.

(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*, 482 Mich at 479-480.]

There is no dispute that both defendants were lower-ranking employees of MSU. As plaintiff correctly observes, governmental immunity for employees is an affirmative defense that the employee must prove. *Odom*, 482 Mich at 479.

Most of the claims alleged in this matter are intentional torts. Under the framework set forth in *Odom*, it is necessary to determine regarding the alleged intentional torts whether (1) the alleged acts were undertaken during the course of each defendant's employment, (2) each defendant was acting or reasonably believed he or she was acting within the scope of his or her authority, (3) defendants undertook the acts in good faith and not with malice, and (4) the acts were discretionary or ministerial. Regarding the claim of innocent misrepresentation, the factors necessary to establish governmental immunity regarding a negligent tort are that (1) the defendant was within the course of employment and was acting, or believed he or she was acting, within the scope of his or her authority, (2) the governmental agency was engaged in the exercise or discharge of a governmental function at the time of the alleged injurious acts, and (3) the defendant's conduct did not amount to gross negligence that proximately caused the injury or damage. Malice is essentially synonymous with an absence of good faith. *Odom*, 482 Mich at 474-475. Furthermore, "gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). We regard that definition as conceptually analogous to bad faith, which *Odom* described as "'malicious intent, capricious action or corrupt conduct' or 'willful and corrupt misconduct . . .'" *Odom*, 482 Mich at 474.

Plaintiff's conclusory characterizations of defendants' conduct notwithstanding, the actual allegedly-wrongful acts undertaken by defendants are reporting plaintiff's conduct to the MSU police department, providing the email correspondence between Kent and plaintiff to the MSU police department, accusing plaintiff of misconduct, keeping plaintiff's check and indicating an intent to collect the outstanding \$68.40, providing false statements about the telephone discussion between plaintiff and Long, and conspiracy to the above. Under the circumstances, it is unnecessary for us to address whether defendants' acts were undertaken in the course of their employments, within the scopes of their respective authority, and were discretionary. Summary disposition is properly granted when a defendant provides uncontroverted evidence that he or she acted in good faith, and the plaintiff has not identified contradictory evidence. See *Latits v Phillips*, 298 Mich App 109, 118; 826 NW2d 190 (2012).

We agree with plaintiff that Kent's and Long's affidavits should be disregarded to the limited extent that they each state, "At all times, I acted in good faith and without any malice toward the Plaintiff." The fact that the affidavits are "self-serving" is unremarkable; indeed, it would be surprising if a party's affidavit did not favor that party's case. However, the quoted averment sets forth a conclusion of law, not a statement of fact from which a conclusion could be drawn. See *Nat'l Concessions, Inc v Nat'l Circus Corp*, 347 Mich 335, 337-338; 79 NW2d 910 (1956). Those specific averments should be disregarded; however, doing so does not invalidate the remainder of the affidavits, which do otherwise set forth appropriate factual averments.

Regarding defendant Long, there is no dispute that she and plaintiff discussed the proposal of having plaintiff deposit the checks and mail payments to MSU; the dispute is whether Long actually told plaintiff to effectuate that proposal, or whether Long told plaintiff she would need to discuss it with her supervisor and then left a message for plaintiff explaining that the proposal had been rejected. Nevertheless, presuming Long did tell plaintiff to effectuate that proposal and proceeded to lie about what she told plaintiff, the unrebutted evidence—even disregarding the conclusory averment in Long’s affidavit—shows an absence of malice or of gross negligence. Long averred, in relevant part, that she “did not know [plaintiff] prior to this incident and had no ill will toward him or any intent to harm his reputation.” Furthermore, Long averred that she merely escalated an anomaly to her supervisor upon determining that plaintiff’s client’s bill still had an outstanding balance. Plaintiff notably does not explain how he expected his client’s bills from MSU to be paid in full under his check-cashing scheme. Importantly, plaintiff’s emails to Kent clearly reflect a mutual misunderstanding and mutual efforts to resolve the problem, but the manner in which plaintiff presented himself would likely have been interpreted as unreasonable and hostile. Although reporting the matter to the police might have been an overreaction, when considered in context, the circumstances fail to show that doing so constituted malice or gross negligence.

