

STATE OF MICHIGAN
COURT OF APPEALS

JAMES W. EGGED,

Plaintiff-Appellant,

v

CITY OF LIVONIA, and FIRE FIGHTERS
UNION LOCAL 1164,

Defendants-Appellees.

UNPUBLISHED

August 19, 2003

No. 240635

Wayne Circuit Court

LC No. 00-041209-CL

Before: Jansen, P.J., and Neff and Kelly, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's grant of summary disposition in favor of defendants in this breach of contract (wrongful discharge) claim against defendant City of Livonia and breach of duty of fair representation claim against defendant Firefighters Union, Local 1164. We affirm.

I

Plaintiff was employed by the city as a firefighter and was a member of the Firefighters Union, Local 1164. In April 1999, plaintiff received a one-day suspension for writing a letter to the Health Emergency Medical Services (HEMS),¹ raising concerns about an emergency medical response call by two of the city's paramedics and questioning the services rendered and the response time. The city also ordered plaintiff to undergo a psychological evaluation, which concluded that plaintiff was permanently unfit for duty. On September 13, 1999, the city terminated plaintiff's employment. Plaintiff initially directly appealed the termination to the Livonia Civil Service Commission (CSC) and thereafter invoked the union grievance process. Following a hearing before the CSC on May 18, 2000,² and June 28, 2000, the CSC upheld plaintiff's discharge.

¹ According to plaintiffs, HEMS is a quasi-public agency charged in part with monitoring wrongful or perceived wrongful conduct by paramedics employed by municipalities.

² According the CSC May 18, 2000 meeting minutes, plaintiff's hearing was previously adjourned on September 29, 1999, March 29, 2000, and April 18, 2000, at plaintiff's request. The May 18 hearing was continued to June 28 at plaintiff's request to review documents submitted by the city and to schedule medical testimony on plaintiff's behalf.

On December 26, 2000, plaintiff filed this action in circuit court, claiming that the city terminated his employment without just cause contrary to the union's labor contract and claiming that the union breached its duty of fair representation by failing to represent plaintiff before the CSC. The court granted the city's motion for summary disposition under MCR 2.116(C)(4) on the basis that plaintiff's challenge of the CSC decision could only be brought by a commencement of an original action for superintending control, MCR 3.302. The court subsequently granted the union's motion for summary disposition under MCR 2.116(C)(8) and (10)³ on the grounds that the union did not decline to represent plaintiff before the CSC and the alleged conduct did not constitute a breach of the duty of fair representation, and under MCR 2.116(C)(7) on the ground that the claim was not brought within the six-month limitation period.

II

This Court reviews de novo the trial court's grant of summary disposition to determine whether the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is properly granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court considers the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

Summary disposition may be granted under MCR 2.116(C)(7) because an action is time barred. *Maiden, supra* at 118 n 3; *Vandenberg v Vandenberg*, 253 Mich App 658, 660; 660 NW2d 341 (2002). In ruling on a motion for summary disposition under this subrule, the court considers all affidavits, pleadings, and other documentary evidence submitted. *Maiden, supra* at 119; *Vandenberg, supra*.

III

Plaintiff first claims that the union breached its duty of fair representation by failing to investigate plaintiff's grievance and failing to represent him before the CSC. Therefore, presumably, the trial court erred in granting summary disposition in favor of the union. We disagree.

Plaintiff asserts that a union has a duty of fair representation to its members as their exclusive bargaining representative, citing *Quinn v Police Officers Labor Council*, 216 Mich App 237; 548 NW2d 692 (1996).⁴ Plaintiff argues that the union breached its duty by acting

³ Because the motion involved the consideration of evidence beyond the pleadings, it is properly considered pursuant to MCR 2.116(C)(10). *Wayne Co v Plymouth Charter Twp*, 240 Mich App 479, 480 n 2; 612 NW2d 440 (2000).

⁴ This Court's decision was reversed on appeal, 456 Mich 478; 572 NW2d 641 (1998). In *Quinn*, the plaintiff's grievance was not processed because there was a dispute concerning which of two unions was responsible for processing the grievance when one union was decertified and replaced by a different union. *Quinn, supra* at 479-481. The Supreme Court held that while a union's authority is premised on its status as an exclusive representative, that status did not

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arbitrarily, capriciously, and in bad faith in processing plaintiff's grievance, e.g., failing to fully investigate his grievance; sending the grievance to the CSC, rather than arbitration, contrary to plaintiff's wishes and despite knowledge that an arbitrator would be more fair to plaintiff; failing to represent plaintiff at the CSC hearing; and routinely having its attorney present at arbitration, but maintaining that the union had no obligation to represent plaintiff before the CSC. Plaintiff further asserts that the union was committed to losing plaintiff's grievance, and it pursued a course of inaction to ensure that plaintiff would lose his case before the CSC.

Plaintiff has failed to show sufficient legal and factual support for his arguments, and thus we find no error in the grant of summary disposition. Plaintiff initiated his appeal with the CSC, and his grievance was fully heard in that forum. The uncontroverted evidence established that the union did not refuse to represent plaintiff. Plaintiff of his own accord retained an attorney to represent him. It is undisputed that under the CBA grievance procedure, the union grievance committee could elect to appeal plaintiff's grievance to either arbitration or the CSC. The grievance committee elected to appeal plaintiff's grievance to the CSC. With regard to the alleged lack of representation, plaintiff had an attorney representing his interests, and the union acted accordingly. Plaintiff does not dispute that the union recommended he obtain a second medical opinion. There is no evidence that the union abdicated its responsibility under the law.

A union has considerable discretion in evaluating and deciding the proper course of action with respect to grievances. *Goolsby v Detroit*, 419 Mich 651, 662-664; 358 NW2d 856 (1984). Although plaintiff is unsatisfied with the outcome of his appeal to the CSC, the uncontroverted evidence establishes no breach of duty. *Goolsby, supra* at 681-682; *Pearl v Detroit*, 126 Mich App 228, 235, 237; 336 NW2d 899 (1983).

Because summary disposition was proper under MCR 2.116(C)(10), we need not determine whether it was properly granted on the ground that plaintiff's claim was time-barred, MCR 2.116(C)(7). Nonetheless, we find no error in the court's conclusion that plaintiff's claim accrued before the June 28, 2000 CSC hearing and was therefore not filed within the six-month limitation period. *Huntington Woods v Wines*, 122 Mich App 650, 652; 332 NW2d 557 (1983). The limitation period commences when a person knows of the act that caused the injury and has good reason to believe that the act was improper or done in an improper manner. *Id.* As the court noted, at the May 2000 CSC hearing, plaintiff was represented by his attorney, not the union.

III

Plaintiff next claims that the CSC decision should be set aside because the union's breach of its duty seriously flawed the provisions of the collective bargaining agreement. In light of our above finding of no breach of duty, we need not decide the merits of this claim. *Id.* at 239.

(...continued)

necessarily extinguish obligations under a preexisting contract such that the union that began processing the plaintiff's grievance was no longer responsible for pursuing it upon decertification. *Id.* at 483, 486.

Similarly, because we find no error in the dismissal of plaintiff's claim against the union, we need not address plaintiff's argument that he should be allowed to proceed in circuit court without seeking an order of superintending control under MCR 3.302. The city correctly observes that absent a statute or court rule providing for review of a municipal civil service commission's decision, the circuit court has no jurisdiction to hear an appeal of the CSC decision. *Robertson v Detroit*, 131 Mich App 594, 597; 345 NW2d 695 (1983); see also LeDuc, Michigan Administrative Law, ch 8, §§ 8:06-8:07, pp 560-561 (circuit courts do not have jurisdiction to hear appeals from municipal administrative agencies absent a statute or court rule authorizing such an appeal). Plaintiff cites no statute or rule as a basis of jurisdiction. However, because plaintiff asserts that he is not seeking review of the decision by the CSC, but rather seeks to have the decision set aside on the basis of the union's breach of duty of fair representation, the matter of jurisdiction is not at issue.

IV

Defendants' requests that this Court impose sanctions against plaintiff for a frivolous and vexatious appeal are denied.

Affirmed.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly