

STATE OF MICHIGAN  
COURT OF APPEALS

---

JAMES W. SAVAGE,  
Plaintiff-Appellant,

UNPUBLISHED  
November 1, 2002

v

TOWNSHIP OF LYON,  
Defendant-Appellee.

No. 230312  
Oakland Circuit Court  
LC No. 99-014926-CZ

---

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff began working for defendant township in 1995, filling in for Ed Chapman, the township building inspector and building official. When Chapman retired in 1997, plaintiff was offered the part-time position of building and mechanical inspector to replace Chapman and perform Chapman's former duties. Plaintiff testified that he was not told how long the job would last and was given no written contract. He was paid a percentage of the fees collected under his supervision.

In 1998, the township board decided to hire a full-time building inspector at a regular salary. At a meeting on May 14, 1998, the township board hired another full-time person to perform the duties of building inspector. According to plaintiff, no one specifically told him that he had been fired or terminated, or no longer had a job. However, after May 14, 1998, he was never contacted by the township to do any more inspections.

Plaintiff commenced this action, alleging that he was improperly terminated from his position with the township without just cause. The trial court granted defendant's motion for summary disposition, concluding that plaintiff could not establish that he had a just-cause employment relationship with the township.

We review a trial court's decision to grant or deny summary disposition de novo. *Muskegon Area Rental Ass'n v Muskegon*, 465 Mich 456, 463; 636 NW2d 751 (2001). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). After reviewing the evidence in the light most favorable to the nonmoving party, the court may grant summary disposition under MCR 2.116(C)(10) if

there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

As our Supreme Court observed in *Phillips v Butterball Farms Co, Inc*, 448 Mich 239, 244; 531 NW2d 144 (1995):

The general rule is that “in the absence of a contractual basis for holding otherwise, either party to an employment contract for an indefinite term may terminate it at any time for any, or no, reason.” [quoting *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982).]

Here, plaintiff does not allege a contractual basis for his claim that he was other than an at-will employee. Rather, the basis for plaintiff’s claim that he could be terminated only for just cause is grounded in the Building Officials and Code Administrators (BOCA) National Building Code, which was adopted by defendant township. Sections 104.1 and 104.2 of the BOCA code provide, in pertinent part:

**104.1 Code Official:** The department of building inspection is hereby created and the executive official in charge thereof shall be known as the code official.

[*Commentary*] The executive official in charge of the building department is named the “code official” by this section. In actuality, the person who is in charge of the department may hold a different title, such as building commissioner, building inspector, construction official, etc. For the purpose of the code, on being appointed, the person becomes the “code official.”

**104.2 Appointment:** The code official shall be appointed by the chief appointing authority of the jurisdiction; and the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.

[*Commentary*] This section establishes the code official as an appointed position from which the official cannot be removed, except for cause, subject to due process review. [BOCA National Building Code, Commentary Vol I, 1996 Edition, p 1-3.]

Plaintiff asserts that he was the “code official” for the township and, therefore, pursuant to § 104.2, he could not be removed from his position except for just cause.

Plaintiff contends that he was the “code official” for the township because, after Chapman retired, he assumed Chapman’s former duties in the building department, supervising and directing other employees. Plaintiff claimed that, at Chapman’s retirement party, he was congratulated by the township supervisor, Jim Atchison, and everyone told him, “you’re in charge.” Further, his state certification indicated that he was registered as a “code official” with the state as a building inspector, mechanical inspector, plumbing inspector and plan reviewer. Additionally, plaintiff claimed that he was identified by the township as the “code official” in the 1998 county directory.

Atchison, the township supervisor, testified at deposition that, after Chapman left, plaintiff was hired as an “inspector” to enforce the codes, but was not in charge of the building department. According to Atchison and other township employees, the township did not have a “building official” or “code official” prior to May 14, 1998.

The trial court determined that there was no factual basis to conclude that plaintiff was the “code official” entitled to just cause protection under the BOCA code. We find no error in that determination. As the trial court observed, § 104.2 of the BOCA code provides that “[t]he code official shall be appointed by the chief appointing authority of the jurisdiction.” Further, the status of an “executive official in charge” under § 104.1 also presumes a formal appointment. As the commentary to that section states, a person in charge of a building department only becomes a “code official” when “appointed,” presumably, as in § 104.2, by the chief appointing authority. Plaintiff did not present any evidence that he was duly appointed as the “code official.” Even assuming plaintiff was performing duties that a “code official” might otherwise perform, was designated or registered as a “code official” with the state and was informally told that he was “in charge,” he was not the “code official” within the meaning of the BOCA code, in the absence of a formal appointment by the township board.

We affirm.

/s/ E. Thomas Fitzgerald  
/s/ Richard A. Bandstra  
/s/ Hilda R. Gage