STATE OF MICHIGAN

COURT OF CLAIMS

THOMAS ANDREW SCHOENBERGER, CICADA 3301 METAVERSE, LLC, a Utah domestic limited liability company, THOMAS ANDREW SCHOENBERGER, doing business as Cicada 3301 Token, Cicada 3301 Portals, and SOPHIA MUSIK,

Plaintiffs,

v

Case No. 25-000045-MM

Hon. James Robert Redford

THE TRUSTEES OF MICHIGAN STATE UNIVERSITY, a body corporate, REBECCA BAHAR-COOKE, MIKE BALOW, DENNIS DENNO, RENEE KNAKE JEFFERSON, SANDY PIERCE, BRIANNA T. SCOTT, KELLY TEBAY, REMA VASSAR, SHAWN TURNER, MONIQUE TURNER, and LAURA DILLEY,

Defendants.
_____/

THOMAS ANDREW SCHOENBERGER, CICADA 3301 METAVERSE, LLC, a Utah domestic limited liability company, THOMAS ANDREW SCHOENBERGER, doing business as Cicada 3301 Token, Cicada 3301 Portals, and SOPHIA MUSIK,

Plaintiffs,

v

Case No. 25-000186-MZ

Hon. James Robert Redford

THE TRUSTEES OF MICHIGAN STATE UNIVERSITY, a body corporate, REBECCA BAHAR-COOKE, MIKE BALOW, DENNIS DENNO, RENEE KNAKE JEFFERSON, SANDY PIERCE, BRIANNA T. SCOTT, KELLY TEBAY, REMA VASSAR, KEVIN GUSKIEWICZ, HEIDI HENNINK-KAMINSKI,

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PRABU DAVID, DIMITAR DELIYSKI, SHAWN TURNER, MONIQUE TURNER, and LAURA DILLEY, in their individual and official capacities,

Defendants.
_____/

ORDER OF CONSOLIDATION

On March 22, 2025, plaintiffs filed an original action in this Court in Docket No. 25-000045-MM. On August 7, 2025, plaintiffs filed a complaint in Wayne Circuit Court in Docket No. 25-012153-CZ, naming all defendants from the Court of Claims action along with some additional individuals. Both actions are based on the same underlying controversy and facts and raise many, if not all, of the same claims. The Wayne Circuit Court transferred Docket No. 25-012153-CZ to this Court on December 1, 2025, and it was assigned Court of Claims Docket No. 25-000186-MZ. The Court orders Docket No. 25-000045-MM be CONSOLIDATED with Docket No. 25-000186-MZ.

IT IS ORDERED.

Date: December 4th, 2025

James Robert Redford
Judge, Court of Claims

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EXHIBIT E

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From: COC Clerks Office
To: Watza, Elizabeth; bpowers@cranbrooklawgroup.com
Subject: Court of Claims #25-000186-MZ - THOMAS ANDREW SCHOENBERGER V THE TRUSTEES OF MICHIGAN STATE UNIVERSITY
Date: Tuesday, December 9, 2025 8:35:28 AM
Attachments: 20251202 Ltr to Circ Ct.pdf

Good morning,

The notice of transfer filed on December 1, 2025 has been processed. The case number and name is listed in the Subject line of this email and it's assigned to the Hon. James Robert Redford. Attached is a letter to be mailed to the Wayne County Circuit Court requesting the record within 21-days.

Best regards,

Court of Claims

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State of Michigan
Court of Claims

BROCK A. SWARTZLE
CHIEF JUDGE
JAMES ROBERT REDFORD
SIMA G. PATEL
CHRISTOPHER P. YATES
JUDGES

JEROME W. ZIMMER JR.
CLERK

December 2, 2025

WAYNE COUNTY CIRCUIT COURT
2 WOODWARD AVENUE, SUITE 502
DETROIT MI 48226

RE: District/Circuit Court Case Case #25-012153-CZ
Court of Claims Case Case #25-000186-MZ

Dear Clerk:

A Notice of Transfer in the above referenced case has been filed with the Court of Claims. Within 21 days of the date of this letter, please provide this Court with one of the following:

1. If the entire case is being transferred, send the original file with a current Register of Actions.
2. If less than the full case is being transferred, send a certified copy of the entire file with the current Register of Actions.

Please mail the file to: COURT OF CLAIMS, 925 W. OTTAWA, P.O. BOX 30185, LANSING MI 48909. If you have any questions, feel free to contact us at (517) 373-0807 between the hours of 8:30 a.m. – 4:30 p.m.

Sincerely,

/x/ Angela M. Davis

Angela M. Davis
Deputy Clerk

cc/case file
Attorney for Plaintiff and Attorney for Defendants

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EXHIBIT F

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2022 WL 17998121
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Robert GARDNER, Plaintiff-Appellant,
v.
MICHIGAN STATE UNIVERSITY, Michael Kiley, Julie Brockman, Marcia Porter, and Randy Showerman, Defendants-Appellees.

No. 360377
|
December 29, 2022

Court of Claims, LC No. 20-000227-MK

Before: Jansen, P.J., and Servitto and Gadola, JJ.

Opinion

Per Curiam.

***1** Plaintiff appeals as of right the Court of Claims opinion and order granting summary disposition in favor of defendants, Michigan State University (MSU), Michael Kiley, Julie Brockman, Marcia Porter, and Randy Showerman.[1] We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a long history of disputes and litigation between plaintiff, MSU, and MSU employees. Plaintiff is a Hispanic male in his 60s. He holds a bachelor of science degree and a master's of science degree in animal science from MSU. In 1990, plaintiff began the doctoral candidacy program in agricultural economics at MSU. While engaged in the program, plaintiff began advocating on behalf of migrant workers, particularly in support of unionization. Plaintiff claimed that MSU administration took issue with his advocacy because it would compromise the school's relationships with farmers who funded MSU programs.

From 1993 to 2000, plaintiff filed several charges of discrimination against MSU and its employees with the Michigan Department of Civil Rights and the Equal Employment Opportunity Commission (EEOC) on the basis of racial discrimination and retaliation for advocating on behalf of migrant workers. In 1997, he filed suit against MSU and the chairperson of the agriculture economics department for racial discrimination and retaliation, which was dismissed. In 1999, plaintiff was terminated from the doctoral program under the "pretext" that he was supposed to finish within eight years. He appealed this decision, and while the appeal was pending, he refused to vacate his campus office, and was arrested and convicted of trespassing. He filed another complaint in 2002 in circuit court against MSU, the Board of Trustees, and two employees under the Elliot-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* This case was dismissed on the merits. In 2012, plaintiff filed a lawsuit in federal district court against MSU and the then-provost alleging violations of his constitutional and civil rights. This suit was dismissed and plaintiff was assessed sanctions in 2014.

In 2015, plaintiff was hired by MSU as a research associate. In February 2016, plaintiff complained to his supervisor that he was being discriminated and retaliated against for filing the federal lawsuit, and later that same month, plaintiff's employment was terminated, according to plaintiff, without good cause. Thereafter, plaintiff started working with Brockman on a project proposal for developing best labor management techniques for fruit and vegetable growers. However, on April 11, 2016, plaintiff received an e-mail from Brockman stating that she was advised to discontinue the research. Plaintiff believed it was Kiley who advised Brockman to stop working with plaintiff. From September 2017 to August 2020, plaintiff applied for several positions with MSU. Plaintiff believes he was not hired because Kiley informed MSU administrators that plaintiff was blacklisted based on his prior civil rights complaints.

***2** Plaintiff filed a 2019 lawsuit in pro per in Ingham Circuit Court against MSU, its Board of Trustees, the provost, and plaintiff's former supervisor, which was dismissed against the individuals with prejudice, and against MSU and the Board of Trustees without prejudice.

II. THE LAWSUIT AT ISSUE

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Plaintiff filed his original complaint in this matter in Ingham Circuit Court against defendants on September 16, 2020, alleging 18 counts. Defendants filed a notice of transfer, transferring the case to the Court of Claims. The parties disputed the transfer, defendants moved for summary disposition, and plaintiff filed a first amended complaint, which defendants moved to strike because it was not verified as required under the Court of Claims Act, MCL 600.6401 *et seq.* On January 29, 2021, the Court of Claims entered an opinion and order transferring plaintiff's claims under the ELCRA back to the circuit court, denied defendants' motion for summary disposition without prejudice, and granted plaintiff leave to file a verified first amended complaint. Plaintiff moved for reconsideration of the court's order retaining jurisdiction of plaintiff's remaining claims, which the court denied. Defendants moved for summary disposition a second time, but plaintiff applied for leave to appeal the Court of Claims decision to retain jurisdiction. Thereafter, the Court of Claims entered an order holding the matter in abeyance pending the appeal, and granting plaintiff leave to file a second amended complaint.

Plaintiff's second amended complaint is the subject of this appeal. In Counts I to III, he alleged breach of contract, breach of implied contract, and promissory estoppel against MSU for being terminated from employment allegedly without good cause. In Count IV, plaintiff alleged promissory estoppel against Brockman "in her individual capacity" for the alleged promises she made to work on plaintiff's proposed project. In Count V, plaintiff alleged tortious interference with a business relationship or advantage by Kiley "in his individual capacity" for interfering with plaintiff's job applications. And in Count VI, plaintiff alleged intentional infliction of emotional distress against Kiley "in his individual capacity" for informing MSU administration that plaintiff was blacklisted and threatening to depose plaintiff's elderly parents.