Defendant Kent also averred, as a proper factual assertion, that he “did not know [plaintiff] prior to this incident and had no ill will toward him or any intent to harm his reputation.” Plaintiff argues that defendants knew or should have known that MSU was not entitled to payment from Allstate, but rather was entitled to payment from his client, and the payments from Allstate actually belonged to plaintiff (as to his attorney fee) and to the client (as benefits owed by Allstate). In other words, plaintiff alleges that he and his client were the rightful recipients of any benefits payable from Allstate, that Long knew this as the billing agent for MSU Health Team, and that Kent, as an attorney, knew or should have known this. However, plaintiff overlooks the facts that (1) the check was actually made out in part to MSU, and (2) defendants were investigating the undisputed fact that the client’s bill was not being paid. Although plaintiff did extend a conditional offer to remit a full payment and then “battle it out in court,” the overall content of plaintiff’s communications cannot be regarded as a good faith effort to resolve the matter amicably. Ordinarily, the propriety and necessity of elevating a legitimate dispute over a payment of \$68.20 into a criminal matter would be questionable, especially because the real problem was Allstate. However, under these particular circumstances, particularly after reading plaintiff’s emails, Kent’s subsequent course of conduct cannot be regarded as wholly unreasonable, and there is no evidence Kent knew that criminal charges would actually be filed.

We therefore conclude that the trial court did not err when it determined that defendants established that they lacked malice and did not engage in gross negligence, and that plaintiff did not provide contradictory evidence.²

² Plaintiff further contends that the trial court improperly shifted the burden of establishing governmental immunity to him because governmental immunity is an affirmative defense, and he did not have the duty to plead in avoidance of it. Our review of the record, however, indicates that

V. ALTERNATIVE GROUNDS FOR AFFIRMANCE

Defendants argue in the alternative that summary disposition would have been proper under MCR 2.116(C)(8) even if the trial court had erred regarding governmental immunity. We agree.

A claim of malicious prosecution requires, in relevant part, “that the defendant has initiated a criminal prosecution against” the plaintiff. *Matthews v Blue Cross and Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998). “A plaintiff’s prima facie case against a private person requires proof that the private person instituted or maintained the prosecution and that the prosecutor acted on the basis of information submitted by the private person that did not constitute probable cause.” *Id.* at 379. A private individual who supplies wrong information to police officers or prosecuting authorities upon which a prosecution is eventually initiated is not considered to have “initiated” the prosecution, unless (1) the individual knows the information to be false, and (2) the officers or prosecutor acted on that false information without any independent exercise of discretion. *Id.* at 383-386. Presuming defendants submitted knowingly false information to the police, plaintiff’s complaint establishes that the police conducted their own independent investigation, including extending an invitation to plaintiff to participate—which plaintiff declined. Because the criminal prosecution was clearly based on an independent exercise of discretion by the officers who actually had the authority to bring the criminal charges, defendants cannot have committed malicious prosecution.

The tort of abuse of process “concerns the willful use of a valid process to obtain a result the law did not intend” and “lies for the improper use of the process after it had been issued, not for maliciously causing it to issue.” *Rowbotham v DAIIE*, 69 Mich App 142, 146; 244 NW2d 389 (1976). “A bad motive alone will not establish an abuse of process.” *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Fatally to plaintiff’s claims, even presuming defendants had an improper motive in attempting to induce the criminal charges to be brought, all of defendants’ alleged wrongful conduct occurred before any legal process existed to abuse. *Peisner v Detroit Free Press*, 68 Mich App 360, 367; 242 NW2d 775 (1976). Defendants were not alleged to be involved in the criminal proceeding after it was commenced, so they cannot be liable for abuse of process.

Intentional infliction of emotional distress (IIED) requires “(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress.” *Hayley v Allstate Ins Co*, 262 Mich App 571, 577; 686 NW2d 273 (2004) (quotation omitted). Presuming plaintiff has adequately alleged the last three elements, it is an initial question of law for the courts to determine whether a defendant’s alleged misconduct was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.” *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). Presuming the facts to be as alleged in the complaint,

the trial court based its decision on the lack of evidence that plaintiff provided to rebut defendants’ affidavits, and did not require plaintiff to plead in avoidance of governmental immunity.

defendants' alleged falsehoods would certainly be distressing and deplorable, but we are unable to find that they rise to the level of "extreme and outrageous."

