STATE OF MICHIGAN

COURT OF CLAIMS

HEATHER LUEBS,

Plaintiff,

v

Case No. 26-000029-MK

MICHIGAN STATE POLICE and COLONEL JAMES GRADY in his official capacity,

Hon. Sima G. Patel

Defendants.
_____ /

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Plaintiff, Heather Luebs, filed this suit against her employer, defendant, Michigan State Police (MSP), and her immediate supervisor and Director of the MSP, Colonel James Grady, raising claims of breach of contract and intentional infliction of emotional distress (IIED). Defendants responded to the complaint by seeking summary disposition on several grounds. The Court finds summary disposition of plaintiff's breach-of-contract claim warranted because she failed to exhaust her administrative remedies before filing suit. The Court further finds summary disposition of plaintiff's IIED claim against the MSP warranted under the immunity extended by MCL 691.1407(1). However, defendant Grady has not established his entitlement to summary disposition of plaintiff's IIED claim against him at this early stage of the proceedings.

The Court GRANTS IN PART and DENIES IN PART defendants' motion for summary disposition.

I. BACKGROUND

Plaintiff has been employed with MSP since 2003, working in the Director's Office since 2019. Beginning July 7, 2024, plaintiff served as Grady's Senior Executive Management Assistant (SEMA). Her employment was controlled by a contract entitled "Senior Executive Management Assistant Service (SEMAS) Limited-Term Employment Agreement" (Agreement). Plaintiff's physical workstation was directly outside of Grady's private office.

Plaintiff described the general nature of the work environment. Grady and Lieutenant Colonel (LTC) Aimee Brimacombe "had reputations within the agency for bullying, harassment, and intimidation." State Representative Mike Mueller was then spearheading a campaign to remove Grady from his position "due to the overwhelming negative opinions" of his performance. On June 9, 2025, the Michigan State Police Troopers Association and Michigan State Police Command Officers Association surveyed their membership regarding their confidence in Grady's and Brimacombe's leadership. The surveys had an over 75% response rate and 90% and 98% of the voting membership respectively voted for no confidence.

On June 9, 2025, Grady participated in a virtual meeting about these surveys with various attendees, including Major Christopher Hawkins. Brimacombe was not scheduled to appear in the meeting, but entered Grady's office, "raising [plaintiff's] concerns that she would be eavesdropping in a conversation that she was purposely not invited to." Plaintiff attempted to warn Hawkins via text message of Brimacombe's presence, stating, "FYA- Aimee is in his office with him. Not sure if he'll acknowledge that." Plaintiff "inadvertently" sent the message to Brimacombe as well. Plaintiff described that Brimacombe furiously stormed out of Grady's office and shoved her phone in plaintiff's face. Brimacombe briefly reentered Grady's office before "storm[ing] out

again, slamming the door." Grady then forwarded the meeting invitation to Brimacombe, who joined from her own office.

Later in the day, Grady and Brimacombe met with and chastised plaintiff. Grady first stated that it was "his prerogative as the director" to have Brimacombe in the meeting without notifying the other participants. They asked plaintiff why she sent the text message to Hawkins, and plaintiff indicated that she knew they would be discussing the surveys, which involved Brimacombe, and she wanted Hawkins "to understand who may be listening for his own protection, as well as" for the protection of Brimacombe. Grady and Brimacombe accused plaintiff of sharing confidential information with others. Plaintiff noted that the meeting and participant list were not confidential. Plaintiff alleged that Grady then "barrage[d]" her with questions about her loyalty and who else she may have shared confidential information with. Plaintiff understood this as an accusation that she had shared information with Representative Mueller. "Grady also maliciously brought up Plaintiff's desire to find a new opportunity in the future, which she had confided in him" during a private meeting. Plaintiff's desire for a promotion was based on earning her degree, but Grady "twist[ed] her words, saying it 'just seemed like she wanted to leave.' " Following this meeting, plaintiff sent a text message to Grady stating, "I'm sorry you don't feel that I support you or am loyal to you. Do you want me to move out of my office while you're gone?" Grady did not respond.

