STATE OF MICHIGAN

COURT OF APPEALS

RICHARD SULLIVAN,

Plaintiff-Appellant,

v

RIVER VALLEY SCHOOL BOARD, RIVER VALLEY EDUCATION ASSOCIATION, CHARLES O. WILLIAMS, Superintendent of River Valley Schools, PHIL BENDER, President of River Valley Education Association, JANE TEMPLE, GARY B. SOMMERS, PAMELA BEHNKE, DENNIS ZEIGER, RICHARD RIETH, VICKIE PAILING, LYNDA VACKAR and WESLEY LIND, jointly and severally in their individual and official capacities,

Defendants-Appellees.

UNPUBLISHED
July 11, 1997

No. 181913
Berrien Circuit Court
LC No. 93-002066-NZ

Before: Hood, P.J., and Neff and M. A. Chrzanowski*, JJ.

PER CURIAM.

Plaintiff, Richard Sullivan, a tenured teacher with the River Valley School District, appeals as of right three orders of the circuit court which, taken together, dismissed plaintiff's action against defendants, River Valley Education Association and its president Phil Bender (RVEA), and River Valley School Board, along with its superintendent, Charles O. Williams, and board members Jane Temple, Gary Sommers, Pamela Behnke, Dennis Zeiger, Richard Rieth, Vickie Pailing, Lynda Vackar and Wesley Lind (RVSB). We affirm.

I

Plaintiff's dispute began in 1990, when he filed a grievance after an unsuccessful bid for a coaching position. Plaintiff's grievance was denied, and plaintiff withdrew his membership in RVEA.

* Circuit judge, sitting on the Court of Appeals by assignment.

As a nonmember, plaintiff was required to pay a yearly representation fee or face termination for failure to do so. In both the 1991-1992 and 1992-1993 school years, the parties became embroiled in issues regarding plaintiff's method of paying his representation fee, particularly with regard to whether the fee should have been submitted to the Michigan Education Association or to RVEA, and whether plaintiff was permitted to withhold payment of the balance of the fee until the exact amount was set by arbitration. As noted by the circuit court, throughout their dispute, "[t]he parties traded accusations and counter-accusations, many of which were aired in local newspapers."

In the Spring of 1992 and 1993, because plaintiff failed to pay the representation fee according to established procedures, RVEA requested that RVSB schedule termination proceedings. Each time, however, plaintiff paid the balance of the fee prior to the scheduled hearing, albeit "under protest". Upon learning that plaintiff had paid the required fee, RVEA withdrew its complaints and the scheduled pretermination hearings were canceled.

At a RVSB meeting on June 22, 1992, board president Jane Temple read a memo addressing plaintiff's situation. The memo contained the following assertions: (1) plaintiff received due process regarding the coaching grievance; (2) the agency fee dispute was between the RVEA and plaintiff, not the board, and plaintiff attempted to blame both the RVEA and the RVSB for his nonpayment, although he was aware of the language of the master agreement, in an attempt "to confuse the issue to make him appear as the grieved party"; (4) whether plaintiff paid at the state or local level was immaterial, because he paid his fees on May 13, 1992, five days before the arbitration hearing, and the charges were dropped after RVEA notified RVSB that plaintiff had paid and notice was mailed to plaintiff; (5) plaintiff had previously stated to the press that he had paid his fees in full, which the board took as agreement on his part that the fees had in fact been paid, and plaintiff made no attempt to notify or verify the evidence directly to the Board; (6) plaintiff's delayed payment and threats of legal action delayed settlement of the issue and cost the taxpayers more in legal consultations. The memo concluded:

> Both issues [coaching and agency fee] were manipulated by [plaintiff] to meet his own personal objectives. We find this to be less than professional and ethical. His attempt to gather support from his students in the classroom over a Union issue indicates serious consideration of his teaching ethics.
>
> [Plaintiff] has harassed, both in person and by written word, his fellow teachers, the teachers' union officers, administrators, and the Board of Education over a period of more than one and a half years. He has misquoted and misrepresented statements made by them to the media and in sarcastic, hurtful, insinuating letters. We expect this unprofessional and unethical behavior to cease as of this date.

On June 21, 1993, plaintiff filed his complaint, alleging that defendants defamed him; that defendants intentionally inflicted mental anguish and interfered with his contractual and business relationship; and that defendants placed plaintiff in a false light. Plaintiff's amended complaint added counts alleging that defendants denied and conspired to deny plaintiff his constitutional rights to free speech, due process, and equal protection.

Subsequently, RVEA and RVSB each filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). The court, in three separate orders, ultimately granted the defendants' motions and dismissed plaintiff's action in its entirety.

II

Plaintiff challenges the circuit court's dismissal of plaintiff's claims against RVSB of defamation, false light, interference with contract, and intentional infliction of emotional distress based on governmental immunity. Although we find that executive immunity, rather than governmental immunity, applies to bar plaintiff's tort claims,[1] we nonetheless affirm the circuit court's order of dismissal. See *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 565 (1997) (Court of Appeals will affirm a circuit court's ruling that reached the right result, even if for the wrong reason).

Governmental immunity bars tort claims against "judges, legislators, and the elective or highest appointed executive officials of all levels of government . . . whenever they are acting within the scope of their judicial, legislative, or executive authority." MCL 691.1407(5); MSA 3.996(107)(5). A school district is a "level of government" described by the statute. *Napela v Plymouth-Canton Community Schools*, 207 Mich App 580, 587; 525 NW2d 897 (1994), aff'd in result, 450 Mich 934 (1994). Moreover, school board members are "elective officials" of a level of government and the superintendent is the "highest appointed executive" of the school district. *Id*. at 587-590. Thus, both school board members and superintendents fall under the purview of the statute and are entitled to absolute immunity when acting within the scope of their authority. MCL 691.1407(5); MSA 3.996(107)(5).

Pursuant to the master agreement, RVEA requested that RVSB terminate plaintiff for nonpayment of a representation fee. As superintendent, Williams was responsible for supervising plaintiff. MCL 380.132(4); MSA 15.4132.[2] Accordingly, RVSB had authority both to handle matters regarding plaintiff's nonpayment of the representation fee and to respond to plaintiff's criticism of RVSB's actions in this regard. *American Transmissions Inc v Attorney General*, 454 Mich 135, 144; 560 NW2d 50 (1997). RVSB is immune from tort liability because it was acting "within the scope of [its] executive authority." *Id*.; MCL 691.1407(5); MSA 3.996(107)(5).

III

We now turn to plaintiff's tort claims against RVEA and Bender. Plaintiff first argues that the circuit court erred in granting defendant's motion for summary disposition on plaintiff's defamation claim. We disagree.

A

A communication is defamatory if it tends to lower a party's reputation in the community or to deter third persons from associating or dealing with him. *Rouch v Inquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 251; 487 NW2d 205 (1992). Plaintiff must plead and prove: (1) a false and defamatory statement concerning plaintiff; (2) an unprivileged communication to a third party;

(3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *Id*.

Pleading defamation requires specificity, and the degree of specificity required depends on whether the action is based in libel or slander. *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 53-55; 495 NW2d 392 (1992). Because libel is written, it must be pleaded verbatim; however, a more generous rule applies to slander because it cannot be retained verbatim. *Id*. In the present case, plaintiff alleges libel as to the Temple memo; plaintiff's remaining allegations (regarding statements that plaintiff had been reprimanded and had been terminated) are of slander.

B

Plaintiff attributed the oral statements to "all of the Defendants." However, plaintiff failed to plead or submit evidence to show that RVEA or Bender either made or adopted these statements. To the contrary, plaintiff submitted evidence that school board member Pamela Behnke made the statement regarding the reprimand, and that Temple made the statement that implied plaintiff would be terminated. In the absence of any evidence linking the statements to RVEA or Bender, plaintiff's claim against RVEA and Bender was properly dismissed by the circuit court.

C

We further find that plaintiff's libel claim, based on the Temple memo, was properly dismissed. Regarding RVEA, plaintiff did not plead with sufficient specificity that RVEA participated in the Temple memo. Moreover, although plaintiff specifically alleged that Bender "adopted" the Temple memo, Bender's actions fall within the scope of a qualified privilege.

The determination of whether a qualified privilege exists is one of law for the court. *Swenson-Davis v Martel*, 135 Mich App 632, 636; 354 NW2d 288 (1984). A qualified privilege extends to all communications made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, to a person having a corresponding interest or duty. *Id*. Here, the Temple memo clearly falls within the scope of a qualified privilege. Teachers' payment of representation fees is a matter in which Bender (as president of RVEA) and RVSB had an interest and a duty. Bender was thus qualifiedly privileged to comment on the controversy surrounding plaintiff's payment of the fee.

Having determined that a qualified privilege protected Bender's adoption of the Temple memo, we must next decide whether a material issue of fact existed as to whether Bender acted with actual malice, which would remove it from the privilege. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 79; 480 NW2d 297 (1991). In doing so, we note that where a qualified privilege exists there is a presumption of good faith. *Nuyen v Slater*, 372 Mich 654, 660; 127 NW2d 369 (1964). In his complaint, plaintiff alleges that Bender "acted maliciously and with knowledge of the Temple memo's falsity." Such general allegations are insufficient to establish a genuine issue of fact regarding the issue of actual malice. *Gonyea, supra* at 79-80.

Because Bender was entitled to a qualified privilege regarding the Temple memo, and because plaintiff has not alleged specific facts that would remove the statements from this privilege, the circuit court's grant of summary disposition was proper.

IV

Plaintiff next argues that the circuit court erred in granting summary disposition for RVEA and Bender on plaintiff's claim of false light invasion of privacy. We disagree.

The tort of false light invasion of privacy is based on publicity that places plaintiff in a false light in the public eye. *Ledl v Quick Pik Stores*, 133 Mich App 583, 591-592; 349 NW2d 529 (1984).

> In order to maintain an action for false light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. [*Porter v City of Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995).]

In addition, the defendant must have known of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed. *Detroit Free Press v Oakland County Sheriff*, 164 Mich App 656, 666; 418 NW2d 124 (1987).

Plaintiff's false light claim is based on two groups of statements. The first is the Temple memo, which plaintiff alleged was adopted by Bender. As discussed above, Bender enjoys a qualified privilege regarding the memo. Moreover, the statements in the Temple memo were not "unreasonable or highly objectionable" considering the course of conduct between the parties. We agree with the circuit court that "after plaintiff has chosen to take off his gloves and engage in a street brawl, this Court will not sustain his cries of 'foul' when his own nose gets bloodied."

The second group of statements alleged by plaintiff to give rise to his false light claim includes those that plaintiff had been reprimanded and that falsely implied that plaintiff would be terminated. As noted above, plaintiff failed to submit evidence attributing these statements to RVEA or Bender. Therefore, plaintiff's false light invasion of privacy claim was properly dismissed by the circuit court.

V

Plaintiff also challenges the circuit court's dismissal of Count II, which alleged both interference with a contract and intentional infliction of emotional distress. We find no error in the circuit court's ruling.

A

Plaintiff's interference claim alleges two different torts, both recognized in Michigan: (1) the instigation of a breach of contract, and (2) the interference with an advantageous relationship. *Feaheny*

v Caldwell, 175 Mich App 291, 301; 437 NW2d 358 (1989). For interference with a contract, a plaintiff must demonstrate a breach of contract caused by the defendant. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287; 393 NW2d 610 (1986). For interference with a business relationship, a plaintiff must show an intentional interference inducing or causing a breach or termination of a relationship or expectancy. *Pryor v Sloan Valve Co*, 194 Mich App 556, 560; 487 NW2d 846 (1992).

As noted by the circuit court, plaintiff's employment relationship with the River Valley School District was never terminated. Consequently, summary disposition of this claim was appropriate. MCR 2.116(C)(8).

B

Defendant also alleged that RVEA committed intentional infliction of emotional distress. Our Supreme Court has adopted the following definition of this tort:

> One who by extreme outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. [*Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602; 374 NW2d 905 (1985) (quoting Restatement Torts, 2d, § 46, p71).]

The defendant's conduct must be "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." *Linebaugh v Sheraton Michigan Co*, 198 Mich App 335, 342; 497 NW2d 585 (1993).

The circuit court correctly determined that defendants' conduct was "not remotely close" to the extreme and outrageous conduct required to establish a claim of intentional infliction of emotional distress. At most, the conduct was more akin to "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," for which there is no liability. *Id*. Accordingly, we find the circuit court properly dismissed this claim.

VI

Plaintiff's final arguments challenge the circuit court's dismissal of his constitutional claims against RVSB and RVEA. Because plaintiff was not deprived of his constitutional rights, we find no error in the circuit court's ruling.

A

Plaintiff first alleges that he was deprived of his rights to free speech and due process in violation of 42 USC 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State of Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceedings for redress. . . [42 USC 1983.]

Section 1983 is not itself the source of substantive rights, but merely provides a remedy for the violation of rights guaranteed by the federal Constitution or federal statutes. *Carlton v Dep't of Corrections*, 215 Mich App 490, 502; 546 NW2d 671 (1996). Plaintiff must plead and prove that (1) he was deprived of a right secured by the Constitution and laws of the United States; and (2) that the defendants deprived him of this right while acting under color of law. *Montgomery v Detroit*, 181 Mich App 298, 308; 448 NW2d 822 (1989).

1

Plaintiff's complaint alleged that he was deprived of his right to free speech. Plaintiff must show that his speech involved a matter of public concern, as determined by the content, form, and context of a given statement as revealed by the whole record. *Connick v Meyers*, 461 US 138, 148 n7; 103 S Ct 1684; 75 L Ed 2d 708 (1983); *Michigan State AFL-CIO v Michigan Employment Relations Comm*, 212 Mich App 472, 495; 538 NW2d 433 (1995), aff'd 453 Mich 362 (1996).

Plaintiff's statements regarding RVEA and RVSB were solely of private concern, namely, plaintiff's application for a coaching position, his subsequent withdrawal from the union, and his payment of representation fees. As noted by the circuit court, "[p]laintiff cannot make it otherwise by accusation of misconduct, illegal deals, or 'fingers in the cookie jar.'" Plaintiff's §1983 action alleging a denial of his freedom of speech was properly dismissed.

2

Plaintiff also contends that he was deprived of his right to due process because he was denied a "name-clearing hearing." We disagree. The federal and state Constitutions guarantee that a person will not be deprived of life, liberty, or property without due process of law. US Const, Am V; Const 1963, art I, §17. "Invocation of the right to due process necessarily requires involvement of a life, liberty, or property interest." *City of St. Louis v Michigan Underground Storage Tank Financial Assurance Policy Bd*, 215 Mich App 69, 74; 544 NW2d 705 (1996).

It is undisputed that plaintiff did not lose his job or any benefits thereof. Any damage to his reputation, standing alone, would be insufficient "to invoke the guarantees of procedural due process absent an accompanying loss of government employment". *Paul v Davis*, 424 US 693, 706; 96 S Ct 1155; 47 L Ed 2d 405 (1976); *see Manning v Hazel Park*, 202 Mich App 685, 694; 509 NW2d 874 (1993). Plaintiff has failed to demonstrate that due process required that he be afforded a "name clearing" hearing, and the circuit court properly dismissed this count.

B

Plaintiff alleges that defendants conspired to deprive him of his rights in violation of 42 USC 1986, which states:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed shall be liable to the party injured . . .

Insofar as plaintiff failed to show a deprivation of constitutional rights, he has failed to state a claim under §1986. This count was properly dismissed by the circuit court.

VII

The circuit properly granted summary disposition as to each of plaintiff's claims against RVEA and RVSB. We therefore affirm the orders of the circuit court dismissing plaintiff's action in its entirety.

Affirmed.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Mary A. Chrzanowski

[1] It is without question that counts I-III of plaintiff's complaint all sound in tort. *Doe v Mills*, 212 Mich App 73, 79-80; 536 NW2d 824 (1995) (false light invasion of privacy); *Adams v NBD*, 444 Mich 329, 336; 508 NW2d 464 (1993) (defamation); *Gonyea v Motor Parts Fed Credit Union*, 192 Mich App 74, 80; 480 NW2d 297 (1991) (intentional infliction of emotional distress); *Feaheny v Caldwell*, 175 Mich App 291, 301; 437 NW2d 358 (1989) (interference with contract and business relationship).

[2] Repealed by 1995 PA 189 §§ 2 and 3 (1995).