Tortious interference with a contract or with a business relationship requires the defendant to be a "third party" to that contract or business relationship. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). According to the complaint, plaintiff had a contract and a business relationship with MSU by virtue of his alleged agreement with Long. Plaintiff alleged that Kent tortiously interfered with that contract and business relationship. However, plaintiff also alleged that Kent was at all relevant times acting as Assistant General Counsel to Michigan State University. In other words, plaintiff alleged that an agent of MSU, while acting on behalf of MSU, interfered with his contract or business relationship with MSU. Although plaintiff bafflingly speculates that Kent was seeking to punish plaintiff for representing his client against Allstate, even if that is true, Kent's "motives therefore cannot be said to be strictly personal." *Reed*, 201 Mich App at 13. The tortious interference claims were therefore untenable.

A claim for fraudulent misrepresentation requires the defendant to have knowingly or recklessly made a material misrepresentation that the defendant intended for the plaintiff to rely upon, and the plaintiff actually did rely upon that misrepresentation and suffered injury as a result. *Hord v Environmental Research Institute of Michigan*, 463 Mich 399, 404; 617 NW2d 543 (2000). A claim for innocent misrepresentation is similar, but instead of the scienter elements of knowing that a statement is false and intending the statement to be relied upon, the misrepresentation must "be made in connection with making a contract and the injury suffered by the victim must inure to the benefit of the misrepresenter." *US Fidelity and Guaranty Co v Black*, 412 Mich 99, 118; 313 NW2d 77 (1981). The latter claim obviously fails; not only did plaintiff fail to allege that Long benefitted from her alleged misrepresentation, there is nothing anywhere in the complaint to suggest how Long could have benefitted from the misrepresentation. The former claim appears to be premised on the allegation that Long misrepresented to plaintiff that she had the authority to permit plaintiff to sign the checks on behalf of MSU. However, plaintiff never articulates what alleged misrepresentation Long actually made. Rather, plaintiff only alleges that he and Long reached an agreement that plaintiff could endorse and deposit the checks on MSU's behalf. Although it might otherwise be appropriate to draw some inferences regarding what Long actually told plaintiff, fraud must be pleaded with particularity. MCR 2.112(B)(1); see also *Churchill v Palmer*, 57 Mich App 210, 216; 226 NW2d 60 (1974). Plaintiff has not pleaded his fraud claim with adequate particularity.

Finally, the trial court observed that under the intracorporate conspiracy doctrine, there cannot legally be a conspiracy between agents of the same legal entity when those agents are acting in their official capacities. *Ziglar v Abbasi*, ___ US ___, ___; 137 S Ct 1843, 1867; 198 L Ed 2d 290 (2017). This Court has recognized the applicability of the doctrine, but noted that it does not apply when the agents have independent personal stakes in the matter, in which case they are deemed to be acting on their own behalf. *Blair v Checker*, 219 Mich App 667, 674-675; 558 NW2d 439 (1996). To the extent plaintiff alleges that defendants were acting in their capacities as agents of MSU, his civil conspiracy claims necessarily fail. However, to the extent plaintiff alleges that defendants were acting on their own behalf, his civil conspiracy claims nevertheless fail in any event because none of his other claims are viable on their own.

VI. CONCLUSION

The trial court's order temporarily limiting discovery to matters relevant to the pending summary disposition motion, lasting only until the outcome of that motion, was not an abuse of discretion, especially because plaintiff elected not to avail himself of the discovery that the trial court did permit. The trial court properly granted summary disposition in favor of defendants under MCR 2.116(C)(7) on the basis of governmental immunity. Furthermore, summary disposition would also have been proper under MCR 2.116(C)(8) because plaintiff failed to state any claims upon which relief could be granted. The trial court is affirmed in all respects. Defendants, being the prevailing parties, may tax costs. MCR 7.219(A).

/s/ Amy Ronayne Krause

/s/ Michael F. Gadola