

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

CLAYTON MORRIS,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2018-P-0086
GLENN M. BROSKA, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2016 CV 00511.

Judgment: Reversed and remanded.

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THOMAS R. WRIGHT, P.J.

{¶1} Appellants, the City of Streetsboro, Mayor Glenn M. Broska, and Law Director Paul Janis, appeal the trial court's denial of their motion for summary judgment seeking immunity on three of the seven claims, tortious interference with contract, tortious interference with economic advantage, and civil conspiracy. We reverse and remand.

{¶2} Appellee, Clayton Morris, was employed by the City of Streetsboro as its director of human resources for approximately four years. In March 2016, a dispute arose

regarding whether a city employee was wrongfully accessing Mayor Broska's administrative assistant's computer. The dispute was referred for review to Teletronics Services, Inc., the company responsible for managing the city's computer system. Within one day, a senior-systems engineer with Teletronics determined that someone using appellee's account name and security identification had connected to four different city computers on multiple occasions during a three-week period. According to the engineer, the computers of Mayor Broska and Law Director Janis were among those that had been accessed.

{¶3} Appellee's desktop computer was confiscated from his office in the municipal building and given to the senior-systems engineer so that he could review the files saved to its hard drive. When the engineer showed the files to the administrative assistant, she saw personal e-mails belonging to Mayor Broska. After consulting with Law Director Janis, Mayor Broska terminated appellee's employment.

{¶4} Upon inspection of the computer, appellee's expert found that a "malicious application" had been downloaded to its hard drive. And within one day after appellee's termination, an external hard drive was employed to download 1,943 new files to his computer. During deposition, Matthew Coffman, a senior-systems engineer with Teletronics, testified that he was involved in attaching the external hard drive.

{¶5} Mayor Broska, Law Director Janis, and Streetsboro moved for summary judgment on all seven claims. As to tortious interference with contracts, the motion asserted separate arguments for each. Broska contended that this claim pertains solely to the contract between Streetsboro and appellee, and that as appellee's supervisor, he could not be sued for terminating appellee's employment because he was a party to the

contract. Janis argued the claim was based upon alleged advice Janis gave to Broska in firing appellee, and, as a Streetsboro employee, Janis could have no liability for giving that advice because he too was a party to the contract between Streetsboro and appellee.

{¶6} Regarding appellee's civil conspiracy claim, Broska and Janis argued that after they were declared immune from the "tortious interference with contract" claim, appellee would be unable to prevail on the civil conspiracy claim because there would be no underlying tort upon which to base the conspiracy. In relation to Streetsboro, the summary judgment motion asserted, as to the claims of tortious interference with contract, tortious interference with prospective economic advantage, and civil conspiracy, Streetsboro is immune from liability because all three claims are intentional torts.

{¶7} In response, appellee did not contest that Streetsboro cannot be liable for tortious interference with a contract. As to Broska and Janis, though, appellee maintained that they are not immune because the motion mischaracterized the basis of his claim; i.e., according to appellee, the claim is predicated upon the effect Broska's and Janis' actions had on contracts he had with other municipalities, not his contract with Streetsboro.

{¶8} The trial court did not individually address each claim, but generally held that the case should proceed to trial because there is conflicting evidence concerning whether appellee was wrongfully terminated and whether Broska, Janis, and Streetsboro conspired to "frame" him by transferring files to his computer's hard drive after he was terminated.

{¶9} Broska, Janis, and Streetsboro limit their arguments on appeal to the denial of summary judgment based on immunity on appellee's tortious interference with contract, tortious interference with prospective economic advantage, and civil conspiracy claims.

Their three assignments of error provide:

{¶10} “[1.] The trial court erred in denying Appellants City of Streetsboro, Law Director Paul Janis, and Glenn M. Broska’s motion for summary judgment relative to amended complaint count two for tortious interference with contract.

{¶11} “[2.] The trial court erred in denying Appellants City of Streetsboro, Law Director Paul Janis, and Glenn M. Broska’s motion for summary judgment on amended complaint count seven for conspiracy.

{¶12} “[3.] The trial court erred in denying Appellant City of Streetsboro’s motion for summary judgment on amended complaint count two for tortious interference with contract, count three for tortious interference with prospective economic advantage, and count seven for civil conspiracy, which are all barred by R.C. Chapter 2744 immunity.”