After this Court denied plaintiff's application for leave to appeal in Docket No. 357109, *Gardner v Mich State Univ*, unpublished order of the Court of Appeals, entered October 22, 2021 (Docket No. 357109), defendants moved for summary disposition a third time. They argued that plaintiff's contract and quasi-contract claims against MSU were time barred because he failed to file a notice of intent within one year of the accrual of his claims. They argued that plaintiff failed to plead a proper claim of promissory estoppel against Brockman, and that Kiley was entitled to governmental immunity of the intentional tort claims alleged against him.

The Court of Claims agreed with defendants' arguments and granted summary disposition in their favor. Counts I, II, and III were dismissed because plaintiff conceded that he failed to timely file a notice of intent. The court concluded that plaintiff failed to plead a specific promise in his promissory estoppel claim against Brockman, and Kiley was entitled to governmental immunity of plaintiff's intentional tort claims. Plaintiff now appeals.

III. STANDARD OF REVIEW

***3** The decision of the Court of Claims whether to transfer a case back to the circuit court implicates the court's inherent power to control its own docket, and this Court reviews that decision for an abuse of discretion. *Baynesan v Wayne State Univ*, 316 Mich App 643, 651; 894 NW2d 102 (2016). The court abuses its discretion when its decision falls outside the range of principled outcomes. *Id.*

Defendants moved for summary disposition under MCR 2.116(C)(7) and (C)(8). We review de novo a lower court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

"MCR 2.116(C)(7) provides that a motion for summary disposition may be raised on the ground that a claim is barred because of immunity granted by law." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010).

> When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal

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> effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is appropriate. [*Id.* at 428-429 (footnotes omitted).]

"A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil*, 504 Mich at 159. "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160. Summary disposition may only be granted under this subrule "when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.*

The court may not weigh the evidence or make credibility determinations when deciding a motion for summary disposition. *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). Nor may the court make findings of fact; if the evidence is conflicting, summary disposition is improper. *Id.*

IV. INTENTIONAL TORT CLAIMS AGAINST KILEY

Plaintiff first argues that the Court of Claims violated his constitutional right to a jury trial by retaining jurisdiction of his intentional tort claims pleaded against Kiley in his individual capacity. We disagree.

Courts must consider issues of subject-matter jurisdiction at any time. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). "When a court lacks subject[-]matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void." *Id.*

The state and its subdivisions may not be sued without consent, and the Legislature may place conditions or limitations on such suits. *Elia Cos, LLC v Univ of Mich Regents*, 335 Mich App 439, 447; 966 NW2d 755 (2021). "The Court of Claims is created by statute and the scope of its subject-matter jurisdiction is explicit." *Dunbar v Dep't of Mental Health*, 197 Mich App 1, 5; 495 NW2d 152 (1992). The Court of Claims has jurisdiction "[t]o hear and determine any claim or demand ... for monetary, equitable, or declaratory relief ... against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court." MCL 600.6419(1)(a). The Court of Claims Act defines "the state or any of its departments or officers" as

> ***4** this state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties. [MCL 600.6419(7).]

When a matter is transferred from the circuit court to the Court of Claims, the Court of Claims has exclusive jurisdiction, MCL 600.6421(4)(b), subject to MCL 600.6421(1), which provides:

> Nothing in this chapter eliminates or creates any right a party may have to a trial by jury, including any right that existed before November 12, 2013. Nothing in this chapter deprives the circuit, district, or probate court of jurisdiction to hear and determine a claim for which there is a right to a trial by jury as otherwise provided by law, including a claim against an individual employee of this state for which there is a right to a trial by jury as otherwise provided by law. Except as otherwise provided in this section, if a party has the right to a trial by jury and asserts that right as required by law, the claim

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> may be heard and determined by a circuit, district, or probate court in the appropriate venue.

The circuit court is presumed to have subject-matter jurisdiction over a civil action unless the Michigan Constitution or a statute expressly gives jurisdiction to another court. *O'Connell v Dir of Elections*, 316 Mich App 91, 101; 891 NW2d 240 (2016). Const. 1963, art. 1, § 14 provides that "[t]he right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law...." The Court of Claims Act does not deprive the circuit court of jurisdiction to hear and determine a claim for which there is a right to a jury trial. MCL 600.6421(1). Rather, concurrent jurisdiction exists between the circuit court and the Court of Claims. *Baynesan*, 316 Mich App at 654, citing MCL 600.6421(1). The Court of Claims must resolve issues within its exclusive jurisdiction before transferring claims for which concurrent jurisdiction exists back to the circuit court. *Id.*

Plaintiff claims that the Court of Claims violated his constitutional right to a jury trial by disregarding the exception in MCL 600.6421(1) for "an individual employee of this state," and decided questions of fact on a motion for summary disposition. We disagree. In comparison to his ELCRA claims that were transferred back to the circuit court, plaintiff has no right to a jury trial for his tort claims against Kiley. Thus, they remained within the exclusive jurisdiction of the Court of Claims. Plaintiff claims that his tort claims against Kiley fall within the exception because they were pleaded against Kiley in his "individual capacity." However, courts determine the nature of a claim by examining its substance rather than its label. *Sunrise Resort Ass'n, Inc v Cheboygan Co Rd Comm*, — Mich App ——, ——*Sunrise Resort Ass'n, Inc v Cheboygan Co Rd Comm*, — Mich App ——, ——; — NW2d —— (2021)—— NW2d —— (2021) (Docket No. 354540); slip op. at 9 n 5. Plaintiff pleaded allegations against Kiley for actions taken during the course and scope of his employment with MSU as general counsel. The Court of Claims Act gives the Court of Claims exclusive jurisdiction against a state employee who is "acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties." MCL 600.6419(7). Therefore, the Court of Claims did not abuse its discretion when it retained jurisdiction over plaintiff's intentional tort claims against Kiley. As will be discussed further below, the Court of Claims properly granted defendants summary disposition of these claims and did not engage in improper fact-finding.

***5** To succeed on a claim of tortious interference with a business relationship or expectancy, plaintiff must prove "(1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the defendant, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the plaintiff." *Hope Network Rehab Servs v Mich Catastrophic Claims Ass'n*, — Mich App ——, ——*Hope Network Rehab Servs v Mich Catastrophic Claims Ass'n*, — Mich App ——, ——; — NW2d —— (2022)—— NW2d —— (2022) (Docket No. 355372); slip op. at 5 (quotation marks and citations omitted). However, when a plaintiff pleads an intentional tort claim against a government employee, the plaintiff must plead in avoidance of governmental immunity, and the burden is on the employee to prove his entitlement to immunity as an affirmative defense. *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). When a plaintiff pleads an intentional tort, the defendant must establish that he is entitled to immunity by proving that

> (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,
>
> (b) the acts were undertaken in good faith, or were not undertaken with malice, and
>
> (c) the acts were discretionary, as opposed to ministerial. [*Id.* at 480.]

In explaining the second element, the *Odom* Court stated that "there is no immunity when the governmental employee acts *maliciously* or with a *wanton or reckless disregard of the rights of another.*" *Id.* at 474.

Plaintiff alleged in the second amended complaint that Kiley interfered with plaintiff's expectancy of obtaining employment with MSU by informing MSU administrators that plaintiff was blacklisted, his actions were "intentional and conduct with malice," were outside the scope of Kiley's authority, and plaintiff was not hired as a result. The actions that plaintiff claimed were malicious were Kiley's e-mails about deposing plaintiff's parents and the manuscript. These

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actions were taken within the course of Kiley's employment as MSU general counsel, they lacked any indication of malice, and they were discretionary. Kiley asked for the contact information for plaintiff's parents for a deposition, but conceded that informal communication would suffice. This does not rise to the level of malicious conduct. See *id.* Nor does Kiley's e-mail to plaintiff regarding the authorship of a manuscript. It was within the scope of Kiley's authority as general counsel to send an e-mail on behalf of his client regarding the potential intellectual property of the university, and there is no indication that this action was taken with malice.

Regarding plaintiff's claim that Kiley interfered with plaintiff's job applications, defendants relied on Kiley's affidavit.[2] Kiley attested that he was general counsel for MSU from 1986 to 2018. He attested that he was not aware that plaintiff applied for all of the positions he claims he did, and did not prevent or instruct anyone from considering plaintiff for employment. Thus, there was no genuine issue of material fact that Kiley was entitled to governmental immunity, and summary disposition of plaintiff's intentional interference claim was proper under MCR 2.116(C)(7).

The same reasoning applies to plaintiff's claim of intentional infliction of emotional distress against Kiley. To establish this claim, the plaintiff must prove "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Swain v Morse*, 332 Mich App 510, 534; 957 NW2d 396 (2020) (quotation marks and citation omitted). The defendant is only liable when his conduct "is 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." *Id.* (quotation marks and citation omitted). The test is whether "the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " *Id.* (quotation marks and citation omitted).

***6** In the second amended complaint, plaintiff alleged that Kiley's "outrageous" behavior included "informing the administrators who posted employment positions which Plaintiff applied for that he was being blacklisted by MSU and that the administrators should therefore not hire Plaintiff for those positions, and for threatening to contact Plaintiff's elderly parents who were living in a senior citizens' center in Puerto Rico." These allegations fail to describe conduct "so outrageous in character ... as to go beyond all possible bounds of decency." *Id.* As mentioned above, Kiley conceded that informal communication with plaintiff's parents would be sufficient rather than taking their depositions. Moreover, plaintiff failed to plead in avoidance of Kiley's entitlement to immunity. The actions alleged by plaintiff were undertaken by Kiley in the scope of his employment as MSU general counsel, and do not rise to the level of malice. See *Odom*, 482 Mich at 480. Therefore, summary disposition of this claim was also proper.

V. PROMISSORY ESTOPPEL CLAIM AGAINST BROCKMAN

Plaintiff argues that the Court of Claims erred in granting defendants summary disposition of his promissory estoppel claim against Brockman because it was sufficiently pleaded. We disagree.

The elements of a promissory estoppel claim are "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." *Cove Creek Condo Ass'n v Vistal Land & Home Dev, LLC*, 330 Mich App 679, 713; 950 NW2d 502 (2019) (quotation marks and citation omitted). "A promise is a manifestation of intention to act or refrain from acting in a specific way, so made as to justify a promisee in understanding that a commitment has been made." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008) (quotation marks and citation omitted). "The promise must be definite and clear, and the reliance on it must be reasonable." *Id.*

In the second amended complaint, plaintiff alleged in the statement of facts section that Brockman "agreed to participate in the project by providing use of the MSU facilities for the project; actively participating in the project; providing her expertise and advice in advancing the project; and seeking prospective financial support for the project via grant funding. Based on Brockman's assurances, Plaintiff expended considerable time and effort in enlisting employers and leaders in the agricultural community to support the project." Under Count IV of the complaint, plaintiff provided cursory statements alleging the elements of a promissory estoppel claim:

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63. Brockman made promises to Plaintiff that she would participate fully in the project aimed at developing best management techniques for fruit and vegetable growers.

64. Brockman should have reasonably expected that her promises to Plaintiff would induce him to take action of a definite and substantial character by seeking to generate support for the project in the agricultural business community.

65. Brockman's promises to Plaintiff in fact produced reliance and forbearance by Plaintiff such that the promises must be enforced in order to avoid an injustice.

66. As a direct and proximate result of Brockman's breach of her promises Plaintiff has suffered damage to his reputation, and the loss of income and earning capacity, and extreme emotional distress.

The Court of Claims determined that plaintiff failed to plead a claim of promissory estoppel against Brockman because these allegations lacked the required specificity. We agree. Plaintiff alleged that Brockman made general promises to participate in the project without identifying what Brockman would actually do. Plaintiff failed to identify what MSU facilities Brockman could provide. Her alleged promise to seek financial support is too vague to be enforceable. Although Michigan is a "notice-pleading state," *Johnson v QFD, Inc*, 292 Mich App 359, 368; 807 NW2d 719 (2011), which requires that the pleading "give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position," *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993), and a motion for summary disposition is based on the pleadings alone, *El-Khalil*, 504 Mich at 159-160, the pleading of a claim for promissory estoppel must contain a clear and definite promise on the part of the promisor, *Zaremba Equip, Inc*, 280 Mich App at 41. Plaintiff failed to do so. Therefore, the Court of Claims properly granted defendants summary disposition of this claim.

***7** Affirmed.

All Citations

Not Reported in N.W. Rptr., 2022 WL 17998121

Footnotes

1 There are no issues on appeal related to MSU, Porter, or Showerman. At the time of these lawsuits, Kiley was associate general counsel for MSU, and Brockman was an associate professor in the school of human resources and labor relations at MSU.

2 We note that defendants listed Kiley's affidavit as Exhibit M to their third motion for summary disposition, but it was not attached. However, it was attached to a previous motion, and therefore a part of the lower court record.

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EXHIBIT G

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2023 WL 7270509
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Ronald JORDAN, Plaintiff-Appellant,
v.
Dennis L. KENDALL, Defendant-Appellee.

No. 365270
|
November 2, 2023

Court of ClaimsLC No. 22-000140-MZ

Before: Letica, P.J., and Hood and Maldonado, JJ.

Opinion

Per Curiam.

***1** Plaintiff Ronald Jordan appeals as of right the order of the Court of Claims granting summary disposition in favor of defendant Dennis L. Kendall. We affirm. [1]

I. BACKGROUND

This case originates with Michigan Department of Corrections (MDOC) personnel confiscating personal property from Jordan. Relevant here, the property included a bottle of Gorilla Glue [2] and a pair of sheepskin mittens. It appears that the confiscation of the various items belonging to Jordan occurred when Jordan was transferred from one MDOC facility to another. Jordan was previously held at "LRF," also known as the Earnest C. Brooks Correctional Facility in Muskegon County, but then transferred to "ARF," also known as the Gus Harrison Correctional Facility in Lenawee County. Jordan appears to have arrived at ARF in early June 2021, and, relevant to this appeal, it is where prison staff confiscated the personal property at issue in this case.

MDOC has several policies related to prisoner personal property and hobbycraft materials. Relevant here are MDOC policy directive (PD) 04.07.112 and PD 05.03.102. PD 04.07.112 governs prisoner personal property and, relevant here, relates to Jordan's mittens. PD 04.07.112 states, in relevant part:

> L. Except if authorized pursuant to Paragraph M, the following kinds of clothing are prohibited:
>
> * * *
>
> 10. Winter gloves/mittens except if single-layered construction and either knit or cloth construction. Suede, leather, and similar artificial materials are prohibited.
>
> M. Prisoners shall be permitted to possess and wear personal winter coats, winter jackets, winter gloves, and winter mittens that were legitimately in their possession prior to January 12, 1998 provided they fit within allowable property limits, even if they are not machine washable or do not meet the requirements set forth in Paragraph L, numbers 1, 4, and 9, and the attachments to this policy. New personal winter coats or winter jackets and new personal winter gloves or winter mittens may be ordered only through established institutional ordering procedures and must comply with all requirements set forth in this policy. A prisoner may only have one personal winter coat or winter jacket and one pair of personal winter gloves or winter mittens in their possession at any time. [PD 04.07.112(L)(10) and (M).]

MDOC PD 05.03.102 governs the hobbycraft program within correctional facilities. According to PD 05.03.102(C), hobbycraft materials, supplies, and projects are "subject to prisoner property limits set forth in" PD 04.07.112. Relevant here, PD 05.03.102 also states:

> ***2** N. Hobbycraft materials and supplies are subject to cost limitations set forth in PD 04.07.112 "Prisoner Personal Property". They also are subject to the following restrictions:
>
> * * *
>
> 6. Liquids and gels, including all paints, must be water-based.

The Gorilla Glue and mittens were confiscated separately and proceeded separately through the prison grievance process. Though some of the critical events overlap, for clarity's sake, we separate the administrative background related to each item.

Document received by the MI Court of Claims.

A. TIMELINE OF EVENTS RELATED TO THE GORILLA GLUE

When Jordan arrived at ARF in early June 2021, a prison employee identified as "T. Skelton" confiscated Gorilla Glue from Jordan. Skelton found that the Gorilla Glue was "not water based" nor "non-toxic," and noted that the bottle's label identified it as "an eye and skin irritant" and waterproof. Skelton believed it should be "handled as contraband per PD 04.07.112[.]" In mid-July 2021, Kendall held an administrative hearing related to the Gorilla Glue. At the hearing, Jordan stated he was "authorized to order[ ]" the glue at his previous facility. Kendall noted that Jordan had a receipt for the glue, but found that although he was "allowed to order this product[,] it [did] not meet the criteria" under PD 05.03.102(N)(6). Kendall found that the glue was contraband, concluding that the glue was "not water based" and noting the warning label that the glue was an eye and skin irritant. He indicated in his report that Jordan could either send the glue home "at his expense" or have it destroyed under prison policy.

A day after the administrative hearing, Jordan filed a Step I appeal of Kendall's decision, asserting that the glue was not contraband because he was previously authorized to purchase and possess the glue as a hobbycraft item. In early August 2021, two individuals identified as J. Lundy and A. Thomas upheld Kendall's decision, noting that although Jordan was authorized to purchase the glue at LRF, this was a violation of prison policy and, regardless, Jordan was "no longer at LRF ...." Lundy and Thomas concluded the glue was contraband under the policy directives because it was not water-based.

In mid-August 2021, Jordan filed a Step II appeal, claiming that because the Step I decision "admit[ted]" that he had authorization to purchase and possess the glue it did not meet the definition of contraband. Shortly after Jordan filed the appeal, the warden of ARF, "S. Campbell," reviewed it and determined that Thomas and Lundy properly addressed the issue, concluding that the glue was not permitted by prison policy because it was not water-based.

In late August 2021, Jordan filed a Step III appeal, reiterating his position that, under prison policy, a prisoner could "possess any item(s) authorized by staff" and he "had staff authorization." In late October 2021, Richard D. Russell, manager of the Grievance Section of the Office of Legal Affairs within the MDOC, denied Jordan's Step III appeal, determining that his claims were "considered, investigated, and a proper decision was rendered."

B. TIMELINE OF EVENTS RELATED TO MITTENS

A few days after Skelton confiscated Jordan's glue, MDOC Officer Baldwin conducted a "ride in property"[3] for Jordan and found several items that he identified as contraband. Relevant here, this included a "pair of brown suede mittens not allowed," i.e., the sheepskin mittens. The same day these items were confiscated, Jordan wrote a letter to Baldwin identifying the items Baldwin withheld as including the "Brown Gloves." Jordan requested return of the items, "or an explanation for withholding."

***3** In early July 2021, Kendall held a hearing relating, in part, to the mittens. Jordan "was present for this hearing" and indicated he had " 'receipts for these things.' " In his findings, Kendall cited PD 04.07.112(L)(10), the policy directive prohibiting leather or suede gloves or mittens, and identified the gloves at issue as "suede," indicating they were "sent home[.]"

Jordan filed a Step I appeal of Kendall's decision in mid-July 2021, contending that his mittens were not suede and explaining they were "[s]heepskin with fur inside; suede does not have fur on one side of [s]heepskin." He argued that prison policy allowed him to "possess 'Winter gloves/ mittens' " and that Kendall's refusal to return the mittens violated policy. Jordan also claimed that Kendall admitted at the hearing that the mittens were sheepskin. In late July 2021, an MDOC employee identified only as "Condon" interviewed Jordan. Condon found that Jordan failed to provide evidence supporting a violation of prison policy with respect to the mittens.

Jordan then filed a Step II appeal in early August 2021, arguing that Condon's decision was "clearly erroneous because [the] grievance makes [an] unrefuted claim" that prison policy (PD 04.07.112(L)(10)) authorized prisoners to possess winter gloves and mittens. Campbell, the ARF warden, denied Jordan's Step II appeal. He concluded that the "grievance was appropriately addressed at Step I," concluding that PD 04.07.112 prohibited winter gloves or mittens "made of suede, leather, and similar artificial material" and found that "[s]heepskin is leather."

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In mid-August 2021, Jordan filed his Step III appeal with the MDOC. He explained the basis for his appeal as follows: "Kendall violated policy because item *NOT* contraband." Russell (the manager of the Grievance Section of the MDOC's Office of Legal Affairs) denied Jordan's Step III appeal, concluding that, after review, the issues were "considered, investigated, and a proper decision was rendered." This decision was mailed to Jordan in late October 2021. Notably, aside from referencing having receipts for the items seized in his administrative hearing, Jordan did not raise the argument that he purchased the mittens prior to 1998 at Step I, II, or III of the administrative grievance process.

C. PROCEDURAL HISTORY IN CIRCUIT COURT AND COURT OF CLAIMS

In mid-May 2022, Jordan sued Kendall in Lenawee Circuit Court, raising claim-and-delivery claims related to the sheepskin mittens and Gorilla Glue. He alleged that he was suing Kendall "in his individual capacity." Jordan further alleged that, under MCL 600.5507(2), he had "previously filed 257 civil actions or appeals" and that he had "exhausted all administrative remedies by filing an administrative grievance through all three steps." Regarding the claim-and-delivery claims, Jordan alleged that Kendall had "no lawful right to refuse [to] return" the mittens and glue that Jordan "legitimately owned and possessed" and that Kendall's "taking and retention of [those] items" was unlawful. He alleged that he had a "legal right to [the] continued possession" of his mittens and glue and that Kendall "undermined [that right] by refusing return of [Jordan's] property items." Jordan sought return of the mittens and glue or $71.53 in compensatory damages, $500 in punitive and exemplary damages, and costs for litigation. [4]

***4** In late September 2022, Kendall filed a notice of transfer, transferring the case to the Court of Claims because Jordan sought "monetary and injunctive relief against a state employee" and the case was "within the jurisdiction of the Court of Claims as provided by 2013 PA 164, at MCL 600.6419(1) and (7)." In late October 2022, Jordan moved to dismiss the case from the Court of Claims and for it to remand to the Lenawee Circuit Court. He argued that the Court of Claims lacked jurisdiction over the case because it could only hear cases against the state and its officers, but Kendall, as a prison counselor, was not an officer. Jordan based this argument on several cases from the 1980s and an unpublished opinion from 1997, an important point for this appeal because the Legislature amended the Court of Claims Act in 2013, and, in doing so, expanded the jurisdiction of the Court of Claims. He also cited *Council of Orgs & Others for Ed About Parochiaid v Michigan*, 321 Mich App 456; 909 NW2d 449 (2017), to support his argument that the Court of Claims lacked jurisdiction over claims against persons sued in their individual capacities, like Kendall here.

In late October 2022, Kendall moved for summary disposition in the Court of Claims. Kendall first argued that Jordan could not possess the mittens or glue because they were prohibited by prison policy directives. He argued that although prisoners may be exempt from the leather prohibition if they legitimately possessed the item before January 12, 1998, Jordan failed to raise this claim during the grievance process. Regarding the Gorilla Glue, Kendall asserted that although the policy directives allowed items for "hobbycraft programs," liquids and gels had to be water based, so Jordan's non-water-based glue was prohibited.

Kendall also argued that summary disposition was appropriate because Jordan failed to exhaust his administrative remedies with respect to his claim that he purchased the mittens at issue before 1998. Kendall noted that Jordan's "grievance affidavit" indicated the basis for his complaint was that his mittens were "not suede but were sheepskin." That is, Kendall asserted that Jordan had not raised his claim that he purchased the mittens before 1998 and did not provide proof of legitimate ownership. Kendall also argued that governmental immunity precluded Jordan's claim for money damages because he performed a governmental function when addressing Jordan's grievance, and that Jordan failed to plead in avoidance of immunity.

Kendall also responded to Jordan's motion to dismiss the same day he moved for summary disposition. He noted that Jordan relied on outdated and unpublished caselaw to support his argument that the Court of Claims lacked jurisdiction, noting the Legislature's 2013 amendment of the Court of Claims Act. Kendall also distinguished *Council of Orgs*, arguing that Jordan's case did not involve intervention and that Jordan's discussion of individual capacity relied on outdated dicta from *Council of Orgs*. He further argued that he acted in an official capacity when conducting the hearing related to Jordan's personal property. Finally, Kendall argued that Jordan had "not properly disclosed his litigation history," contrary to MCL 600.5507. [5]

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In mid-November 2022, Jordan responded to Kendall's motion for summary disposition, asking the Court of Claims to deny the motion. He asserted he had a right to continued possession of the mittens and Gorilla Glue. Referencing his affidavit attached to his response, Jordan asserted that an "authorized prison official" issued him the Gorilla Glue and that, under PD 04.07.112, he could possess the glue as a hobbycraft item. He argued that the authorization "negate[d] any claim the Glue was prohibited 'contraband,' " but, "[a]t the very least," it created a factual dispute sufficient to preclude summary disposition.

***5** Jordan also contended that he fully exhausted all of his administrative remedies. Jordan asserted that the Federal Prison Litigation Reform Act, 42 USC 1997e *et seq.*, which Kendall cited in his motion for summary disposition, was inapplicable and that only the Michigan Prison Litigation Reform Act (PLRA), MCL 600.5501 *et seq.*, applied. Noting that he had to "exhaust all three steps of the prison grievance procedure," Jordan asserted that he "presented his claim in the grievance which was reviewed at all levels and denied." Jordan contended that he informed Kendall that he had possessed the mittens since 1996, but that Kendall "elected to ignore and exclude this important fact from the hearing report" he prepared. Finally, Jordan asserted that Kendall was not entitled to governmental immunity because his conduct was grossly negligent.

In mid-January 2023, the Court of Claims entered an order granting Kendall's motion for summary disposition under MCR 2.116(C)(8). The Court of Claims, noting that the MDOC had statutory authority to limit personal property of prisoners, concluded that Jordan did not have a right to possess the mittens and Gorilla Glue. It found that PD 04.07.112(M) prohibited prisoner possession of "gloves like the ones taken from [Jordan]." The Court of Claims also found that the Gorilla Glue was "properly considered contraband" under PD 05.03.102(N)(6) because it was a non-water-based liquid. Because it found that Jordan did not have a right to possess the mittens and glue, the Court of Claims "order[ed] that [Jordan] has failed to state a claim upon which relief can be granted and [his] request to amend the complaint would be futile." The Court of Claims therefore dismissed Jordan's case.

In early February 2023, Jordan moved for reconsideration of the January 2023 order, which the Court of Claims denied. He argued that the Court of Claims lacked jurisdiction over his case for the same reasons articulated in his motion to dismiss, namely because Kendall was not an officer of the state acting in an official position, as required to vest jurisdiction with the Court of Claims. He also argued that the Court of Claims improperly granted summary disposition under MCR 2.116(C)(8) because it made findings of fact and should not have relied on documentary evidence attached to Kendall's dispositive motion. The Court of Claims denied reconsideration. This appeal followed.

II. STANDARDS OF REVIEW

"Whether the trial court had subject-matter jurisdiction is a question of law that this Court reviews de novo." *Council of Orgs*, 321 Mich App at 463 (quotation marks and citation omitted). "Where a court lacks jurisdiction over the subject matter of a suit, any action with respect to such a cause, other than dismissal, is absolutely void." *Id.* at 466 (quotation marks and citation omitted).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint." *Id.* at 159 (emphasis omitted). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160. "A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.*

A motion under MCR 2.116(C)(10) "tests the factual sufficiency of a claim." *El-Khalil*, 504 Mich at 160 (citation and emphasis omitted). In considering a motion under MCR 2.116(C)(10), the trial court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id.* (citation omitted). Such a motion "may only be granted when there is no genuine issue of material fact." *Id.* (citation omitted). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.* (quotation marks and citation omitted).

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III. COURT OF CLAIMS JURISDICTION

***6** Jordan argues that the Court of Claims only has jurisdiction over cases involving officers of the state and that Kendall, as a "prison counselor," did not constitute an officer. He therefore argues that the Court of Claims lacked jurisdiction over his case and should have remanded it back to Lenawee Circuit Court. We disagree.

Under the current version of MCL 600.6419(1)(a), the Court of Claims has jurisdiction

> [t]o hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

MCL 600.6419(7) defines "the state or any of its departments or officers" as:

> [T]his state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties.

In other words, an employee of this state who acts (or reasonably believes they are acting) within the scope of their authority while engaged in or discharging a governmental function in the course of their duties constitutes "the state or any of its departments or officers" under MCL 600.6419(7), and the Court of Claims has jurisdiction over claims against that employee under MCL 600.6419(1)(a).

Though the Court of Claims did not address this argument, it had jurisdiction over this case because Kendall is an employee of a state department. ARF, a state prison facility, is part of the MDOC. Kendall is an ARF prison counselor who was designated to conduct administrative hearings related to Jordan's Gorilla Glue and sheepskin mittens. He is therefore an employee of MDOC who discharged a governmental function—regulating prison property—when evaluating Jordan's grievances. Accordingly, Kendall is an officer or employee of the state under MCL 600.6419(7). This case was therefore one against an officer of the state and the Court of Claims thus had jurisdiction over it. See MCL 600.6419(1)(a).

Jordan's argument to the contrary is unpersuasive because he relies on mostly outdated caselaw. He cites several cases from the 1980s and 1990s to support his position.[6] Jordan's reliance on these cases is misplaced for the same reason: they were all decided before the Legislature amended MCL 600.6419 in 2013. Before the 2013 amendment, the general jurisdictional provision of the Court of Claims Act provided that the Court of Claims had jurisdiction "[t]o hear and determine all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, boards, institutions, arms or agencies." MCL 600.6419(1)(a), as enacted by 1984 PA 212, effective July 9, 1984. "This provision ha[d] been interpreted to mean that the Court of Claims ha[d] exclusive jurisdiction over suits against public officials acting in their official capacities as well as suits against state agencies or departments." *Grunow v Sanders*, 84 Mich App 578, 581; 269 NW2d 683 (1978).

***7** As Kendall points out, the only post-2013 decision Jordan cites is *Council of Orgs & Others for Ed About Parochiaid v Michigan*, 321 Mich App at 456. This case is distinguishable. First, the critical issue in *Council of Orgs* was intervention. See *id.* Members of the state legislature, in their private capacities, and private organizations sought to intervene as defendants in a case involving public funds for

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private schools. *Id.* at 459-463. Intervention is not at issue in this case. Second, this Court's determination that the Court of Claims lacked jurisdiction over the intervening defendants, state legislators—acting in their individual capacities—and private organizations, in *Council of Orgs* hinged on the fact they were "nonstate actors." *Id.* at 465-470. Essentially, in *Council of Orgs*, the intervening defendants sought to piggyback on the Court of Claims' existing jurisdiction because of their personal interests in the suit. See *id.* Jurisdiction otherwise was not largely in dispute. Here, there is no dispute that Kendall is a state actor; he is an employee of MDOC who was acting in his official capacity when he determined that Jordan's mittens and glue were contraband. *Council of Orgs* therefore does not support Jordan's position. We conclude that the Court of Claims had jurisdiction over this case.

IV. SUMMARY DISPOSITION

A. FACTUAL FINDINGS UNDER MCR 2.116(C)(8)

Jordan argues that the Court of Claims erred when it granted summary disposition under MCR 2.116(C)(8) because it relied on documentary evidence attached to Kendall's dispositive motion and made factual findings. We agree.

The Court of Claims concluded that the applicable policy directives "prohibit[ed] prisoners from possessing gloves like the ones taken from [Jordan]" and that the "Gorilla Glue was properly considered contraband because it was not a water-based liquid as required by PD 05.03.102(N)(6)." The court's conclusions regarding the mittens and Gorilla Glue included factual determinations (i.e., that sheepskin is suede or leather; that Gorilla Glue is not water-based). The court therefore looked beyond the pleadings and inappropriately made factual findings. Summary disposition was, accordingly, improper under MCR 2.116(C)(8).

B. GORILLA GLUE

We may nevertheless affirm the trial court when it reaches the right result, even if for the wrong reason. *Gleason v Mich Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003). We address the Gorilla Glue issue first. Here, PD 05.03.102(N)(6) provides that "[l]iquids and gels, including all paints, must be water-based." Gorilla Glue is a liquid or gel, so it must be water-based for a prisoner to possess it as a hobbycraft material. Kendall found that the Gorilla Glue "is not water based ...." To be clear, that Gorilla Glue is not water based is a factual conclusion, but it is a conclusion that Jordan did not dispute during the administrative process or in the trial court, and one that does not dispute on appeal. He conceded at oral argument that the glue was not water-based. There is therefore no factual dispute that it was prohibited under PD 05.03.102(N)(6), absent some other administrative carveout.

Jordan contends that PD 05.03.102(M) allowed him to retain possession of the Gorilla Glue because he presented evidence that "the warden's designee had authorized [him] to purchase and possess the Gorilla Glue." That evidence, as far as we can tell, is an affidavit from Jordan indicating that he ordered the glue in May 2020 and received it in mid-July 2020; an order form dated what appears to be May 28, 2020, for two eight-ounce bottles of Gorilla Glue; and a receipt indicating that Jordan received "2 gorilla glue" on July 17, 2020. The order form indicates that Jordan was at LRF when he ordered the Gorilla Glue. And though it does not say LRF on the receipt, the receipt is signed by the same individual who signed the order form as the "R.U.M or Authorized Agent."

PD 05.03.102(M) provides, in relevant part, that "[t]hat prisoners shall be permitted to use only those hobbycraft materials and supplies authorized for use by the Warden or designee for the hobbycraft activities in which the prisoner is participating." PD 05.03.102(M). According to Kendall's administrative hearing report, Jordan stated to Kendall that he was " 'authorized to order [the Gorilla Glue] at LRF.' " Even if true, Jordan transferred to ARF, which is where the glue was confiscated. That he was permitted to possess the glue at LRF (though it appears this may have been improper under 05.03.102(N)(6))[7] does not mean he would automatically be allowed to possess it at ARF.

***8** In conclusion, the Court of Claims improperly granted summary disposition of Jordan's claim-and-delivery action related to the Gorilla Glue under MCR 2.116(C)(8), but we affirm that decision under MCR 2.116(C)(10). The uncontradicted evidence showed that Gorilla Glue is a non-water-based liquid, so it was prohibited under PD 05.03.102(N)(6). Jordan conceded at oral argument that the "Gorilla Glue" at issue here is a non-water-based liquid. He only challenges the confiscation based on his authorization to purchase it. It is immaterial whether Jordan had authorization to possess the Gorilla Glue while he was imprisoned at LRF because he was subsequently transferred to ARF, which

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is where the glue was confiscated and determined to be contraband. [8]

C. SHEEPSKIN MITTENS

The next issue relates to the sheepskin mittens. Jordan raises two arguments related to the mittens. First, he argues that summary disposition was inappropriate and the mittens should be returned to him because PD 04.07.112(L)(10) prohibited suede and leather gloves, not sheepskin gloves. We disagree.

Here, PD 04.07.112(L)(10) prohibits winter gloves or mittens unless they are "single-layered construction and either knit or cloth construction. Suede, leather, and similar artificial materials are prohibited." PD 04.07.112(L) is subject to PD 04.07.112(M). Subsection (M) provides that prisoners are allowed to

> possess and wear personal winter coats, winter jackets, winter gloves, and winter mittens that were legitimately in their possession prior to January 12, 1998 provided they fit within allowable property limits, even if they are not machine washable or do not meet the requirements set forth in Paragraph L, numbers 1, 4, and 9, and the attachments to this policy. [PD 04.07.112(M).]

There is no genuine issue of material fact regarding whether Jordan could retain possession of his sheepskin gloves under PD 04.07.112(L)(10). Jordan seems to misread that policy directive. During the grievance process, he appeared to believe that it allowed him to possess winter gloves or mittens. It instead *prohibits* possession of winter gloves or mittens *unless* they are "single-layered construction and either knit or cloth construction." PD 04.07.112(L)(10). And it explicitly prohibits gloves or mittens that are "[s]uede, leather, [or a] similar artificial material[ ] ...." *Id.* There is no factual dispute that the sheepskin gloves are prohibited under PD 04.07.112(L)(10). Even if they are not suede, leather, or a similar artificial material, there is no dispute that the gloves are neither knit nor cloth construction. Accordingly, the trial court properly granted summary disposition as it relates to Jordan's argument under PD 04.07.112(L)(10).

Second, Jordan argues that because he purchased the mittens in 1996, PD 04.07.112(M) allows him to possess the mittens, even if they do qualify as suede or leather that is otherwise prohibited under PD 04.07.112(L)(10). Jordan did not raise his argument that he has owned the gloves since 1996 in Step I, II, or III of the grievance process and he has thus failed to exhaust his administrative remedies as it relates to this argument. See MCL 600.5503(1) (requiring exhaustion of all available administrative remedies as a precondition to filing an action). The Court of Claims therefore properly granted summary disposition of this claim, albeit under the wrong subrule.

***9** It is well settled that a claimant must exhaust administrative remedies within an agency before seeking judicial review of the agency decision. See *Wilcox v Wheatley*, — Mich App ——, ——*Wilcox v Wheatley*, — Mich App ——, ——; — NW2d —— (2022)— NW2d —— (2022) (Docket No. 358630); slip op. at 3; *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 51-54; 620 NW2d 546 (2000). Further, the PLRA provides "certain requirements that apply when a prisoner brings a civil action concerning prison conditions." *Anderson v Myers*, 268 Mich App 713, 715; 709 NW2d 171 (2005) (quotation marks and citations omitted). This includes the requirement that "[a] prisoner shall not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies." MCL 600.5503(1).

Throughout the grievance process, Jordan argued that Kendall improperly retained possession of the sheepskin mittens because prison policy (PD 04.07.112(L)(10)) allowed him to possess them. At Step I, Jordan asserted that his mittens were not suede, but sheepskin, and that prison policy "authorize[d] [him] to possess 'Winter gloves/mittens ....' " He contended that, at the grievance hearing, Kendall "admitted [the] mittens were Sheepskin." There was no mention of Jordan having purchased the mittens in 1996 in his Step I grievance. Nor did he raise his claim that he bought the mittens in 1996 in his Step II or Step III appeals. Jordan's Step II appeal essentially reiterates the same point in his Step I grievance—that prison policy allowed possession of winter gloves or mittens, and Kendall's retention of the mittens violated that policy. And his Step III appeal only stated that Kendall "violated policy because item *NOT* contraband." Jordan therefore never

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raised his argument that he was entitled to return of the mittens under PD 04.07.112(M) during the administrative grievance process.[9] See PD 03.02.130 (relating to prisoner grievances); *Burton v Jones*, 321 F3d 569, 574 (CA 6, 2003), abrogated on other grounds by *Jones v Bock*, 549 US 199; 127 S Ct 910; 166 L Ed 2d 798 (2007) ("We understand these policies to require that a prisoner seeking to administratively exhaust a claim against a prison official describe the alleged mistreatment or misconduct at Step I of the grievance process").[10] Because he did not raise the issue during the grievance process, instead first raising it in the circuit court then Court of Claims, he did not exhaust his administrative remedies. Accordingly, although the Court of Claims improperly granted summary disposition of this claim under MCR 2.116(C)(8), summary disposition was appropriate under MCR 2.116(C)(4). *Rudolph Steiner Sch of Ann Arbor*, 237 Mich App at 730.

We affirm.

All Citations

Not Reported in N.W. Rptr., 2023 WL 7270509

Footnotes

1 We note that Jordan failed to comply with the disclosure requirements in MCL 600.5507. See MCL 600.5507(2). Though in the trial court he disclosed the number of civil actions and appeals he has previously filed, he did not disclose that number when he commenced this appeal. His appeal is therefore subject to dismissal. See *Tomzek v Dep't of Corrections*, 258 Mich App 222, 224-225; 672 NW2d 511 (2003); MCL 600.5507(3)(b). Nevertheless, we address Jordan's claims on appeal.

2 Jordan appears to have originally purchased two bottles of Gorilla Glue while incarcerated at LRF, but came to ARF with only one bottle.

3 "Ride in property" is a reference to a property check and release of property upon arrival at a new institution, either from jail or another MDOC facility.

4 In early July 2021 Kendall moved for summary disposition in the circuit court. This motion and Jordan's response to it are essentially identical to their respective filings in the Court of Claims. Because this appeal relates to the arguments in and decision of the Court of Claims, we do not rehash the arguments in the parties' circuit court filings. We note, however, that Jordan moved for leave to file an amended complaint. He sought to add a gross-negligence claim to avoid immunity, in response to a claim in Kendall's dispositive motion.

5 MCL 600.5507(2) provides: "A prisoner who brings a civil action or appeals a judgment concerning prison conditions shall, upon commencement of the action or initiation of the appeal, disclose the number of civil actions and appeals that the prisoner has previously initiated."

6 Jordan cites *Burnett v Moore*, 111 Mich App 646, 648; 314 NW2d 458 (1981) (involving state police trooper), and *Hamilton v Reynolds*, 129 Mich App 375, 379; 341 NW2d 152 (1983) (involving director of psychiatric hospital), for the proposition that the director of a state facility or a prison warden qualify as state officers for purposes of Court of Claims jurisdiction. Positions he contends do *not* qualify as state officers include Michigan State Troopers, see *Burnett*, 111 Mich App at 648, prison guards, see *Lowery v Dep't of Corrections*, 146 Mich App 342, 349; 380 NW2d 99 (1985), prison work camp supervisors, see *Bandfield v Wood*, 104 Mich App 279; 304 NW2d 551 (1981), or anyone in an administrative position, see *Haider v Mich Technological Univ*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 1997 (Docket No. 183350). Unpublished opinions of this Court are not binding authority but may be considered for their persuasiveness. See *Legacy Custom Builders, Inc v Rogers*, —— Mich App ——, ——*Legacy Custom*

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Builders, Inc v Rogers, —— Mich App ——, ——; —— NW2d —— (2023)—— NW2d —— (2023) (Docket No. 359213); slip op. at 9. The opinions he cites decided before November 1, 1990, are not strictly binding pursuant to MCR 7.215(J)(1), but, as published opinions, they nevertheless have "precedential effect under the rule of stare decisis" pursuant to MCR 7.215(C)(2). See *id.* at ——; slip op. at 5 n 1. This rule applies to other pre-November 1, 1990 cases cited in this opinion.

7 PD 05.03.102(N) states that "[h]obbycraft materials and supplies ... are subject to the following restrictions[,]" which includes the limitation that liquids and gels "be water-based." This serves as a limitation on PD 05.03.102(M). That is, although a warden or designee may authorize a prisoner to use certain hobbycraft materials and supplies under PD 05.03.102(M), that authorization is still subject to the restrictions outlined in PD 05.03.102(N). Indeed, as noted, Lundy and Thomas indicated in the Step I Grievance Response Form that Jordan was "authorized to purchase the Gorilla Glue at LRF even though it violated policy."

8 We note PD 05.03.102(P), which governs hobbycraft materials and prison transfers. It provides:

> If a prisoner with hobbycraft materials or supplies transfers to a facility which does not offer at the prisoner's security level a hobbycraft activity for which the same materials and supplies are authorized, the materials and supplies not allowed at that facility shall be disposed of as set forth in PD 04.07.112 "Prisoner Personal Property"; this includes storing the items if the prisoner is placed in security Level IV or V if storage is required by PD 04.07.112. If the receiving facility does offer a hobbycraft activity at the prisoner's security level for which any or all of the same materials or supplies are authorized, those materials and/or supplies which are authorized shall be stored for the prisoner for at least 30 calendar days to permit the prisoner an opportunity to apply to participate in the hobbycraft activity. [PD 05.03.102(P).]

9 Even if Jordan raised his argument related to PD 04.07.112(M) and having owned the mittens since 1996 at the administrative hearing before Kendall, there is no documentary evidence supporting that beyond Jordan's own affidavit. And because he did not raise this argument during his Step I, II, or III appeals, he failed to exhaust his administrative remedies.

10 Although not binding on state courts, lower federal court decisions may be considered for their persuasive value. *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

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EXHIBIT H

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2022 WL 2103143 (Mich.Ct.Cl.) (Trial Order)
Michigan Court of Claims.
Ingham County

GENUINE SOLUTIONS COUNSELING CENTER, P.L.L.C., and Scott Hall, Plaintiffs,

v.

Governor Gretchen WHITMER, in her official capacity only, The State of Michigan, acting through the Governor's Office, The Michigan Attorney General's Office, a Michigan governmental agency, Dennis J. Pheney, Jr., Assistant Attorney General, in his official and individual capacities, Michigan Department of Health and Human Services, a Michigan governmental agency, Director Stacie Sampson, Director of the Integrity Division of the Department of Health and Human Services, in her official and individual capacities, and Kate Massey, Director of the Michigan Department of Health and Human Services Medical Services Administration, in her official and individual capacities, Defendants.

No. 22-000016-MM.
April 13, 2022.