Grady organized a meeting with plaintiff and Professional Development Bureau Assistant Deputy Director Dr. Juli Liebler on June 16, 2025. Grady asked about plaintiff's text to him, and plaintiff responded that she intended it as an apology for the situation. Grady then gave plaintiff two choices: (1) "voluntarily move into an analyst role of his choosing quietly and without making a fuss," or (2) Grady would "file an internal affairs investigation against Plaintiff, speak negatively about her to others in their agency, and have her removed from her current position." Plaintiff

claimed she "knew that there was nothing that [Grady] could have filed an internal investigation against her for, but [he] successfully scared her." Plaintiff alleged that Grady "had used fear and intimidation with Plaintiff and others" in the past and, fearing that Grady "would fabricate a story against her to spin to his advantage," plaintiff "was pressured to make a decision on the spot." Knowing of Grady's "reputation for bullying and pulling strings to avoid proper hiring protocol within the agency and [fearing] what he could do to her career," plaintiff chose to move into an analyst position. Shortly thereafter, Grady communicated to plaintiff the new role she would take on. Plaintiff did not receive this information through Human Resources channels.

Plaintiff alleges that it was the general practice to continue paying an employee at their contract rate until the end of the contract term, but that did not happen here. Instead, her pay was immediately reduced by $8 per hour. She was demoted from pay level 15 to 12. And her new position did not qualify for "pay for performance" bonuses.

Plaintiff then filed this suit. In Count I, plaintiff alleges that defendants breached her contract by terminating her from the SEMAS position without cause and without notice. Plaintiff alleges that her job performance was "excellent" and yet she was removed from her position based on "a petty grudge" and with the use of a "threatened fabricated internal investigation."

In Count II, plaintiff alleges IIED. The "extreme and outrageous conduct" underlying this claim included: "[s]creaming at her after she inadvertently sent the text to LTC Brimacombe"; "[r]epeatedly accusing her of disclosing confidential information to outsiders"; "[t]hreatening her with a falsified internal investigation"; and "[f]orcing her to take a demotion." She continued that defendants employed "emotional hostility and blackmail to remove her from her contracted

position due to their own failure at leadership and ongoing paranoia." This resulted in plaintiff suffering "significant mental anguish and distress."

Defendants responded to the complaint with a motion for summary disposition. They seek dismissal of plaintiff's breach-of-contract claim pursuant to MCR 2.116(C)(4), contending that plaintiff was required to file a grievance and exhaust her administrative remedies before filing suit. They seek dismissal of plaintiff's IIED claim pursuant to MCR 2.116(C)(7) based on governmental immunity and MCR 2.116(C)(8), arguing that plaintiff failed to plead conduct rising to the level necessary to support her claim. Defendants seek dismissal of the complaint as a whole on the ground that plaintiff failed to file timely notice of her action under the Court of Claims Act (COCA), MCL 600.6401 *et seq*.

Plaintiff responded that she timely filed her notice of intent to file suit. She asserted that pursuing her administrative remedies would have been a futile endeavor, excusing her failure to exhaust those remedies before filing suit. Plaintiff contended that Grady could only assert immunity from her IIED claim if he could establish he acted in good faith and without malice, and could only be entitled to absolute immunity if he established he was the highest appointed executive official of all levels of government, but that he failed to establish either in his motion. And, in the alternative, plaintiff alleged that she pleaded conduct rising to the level necessary to support her IIED claim.

Because the briefing adequately addresses the issues presented, the Court dispenses with a hearing in considering defendants' summary disposition motion.

II. ANALYSIS

A. COCA NOTICE PERIOD

Defendants contend that plaintiff failed to file timely notice of her suit pursuant to MCL 600.6431 of the COCA. MCL 600.6431(1) requires a plaintiff to file a claim or notice of intent to file a claim against a state defendant with the Clerk of the Court of Claims within one year of a claim's accrual. Subsection (4) shortens that period to six months where the claim is for property damage or personal injury.

Plaintiff's claim accrued on June 16, 2025, when she was allegedly forced to take a demotion. Plaintiff filed a notice of intent with the Clerk of the Court of Claims approximately five months later, on November 26, 2025. Because plaintiff filed timely notice in accordance with the COCA, even if the shortened six-month notice period applied, defendants' motion for summary disposition on this ground lacks merit.

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Defendants further contend that plaintiff was required under her contract to pursue a grievance and exhaust her administrative remedies before filing her breach-of-contract claim, requiring dismissal of that count under MCR 2.116(C)(4). Plaintiff's SEMAS Agreement provided that "the terms and conditions of [her] employment are governed by this agreement and the Civil Service Commission rules and regulations governing SEMAS." Paragraph 6 of the Agreement governed "Early Termination of Appointment" as follows:

> You may terminate my employment before my term expires: (a) for cause, including unsatisfactory performance or (b) if you abolish my SEMAS position. If you do this, I may file a grievance, but even if my grievance is upheld, I cannot be awarded damages for any time beyond the expiration of this appointment.

Plaintiff does not deny that the Agreement required her to pursue a grievance to challenge the early termination of her position. Instead, plaintiff contends that several exceptions to the exhaustion doctrine apply in this case. Overall, plaintiff contends the Michigan Civil Service Commission Rules do not permit a grievance for a lateral job change and even if they did, Grady, as plaintiff's "appointing authority," would be the person considering her grievance. Accordingly, she asserts, filing a grievance would have been an exercise in futility and could not provide an adequate remedy.

> The purposes of requiring the exhaustion of administrative remedies are (1) to prevent an untimely intrusion by the courts resulting in delays and disruption of an administrative scheme, (2) to ensure that appellate review occurs with a fully developed record, (3) to ensure that required agency expertise and technical competency is afforded in the process, and (4) to afford the agency an opportunity to resolve the dispute without judicial intervention. Exhaustion will not be required when doing so would run counter to the policies which underlie the doctrine. [*L & L Wine & Liquor Corp v Mich Liquor Control Comm*, 274 Mich App 354, 362; 733 NW2d 107 (2007) (cleaned up).]

Futility is a judicially created exception to the general requirement that a party must exhaust her administrative remedies before filing suit. *Id.* at 358. "To invoke this exception, it must be clear that an appeal to an administrative board is an exercise in futility and nothing more than a formal step on the way to the courthouse. Futility will not be presumed; courts assume that the administrative process will properly correct alleged errors." *Id.* (cleaned up). "Futility is not established merely because it may appear at the preliminary stages of administrative proceedings that a litigant would be unable to prevail." *Papas v Mich Gaming Control Bd*, 257 Mich App 647, 665; 669 NW2d 326 (2003).

The Court disagrees with plaintiff that the Michigan Civil Service Commission Rules preclude a grievance under the circumstances present in this matter. In response to defendants' motion for summary disposition, plaintiff characterizes the events on June 16, 2025, as being

forced to voluntarily leave her position and make a "lateral job change" as punishment for her text message regarding Brimacombe. Citing Civ Serv R 4-6.2(c) pertaining to SEMAS positions, plaintiff argues that this lateral change is not grievable: "Employees in SES [Senior Executive Services] or SEMAS positions may be transferred to other SES or SEMAS positions. A transfer within the employee's own agency is not grievable, except as authorized in rule 8-1. For a transfer, the parties may agree to a new SES or SEMAS agreement."

Plaintiff was not "transferred" as contemplated in Rule 4-6.2(c); she was not moved from one SEMAS position to a SES or another SEMAS position. This case also does not involve a lateral job change. Civ Serv R 9.1 defines "lateral job change" as "the authorized movement of an employee to a different position (1) in the same classification or (2) in a different classification at the same classification level." As plaintiff recognized in the complaint, she was "demoted" from a SEMA to an analyst and her job classification was reduced from 15 to 12. See *id.* (defining "demotion" as "an authorized movement of an employee with status from a position in one classification level to a lower classification level"). Ultimately, because plaintiff was not "transferred," Rule 4-6.2(c) is inapplicable and does not prevent plaintiff from filing a grievance.

Plaintiff also contends that it would have been futile to file a grievance because Grady would have been the individual considering the grievance and he was predisposed to rule against her. Civ Serv R 8-1.1 provides that a grievance filed under this provision is filed "with an appointing authority." "Appointing authority" is defined by Rule 9.1 as "each of the following":

> (a) A single executive heading a principal department or autonomous entity.
>
> (b) A chief executive officer of a principal department or autonomous entity headed by a board or commission.

> (c) A person designated by any of the preceding as responsible for administering the personnel functions of the department, autonomous entity, or other agency.

Colonel Grady is the director of the MSP and the "single executive heading" that "principal department." Therefore, Grady is an "appointing authority" for grievance purposes. Plaintiff adequately pled facts to support that Grady was predisposed to rule against her in any grievance process or to designate a person within the MSP to consider the grievance in a manner consistent with his predisposition.

However, even if Grady or his designee ruled against her at the grievance stage, plaintiff could appeal the decision "to civil service staff, as authorized in the civil service rules and regulations." Civ Serv R 8-2.1. See Civ Serv R 8-2.2(c)(2) (permitting an appeal from a final grievance decision regarding a demotion imposed without just cause). If the adjudicating officer eventually ruled against her, plaintiff could "file a further appeal of the final decision . . . to the civil service commission." Civ Serv R 8-2.5. The "civil service staff" "exercise[s] and administer[s] the powers of the civil service commission" under the authority of the state personnel director. Civ Serv R 1-4.3. The Commission and its staff are completely independent of the MSP and other departments and agencies whose employees are civil-service classified. Plaintiff has not pleaded facts to support or otherwise demonstrated that this stage of the administrative proceedings would have been futile.

Plaintiff also contends that she was not required to exhaust her administrative remedies by filing a grievance because her claims involve "clearly framed issues of law that neither require extensive fact finding nor technical expertise." She characterizes those issues as whether Grady is immune from liability, whether she stated a viable claim of IIED, and whether she satisfied the notice requirements of the COCA. However, those are not the issues that would have been

considered during the administrative review process. Had plaintiff filed a grievance, the propriety of plaintiff's disciplinary demotion would have been reviewed, which would have included consideration of Grady's and Brimacombe's actions and of the facts supporting the "just cause" for the employment action. Plaintiff could have avoided the need for judicial consideration by seeking reinstatement to a SEMAS position or recovery of her lost wages for the remainder of her contract term through the grievance process. Immunity and notice requirements would have been irrelevant in such a situation.

Plaintiff asserts that she was not required to exhaust her administrative remedies because "review of the agency's final decision would not provide an adequate remedy." Plaintiff has not explained her position in regard to this exception to the exhaustion doctrine. Plaintiff has not supported her claim that this exception to the exhaustion doctrine applies in this case and the Court will not attempt to make the argument for her.

Because plaintiff has not demonstrated that resort to the grievance procedure and subsequent administrative appeal would have been futile, the Court GRANTS defendants' motion for summary disposition of plaintiff's breach-of-contract claim under MCR 2.116(C)(4) and DISMISSES plaintiff's breach-of-contract claim against both defendants.

C. GOVERNMENTAL IMMUNITY

Defendants seek dismissal of plaintiff's IIED claim on governmental immunity grounds.

1. MSP

The MSP's entitlement to immunity is governed by MCL 691.1407(1) of the Governmental Tort Liability Act (GTLA), MCL 691.1401. That provision states, "Except as otherwise provided

in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." *Id*. "The GTLA does not contain an 'intentional tort exception to governmental immunity' from tort liability. Accordingly, any plaintiff who seeks to assert an intentional tort claim against a governmental defendant must demonstrate that the defendant committed the alleged tort outside the exercise or discharge of a governmental function." *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317, 328; 869 NW2d 635 (2015) (cleaned up).

> This is a very high—and extremely difficult—burden for a plaintiff to surmount because . . . when courts assess whether a governmental defendant was engaged in the exercise or discharge of a governmental function, we look to the *general activity* involved rather than the *specific conduct* engaged in when the alleged injury occurred. Therefore, an act may be the exercise or discharge of a governmental function even though it results in an intentional tort. [*Id*. (cleaned up).]

A "governmental function" is "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b). "[T]he term 'governmental function' is to be broadly construed." *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). Personnel decisions, such as the hiring, firing, discipline, and demotion of employees, are a governmental function. See *Galli v Kirkeby*, 398 Mich 527, 537; 248 NW2d 149 (1976). The MSP was engaged in a governmental function and therefore is immune from liability for IIED.

2. COLONEL GRADY

Defendants contend that Grady is entitled to "absolute immunity" under MCL 691.1407(5), which states: "A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority."

> To qualify for absolute immunity from tort liability an individual governmental employee must prove his or her entitlement to immunity by establishing, consistently with the statute's plain language, (1) that he or she is a judge, legislator, or the elective or highest appointive executive official of a level of government and (2) that he or she acted within the scope of his or her judicial, legislative, or executive authority. [*Petipren v Jaskowski*, 494 Mich 190, 204; 833 NW2d 247 (2013).]

Defendants have cited no legal support for applying MCL 691.1407(5) to the director of the MSP, and the Court's research uncovered no supporting caselaw. Again, this Court is not required to search out support for a party's arguments. Defendant Grady is not entitled to tort immunity on this ground.

Defendants also contend that Grady is entitled to immunity under MCL 691.1407(2), which governs the immunity granted to lower-level governmental actors as follows:

> Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service . . .if all of the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

MCL 691.1407(3) provides that subsection (2) "does not alter the law of intentional torts as it existed before July 7, 1986."

IIED is an intentional tort and, accordingly, the immunity granted for negligent acts in subsection (2) does not apply. "Subsection 3 indicates the Legislature's intent to confer immunity on governmental employees for intentional torts to the same extent allowed under the common

law as it existed before July 7, 1986." *Odom v Wayne Co*, 482 Mich 459, 470; 760 NW2d 217 (2008) (cleaned up). To be immune from liability for an intentional tort, the governmental employee must demonstrate first that his acts were taken during the course of his employment and he was acting within, or reasonably believed he was acting within, the scope of his authority. *Id*. at 473. Second, the employee must demonstrate that he acted in "good faith," meaning without malice and without a wanton or reckless disregard. *Id*. at 474. Finally, a governmental employee is immune from liability for discretionary, but not ministerial acts. *Id*. at 475-476.

As noted, personnel decisions are a governmental function and Grady, as plaintiff's supervisor, acted within the scope of his authority in disciplining and demoting plaintiff. Grady's acts were discretionary; they "require[d] personal deliberation, decision and judgment." *Id*. at 476 (cleaned up). However, the Court concludes that Grady is not entitled to immunity from plaintiff's IIED claim. Plaintiff alleged that Grady acted without good faith and with malice and a wanton or reckless disregard for plaintiff's rights. She alleged that her text message to Hawkins (and accidentally to Brimacombe) would not support the initiation of an internal investigation and yet Grady threatened to initiate a baseless investigation. Plaintiff alleged that Grady made threats to speak negatively about her to other members of the MSP. Plaintiff also alleged that Grady "maliciously" used her hopes for a promotion after earning her degree to falsely accuse her of disloyalty. This was sufficient to plead her claim in avoidance of governmental immunity.

Accordingly, the Court GRANTS IN PART and DENIES IN PART defendants' motion for summary disposition of plaintiff's IIED claim pursuant to MCR 2.116(C)(7). The Court DISMISSES plaintiff's IIED claim against the MSP based on governmental immunity.

D. FAILURE TO STATE AN IIED CLAIM

The only remaining claim in plaintiff's complaint is her claim of IIED against Grady. "The tort of [IIED] has four elements: (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Haverbush v Powelson*, 217 Mich App 228, 233-234; 551 NW2d 206 (1996). Defendants contend that plaintiff failed to plead the necessary "extreme and outrageous conduct" to support her claim.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint alone. In considering such a motion, the Court must accept all factual allegations as true and dismiss the claim when it appears "so clearly unenforceable that no factual development could possibly justify recovery." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019).

When alleging "extreme and outrageous conduct," it is not sufficient "that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602-603; 374 NW2d 905 (1985) (cleaned up). Rather,

> Liability has been found only where the conduct has been 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. Generally, the case is one in which 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*. at 603 (cleaned up).]

Further, liability

> does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt. There must still be freedom to express an unflattering opinion, and some safety valve must be left through which irascible tempers may blow off relatively harmless steam. [*Id.* (cleaned up).]

The Court finds that plaintiff pleaded sufficient facts to avoid summary disposition of her IIED claim against Grady. She pleaded that Grady had created a hostile work environment governed by fear and intimidation and that he knowingly and purposely threatened to instigate an unfounded internal affairs investigation against her if she did not give in to his demands and take a significant demotion. Only discovery will tell if plaintiff can provide the evidence to support the factual basis of her claim. But the allegations in her complaint suffice to legally support her claim.

The Court DENIES defendant Grady's motion for summary disposition of plaintiff's IIED claim.

III. CONCLUSION

Accordingly,

1. The Court GRANTS IN PART and DENIES IN PART defendants' motion for summary disposition.
2. The Court DISMISSES plaintiff's breach-of-contract claim in its entirety and with prejudice. The Court DISMISSES plaintiff's IIED claim against the MSP with prejudice.
3. Plaintiff's IIED claim against Grady remains pending.
4. Defendant Grady is directed to file an answer to plaintiff's complaint within 21 days of the entry of this order.
5. This is not a final order resolving all issues presented in this matter.

Date: November 12, 2026

Sima G. Patel
Judge, Court of Claims