{¶13} Generally, a trial court’s denial of a summary judgment motion is not a final order that can be immediately appealed because such a ruling does not fully decide the underlying action and prevent the moving party from prevailing on the final merits. *Sagenich v. Erie Ins. Group*, 11th Dist. Trumbull No. 2003-T-0144, 2003-Ohio-6767, ¶ 3.

{¶14} Notwithstanding this general proposition, appellants contend that this court has jurisdiction to immediately review limited aspects of the trial court’s decision because, as part of their summary judgment motion, they maintained that they were immune from liability as to several of appellee’s claims. As to this point, appellants note that pursuant to R.C. 2744.02(C), an “order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.”

{¶15} Appellants’ first two assignments pertain solely to Broska and Janis. Under

their first assignment, they assert that appellee's claim of tortious interference with contract is predicated solely upon the employment contract appellee had with Streetsboro. Building upon this, appellants argue that Broska is "immune" from liability under this claim because as appellee's supervisor, he is not an "outsider" to that contract. Similarly, as to Janis, they argue that he is "immune" because he was a fellow city employee.

{¶16} For the following reasons, however, the merits of appellants' first assignment cannot be addressed because they do not raise an immunity argument that is immediately appealable. R.C. 2744.02(C). First, in asserting that appellee's claim of tortious interference with contract is based upon his employment contract with Streetsboro, appellants mischaracterize the nature of the claim. Second, even if their characterization of the claim is correct, the cited authority supports a conclusion that appellee cannot state a viable claim of tortious interference with contract against Broska and Janis, not that they are immune.

{¶17} "To recover under [a tortious interference with contract claim], a plaintiff must prove all of the following elements: (1) the existence of a contract; (2) the defendant's knowledge that a contract existed; (3) the defendant's intentional procurement to breach that contract; (4) the defendant's lack of justification for the procurement to breach the contract; and (5) the damages that resulted from the breach." *Andrews v. Carmody*, 145 Ohio App.3d 27, 32, 761 N.E.2d 1076 (11th Dist.2001), citing *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 707 N.E.2d 853, paragraph one of the syllabus.

{¶18} Ohio courts have also recognized a claim for tortious interference with an

employment relationship. The elements of this separate claim are similar to the elements for tortious interference with a contract:

{¶19} “Tortious interference with an employment relationship “occurs when one party to the relationship is induced to terminate the relationship by the malicious acts of a third party who is not a party to the relationship at issue.” *Tessmer v. Nationwide Life Ins. Co.* (Sept. 30, 1999), Franklin App. No. 98AP-1278, 1999 WL 771013 at 6, citing *Condon v. Body, Vickers & Daniels* (1994), 99 Ohio App.3d 12, 22, 649 N.E.2d 1259. Accordingly, to establish such a claim, a plaintiff must demonstrate: “1) the existence of an employment relationship between plaintiff and the employer; 2) the defendant was aware of this relationship; 3) the defendant intentionally interfered with this relationship; and 4) the plaintiff was injured as a proximate result of the defendant’s acts.” (Citations omitted).” *Davila v. Simpson*, 5th Dist. Stark No. 2017CA00166, 2018-Ohio-946, ¶ 23, quoting *Slyman v. Shipman, Dixon & Livingston, Co., L.P.A.*, 2nd Dist. Miami No. 2008-CA-35, 2009-Ohio-4126, ¶ 11.

{¶20} As noted, in maintaining that Broska and Janis are immune from the second claim in the amended complaint, appellants characterize the claim as interference with his employment contract with Streetsboro. However, the allegations in the amended complaint do not support their assertion:

{¶21} “Without privilege to do so; and, with intentional and reckless disregard of the true facts, Broska and Janis made false allegations against Morris and used those false allegations to terminate his agreement with Streetsboro. Janis and/or Teletronics then purposely and maliciously attempt to ‘frame’ Morris by downloading documents on his computer on March 9, 2016 and then cover-up their actions. Janis and Teletronics

were the only individuals with access to Morris's computer after the City wrongfully terminated him on March 8, 2016 and removed him from the City's property. Broska then published their false allegations to the various news outlets including, the Streetsboro Gateway News for the sole purpose and intent of causing additional harm to Morris. Broska knew Morris had contracts with other businesses and government entities. The unprivileged actions of Broska, Janis and/or Teletronics Services, Inc., individually and on behalf of Streetsboro, has caused other entities to breach their agreements with Morris."

{¶22} The first three sentences of the foregoing paragraph constitute a summary of the previous allegations in the amended complaint regarding the roles Broska and Janis played in appellee's termination. Nevertheless, the paragraph's final two sentences allege that following appellee's termination, Broska took the additional step of informing the local media of the grounds for appellee's firing, which led to the termination of separate employment contracts he had with other government entities. The inclusion of those two allegations readily establishes that the purpose of this claim is to recover separate damages appellee allegedly suffered because of the termination of his other employment contracts. Given that appellee's complaint had separate claims for wrongful termination and breach of his employment contract with Streetsboro, the claim at issue does not state a claim for tortious interference with his employment contract with Streetsboro, but a claim for tortious interference with other contracts.

{¶23} At both the trial and appellate levels, appellants have not argued that Broska and Janis are immune from liability for tortious interference with other contracts. Thus, in light of appellants' mischaracterization of the second claim in appellee's amended

complaint, they have failed to assert a proper immunity argument that can be considered in an appeal under R.C. 2744.02(C).

{¶24} Alternatively, even if appellee's second claim could be characterized as a claim for tortious interference with an employment contract, appellants have failed to establish that Broska and Janis are immune from that type of claim. In arguing that Broska is immune because he was appellee's supervisor, they do not cite any specific provision in R.C. Chapter 2744, which governs sovereign immunity for Ohio's political subdivisions and their employees. Instead, appellants rely upon the ruling of the Ohio Supreme Court in *Anderson v. Minter*, 32 Ohio St.2d 207, 291 N.E.2d 457 (1972). One of the issues in *Anderson* concerned whether a civil service employee could maintain a claim of malicious interference with employment against his supervisor. In holding that such claim is not viable, the Supreme Court stated: "A complaint alleging that a supervisory employee maliciously induced the appointing authority of a civil service employee to suspend such employee for a period of five days or less and seeking compensatory and punitive damages as a result thereof does not state a cause of action against such supervisory employee." *Id.* at paragraph two of the syllabus.

{¶25} Appellants correctly note that in applying *Anderson* in subsequent actions involving claims for tortious interference with employment, two courts have said that *Anderson* gives supervisory employees "absolute immunity" from such a claim. See *Nichols v. Univ. of Akron*, 10th Dist. Franklin Nos 90AP-471 and 90AP-691, 1991 WL 139372, *2 (July 23, 1991); *Gosche v. Calvert High School*, 997 F.Supp. 867, 873 (Ohio N.D.1998). However, the wording of *Anderson* does not support this conclusion. First, *Anderson* does not refer to sovereign or governmental immunity. Second, of the five

cases *Anderson* cites in support of its holding, three involve the termination of an employee at a private company. *Johnson v. Aetna Life Ins. Co.*, 158 Wis. 56, 147 N.W. 32 (1914); *Beane v. Weiman Co.*, 5 N.C.App. 279, 168 S.E.2d 233 (1969); *Ross v. Wright*, 286 Mass. 269, 190 N.E. 514 (1934). Therefore, the *Anderson* holding is not predicated upon governmental immunity. Instead, the holding is based on the nature of the relationship between a supervisor and the employee.

{¶26} To this extent, *Anderson* does not provide that a supervisor has sovereign immunity from a claim of tortious interference with an employment contract, but instead holds that a terminated or suspended employee cannot bring such a claim against his supervisor. Given that the scope of an appeal under R.C. 2944.02(C) is limited to determining whether a political subdivision or its employee is entitled to immunity, this court lacks jurisdiction at this time to address appellants' arguments. See *Davis v. City of Akron*, 9th Dist. Summit No. 27041, 2014-Ohio-2511, ¶ 12-14; *Jones v. City of Norwood*, 1st Dist. Hamilton No. C-120237, 2013-Ohio-350, ¶ 31-32. Similarly, since appellants' argument in relation to Janis is predicated on the same argument, we lack authority to consider in the context of this appeal whether appellee states a viable claim of tortious interference with contract against Janis.

{¶27} Appellants simply do not assert an immunity argument that can currently be reviewed. R.C. 2744.02(C). Therefore, the arguments asserted in the first assignment are not properly before the court for determination.

{¶28} Our resolution of the first assignment controls our analysis of the second assignment, in which appellants assert the trial court erred in failing to also hold that Broska and Janis are immune from liability under appellee's civil conspiracy claim. They

note that for appellee to prevail on this claim, he must prove that Broska and Janis committed an underlying tort. Building upon this, they argue that since Broska and Janis cannot be held liable under appellee's claim of tortious interference with contract, they are likewise immune from the civil conspiracy claim.