Opinion and Order

Douglas B. Shapiro, Judge.

***1** Pending before the Court is defendants' February 23, 2022 motion for summary disposition filed pursuant to MCR 2.116(C)(6). For the reasons stated herein, the motion is GRANTED.

I. BACKGROUND

Plaintiffs filed the instant eight-count complaint Oakland Circuit Court on September 27, 2021. Defendants filed a notice of transfer pursuant to MCL 600.6404(3), and the circuit court transferred the matter to this Court. The complaint names the same defendants and alleges the same causes of action that are at issue in Docket No. 21-000185-MM, [1] which was filed in this Court on September 26, 2021. Given the similarities between this case and Docket No. 21-185, defendants have moved for summary disposition under MCR 2.116(C)(6) and have asked the Court to dismiss this action as being duplicative of the other action. In the alternative, defendants have asked the Court to consolidate this action with Docket No. 21-185.

Plaintiffs' response to the motion for summary disposition is, for the most part, a challenge to the validity of the transfer. To that end, plaintiffs argue that this Court lacks jurisdiction over the claims against the individual defendants, either because of the nature of the allegations against those individuals, or because plaintiffs believe that they have the right to a jury trial on their claims against those defendants. Plaintiffs argue that they are suing the employees in their "individual" capacities and not in a way that would render the individuals subject to this Court's jurisdiction. They also argue that they have a constitutional right to have their claims against the employee defendants heard before a jury. Plaintiffs' briefing says little about the claims against the other defendants or the other counts.

The Court held oral argument on the pending motion on April 6, 2022.

II. ANALYSIS

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The pending motion asks for summary disposition under MCR 2.116(C)(6), which provides that the Court may grant summary disposition when "[a]nother action has been initiated between the same parties involving the same claim. The rule is a "codification of the former plea of abatement by prior action, the purpose of which was to protect parties from the harassment of new suits." *Valeo Switches & Detection Sys, Inc v Emcom, Inc*, 272 Mich App 309, 313; 725 NW2d 364 (2006). In order to grant summary disposition under subrule (C)(6), the Court need only find that the two suits are "based on the same or substantially the same cause of action." *Fast Air Inc v Knight*, 235 Mich App 541, 545 n 1; 599 NW2d 489 (1999), quoting *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 598; 386 NW2d 605 (1986).

***2** Based on the Court's review of the complaint filed in this matter and the complaint filed in Docket No. 21-185, it is apparent that plaintiffs' allegations against all of the defendants in the two cases are identical. In fact, every allegation in Docket No. 21-185, including paragraph numbering, is repeated, verbatim, in the instant complaint. The named defendants are the same in both cases. The only difference between the two complaints is that the circuit court complaint contained a jury demand. A review of these identical allegations leads the Court to conclude that this duplicative action must be dismissed under MCR 2.116(C)(6). See *Valeo Switches & Detection Sys*, 272 Mich App at 313.

In arguing against dismissal MCR 2.116(C)(6), plaintiffs maintain that this case has raised claims against individual government employees who are not within this Court's subject-matter jurisdiction. [2] Thus, according to plaintiffs, this Court lacks the power to hear and decide the claims pleaded in the complaint and the claims against the individual defendants in this case must be transferred back to the circuit court.

Because the Court of Claims is created by statute, the scope of this Court's subject-matter jurisdiction is subject to express statutory limitations. *O'Connell v Dir of Elections*, 316 Mich App 91, 101; 891 NW2d 240 (2016). Under the Court of Claims Act, the Court has exclusive jurisdiction:

> To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the *state or any of its departments or officers* notwithstanding another law that confers jurisdiction of the case in the circuit court. [MCL 600.6419(1)(a) (emphasis added).]

The phrase emphasized above is significant to whether this Court has jurisdiction over the claims alleged against the individual defendants. As defendants correctly point out, the Court's jurisdiction expanded in 2013 in a way that encompasses more claims against individual governmental employees than did previous versions of the Court of Claims Act. See 2013 PA 164. See also *Pike v Northern Mich Univ*, 327 Mich App 683, 700-701; 935 NW2d 86 (2019) (SwARTZLE, J., concurring). Notably, MCL 600.6419(7) informs that the phrase "the state or any of its departments or officers," means:

> this state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, *or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties.* [MCL 600.6419(7) (emphasis added).]

Therefore, the question whether this Court has jurisdiction over individual employees, such as those named in this case, turns on whether those employees were acting, or reasonably believed they were acting, within the scope of their respective authority while engaged in a government function in the course of their duties. See *Id.* See also *Council of Orgs & Others for Ed About Parochiaid v State*, 321 Mich App 456, 469-470; 909 NW2d 449 (2017). "The determination whether the Court of Claims possesses jurisdiction is governed by the actual nature of the claim, not how the parties phrase the request for relief or the characterization of the nature of the relief." *AFSCME Council 25 v State Employees' Retirement Sys*, 294 Mich App 1, 6;

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818 NW2d 337 (2011). Moreover, the Court is not bound by plaintiffs' decision to label this action as one against government employees in their "individual" capacities. Instead, the Court looks beyond plaintiffs' labels to the nature of the claims pleaded in the complaint. See *Matouk v Mich Municipal League Liability & Prop Pool*, 320 Mich App 402, 418; 907 NW2d 853 (2017).

A. THIS COURT HAS JURISDICTION OVER THE STATE EMPLOYEES

***3** Having reviewed the complaint, the Court disagrees with plaintiffs' contention that it lacks jurisdiction to hear and decide the claims against the individual defendants. The individual employees about whom plaintiffs present an argument are: (1) defendant Dennis J. Pheney, Jr., an assistant attorney general involved in plaintiff Scott Hall's prosecution; (2) defendant Stacie Sampson, the director of the Integrity Division of the Michigan Department of Health and Human Services' Officer of Inspector General; and (3) defendant Kate Massey, the director of the Michigan Department of Health and Human Services' Medical Services Administration.[3] All the allegations against these individuals concern the course and scope of their respective employment, and the allegations concern actions taken by the defendants in their roles as government employees. In addition, plaintiff makes no allegations from which it could reasonably be inferred that the individual defendants were not acting, or did not reasonably believe they were acting, within the course and scope of their respective authority while engaged in or discharging a government function. To that end, all plaintiffs have alleged is that plaintiff Hall told the various defendants that he believed his conduct was legal. The individual defendants did not believe Hall however, or disagreed with his position as a matter of law, according to the complaint. Moreover, the complaint alleges that the defendants, when confronted with an expert witness who opined that plaintiff Hall's activity was not unlawful, ceased the allegedly wrongful actions by discontinuing the prosecution and by lifting the suspension order against plaintiff. And the fact that they ceased the allegedly wrongful actions when confronted with a contradictory opinion undercuts the suggestion that the defendant employees were acting outside of their employment when they took the complained-of actions against plaintiffs. In short, there are no allegations from which it could be inferred that any of the alleged tortious conduct was not reasonably within the authority of the employee defendants or that it was somehow the product of personal animus. Absent allegations that those employees did not or could not have reasonably believed they were acting in a manner that was consistent with their authority and employment, the case necessarily lies within the jurisdiction of this Court under MCL 600.6419(7). Plaintiffs' contention that this Court lacks jurisdiction over the individual defendants is without merit.

B. THERE IS NO RIGHT TO A JURY TRIAL AGAINST THE STATE DEFENDANTS

Plaintiffs next seek to have the claims against the individual defendants returned to circuit court and to avoid dismissal of the duplicative action under MCR 2.116(C)(6) by arguing that they have the right to a jury trial against the state employees. The Legislature has created an exception to this Court's exclusive jurisdiction in MCL 600.6421(1) when a plaintiff has the right to a jury trial on certain claims. *Elia Cos, LLC v Univ of Mich Regents*, 335 Mich App 439, 457; 966 NW2d 755 (2021). "However, the question is not whether there would ordinarily be a right to a jury trial as between private parties but whether there is a specific right to a jury trial against the state." *Id.* A jury-trial right has been found to exist against the state in situations where the Legislature has expressly waived the state's immunity, such as in the case of the Whistleblowers' Protection Act. *Id.* Here, plaintiffs have not identified authority for the notion that they possess a jury-trial right against state employees who are being sued as state employees within the jurisdiction of the Court of Claims,[4] and the Court has not located such authority, either. The claims are plainly subject to the exclusive jurisdiction granted to this Court under MCL 600.6419(1)(a) and MCL 600.6419(7). Accordingly, plaintiffs are not entitled to have the matter transferred to circuit court on this basis.

C. THE DUPLICATIVE ACTION MUST BE DISMISSED

In light of the above, there is no reason to transfer any part of this matter back to circuit court. And given that the allegations contained in the complaint in this matter are identical to the allegations pleaded in the complaint in Docket No. 21-185, the Court agrees with defendants that the instant complaint is duplicative and that it must be dismissed under MCR 2.116(C)(6) as a result.

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III. CONCLUSION

IT IS HEREBY ORDERED that defendants' motion for summary disposition is GRANTED.

This is a final order that resolves the last pending claim and closes the case.

April 13, 2022

<<signature>>

Douglas B. Shapiro

Judge, Court of Claims

Footnotes

1 In a simultaneously issued opinion and order, this Court granted summary disposition in part and denied summary disposition in part to defendants. While the Court granted the motion as to the state entities, it rejected the individual defendants' motion for summary disposition predicated on an alleged lack of compliance with MCL 600.6431, given that the statute does not apply to claims asserted in this Court against individual government employees. See *Pike v Northern Mich Univ*, 327 Mich App 683, 935 NW2d 86 (2019).

2 Plaintiffs have not raised a meaningful response to the arguments that concern the state and the state agencies, however.

3 While the complaint names the Governor, plaintiffs' briefing has not presented any argument about the Governor, and the complaint contains few, if any, allegations about the Governor. As a result, the Court will only focus on the three individuals about whom plaintiffs have presented an argument.

4 In fact, plaintiffs have not even raised this argument, but instead continue to insist that they have a jury-trial right because they are suing the individual defendants as private actors, not as state employees.

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EXHIBIT I

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STATE OF MICHIGAN
IN THE CIRCUIT COURT OF CLAIMS

THOMAS ANDREW SCHOENBERGER, CICADA 3301 METAVERSE, L.L.C., A UTAH DOMESTIC LIMITED LIABILITY COMPANY, AND THOMAS ANDREW SCHOENBERGER DOING BUSINESS AS CICADA 3301, CICADA 3301 TOKEN, CICADA 3301 PORTALS, AND SOPHIA MUSIK,

Plaintiffs,

v.

THE TRUSTEES OF MICHIGAN STATE UNIVERSITY, A BODY CORPORATE, REBECCA BAHAR-COOKE, MIKE BALOW, DENNIS DENNO, RENEE KNAKE JEFFERSON, SANDY PIERCE, BRIANNA T. SCOTT, KELLY TEBAY, REMA VASSAR, SHAWN TURNER, MONIQUE TURNER, AND LAURA DILLEY,

Defendants.

Case No. 25-000045-MM

Hon. James R. Redford

AFFIDAVIT OF SHAWN TURNER

1. I make this affidavit based on my personal knowledge. I am competent to testify under oath to the facts stated in this affidavit if called upon to do so.

2. I have reviewed the allegations in the above-captioned complaint.

3. I am the general manager of WKAR Public Media at Michigan State University ("MSU"). I am also a professor of strategic communication at MSU in the Department of Communication within the College of Communication Arts and Sciences. I am not a member of the Communication Sciences and Disorders Department.

4. I do not oversee, supervise, manage, or ensure Dr. Laura Dilley's conduct is lawful and proper, nor have I ever done so. Dr. Dilley does not answer/report to me.

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5. Dr. Dilley has discussed her research with me in the past. However, I do not mentor or support Dr. Dilley, nor have I ever done so. I do not support or endorse her research or research papers, nor have I ever done so. I do not permit, cause, or approve Dr. Dilley's research or the publication/funding of her research/research papers, nor have I ever done so.

6. I did not know of Dr. Dilley's QAnon-related research at issue in the complaint before Dilley conducted the same or authored "QAnon propaganda on Twitter as information warfare: Influencers, networks, and narratives."

Shawn Turner

Subscribed and sworn to before me
on June 12, 2025

Notary Public, Ingham County, MI
My Commission Expires: June 8, 2029

AMY L. MEYER
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF INGHAM
My Commission Expires June 8, 2029

Document received by the MI Court of Claims.

EXHIBIT J

Document received by the MI Court of Claims.

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF CLAIMS

THOMAS ANDREW SCHOENBERGER, CICADA 3301 METAVERSE, L.L.C., A UTAH DOMESTIC LIMITED LIABILITY COMPANY, AND THOMAS ANDREW SCHOENBERGER DOING BUSINESS AS CICADA 3301, CICADA 3301 TOKEN, CICADA 3301 PORTALS, AND SOPHIA MUSIK,

Plaintiffs,

v.

THE TRUSTEES OF MICHIGAN STATE UNIVERSITY, A BODY CORPORATE, REBECCA BAHAR-COOKE, MIKE BALOW, DENNIS DENNO, RENEE KNAKE JEFFERSON, SANDY PIERCE, BRIANNA T. SCOTT, KELLY TEBAY, REMA VASSAR, SHAWN TURNER, MONIQUE TURNER, AND LAURA DILLEY,

Defendants.

Case No. 25-000045-MM

Hon. James R. Redford

AFFIDAVIT OF DIMITAR DELIYSKI

1. I make this affidavit based on my personal knowledge. I am competent to testify under oath to the facts stated in this affidavit if called upon to do so.

2. I have reviewed the allegations in the above-captioned complaint.

3. I am the chair of the Department of Communicative Sciences and Disorders ("CSD") in the College of Communications Arts and Sciences at Michigan State University ("MSU"). I have been in this role since August 16, 2015.

4. The CSD Department, including the research conducted within the same, aims to understand communication disorders, improve clinical practice in communication disorders, study the physiology of communication development and rehabilitation, as well as the underlying basis

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of speech and language processes. By way of example, one common research topic is stuttering.[1] Other examples are: voice disorders due to pathology of the larynx; speech disorders due to trauma, cancer or deafness; communication disorders caused by language development; etc. They are related to a vast scope of clinical practice in speech-language pathology and otolaryngology.

5. Dr. Laura Dilley is an Associate Professor in the Department of Communicative Sciences and Disorders. She received her Bachelor of Science in Brain and Cognitive Sciences and her Ph.D. in Speech and Hearing Biosciences and Technology.

6. I am Dr. Dilley's direct supervisor and have been since 2015.

7. I did not know of Dr. Dilley's QAnon-related research at issue in the complaint before Dr. Dilley conducted the same or authored "QAnon propaganda on Twitter as information warfare: Influencers, networks, and narratives." In fact, I have never heard about QAnon and what it stands for until I learned about this article.

8. I do not support or endorse Dr. Dilley's research at issue in the complaint, nor have I ever done so. I did not permit, cause, or approve Dr. Dilley's research at issue or the publication/funding of "QAnon propaganda on Twitter as information warfare: Influencers, networks, and narratives."

9. Dr. Dilley's research at issue is outside the scope of her MSU employment with the CSD Department.[2]

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[1] See https://comartsci.msu.edu/departments/communicative-sciences-and-disorders.

[2] ". . . [F]aculty members have a responsibility to conduct research and engage in creative activity in their area(s) of appointment and professional competence. Recognition of professional competence and definition of area(s) of appointment occur in the basic academic units (departments . . .) through procedures in which established systems of peer review play a central role." https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/faculty_rights.html. The research at issue is not in Dr. Dilley's area of appointment and professional competence, and did not count toward her research effort. I relayed the same to Dr. Dilley several times, including during her 2022 and 2023 performance evaluations.

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10. Dr. Dilley's alleged social media activity is outside the scope of her MSU employment with the CSD Department.[3]

11. Dr. Dilley's alleged falsification of an email from MSU's General Counsel is outside the scope of her MSU employment.

12. Dr. Dilley's alleged hacking of an email account and deleting emails/evidence is outside the scope of her employment.

13. Dr. Dilley's alleged offering of merchandise on Etsy is outside the scope of her employment.

Dimitar Deliyski

Subscribed and sworn to before me
on 6/11, 2025

Notary Public, Ingham County, MI
My Commission Expires: 9/21/29

LAURIE SECORD
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires September 21, 2029
Acting in the County of Ingham

[3] "As a member of the wider community, the faculty member has the rights and obligations of any citizen. In exercising these rights, the faculty member speaks only as an individual, either as a professional scholar with a field of special competence or as a private citizen." https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/faculty_rights.html. Dr. Dilley's speech at issue was that of an individual, not of MSU. Again, the research at issue is not in Dr. Dilley's area of appointment and professional competence, and did not count toward her research effort in the CSD Department.

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25-012153-CZ FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 1/28/2026 2:26 PM Amanda Walker

STATE OF MICHIGAN MI Wayne 3rd Circuit Court	PROOF OF ELECTRONIC SERVICE	CASE NO. 25-012153-CZ

Case Title
Schoenberger, Thomas Andrew , et al. v Dilley, Laura , et al.

1. MiFILE served the following documents on the following persons in accordance with MCR 1.109(G)(6).

Type of Document	Title of Document
Reply Brief	MSU Reply in Supp of MSD WCCC 1.28.26 with EXH 1&2
Exhibit, Filed	MSU Reply in Supp of MSD WCCC 1.28.26 EXHIBIT 3 part1
Exhibit, Filed	MSU Reply in Supp of MSD WCCC 1.28.26 EXHIBIT 3 part 2

Person Served	E-mail Address of Service	Date and Time of Service
Barry R. Powers	bpowers@cranbrooklawgroup.com	1/28/2026 2:26:27 PM
Nicholas A. Cirino	nicholascirino@aol.com	1/28/2026 2:26:27 PM

2. I, Elizabeth Watza, initiated the above MiFILE service transmission.

This proof of electronic service was automatically created, submitted, and signed on my behalf by MiFILE. I declare under the penalties of perjury that this proof of electronic service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

1/28/2026
Date

/s/Elizabeth Watza
Signature

MSU Office of General Counsel
Firm (if applicable)