

STATE OF MICHIGAN
COURT OF APPEALS

AFSCME COUNCIL 25, AFSCME LOCAL 41,
and JAMES FULLER,

UNPUBLISHED
March 16, 2006

Plaintiffs-Appellees,

and

ANNIERLY COOPER and SADIE ADAMS,

Plaintiffs,

v

CITY OF HIGHLAND PARK,

Defendant-Appellant.

No. 257680
Wayne Circuit Court
LC No. 02-228994-CL

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting summary disposition in favor of plaintiffs, AFSCME Council 25, AFSCME Local 41, and James Fuller. We affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Speik v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Plaintiffs filed their motion for summary disposition but failed to cite a specific court rule upon which it was based. However, although the trial court also did not expressly articulate which court rule it relied on in granting plaintiffs' motion, because the court looked beyond the pleadings in deciding the motion,¹ this Court reviews the motion as having been granted under MCR 2.116(C)(10). See *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In

¹ The trial court indicated that its ruling would be based on the parties' briefs and oral arguments. Because the parties' briefs contained exhibits that contained information beyond the pleadings, it is evident that the trial court looked beyond the pleadings.

reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists.” *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

Defendant first argues that the trial court did not properly enter an order granting summary disposition in favor of Fuller. This argument is without merit. Although Judge Tertzag did not enter an order contemporaneously with his apparent decision on the motion, an order was ultimately entered by Judge Callahan on July 20, 2004. Indeed, the July 20, 2004 order is the same order from which defendant sought reconsideration and now appeals as of right. Further, the July 20, 2004 order was entered as a reaction to the entry into the register of actions by Judge Tertzag which clearly showed he had intended to enter an order that granted summary disposition in favor of Fuller (i.e., “PL MO SUM DISP TO ENFORCE ARBITRATION AWARD – GRANT AS TO JAMES FULLER – DENIED AS TO SADIE ADAMS & ANNIERLY COOPER – O.T.B.P.”) Judge Tertzag explained at the hearing, to which defendant’s counsel agreed was satisfactory, that although he was not ruling from the bench, the basis for his ruling would be the arguments set forth in the prevailing parties’ brief and at oral argument. Judge Callahan, upon reassignment of the action, entered an order granting the motion in favor of Fuller. Although an order was not entered as promptly as it could have been, defendant has failed to articulate any persuasive empirical or legal reason why this Court should disregard the July 20, 2004 order.

Defendant’s alternative argument, that Helen Cook did not have the authority to sign the stipulated arbitration on behalf of defendant, also fails. Defendant first argues that Ramona Pearson, as the Emergency Financial Manager, had exclusive authority over all decisions regarding the payment of debts and financial obligations of defendant under MCL 141.1221. MCL 141.1221 is simply one section of the Local Government Fiscal Responsibility Act, which is a statutory scheme that empowers the governor to appoint an emergency financial manager for a local government for which a finance emergency has been confirmed to exist. MCL 141.1201 *et seq.* MCL 141.1221 sets forth several actions that the emergency financial manager “may take” in addition to those actions she is required to take under the Act. See MCL 141.1221(a) through (p); MCL 141.1219; MCL 141.1220. Defendant, however, fails to cite any authority that establishes that the emergency financial manager has exclusive authority over all debts and final obligations of defendant.

To the contrary, the parties involved in negotiating Fuller’s stipulated arbitration award were acting according to the Agreement entered into between AFSCME and defendant. The Agreement provides that the agreement is “between the City of Highland Park, its successors and assigns” and AFSCME. Further, at the time the parties stipulated to the arbitration award, it is uncontroverted that the parties were acting according to the specific procedural process for resolving grievances as set forth in the Agreement, which included arbitration as the final step towards resolution. The arbitration provision does not state who is authorized to attend the arbitration on behalf of defendant. To this end, the evidence shows Cook, who was the Human Resources Director, acted in tandem with the city attorney to represent defendant at the arbitration proceeding, and regularly sought approval from her superiors regarding the specific terms of the arbitration award. Specifically, Fuller and his union representative believed that

Cook had the authority to bind defendant to the award. Therefore, defendant has failed to provide any evidence that Cook was not authorized to act on behalf of defendant.

At a minimum, Cook was acting as defendant's ostensible agent. As noted by this Court in *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991):

The following three elements . . . are necessary to establish the creation of an ostensible agency: (1) the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one, (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's authority must not be guilty of negligence. [Citations omitted.]

Here, it is undisputed that Cook was the Human Resources Director, and was acting side by side with the city attorney at the arbitration. Fuller and his union representative provided affidavits that showed that they believed Cook had authority to sign the arbitration award. The parties were participating in arbitration according to the Agreement between the union and defendant, and there is no evidence that Fuller or his union representative were negligent. Based on the record, Cook was acting as the ostensible agent of defendant, if not the real agent of defendant and thus had the authority to bind defendant to the arbitration award.

We reject defendant's alternative argument that city charter prohibited Cook from signing the stipulated arbitration award. As stated, Cook was acting according to the Agreement between the union and the city. Defendant's Mayor and City Clerk signed the Agreement, as required by Section 14-1 of the Highland Park Charter. Defendant's argument fails because the Agreement that gave Cook the authority to act at the arbitration was approved by the City Council in accord with the charter sections relied upon by defendant.

Defendant's final argument is that the trial court does not have the authority to enforce the arbitration award. Courts have authority to enforce an arbitration award and thus the authority to interpret the award to the extent necessary to enforce it. *Staniszewski v Grand Rapids Packaging Co*, 125 Mich App 97, 99; 336 NW2d 10 (1983). The trial court, therefore, has the authority to enforce the award and should, therefore, conduct the necessary proceedings to enforce the award.

Affirmed and remanded for proceedings consistent with the opinion. We retain no further jurisdiction.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot