

STATE OF MICHIGAN  
COURT OF APPEALS

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CAROL ANNE STEIGER,

Plaintiff-Appellant,

v

MONTMORENCY AREA RURAL  
COMMUNITY HOUSING, a/k/a MARCH and  
PAUL WINGATE,

Defendants-Appellees.

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UNPUBLISHED  
February 14, 2006

No. 264836  
Montmorency Circuit Court  
LC No. 04-000876-CZ

Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants summary disposition on all plaintiff's claims.<sup>1</sup> We affirm.

In 2001, defendant Montmorency Area Rural Community Housing (MARCH) hired plaintiff as its executive director. In that role, plaintiff took "per diem" payments for meetings and other activities outside of work hours. On one occasion, plaintiff also paid herself for unused vacation time. In 2004, MARCH conducted an internal audit and concluded that neither the per diem payments nor the vacation payment were authorized. MARCH's board voted to terminate plaintiff, who brought a number of claims against MARCH and against defendant Wingate. Relevant to this appeal, the trial court found that plaintiff was an at-will employee and that, in any event, plaintiff had actually taken funds to which she was not entitled. The trial court concluded that MARCH was entitled to terminate plaintiff's employment and that Wingate had not defamed plaintiff by telling a third party that she had embezzled funds.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We also review de novo as a question of law the proper interpretation of a contract, including a trial court's determination whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663

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<sup>1</sup> Plaintiff does not appeal all of them.

NW2d 447 (2003). On appeal, plaintiff does not raise all the arguments or issues presented below. To the extent they are not implicated by the issues actually presented, they are abandoned. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); *Badiee v Brighton Area Schools*, 265 Mich App 343, 357; 695 NW2d 521 (2005).

Plaintiff first contends that she was not an employee at will, so she could only be terminated for just cause. We disagree.

Employment relationships are presumed to be at will in the absence “of either a contract provision for a definite term of employment, or one that forbids discharge absent just cause.” *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163-164; 579 NW2d 906 (1998). There is no evidence of the latter. Plaintiff argues the former, in reliance on a document that she drafted entitled “Salary Proposal for Fiscal Year 10/1/02 to 9/30/03,” which states that her salary is “\$800 per week – annually \$41,600” and that “This agreement shall be effective for a period of three years commencing October 1, 2002.” Although this document provides that it is effective for a definite term, it does not provide for *employment* of any particular term. As per plaintiff’s drafting, the document states that it sets forth the salary and benefits she was to receive as Executive Director. The document reflects the parties’ mutual commitment to a definite level of compensation that will not be renegotiated for a definite term. This is consistent with plaintiff’s deposition testimony, where she stated that she did not expect to be fired, but she had no particular belief whether she could be fired within three years or whether she could quit within three years. Plaintiff further stated her belief that she could have quit at any time, had she wished to. “A basic requirement of contract formation is that the parties mutually assent to be bound.” *Rood v General Dynamics Corp*, 444 Mich 107, 118; 507 NW2d 591 (1993). Here, the parties clearly both intended to be bound to plaintiff’s level of compensation, but they equally clearly did not both intend to be bound to her actual employment.

The remainder of the evidence also shows that plaintiff was an employee at will. The employee handbook explicitly states that “All employees of Rural Michigan CDC<sup>2</sup> are employees at will.” It also explicitly states that the executive director is an “employee.” Although it provides that the executive director or president *may* enter into employment agreements, that provision does not mandate that any agreement between them *must* be an employment agreement. During a board discussion of plaintiff’s first salary agreement, a board member noted that “this is not a contract that is set in stone and can be negotiated after a year.” Plaintiff argues that the first agreement did not specify a time period, so if it had, it would be a “contract that is set in stone.” However, context suggests that the board was discussing plaintiff’s compensation, and, in fact, the negotiation a year later also concerned only plaintiff’s compensation. To the extent there is any remaining ambiguity that is not otherwise explicable, it must be construed against plaintiff as the drafter of the document on which she relies. *Klapp, supra* at 470-471.

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<sup>2</sup> MARCH is also known by this name.

In any event, even if plaintiff had an employment contract that precluded her termination for any reason other than just cause, MARCH had just cause under the circumstances. Even presuming the October 8, 2002 agreement is an “employment contract,” plaintiff’s own drafting gave her an increased salary and deleted the provision allowing her to take per diem payments. The per diem policy, also drafted by plaintiff, deleted “and non-hourly / contract employees” from eligibility to receive per diem payments. If plaintiff had a contract, she would not be eligible, and if she did not have a contract, she was non-hourly and still not eligible. Further, the employee handbook explicitly states that the executive director “is a salaried exempt position” with variable hours “and will not be eligible for overtime pay or compensatory time.” Plaintiff argues that the per diem policy is ambiguous because “staff” is listed as being permitted compensation. This is an inaccurate reading: the first paragraph states that board members are entitled to receive per diem payments, whereas the second paragraph – containing “staff” – merely lists the pay scale. There is no ambiguity.

Plaintiff argues that the trial court erroneously dismissed most of her other claims on the basis of its findings that she was an employee at will who had, in fact, misappropriated funds. Because we find that the trial court reached correct findings of fact on those issues, and because plaintiff asserts no further argument, we decline to consider them.

Plaintiff finally argues that the trial court erred in dismissing her defamation claim against defendant Wingate personally for alleged statements he made accusing plaintiff of embezzlement. We disagree.

The crime of embezzlement by an agent, servant, or employee is a crime set forth in MCL 750.174(1). The elements are:

“(1) the money in question must belong to the principal, (2) the defendant must have a relationship of trust with the principal as an agent or employee, (3) the money must come into the defendant’s possession because of the relationship of trust, (4) the defendant dishonestly disposed of or converted the money to his own use or secreted the money, (5) the act must be without the consent of the principal, and (6) at the time of conversion, the defendant intended to defraud or cheat the principal.” [*People v Lueth*, 253 Mich App 670, 683; 660 NW2d 322 (2002).]

Here, the money for the per diem payments came from plaintiff’s principal, defendant MARCH. Plaintiff was the executive director and responsible for the payroll, and it was through that position of trust that plaintiff paid herself. Plaintiff actually took the money and converted it to her own use. As discussed, she did so without MARCH’s consent. The inference that plaintiff lacked the intent to defraud or cheat is incompatible with the familiarity plaintiff must have had with the documents she herself drafted or contributed to, which clearly show that she was not entitled to per diem payments after her salary agreement was renegotiated.

The trial court did not engage in impermissible fact-finding. There was no genuine factual dispute that plaintiff embezzled funds when she took the per diem payments. Truth is a defense to defamation. *Porter v Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995). We decline to address the issues plaintiff has not briefed.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Alton T. Davis