

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

JANET TRUAX,

Plaintiff-Appellant,

v

TOWNSHIP OF CLINTON, DENNIS
TOMLINSON, JAMES SINNAMON, ROBERT
STEINER and NANCY DEDENBACH,

Defendants-Appellees.

UNPUBLISHED
October 14, 1997

Nos. 185686; 191344
Macomb Circuit Court
LC No. 94-004425-CZ

Before: Hood, P.J., and McDonald and Young, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals as of right from the trial court's grant of summary disposition to defendants under MCR 2.116(C)(10) (Docket No. 185686), and by delayed leave granted from the trial court's award of sanctions to defendants under MCL 600.2591; MSA 27A.2591 (Docket No. 191344). Plaintiff was the deputy supervisor in Clinton Township until the supervisor was accused of committing a felony, at which time plaintiff assumed the supervisor's duties. After the supervisor was convicted, the township board appointed a new supervisor. This case arises from plaintiff's failure to be appointed as the new township supervisor and her subsequent termination as deputy supervisor. We affirm.

In Docket No. 185686, plaintiff first argues that the trial court "abused its discretion" by dismissing all of plaintiff's substantive claims "without affording [p]laintiff the opportunity to discover facts in support of her claim, and without ruling on each claim." As explained fully below, we conclude that additional discovery would be futile in light of various legal deficiencies in plaintiff's case. See *Adams v Perry Furniture Co (On Remand)*, 198 Mich App 1, 14-15; 497 NW2d 514 (1993). Consequently, the trial court's decision granting summary disposition to defendants was not premature.

We now turn to plaintiffs' claims as they relate to her failure to be appointed to the office of township supervisor. Under Michigan law, where the office of the township supervisor becomes "vacant" due, among other things, to the supervisor's "conviction of any infamous crime, or of any

offense involving the violation of his oath of office," MCL 201.3; MSA 6.693, "the *vacancy shall* be filled by appointment by the township board, and the person appointed shall hold office for the remainder of the unexpired term." MCL 168.370(1); MSA 6.1370(1) (emphasis added).¹ That is exactly what happened here. We therefore reject plaintiff's contention that she was entitled to succeed to the office of township supervisor upon its vacancy.²

Next, because plaintiff did not, and was never entitled to, become township supervisor, we reject plaintiff's contention that the trial court erred in dismissing her claim that the township board "terminated" her from the position of township supervisor because of her sex in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* Likewise, as plaintiff never became township supervisor, and because plaintiff, as deputy supervisor, admittedly served at the pleasure of the township supervisor, MCL 41.61(2); MSA 5.52(2), she could have no reasonable expectation of just cause employment and her wrongful discharge claim was therefore properly dismissed. See *Manning v City of Hazel Park*, 202 Mich App 685, 693-694; 509 NW2d 874 (1993).

Plaintiff also claims that her First Amendment rights were violated by her termination as deputy supervisor. We disagree. MCL 41.61(2); MSA 5.52(2) contemplates a close working relationship between the deputy supervisor and the township supervisor. Thus, plaintiff was not protected by the First Amendment from discharge on the basis of her political beliefs, and summary disposition in favor of defendants was appropriate. See *James v City of Burton*, 221 Mich App 130, 133-134; 560 NW2d 668 (1997). Plaintiff also maintains that her termination deprived her of due process. Again, we disagree. Plaintiff's position as deputy supervisor was held at the will of the township supervisor. Therefore, plaintiff did not have a property right in her position and defendants were not obligated to comply with procedural due process in terminating plaintiff's employment. *Id.* at 134; *Manning, supra* at 694. By the same token, because her civil rights as secured by the United States Constitution were not violated, plaintiff cannot maintain an action under 42 USC 1983.

Plaintiff's claim of intentional infliction of emotional distress must also fail because the conduct alleged was not sufficiently outrageous as a matter of law. See *Grochowalski v DAIIE*, 171 Mich App 771, 775-776, 778-779; 430 NW2d 822 (1988). Finally, we reject plaintiff's claim of tortious interference with a contractual relationship because plaintiff cannot show that defendants were third parties who caused a breach of contract. See *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287; 393 NW2d 610 (1986). In light of our disposition, we need not address defendants' argument that plaintiff's claims are barred because she failed to bring in action in quo warranto.

In Docket No. 191344, plaintiff argues that the trial court erred in awarding defendants costs and attorney fees as sanctions under MCR 2.114(F) and MCL 600.2591; MSA 27A.2591. The trial court found that sanctions were appropriate in this case because plaintiff's claims were frivolous. On this record, we cannot say that the trial court's decision was clearly erroneous. See *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1990). Moreover, this Court reviews the reasonableness of an award of attorney fees only for an abuse of discretion. See *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97; 537 NW2d 471

(1995). Here, plaintiff has failed to demonstrate that the trial court abused its discretion in the amount of attorney fees awarded.

Affirmed.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Robert P. Young, Jr.

¹ The appointee's term is also subject to the provisions of MCL 168.370a; MSA 6.137(1).

² We note that plaintiff relies on MCL 41.61(2); MSA 52.2(2) and MCL 41.58; MSA 5.49 in support of her claim that she was entitled to succeed to the office of township survivor. We conclude that those statutory provisions are simply inapplicable to the facts of this case.