

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WILLIE J. MITCHELL,

Plaintiff-Appellant,

v

CITY OF BENTON HARBOR and JOEL  
PATTERSON,

Defendants-Appellees.

---

UNPUBLISHED  
February 12, 2004

No. 244508  
Berrien Circuit Court  
LC No. 02-003545-CL

Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant City of Benton Harbor under MCR 2.116(C)(10).<sup>1</sup> We affirm.

On May 1, 2000, plaintiff entered into an employment contract with defendant City of Benton Harbor in which plaintiff agreed to serve as Benton Harbor's Chief Code Enforcement Officer in exchange for an annual salary of \$35,000. Plaintiff and Ron Singleton, who was then the acting city manager of Benton Harbor, both signed the employment contract. Under the terms of the contract, plaintiff agreed to remain in defendant City of Benton Harbor's employment for five years. In addition, the employment contract provided that if plaintiff were terminated for any reason that did not constitute just cause, he would be entitled to severance pay in the form of a lump sum payment to compensate him for his salary for the remainder of the contractual period of employment.

On October 12, 2001, defendant Joel Patterson, who was then the city manager of Benton Harbor, gave plaintiff a "Notice of Termination" letter, which advised plaintiff that defendant Patterson was "terminating [plaintiff's] employment relationship with the City of Benton Harbor

---

<sup>1</sup> At trial, plaintiff consented to the trial court's granting of summary disposition in favor of defendant Joel Patterson, and raises no issue on appeal regarding that dismissal. Accordingly, our review is limited to whether the trial court properly granted summary disposition in favor of defendant City of Benton Harbor.

effective as of 5:00 p.m. today.” The notice was silent regarding the reasons for the termination of plaintiff’s employment and did not indicate that defendant Patterson was terminating plaintiff for any of the four reasons for termination that were enumerated in the employment contract as constituting “just cause.”

Thereafter, plaintiff filed a complaint against defendants for breach of contract alleging that because defendants did not fire him for cause as defined in the employment contract, defendants owed him severance pay in the amount of \$146,666.67 for the remaining forty-four months of the contract under ¶4(B) of the employment contract. Defendants moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that plaintiff’s employment contract was void because it failed to comply with numerous provisions of the Benton Harbor Charter and the Benton Harbor Code of Ordinances.

The trial court granted defendant City of Benton Harbor’s motion for summary disposition under MCR 2.116(C)(10). In granting the motion, the trial court found that Singleton acted ultra vires in entering into the employment contract with plaintiff “with virtually no compliance with any of the appropriate provisions of the City Ordinances as it relates to—as it relates to this agreement.”

Plaintiff first argues that the trial court erred in granting defendants’ motion for summary disposition of plaintiff’s breach of contract claim because there was a genuine issue of material fact regarding whether the employment contract’s “just cause” provisions were valid. We review de novo a trial court’s grant or denial of summary disposition. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

We hold that the trial court properly concluded that the employment contract was not entered into in accordance with the Benton Harbor Code of Ordinances and that Singleton acted ultra vires in entering into the employment contract with plaintiff. It appears that the trial court concluded that plaintiff’s employment contract violated Benton Harbor Code of Ordinances, § 2-35, which provides as follows:

**Sec. 2-35. Approval of legal documents.**

The mayor shall sign, the city clerk shall attest to, the city manager shall approve as to substance, and the city attorney shall approve as to form, all contracts and agreements requiring the assent of the city, unless otherwise provided for by law, the Charter, ordinances or the provisions of this Code.

Plaintiff’s employment contract did require the assent of the city because the amount of the contract was greater than \$1,000, and the Benton Harbor Code of Ordinances provides that “[a]ny expenditure for . . . [a] contract obligating the city, where the amount of the city’s obligation is in excess of one thousand dollars (\$1,000.00), shall be approved by the city commission . . . .” Benton Harbor Code of Ordinances, § 2-100.

In plaintiff’s deposition, he admitted that his employment contract was not signed by the mayor of the City of Benton Harbor, was not attested to by the city clerk, and was not approved as to form by the city attorney. Therefore, the trial court was correct in ruling that Singleton did not comply with §§ 2-35 and 2-100 of the Benton Harbor Code of Ordinances because the

contract amount exceeded \$1,000, and the mayor, city clerk, and city attorney did not sign the contract. It is fundamental that people dealing with public officials must take notice of the powers of the officials. *Johnson v Menominee*, 173 Mich App 690, 693-694; 434 NW2d 211 (1988). Persons dealing with a municipal corporation through one of its officers must at their peril take notice of the authority of the particular officer to bind the corporation. *Id.* at 694. Accordingly, because there was no genuine issue of material fact regarding the validity of plaintiff's employment contract, the trial court properly granted defendant's motion for summary disposition of plaintiff's breach of contract claim.

Plaintiff next argues that the trial court erred in failing to permit him to amend the pleadings under MCR 2.116(I)(5) and MCR 2.118(A)(2). "[D]ecisions granting or denying motions to amend pleadings . . . are within the sound discretion of the trial court and reversal is only appropriate when the trial court abuses that discretion." *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Plaintiff did not seek leave to amend the pleadings at trial. Therefore, the trial court never addressed whether plaintiff should be permitted to amend the pleadings. Generally, to preserve an issue for appellate review, the issue must be raised before and decided by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Because the issue was not raised before and decided by the trial court, it is not preserved for this Court's review. *Id.*

Affirmed.

/s/ Christopher M. Murray

/s/ William B. Murphy

/s/ Jane E. Markey