

**Court of Appeals, State of Michigan**

**ORDER**

Charles Melki v Charter Township of Clayton

Docket No. 306135

LC No. 09-091361-CL

William C. Whitbeck  
Presiding Judge

Patrick M. Meter

Pat M. Donofrio  
Judges

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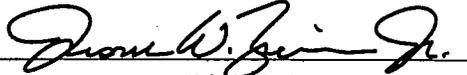
The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued June 18, 2013, and amended by order July 23, 2013, is hereby VACATED. A new opinion is attached to this order.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

**AUG 22 2013**

Date

  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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CHARLES MELKI,

Plaintiff-Appellee/Cross-Appellant,

v

CLAYTON CHARTER TOWNSHIP, BRUCE  
BEATTY, and CHARLES SHINOUSKIS,

Defendants-Appellants/Cross-  
Appellees.

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UNPUBLISHED  
August 22, 2013

No. 306135  
Genesee Circuit Court  
LC No. 09-091361-CL

ON RECONSIDERATION

Before: WHITBECK, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

In this dispute concerning the termination of plaintiff Charles Melki's employment with defendant Clayton Charter Township (Clayton Township), the defendants Clayton Township, Bruce Beatty, and Charles Shinouskis, appeal as on leave granted<sup>1</sup> an order granting in part and denying in part their motion for summary disposition. Plaintiff, Charles Melki, cross-appeals as of right.

Because Melki's employment contract contained a just-cause for termination provision that contravened the applicable provision in the governing ordinance we conclude that the trial court should have granted Clayton Township's motion for summary disposition on Melki's wrongful discharge claim against that township. We also conclude that Melki has abandoned the issue of Shinouskis's governmental immunity.

However, we conclude that Beatty was acting outside his authority as township supervisor when he discharged Melki and therefore was not entitled to governmental immunity, the trial court to the contrary. And because (1) Melki's contract was severable and (2) a plaintiff

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<sup>1</sup> *Melki v Clayton Charter Twp*, unpublished order of the Court of Appeals, entered December 28, 2011 (Docket No. 306135).

may maintain a claim for tortious interference with an at-will contract, Melki could bring a tortious interference claim against Beatty.

We affirm the trial court's grant of summary disposition concerning Shinouskis, reverse the trial court's grant of summary disposition to Beatty, reverse the trial court's denial of summary disposition to Clayton Township, and remand.

## I. FACTS

### A. BACKGROUND FACTS

In December 2002, Clayton Township's Board of Trustees (the Board) adopted Ordinance 406, which established the Clayton Township Police Department.<sup>2</sup> The ordinance provided that

The Township Board shall appoint a Chief, a full-time position, who shall be the chief administrative officer of the department. The Chief shall be accountable to the Township Board for the efficient and effective operation of the department, and for the department's compliance with all state laws, township ordinances and policies. The Chief shall serve at the pleasure of the Board.

The Board appointed Melki to the Chief position and, in December 2004, approved Melki's employment contract. The contract stated in pertinent part that "[t]he term of this just clause [sic] employment agreement shall be for life . . . ."

At his deposition, Melki testified that in March 2007, he began investigating Lloyd Swan, the Township's deputy treasurer, who allegedly took without authorization a check that was made out to the Township Clerk. After making no progress, Melki closed the investigation. However, he reopened the investigation in 2008 after Swan admitted in a civil case that he took the check to deprive the Clerk of the money. In May or June 2008, Melki also began investigating Ted Henry, Clayton Township's building inspector, after another employee alleged that Henry was not working all of the hours that he claimed to be working.

Melki testified that he decided to wait until after the 2008 general election to request a warrant for Swan because he did not want to favor any of the Board's candidates. Melki testified that he learned that Swan was affiliated with Beatty, who was running for the position of township supervisor. Beatty testified at his deposition that Swan worked on his campaign.

### B. REVIEW OF MELKI'S CONTRACT

Beatty was elected and, on November 24, 2008, Melki sent Beatty a memo introducing himself. Melki testified that he met with Beatty a few days later, and informed him about his investigations of Swan and Henry. According to Melki, he understood that Swan and Beatty

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<sup>2</sup> Clayton Township Ordinance No. 406.

were friends and he wanted to give Beatty “a heads up that I was going to do my job . . . .” Melki testified that Beatty appeared angry, grimaced, and made “a sour face.”

On November 25, 2008, the Board authorized Beatty to have an impartial attorney review the contract of Steven Iamarino, the township attorney, which expired in May 2010. The Michigan Townships Association referred Beatty to attorney John Bauckham, who informed the Board that both Iamarino’s and Melki’s contracts were void because they extended beyond the term of the board that negotiated the contracts.

On December 4, 2008, Beatty suspended Melki, Iamarino, and Henry “until the Clayton Township Board determines the process of a new contract . . . .” On December 11, 2008, Shinouskis moved to reinstate Melki, Iamarino, and Henry for 60 days, “for the reconstruction of at-will employment contracts[.]” The Board approved the motion.

On December 18, 2008, Beatty moved to “rescind our previous motion of December 11, 2008” and to reinstate Melki, Iamarino, and Henry “under their contracts, that were in effect as of November 20, 2008 to allow the new Board and those employees to work on new contracts that are acceptable to each contracted employee and Township Board before the regular meeting of the Township Board to be held on March 12, 2009.” Clayton Township’s Board adopted the motion.

#### C. MELKI’S SUSPENSION AND HAMMON’S TERMINATION

While Melki was suspended, Sergeant David Hammon was the senior officer in the department. Melki testified that during his suspension, materials pertinent to the Henry and Swan investigations went missing from Melki’s office. On January 9, 2009, Melki informed Iamarino that he had terminated Sergeant Hammon’s employment. According to Melki, Sergeant Hammon stated that he did not know where the missing investigation materials were located. Melki informed Iamarino that the department’s security cameras had been deactivated during his suspension. Melki also informed Iamarino that Sergeant Hammon’s desk contained an internal affairs report of a fatal shooting in which Melki had been involved, which should not have been in Sergeant Hammon’s office. Melki testified that he terminated Sergeant Hammon’s employment for untruthfulness and for deactivating the security cameras, which was against the police department’s guidelines.

Beatty informed Melki that he needed copies of statements from various persons involved in Sergeant Hammon’s termination. After expressing reservations concerning releasing sensitive internal affairs material, Melki relinquished the documents.

#### D. RESOLUTION VOIDING MELKI’S CONTRACT

Clayton Township’s Board held a special meeting on March 4, 2009. At that meeting, Beatty’s attorney, Charles Forrest, explained that he had drafted a resolution after consulting with Beatty and Shinouskis. The resolution provided in part “that the contract with Chief Melki is void as extending beyond the terms of the Township Board . . . and accordingly, the said contract as previously extended for the purpose of allowing this Board to examine an appropriate course of action is terminated and shall have no force and effect beyond March 12, 2009.” The resolution also proposed to redefine the duties of the police chief and provided that “until the

position has been filled pursuant to a competitive process based upon a recommendation of the Supervisor and approved by the Board, the senior member of the Department shall serve as Acting Chief . . .” Beatty moved that the Board adopt the resolution.

When Dennis Milem, the Township Clerk, specifically asked if the resolution would fire Melki, Forrest responded, “No, that is a distortion, the Resolution states that the contract is void, the Chief is not fired.” Clayton Township’s Board voted 4-3 in favor of the motion. Jennifer Henry, a Clayton Township Trustee, testified at deposition that “my vote was that he did not have a lifetime valid contract. The termination is not what I voted on.”

Shortly after the end of the board meeting, Beatty hand-delivered a letter to Melki, informing him that

[t]he Board has passed the attached resolution which, among other things, confirms the earlier determination that your contract is void as extending between the terms of the Township Board that negotiated the contract thereby impairing the statutory authority of the newly elected Township Board. Accordingly, although pursuant to the previously granted extension, you will be paid until March 12, 2009, you are hereby, forthwith, relieved of day to day duties and are directed to turn in to me as soon as possible your badge, Township issued firearm and other Township owned property.

#### E. PROCEDURAL HISTORY

Melki sued Clayton Township, Beatty, and Shinouskis, alleging in parts pertinent to this appeal that (1) the Board wrongfully discharged him in violation of his just-cause employment contract, and (2) Beatty and Shinouskis interfered with his contractual relationship with Clayton Township.

The defendants moved for summary disposition under MCR 2.116(C)(7) and (10), contending that Melki’s employment contract was void as a matter of law, and Melki could not establish tortious interference with a contractual relationship because Beatty and Shinouskis were parties to Melki’s contract.

The trial court denied the defendants’ motion concerning wrongful discharge on the basis that Melki had a just-cause contract. The trial court granted the defendants’ motion on Melki’s individual claims on the basis that Beatty and Shinouskis were acting as township officials and thus were personally immune from the lawsuit or, alternatively, they were third parties to Melki’s contract.

## II. WRONGFUL DISCHARGE

### A. STANDARD OF REVIEW

This Court reviews de novo questions of law, including issues of statutory interpretation and of the interpretation of ordinances.<sup>3</sup>

This Court also reviews de novo the trial court's determination on a motion for summary disposition.<sup>4</sup> A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."<sup>5</sup> The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.<sup>6</sup>

Once the moving party has identified issues in which there are no disputed issues of material fact, the burden is on the nonmoving party to show that disputed issues of fact exist.<sup>7</sup> A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue.<sup>8</sup>

### B. LEGAL STANDARDS

There are two theories for a wrongful discharge claim: (1) an express agreement for just-cause employment, and (2) an employee's legitimate expectation of just-cause employment.<sup>9</sup>

### C. APPLYING THE STANDARDS

Though both Melki and Clayton Township ask this Court to determine whether Melki's contract was void as a matter of law on the basis that an outgoing board cannot bind an incoming board to a contract that extends beyond the outgoing board's term, this issue actually has little bearing on this case. On December 18, 2008, the Board rescinded its December 11, 2008 resolution to reinstate Melki for 60 days, and resolved to reinstate Melki under the contract "that w[as] in effect as of November 20, 2008 to allow the new Board and those employees to work on

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<sup>3</sup> *United Parcel Serv, Inc v Bureau of Safety and Regulation*, 277 Mich App 192, 202; 745 NW2d 125 (2007); *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998).

<sup>4</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

<sup>5</sup> MCR 2.116(C)(10); *Maiden*, 461 Mich at 120.

<sup>6</sup> MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

<sup>7</sup> MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

<sup>8</sup> *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

<sup>9</sup> *Toussaint v Blue Cross & Blue Shield*, 408 Mich 579, 598; 292 NW2d 880 (1980); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 116; 512 NW2d 13 (1993).

new contracts . . . .” Thus, the contract in this case was not void on this ground. If the incoming Board *could* be bound to Melki’s contract, it bound *itself* to his contract.

However, a public body cannot bind itself to a contract that violates its own governing ordinances. We conclude that the just-cause provision of Melki’s contract is void because it conflicts with Clayton Ordinance No. 406. The just cause provision therefore violates Clayton Township’s own governing ordinance, which states that, “The Chief shall serve at the pleasure of the Board.”

“At common law all contracts in violation of law are void.”<sup>10</sup> A contractual clause that is prohibited by a statute is void and unenforceable.<sup>11</sup> An ordinance has the same force as a statute.<sup>12</sup> It logically follows that a contractual clause that violates an ordinance is also void and unenforceable.

Here, again, the ordinance provides that the police chief “shall serve at the pleasure of the board.” A statement that an appointee holds office at the pleasure of a locality is a clear and unambiguous statement that “creates an unequivocal at-will employment policy[.]”<sup>13</sup> Thus, the ordinance’s language is unequivocal in its indication of at-will employment. But Melki’s contract, which the Board adopted by resolution, provides that his employment may only be terminated with cause. A resolution does not override an ordinance.<sup>14</sup> The ordinance precluded entering into exactly the sort of agreement that Melki and Clayton Township entered into in this case. To the extent that Melki’s contract purports to establish a just-cause relationship, it is void as conflicting with the ordinance. However, as we will explain below, since the contract is severable, the conflict voids only the illegal just-cause provision of Melki’s contract.<sup>15</sup>

The Michigan Supreme Court’s decision in *Pandy v Bd of Water & Light*<sup>16</sup> is distinguishable. In that case, the city’s charter provided that a director would serve at the pleasure of the city’s board, and the parties’ contract provided that it could be terminated with or without cause.<sup>17</sup> The Michigan Supreme Court determined that this meant “that the plaintiff served ‘at the pleasure’ of the Board.”<sup>18</sup> But here, the contract clearly provides that Melki’s

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<sup>10</sup> *Bagg v Jerome*, 7 Mich 145, 157 (1859).

<sup>11</sup> *Mino v Clio School Dist*, 255 Mich App 60, 71; 661 NW2d 586 (2003).

<sup>12</sup> *Gale v Bd of Supervisors of Oakland Co*, 260 Mich 399, 404; 245 NW2d 363 (1932), quoting *In re Seely*, 114 Misc 633; 187 NYS 130 (1921).

<sup>13</sup> *Manning v City of Hazel Park*, 202 Mich App 685, 693; 509 NW2d 874 (1993).

<sup>14</sup> See *Saginaw v Consumers’ Power Co*, 213 Mich 460, 469; 182 NW2d 146 (1921); *Lee v Taylor*, 63 Mich App 221, 223; 234 NW2d 483 (1975).

<sup>15</sup> See *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 641; 534 NW2d 217 (1995).

<sup>16</sup> *Pandy v Bd of Water & Light*, 480 Mich 899; 739 NW2d 86 (2007).

<sup>17</sup> *Id.* at 899-900.

<sup>18</sup> *Id.* at 900.

employment may only be terminated with cause. Therefore, Melki does not serve “at the pleasure of the board,” as Clayton Ordinance 406 requires.

We conclude that Melki’s contract is void to the extent that it purports to be a just-cause employment contract. Therefore, because Melki has at best demonstrated that he had an at-will employment contract, the trial court should have granted Clayton Township’s motion for summary disposition on Melki’s wrongful discharge claim.

### III. GOVERNMENTAL IMMUNITY

#### A. STANDARD OF REVIEW

This Court reviews de novo the trial court’s determination on a motion for summary disposition.<sup>19</sup> A defendant is entitled to summary disposition under MCR 2.116(C)(7) if the plaintiff’s claims are barred because of immunity granted by law.<sup>20</sup> The moving party may support its motion with affidavits, depositions, admissions, or other documentary evidence.<sup>21</sup> We must consider this evidence and determine whether it indicates that the defendants are entitled to immunity.<sup>22</sup>

#### B. LEGAL STANDARDS

Governmental immunity may protect township board members from tort liability.<sup>23</sup> “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.”<sup>24</sup>

#### C. APPLYING THE STANDARDS

Melki asserts that the trial court erred when it determined that Beatty and Shinouskis were acting within the scope of their authority when they discharged him.

Concerning Shinouskis, Melki has provided no authority to support that Shinouskis’s actions—accompanying Beatty to Melki’s office when Beatty suspended Melki on December 8, 2012, and preparing a resolution for the board’s consideration—exceeded the scope of Shinouskis’s authority as one of the Board’s Trustees. A party may not “give issues cursory

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<sup>19</sup> *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*; MCR 2.116(G)(5).

<sup>22</sup> *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011).

<sup>23</sup> *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 594; 640 NW2d 321 (2001).

<sup>24</sup> MCL 691.1407(5).

treatment with little or no citation of supporting authority.”<sup>25</sup> A party’s failure to address the merits of an issue constitutes abandonment of that issue.<sup>26</sup> We conclude that Melki has abandoned this issue.

Concerning Beatty, we agree that the trial court’s determination that he was entitled to governmental immunity was erroneous. We conclude that Beatty was acting outside of his authority as the township supervisor when he discharged Melki.

#### 1. AUTHORITY AS A PERSONNEL DIRECTOR

We disagree with Beatty’s contention that he was acting within the automatic authority of a township supervisor to act as a personnel director of a township. MCL 42.10 allows a township “to appoint a township superintendent” and provides that the township may delegate to him or her “the duties and responsibilities as personnel director of all township employees.”<sup>27</sup> In the absence of such a delegation, the township supervisor exercises these duties.<sup>28</sup>

However, MCL 42.12 provides that

[t]he township board in each charter township may provide for and establish a police force and authorize the supervisor, or the township superintendent if one has been appointed, *to appoint, subject to the approval of the said board*, a township marshal and other such policemen and watchmen as may be required . . . . The township board shall make all necessary rules for the government of the township police force and its members and shall prescribe the powers and duties of policemen and watchmen . . . .

The Michigan Attorney General has opined that when a township board must approve a township supervisor’s appointment of an employee, he or she may not then terminate the employee’s appointment without the approval of the township board:

Since the township supervisor needs the authorization by statute, township ordinance, or by delegation of the township board to hire people, and must be specifically authorized to set salaries, the supervisor would likewise need authorization by statute, township ordinance, or by delegation of the township board to unilaterally terminate the employment of a township employee.

It is my opinion, therefore, that in a charter township a township supervisor, in the absence of a township ordinance or delegation of authority of

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<sup>25</sup> *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

<sup>26</sup> *Id.*

<sup>27</sup> MCL 42.10(n).

<sup>28</sup> MCL 42.10.

the township board, may not unilaterally terminate the employment of a township employee without the prior approval of the township board.<sup>1[29]</sup>

While opinions of the attorney general are not binding on this Court, we may consider them as persuasive authority.<sup>30</sup> We consider this attorney general’s opinion persuasive because it is consistent with the language of MCL 42.12.

We agree that MCL 42.10(n)’s general grant to a township supervisor of “duties and responsibilities as personnel director of all township employees” and MCL 42.12’s provision providing that appointments of policemen are subject to the approval of the township board, arguably conflict. When two statutory provisions arguably conflict, the more specific provisions “prevail over any arguable inconsistency with the more general rule . . . .”<sup>31</sup> A statutory provision is more specific when it “applies to a more narrow realm of circumstances[.]”<sup>32</sup>

Here, MCL 42.12 is more specific because it applies to a narrower realm of circumstances—those personnel decisions which affect the township’s police force—while MCL 42.10(n) applies to all township personnel. We conclude that, to the extent that the language of MCL 42.10(n) and MCL 42.12 may arguably conflict, the language of MCL 42.12 controls the outcome of this case. Therefore, a township supervisor may only unilaterally terminate the employment of policemen, such as the police chief, if the supervisor is authorized to do so by a delegation of the township board. We reject Beatty’s assertion that MCL 42.10(n) determines the scope of his duties as they apply to police officers because MCL 42.12 more specifically defines the scope of those duties.

## 2. THE *MARROCCO* FACTORS

In *Marrocco v Radlett*, the Michigan Supreme Court provided that whether an act was in an official’s executive authority depends on factors that include (1) the nature of the acts alleged, (2) the position held by the official who performed the acts, (3) the charter, ordinances, or local law defining the official’s authority, and (4) the structure and allocation of powers in a particular level of government.<sup>33</sup> The purpose of this test is to determine whether the official intentionally misused a badge of governmental authority for a purpose that was not authorized by law.<sup>34</sup>

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<sup>29</sup> OAG, 1981-1982, No 5939, pp 277-278 (August 3, 1981).

<sup>30</sup> *Mich Ed Ass’n Political Action Comm v Secretary of State*, 241 Mich App 432, 441-442; 616 NW2d 234 (2000).

<sup>31</sup> *Miller v Allstate Ins Co*, 481 Mich 601, 613; 751 NW2d 463 (2008), quoting *Jones v Enertel, Inc*, 467 Mich 266, 271; 650 NW2d 334 (2002).

<sup>32</sup> *Miller*, 481 Mich at 613.

<sup>33</sup> *Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988); *Armstrong*, 248 Mich App at 592.

<sup>34</sup> *Marrocco*, 431 Mich at 707-708.

Considering these factors, we conclude that Beatty was not acting within the scope of his authority as an executive official. The township’s charter, its ordinances, and the laws of Michigan do not favor Beatty’s contention that he was acting within the scope of his authority when he terminated Melki’s employment. As discussed above, concerning a township police force, MCL 42.12 provides the authority for the township board in a charter township to establish a police force and allows the township supervisor to “appoint, subject to the approval of the said board, a township marshal and other such policemen . . . .” This statutory grant of authority to create positions implies the authority to abolish them.<sup>35</sup> However MCL 42.12 constrains the supervisor’s authority by making it “subject to the approval of the board.” MCL 42.12 further provides that a *board* shall make “rules for the government of the township police force and its members.”

Here, the Board’s December 18, 2009 resolution provided only that

henceforth, there shall be a regular system of reporting by the Police Chief to the Supervisor and all personnel action shall be subject to approval and ratification by the Supervisor in his capacity as Personnel Director and Board action, as necessary, consistent with the Employees Policies & Procedures Manual shall be taken.

The resolution provided that the police chief’s personnel decisions would be subject to the supervisor’s approval and ratification, but did *not* provide that the supervisor acting alone could decide to terminate the police chief’s employment. There is no indication that the Board actually and formally delegated to Beatty the authority to act on its behalf.

The structure and allocation of the township level of government also does not support Beatty’s position. A charter township only exercises legislative authority, though the township board—as a local body of government—may also exercise executive powers.<sup>36</sup> A township supervisor is not automatically a township’s executive officer.”<sup>37</sup> We conclude that the structure of township government does not support Beatty’s argument that he was acting within his authority.

Finally, the resolution itself does not support Beatty’s position. The resolution says nothing about terminating Melki’s employment. It voided his contract, extended the duties of the police chief, provided that the senior officer of the police department would serve as acting chief until the Board selected a new chief, and provided that “all personnel action shall be subject to approval and ratification by the Supervisor . . . .” But nothing in the language of the resolution prohibits Melki, as the senior officer of the police department, from acting as chief “until the position has been filled[.]”

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<sup>35</sup> *Armstrong*, 248 Mich App at 589-590.

<sup>36</sup> *Armstrong*, 248 Mich App at 587-588.

<sup>37</sup> *Id.* at 588, 590.

We conclude that the trial court improperly granted summary disposition to Beatty on Melki's tortious inference claim on the basis of governmental immunity. None of the *Marrocco* factors support Beatty's argument that he was acting within the scope of his authority when he terminated Melki's employment.

#### IV. TORTIOUS INTERFERENCE

##### A. STANDARD OF REVIEW

This Court reviews de novo the trial court's determination on a motion for summary disposition.<sup>38</sup> A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."<sup>39</sup> The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.<sup>40</sup> A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue.<sup>41</sup>

##### B. LEGAL STANDARDS

"The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant."<sup>42</sup>

##### C. EXISTENCE OF MELKI'S CONTRACT

Beatty asserts that Melki's tortious interference claim fails because he cannot establish that he had a contract. We conclude that the trial court need not dismiss Melki's claim for breach of contract on that basis.

That the just-cause portion of Melki's contract is void as a matter of law does not void Melki's entire contract. Generally, "the failure of a distinct part of a contract does not void valid, severable provisions."<sup>43</sup> Whether a contract is severable depends on the intent of the parties.<sup>44</sup> Here, the parties' contract provides that if any part of the contract is void, "the agreement shall

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<sup>38</sup> *Maiden*, 461 Mich at 118; *Latham*, 480 Mich at 111.

<sup>39</sup> MCR 2.116(C)(10); *Maiden*, 461 Mich at 120.

<sup>40</sup> MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

<sup>41</sup> *Allison*, 481 Mich at 425.

<sup>42</sup> *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005).

<sup>43</sup> *Samuel D Begola Servs, Inc*, 210 Mich App at 641; see *Stevenson v Brotherhoods Mut Benefit*, 312 Mich 81, 88; 19 NW2d 494 (1945).

<sup>44</sup> *Samuel D Begola Servs*, 210 Mich App at 641; *Stevenson*, 312 Mich at 87.

be treated as severed from the balance of the agreement, which shall have continuing force and effect.”

As discussed previously, on December 22, 2008, the Board reinstated Melki under his contract. When the void, just-cause provision of Melki’s contract is severed from the remainder of his contract, Melki still was employed under a contract, albeit an at-will contract. A plaintiff may maintain a claim for tortious interference with an at-will contract.<sup>45</sup> Thus, Melki did have a contract on which he could maintain a tortious interference claim.

#### D. WHETHER BEATTY WAS A THIRD PARTY TO THE CONTRACT

Melki asserts that the trial court erred when it determined that Beatty was not a third party to his contract. Beatty asserts that he was not a third party to the contract, because the Board’s March 4, 2009 resolution granted Beatty the authority to terminate Melki’s employment on behalf of the Board.

“[T]he plaintiff must establish that the defendant was a ‘third party’ to the contract rather than an agent of one of the parties acting within the scope of its authority as an agent.”<sup>46</sup> When a plaintiff claims that a defendant interfered with an at-will employment contract, “where the defendant is an officer of the employer, a plaintiff has the particularly heavy burden of proving that the officer was acting outside the scope of her authority.”<sup>47</sup> An agent is not liable for tortious interference “unless they acted solely for their own benefit with no benefit to the corporation.”<sup>48</sup>

While Beatty was a member of the Board, we conclude that there is a question of fact concerning whether Beatty was an agent of the board acting within the scope of his authority, or, conversely, whether he acted solely for his own benefit. As discussed above, there is no indication that Beatty was acting within the scope of his authority when he terminated Melki’s employment. Beatty acted unilaterally to suspend Melki. Subsequently, at the meeting on December 11, 2008, Milem “informed the residents that . . . the suspensions were done without Board approval” and the Board subsequently reinstated him.

The resolution does not indicate that it authorized Beatty to terminate Melki’s employment. Additionally, at the meeting discussing the resolution, Milem specifically asked if the resolution would “fire” Melki. Forrest, who drafted the resolution on Beatty’s and Shinouskis’s behalf, stated that it would not. Shortly after the end of the Board meeting, Beatty hand-delivered a letter to Melki that informed Melki that “the attached resolution . . . confirms the earlier determination that your contract is void” and “relieved [him] of day to day duties[.]”

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<sup>45</sup> *Patillo v Equitable Life Assurance Society of the United States*, 199 Mich App 450, 457; 502 NW2d 696 (1993).

<sup>46</sup> *Lawsuit Financial, LLC v Curry*, 261 Mich App 579, 593; 683 NW2d 233 (2004).

<sup>47</sup> *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 657; 513 NW2d 441 (1994).

<sup>48</sup> *Reed v Mich Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993).

Jennifer Henry, one of the Board's Trustees, testified at deposition that she voted to void the contract, but her vote was not to terminate Melki's employment. But Beatty testified that he terminated Melki's employment because his contract was void.

Viewing this evidence in the light most favorable to Melki, we conclude that reasonable minds could differ concerning whether Beatty acted solely for his own benefit when he terminated Melki's employment.

#### E. UNJUSTIFIED CONDUCT

Beatty contends that Melki did not demonstrate that Beatty's conduct was unjustified. We disagree.

Unjustified actions include those actions that are (1) wrongful per se, or (2) lawful acts done with malice, for the purpose of invading another's contractual rights.<sup>49</sup> An act is wrongful per se when it cannot be justified under any circumstances.<sup>50</sup> "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference."<sup>51</sup>

We conclude that Beatty's actions were not wrongful per se. We are not convinced that Beatty's termination of Melki's employment, standing alone and without the prior authorization of the Board, while unauthorized, was an act that was so wrongful that it could not be justified under any circumstance.

However, we also conclude that Melki has provided evidence of specific, affirmative acts that would corroborate that Beatty had an unlawful purpose for his interference. Melki provided evidence that Beatty reacted negatively when Melki informed him that he was investigating Swan and Henry. Swan was Beatty's campaign manager. Beatty acted alone to suspend Melki, and the suspension was overturned by the Board.

After Melki's return from his suspension, his relationship with Beatty remained contentious. Beatty, through his attorney, subsequently drafted and proposed a resolution at the March 4, 2009 meeting of the Clayton Township Board. In response to questions, Beatty's attorney stated that the resolution did not fire Melki. Shortly following the Board's adoption of the resolution, Beatty gave Melki a letter that, in effect, fired him. We conclude that reasonable minds could differ concerning whether Beatty's actions were done for the purposes of invading Melki's contractual rights.

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<sup>49</sup> *Patillo*, 199 Mich App at 457.

<sup>50</sup> *Baidee v Brighton Area Sch Dist*, 265 Mich App 343, 367; 695 NW2d 521 (2005).

<sup>51</sup> *CMI Int'l v Internet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002).

## V. CONCLUSION

We reverse the trial court's denial of summary disposition of Melki's wrongful discharge claim, affirm the trial court's dismissal of Melki's tortious interference claim against Shinouskis, reverse the trial court's dismissal of Melki's claim of tortious interference against Beatty, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Patrick M. Meter

/s/ Pat M. Donofrio