{¶29} A civil conspiracy has been described as “malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages.” *Lanzer v. City of Louisville*, 5th Dist. Stark No. 2015 CA 00170, 2016-Ohio-8071, ¶ 47, quoting *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 419, 650 N.E.2d 863 (1995). A civil conspiracy can only exist when two or more defendants have committed an underlying tort against the plaintiff: “[I]f all of the substantive claims underlying the conspiracy are without merit, the conspiracy claim must also fail.” *Id.* citing *Brose v. Bartlemay*, 1st Dist. Hamilton Nos. C-960423 & A-9105270, 1997 WL 180287 (April 16, 1997).

{¶30} Given our conclusion under the first assignment, the same is also true as to appellee's civil conspiracy claim. Moreover, appellants have failed to raise an immunity argument as to the civil conspiracy claim; i.e., they only contend that if Broska and Janis are immune from the “tortious interference with contract” claim, they are also immune from the civil conspiracy claim. Appellants have not asserted a viable immunity argument as to either of these two claims. Hence, again, the argument asserted in the second assignment is not properly before us for determination.

{¶31} Appellants' last assignment pertains solely to Streetsboro. They state that regardless of the outcome of the analysis as to Broska and Janis, the trial court should have granted summary judgment for Streetsboro on appellee's tortious interference with

contracts, civil conspiracy, and tortious interference with prospective economic advantage claims. Appellants contend Streetsboro is immune from all three claims because each is an intentional tort.

{¶32} Appellee does not dispute this assignment. Furthermore, since appellants' immunity argument as to the City of Streetsboro is based in part upon the provisions in R.C. Chapter 2744 governing the tort liability of political subdivisions, this court has the authority to address this assignment. R.C. 2744.02(C).

{¶33} In construing R.C. 2744.02(B), Ohio courts have generally held that political subdivisions are immune from intentional tort claims. *Cornelison v. Colosimo*, 11th Dist. Trumbull No. 2009-T-0099, 2010-Ohio 2527, ¶ 37, citing *Thornton v. City of Cleveland*, 176 Ohio App.3d 122, 2008-Ohio-1709, 890 N.E.2d 353, ¶ 6 (8th Dist.). A claim for tortious interference with contracts cannot be maintained against a political subdivision because such a claim involves an intentional act. *Hope Academy Broadway Campus v. Integrated Consulting and Management*, 8th Dist. Cuyahoga Nos. 96100 & 96101, 2011-Ohio-6622, ¶ 19.

{¶34} The claim of civil conspiracy has been characterized as an intentional tort. *Equicredit Corp. of America v. Jackson*, 7th Dist. Mahoning No. 03 MA 191, 2004-Ohio-6376, ¶ 74. Therefore, a political subdivision's immunity from intentional torts applies. Similarly, the claim of tortious interference with business relations is an intentional tort. *Dolan v. City of Glouster*, 4th Dist. Athens Nos. 11CA18, 11CA19, 11CA33, 12CA1, & 12CA6, 2014-Ohio-2017, ¶ 94. To the extent that a claim for tortious interference with business relations covers prospective contractual relations not reduced to writing, *Ginn v. Stonecreek Dental Care*, 12th Dist. Fayette No. CA2014-06-015, 2015-Ohio-1600, ¶

12, it is similar in nature to the claim asserted by appellee, i.e., tortious interference with prospective economic advantage. As a result, appellee's "prospective economic advantage" claim is also an intentional tort to which "intentional tort" immunity for political subdivisions applies.

{¶35} As there is no dispute regarding the status of Streetsboro as a political subdivision for purposes of immunity under R.C. 2744.02, it is entitled to summary judgment on the three intentional tort claims in appellee's amended complaint as a matter of law. To this limited extent, the trial court erred in part in overruling appellants' summary judgment motion. Appellants' third assignment has merit.

{¶36} The judgment of the Portage County Court of Common Pleas is reversed, and the case is hereby remanded for further proceedings consistent with this opinion: to wit, the trial court is instructed to enter summary judgment in favor of the City of Streetsboro as to appellee's claims for tortious interference with contracts, civil conspiracy, and tortious interference with prospective economic advantage.

CYNTHIA WESTCOTT RICE, J.,

MATT LYNCH, J.,

concur.