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STATE OF MICHIGAN

COURT OF APPEALS

ROBERT DAVIS,

Plaintiff-Appellant,

v

WAYNE COUNTY BOARD OF COMMISSIONERS, WAYNE COUNTY ETHICS BOARD, ALAN HELMKAMP, DONN FRESARD, and CATHY M. GARRETT,

Defendants-Appellees,

and

GAUKLER POINTE COMMUNICATIONS and TIMOTHY JOHNSON,

Defendants.

UNPUBLISHED
November 20, 2026
11:31 AM

No. 372455
Wayne Circuit Court
LC No. 23-008549-CZ

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

In this action involving tort claims and claims brought under Michigan's Freedom of Information Act (FOIA), MCL 15.231 *et seq*., plaintiff, Robert Davis, appeals as of right the trial court's August 26, 2024 order dismissing the then-remaining claims in the case against defendant Cathy M. Garrett, acting in her official capacity as the Wayne County Clerk. In this appeal, plaintiff also challenges the trial court's earlier rulings granting summary disposition in favor of defendants Wayne County Board of Commissioners (WCBC), Alan Helmkamp, and Donn Fresard and awarding sanctions in favor of the WCBC. For the reasons set forth in this opinion, we vacate in part and affirm in part.

I. BACKGROUND

In his amended complaint, defendant raised nine counts. Counts I through IV primarily involved plaintiff's FOIA requests. Count I sought a declaratory judgment that the WCBC violated the FOIA by denying plaintiff's April 9, 2023 FOIA request that sought "[c]ertified copies of Wayne County Ordinance No. 83-13 and any subsequent amendments made thereto by the Wayne County Commission." The WCBC responded to this FOIA request by stating that plaintiff's "request is denied because Ordinance No. 83-13 does not exist. After a diligent search for the requested records, we have determined and certify that these records do not exist within the records of the Commission." Plaintiff alleged in his amended complaint that this assertion was false and that the ordinance existed. In Count I of the amended complaint, plaintiff also sought a declaratory judgment that defendant Garrett, as the County Clerk, is also "the 'Clerk of the Defendant County Commission' pursuant to MCL 46.4, and pursuant to MCL 46.11(j)" and further "has the statutory legal duty to certify all ordinances enacted and adopted by the Defendant County Commission, including Ordinance No. 83-13, which Plaintiff requested a 'certified' copy of under the FOIA."

In Count II, plaintiff sought a declaratory judgment that the Wayne County Clerk, as the clerk for the WCBC, has the legal authority to accept legal service of a summons on behalf of the WCBC. Plaintiff complained that after an employee of the County Clerk's office accepted service of the summons and complaint in this action on behalf of the WCBC, defendant Helmkamp, in his capacity as commission counsel for the WCBC, objected in the trial court to the manner of effectuating service and stated that acceptance of service in this manner was limited to the present action and did not constitute authorization for using this manner of service in the future. Plaintiff further complained that the County Clerk's office had refused to accept service on behalf of the WCBC in a separate lawsuit filed by plaintiff.

In Count III, plaintiff sought a declaratory judgment that the WCBC violated the FOIA by denying Items 4 and 5 of his June 22, 2023 FOIA request with respect to certain communications and e-mails involving the Wayne County Ethics Board's (WCEB) legal counsel. Plaintiff alleged that the WCBC falsely denied the existence of these particular communications.

In Count IV, plaintiff sought a declaratory judgment that the WCBC violated the FOIA by failing to provide plaintiff with a "certified" copy of the ethics ordinance as requested in Item 1 of his June 22, 2023 FOIA request. Plaintiff alleged that the WCBC merely provided him with an "unsigned" and "uncertified" copy of the ethics ordinance, along with a signed document titled "Freedom of Information Act Certification of Records." Plaintiff maintained that the ordinance was required to be signed by the County Clerk, as clerk of the WCBC.

Counts VII, VIII, and IX[1] alleged tort claims against Fresard and Helmkamp.[2] Fresard is a Macomb County assistant prosecutor and husband of a Wayne Circuit judge. Helmkamp served as

[1] Because plaintiff does not challenge the trial court's decision dismissing Counts V and VI, those counts are not relevant on appeal.

[2] These counts also were alleged against defendants Timothy Johnson and Gaukler Pointe Communications, LLC. But plaintiff agreed to voluntarily dismiss those defendants, and the issues raised on appeal do not directly implicate them. We therefore need not specifically address them in this opinion.

the assistant legal counsel to the WCBC. Plaintiff in Count VII of the amended complaint alleged that Fresard and Helmkamp tortiously interfered with his business relationship with Commissioner Martha G. Scott by pressuring Scott to terminate plaintiff's employment as her legislative aide if plaintiff did not dismiss certain other lawsuits that he had filed seeking to have certain incumbent Third Circuit Court judges removed from the November 2022 general election ballot. Plaintiff alleged that Scott informed plaintiff in December 2022 that she was not renewing his employment agreement for 2023. In Count VIII, plaintiff alleged that Fresard and Helmkamp were also liable for intentional infliction of emotional distress (IIED) based on their alleged actions pressuring Scott to terminate plaintiff's employment. Plaintiff alleged in Count IX that Fresard and Helmkamp had engaged in a civil conspiracy to tortiously interfere with his business relationship or expectancy to intentionally inflict emotional distress on plaintiff. With respect to Counts VII, VIII, and IX, plaintiff alleged that Helmkamp was acting in his official capacity as assistant commission counsel.

Relevant to this appeal, WCBC, Garrett, and Helmkamp each moved for summary disposition.[3]

First, with respect to the WCBC, it moved for summary disposition under MCR 2.116(C)(4) (lack of subject matter jurisdiction), (8) (failure to state a claim), and (10) (no genuine issue of material fact) on the claims (Counts I through IV) against it for various reasons. The WCBC argued that Count I must be dismissed because there was no factual dispute that records of Ordinance 83-13 that plaintiff requested did not exist, and the WCBC thus could not be compelled to produce a nonexistent record. Regarding Count II, the WCBC argued that this service of process issue was resolved in this case because Helmkamp had agreed to the manner of service in this particular case and there was accordingly no controversy for the court to adjudicate with respect to this issue. The WCBC argued that this issue was moot and that plaintiff lacked standing to bring this claim.

Next, the WCBC argued that Count III must be dismissed because there was no genuine issue of fact that the requested emails also did not exist. With respect to Count IV, the WCBC argued that the court lacked subject matter jurisdiction over this claim because plaintiff's FOIA request was granted regarding his request for a certified copy of the ethics ordinance and plaintiff's contentions about what constituted proper certification were unsupported by legal authority. The WCBC further argued that there was no controversy regarding this issue because plaintiff had not articulated any harm that he suffered as a result of the form of the provided copy of the ethics ordinance. Lastly, the WCBC sought sanctions against plaintiff under MCR 1.109(E) and MCL 600.2591 for his refusal to dismiss Count I, which the WCBC argued was frivolous. Garrett filed a concurrence, in which she claimed that summary disposition was also warranted in her favor for the same reasons described by the WCBC.

Helmkamp moved for summary disposition under MCR 2.116(C)(7) (immunity granted by law) and (C)(8) on Counts VII, VIII, and IX, arguing primarily that all three counts were barred by governmental immunity because plaintiff failed to allege any facts to support a conclusion that

[3] The WCEB also moved for summary disposition of Counts V and VI. However, as previously stated, the rulings regarding these counts are not at issue in this appeal.

Helmkamp acted outside his official capacity and authority, and the elements of governmental immunity were otherwise satisfied. Helmkamp additionally argued that as a matter of law, Helmkamp could not tortiously interfere with plaintiff's employment contract because Helmkamp acted as legal counsel to the WCBC, which included Commissioner Scott, and a corporate agent cannot be liable for tortious interference with the corporation's contracts unless the agent acted for his own benefit. Furthermore, Helmkamp argued that plaintiff did not have a valid expectancy in the renewal of his at-will contract. With respect to the IIED claim, Helmkamp argued that the alleged conduct did not rise to the level of extreme and outrageous behavior. He also argued that the IIED claim was premised on the non-renewal of plaintiff's employment contract and that such a theory was not cognizable under Michigan law. Finally, Helmkamp argued that because plaintiff could not establish a valid underlying tort claim, he could not establish his civil conspiracy claim.

The trial court issued a written opinion and order addressing the motions for summary disposition. With respect to the WCBC's motion for summary disposition on Counts I through IV, the trial court sua sponte relied on the doctrine of res judicata to dismiss these counts. In doing so, the trial court failed to address the actual arguments raised by the WCBC in its motion. The trial court also found that sanctions were warranted against plaintiff under MCR 1.109(E)(6) and MCL 600.2591(3)(a)(*i*) for bringing Counts I through IV. Regarding Helmkamp's motion directed at Counts VII through IX, the trial court concluded that these claims against Helmkamp were subject to dismissal based on governmental immunity.

Fresard subsequently moved for summary disposition, arguing as relevant to this appeal that he was entitled to summary disposition under MCR 2.116(C)(8) because plaintiff failed to allege facts sufficient to establish causes of action for the claims of tortious interference, IIED, and civil conspiracy against him.

The trial court granted Fresard's motion for summary disposition pursuant to (C)(8). With respect to the tortious interference claim, the trial court considered plaintiff's employment contract that was referenced in his amended complaint and determined that there was no indication that plaintiff was not an at-will employee, and the court further concluded that because there was no factual allegation to support the existence of a valid business expectancy, the tortious interference claim must be dismissed. Regarding the IIED claim, the trial court concluded that Fresard's alleged conduct did not meet the standard for extreme and outrageous conduct, and the court therefore dismissed that claim. Finally, the court granted summary disposition on the civil conspiracy claim because there was no surviving underlying tort claim. The trial court subsequently entered another order clarifying that all claims against Garrett in Counts I through IV were also dismissed pursuant to its earlier order addressing Counts I through IV.

Plaintiff's current appeal is now before this Court.

II. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Gyarmati v Bielfield*, 245 Mich App 602, 604; 629 NW2d 93 (2001). Summary disposition may be granted under MCR 2.116(C)(7) when "[e]ntry of judgment, dismissal of the action, or other relief is appropriate" because of "prior judgment" or "immunity granted by law." When considering a motion pursuant to (C)(7), "a trial court should examine all documentary evidence

submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party." *King v Munro*, 329 Mich App 594, 599; 944 NW2d 198 (2019) (quotation marks and citation omitted).

Summary disposition may be granted under MCR 2.116(C)(8) when the "opposing party has failed to state a claim on which relief can be granted." On review of a motion under (C)(8), a "court must accept the factual allegations of the plaintiff's complaint as true, and if, even after considering the facts in a light most favorable to the plaintiff, a claim is clearly unenforceable as a matter of law, then the motion should be granted and there is no right to recovery." *Gyarmati*, 245 Mich App at 605.

The application of res judicata presents a question of law that we review de novo. *King*, 329 Mich App at 599. The application of governmental immunity also presents a question of law that this Court reviews de novo. *Wood v Detroit*, 323 Mich App 416, 419; 917 NW2d 709 (2018).

III. FOIA CLAIMS

On appeal, plaintiff first argues that the trial court erred by sua sponte applying the doctrine of res judicata to dismiss Counts I through IV when the WCBC and Garrett had failed to raise this affirmative defense in their motion for summary disposition filed in lieu of an answer, which was their first responsive pleading to plaintiff's amended complaint.

"Under the doctrine of res judicata, a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *King*, 329 Mich App at 600-601 (quotation marks and citation omitted). However, the "defense of *res adjudicata* is an affirmative defense and the burden of proof is on the party urging such defense." *E & G Fin Co v Simms*, 362 Mich 592, 596-597; 107 NW2d 911 (1961). As this Court has previously explained:

> "[T]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." MCR 2.111(F) addresses the proper manner to plead affirmative defenses and sets forth the consequences for failing to do so. MCR 2.111(F)(2) provides that "[a] defense not asserted in the responsive pleading or by motion as provided by these rules is waived, except for the defenses of lack of jurisdiction over the subject matter of the action, and failure to state a claim on which relief can be granted." And MCR 2.111(F)(3) provides that "[a]ffirmative defenses must be stated in a party's responsive pleading, either as originally filed or as amended in accordance with MCR 2.118." Alternatively, "a party who has asserted a defense by motion filed pursuant to MCR 2.116 before filing a responsive pleading need not again assert that defense in a responsive pleading later filed[.]" MCR 2.111(F)(2)(a). It has long been established that under MCR 2.111(F), " '[t]he failure to raise an affirmative defense as required by the court rule constitutes a waiver of that affirmative defense.' " [*Baker v Marshall*, 323 Mich App 590, 595; 919 NW2d 407 (2018) (some citations omitted; alterations in original).]

Neither the WCBC nor Garrett assert that the doctrine of res judicata was preserved as an affirmative defense in the trial court proceedings. WCBC explicitly concedes that this defense was neither briefed nor affirmatively advanced below, and our review of the pleadings reveals no effort to raise res judicata as an affirmative defense. Furthermore, WCBC does not reference any portion of the lower court record evidencing that this defense was asserted.[4]

Accordingly, the trial court erred by invoking res judicata sua sponte to dismiss plaintiff's claims in Counts I through IV, as the affirmative defense had been waived. See *id*. Although the trial court alluded to issues such as failure to join necessary parties and mootness, the record indicates that res judicata was the primary basis for dismissal. Therefore, we vacate the grant of summary disposition in favor of WCBC and Garrett as to Counts I through IV, and remand for the trial court to address these claims in the first instance.

The trial court further imposed sanctions against plaintiff predicated on the pursuit of Counts I through IV. Given our vacatur of the summary disposition as to these counts, we must also vacate the corresponding sanctions order, as it was premised on the now-vacated ruling. At this procedural juncture, there is insufficient basis to determine that plaintiff's claims were frivolous or asserted for an improper purpose. See MCL 600.2591(3); MCR 1.109(E)(5). On remand, the trial court may reconsider the issue of sanctions if warranted by the proceedings.

IV. HELMKAMP'S MOTION FOR SUMMARY DISPOSITION

Plaintiff also argues that the trial court erred by granting summary disposition in favor of Helmkamp based on governmental immunity.

A party is entitled to summary disposition under MCR 2.116(C)(7) if, among other things, the plaintiff's claims are barred because of "immunity granted by law." Parties may support their respective positions with affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(5). The contents of the complaint are accepted as true unless contradicted by the evidence provided. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

As an initial matter, plaintiff on appeal does not dispute that Helmkamp was a "lower-level governmental employee" for purposes of the governmental immunity analysis and that plaintiff's three claims against Helmkamp in Counts VII through IX were intentional torts.

Certain high-ranking government officials enjoy absolute immunity from tort liability when acting within the scope of their authority. MCL 691.1407(5); *Odom v Wayne Co*, 482 Mich 459, 469; 760 NW2d 217 (2008). However, lower-level governmental employees enjoy qualified immunity from intentional-tort liability. *Id*. at 473. Our Supreme Court in *Odom* explained that

[4] Although WCBC points to a generalized reference in its trial court pleadings characterizing some of plaintiff's claims as "largely duplicative," such a conclusory statement is, standing alone, insufficient to preserve the affirmative defense of res judicata.

when a plaintiff has pleaded an intentional tort against a lower-ranking governmental employee, it must be determined

> whether the defendant established that he is entitled to individual governmental immunity under the *Ross*[5] test by showing the following:
>
> (a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,
>
> (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.]

Plaintiff, in his amended complaint, asserted three tort claims against Helmkamp, alleging that he acted in his official capacity as assistant commission counsel. Plaintiff contended that Helmkamp discouraged Scott from hiring him, disclosed plaintiff's prior lawsuits—including those aimed at removing various Wayne Circuit incumbent judges, one of whom was Fresard's spouse—from the November 2022 ballot, and exerted pressure on Scott to terminate plaintiff's employment. Plaintiff maintained that these actions constituted: (1) tortious interference with a business relationship; (2) intentional infliction of emotional distress, manifested by stress, anxiety, depression, and elevated blood pressure; and (3) participation in a civil conspiracy. Plaintiff further alleged that Helmkamp exceeded his authority by reporting plaintiff's litigation activities to Scott, influencing the termination of plaintiff's employment as Scott's legislative aide, and engaging in conspiratorial conduct.

Helmkamp, in support of his motion for summary disposition, submitted an affidavit in which he unequivocally denied any communications with Scott pertaining to plaintiff, including issues related to plaintiff's employment. He further attested that his responsibilities as assistant commission counsel for the WCBC comprised advising commissioners on matters arising in the course of their official duties, and that any communications he had with Commissioner Scott fell within the scope of his official functions and were conducted as part of WCBC business.
On appeal, plaintiff fails to identify record evidence—apart from his own conclusory assertions—that contradicts Helmkamp's sworn statements.[6] *Nat'l Waterworks, Inc v Int'l Fidelity & Surety,*

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[5] *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984).

[6] Plaintiff attempted to file his own affidavit in the trial court under MCR 2.116(H)(1), but the trial court correctly ruled that the affidavit was not compliant with that court rule.

Under MCR 2.116(H)(1), "[a] party may show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure." But such affidavits must (1) name the persons whose affidavits cannot be procured, (2) state why their testimony cannot be procured, (3) state the nature of their probable testimony, and (4) state "the reason for the party's belief that these persons would

Ltd, 275 Mich App 256, 265; 739 NW2d 121 (2007) ("A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim."). Although plaintiff's complaint characterizes Helmkamp's conduct as "malicious," he provides no factual allegations supporting a finding of malice. *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994) ("[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action."). In this context, "malice" denotes dishonesty, improper purpose, corruption, intentional abuse of power, outrageous conduct, or reckless disregard for the rights of others. *Odom*, 482 Mich at 473-474. Plaintiff also neglects to offer a reasoned argument that Helmkamp's actions were ministerial, effectively abandoning this claim. *Nat'l Waterworks*, 275 Mich App at 265. Accordingly, plaintiff has not established that the trial court erred in granting summary disposition in favor of Helmkamp on the ground of governmental immunity.

V. DONN FRESARD'S MOTION FOR SUMMARY DISPOSITION

Plaintiff argues that the trial court erred by granting Fresard's motion for summary disposition under MCR 2.116(C)(8).

The three counts pertaining to Fresard are Counts VII (interference with business relationship or expectancy), VIII (IIED), and IX (civil conspiracy).

> The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 90; 706 NW2d 843 (2005).]

The trial court dismissed this claim on the ground that plaintiff lacked a valid business relationship or expectancy in the renewal of his employment contract. The court observed that plaintiff was neither terminated, demoted, nor subject to a reduction in pay. Rather, Commissioner Scott exercised her prerogative within the at-will employment framework by declining to renew plaintiff's contract upon its expiration at the close of 2022. On appeal, plaintiff does not directly challenge this basis for dismissal. Plaintiff's sole reference is a cursory assertion that the amended complaint sufficiently pled the existence of a valid business relationship between plaintiff and Commissioner Scott. Such perfunctory treatment constitutes abandonment of the issue. *Seifeddine v Jaber*, 327 Mich App 514, 521; 934 NW2d 64 (2019) (failure to adequately brief an issue is deemed abandonment); see also *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004) (where a party fails to address the basis for the trial court's ruling, this Court may deem the issue abandoned).

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testify to those facts." MCR 2.116(H)(1)(a) and (b). In this case, plaintiff's affidavit did not provide any reasons for his belief that the persons, including Commissioner Scott, would testify consistently with his pleaded facts. Accordingly, any attempt to rely on this affidavit is unavailing.

Moreover, in attempting to demonstrate that the amended complaint contained sufficient allegations, plaintiff failed to identify any specific allegations within the 104-page, 336-paragraph complaint. Instead, he merely referenced the complaint, stating, "See Plaintiff's Amended Complaint." It is well established that an appellant may not simply announce a position and leave it to this Court to search for and rationalize the basis for the claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); see also *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008) (the courts are not "the research assistants of the litigants," and parties bear the responsibility to fully present their arguments).

We next address plaintiff's claim for intentional infliction of emotional distress (IIED). To establish IIED, a plaintiff must demonstrate: (1) extreme and outrageous conduct by the defendant, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 321; 788 NW2d 679 (2010). Liability arises only where the defendant's conduct is so outrageous and extreme as to exceed all possible bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community. *Id*. Here, the trial court found that plaintiff failed to allege conduct rising to this standard, as the alleged acts amounted to no more than threats or insults. The court further observed that it was the nonrenewal of plaintiff's employment contract, rather than defendant Fresard's conduct, that gave rise to plaintiff's alleged ailments.

On appeal, plaintiff offers only a conclusory assertion that Fresard's alleged pressure on Commissioner Scott to terminate or decline to renew plaintiff's employment constituted extreme and outrageous conduct. As this Court has observed, "[m]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities do not give rise to liability for intentional infliction of emotional distress." *Dalley*, 287 Mich App at 321. Even if plaintiff's allegations are accepted as true, the alleged conduct does not rise to a level that surpasses all bounds of decency. Plaintiff's conclusory arguments do not establish error in the trial court's dismissal of this claim.

Finally, this Court has defined civil conspiracy as "a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Swain v Morse*, 332 Mich App 510, 530; 957 NW2d 396 (2020). Critically, liability does not arise from civil conspiracy alone; there must be proof of a separate, actionable tort. *Id*. at 530 n 13. Because plaintiff has failed to show error in the trial court's dismissal of the tortious interference and IIED claims, he has not established the existence of a surviving actionable tort to support his civil conspiracy claim. Accordingly, plaintiff has not demonstrated that the trial court erred in dismissing this claim.

Affirmed in part, vacated in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded. MCR 7.219(A).

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin