[Cite as *Pryor v. Bowling Green State Univ.*, 2013-Ohio-5958.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DONALD E. PRYOR

Plaintiff

v.

BOWLING GREEN STATE UNIVERSITY

Defendant

Case No. 2008-05087

Judge Patrick M. McGrath
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On September 13, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B), and the court subsequently issued an order setting a non-oral hearing on the motion for October 11, 2013. On October 14, 2013, plaintiff filed a memorandum in opposition to the motion for summary judgment, which is untimely and shall not be considered. On October 16, 2013, defendant filed a motion to strike, which is DENIED as moot. On November 4, 2013, plaintiff filed a motion wherein he requests an extension of time until December 31, 2013, to respond to the motion for summary judgment. The November 4, 2013 motion is untimely and does not include an affidavit stating the reasons why additional time is needed as required under Civ.R. 56(F), and the motion is therefore DENIED. On November 8, 2013, defendant filed a motion to strike, which is DENIED as moot.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶ 4} It is undisputed that plaintiff served as a part-time faculty member at defendant's Firelands College in Huron, Ohio, during the spring semester of 2007, until tendering his resignation on April 18, 2007. On the day plaintiff resigned, he sent an e-mail to four Firelands College employees, including Associate Professor of Biology Christine Genovese, which included such phrases as "All I wish is for the exact. . . if not more so problems TO come to plague anyone who has had in their hearts opposition to me being here"; "Firelands college. . .has amounted to debt. . .a lost home to pay for college and no money and no power. Which power is…I know I shouldn't say this. . . .but exactly. . . .what I seek"; "MAY GOD PUNISH MY ENEMIES SINCE I CAN'T"; "AND TO THE SHREWD MS. GENOVESE, I WILL GO WITH MY GUT VIBE AND SAY GO FUCK YOURSELF. . .I RESIGN." There is no dispute that employees of defendant reported the matter to the Erie County Sheriff's Department, that plaintiff was arrested by a deputy sheriff on April 19, 2007, and charged with telecommunications harassment, and that plaintiff was tried before a jury in the Huron Municipal Court and acquitted of the charge.

{¶ 5} Plaintiff's theory of relief in this action is not entirely clear from the form complaint and supplemental typewritten complaint that he filed, but he appears to assert that his arrest and prosecution were wrongful, that defendant engaged in gender

discrimination and other wrongful employment practices, and that defendant defamed him or otherwise damaged his reputation.

{¶ 6} With respect to the circumstances that gave rise to plaintiff's arrest and prosecution, defendant submitted an affidavit from Genovese wherein she avers, in part, that plaintiff asked her to step in and teach his biology class on the evening of April 18, 2007, so that he could be with his ailing mother. Genovese states that when she taught the class, she learned that plaintiff "was significantly behind in teaching the course," and that she consequently sent plaintiff an e-mail that evening with suggestions on how to cover the most important subject matter in the time remaining that semester. Genovese states that about two hours later, she received the aforementioned e-mail from plaintiff in response, and that she felt threatened by it and was concerned for her safety, particularly in light of the fact that a mass shooting had taken place two days earlier at Virginia Tech University. Genovese states that she sent an e-mail that night to the Director of Budget and Operations, Mark Charville, who was in charge of campus safety, to express her concerns and request an escort to walk her to her car in the evenings. Genovese further states that the next day she and Charville met with Erie County Deputy Sheriff Jeff Hippely to report the matter, but that she did not request that criminal charges be filed. In a separate affidavit, Charville similarly avers that he did not request for criminal charges to be filed.

{¶ 7} Defendant also submitted an affidavit from Lee McDermond, Jr., who was the Law Director for the city of Huron at all times relevant. McDermond avers that Deputy Hippely contacted him about the matter and that on his advice, the sheriff's department filed a criminal complaint for telecommunications harassment. McDermond states that he proceeded to prosecute plaintiff based upon his belief that plaintiff's e-mail was intended to abuse, threaten, or harass Genovese. McDermond further states that defendant did not pressure him in any way to proceed with the prosecution.

{¶ 8} Plaintiff has not presented any affidavits or other evidence to controvert the foregoing affidavit testimony. Upon review of the uncontroverted testimony, reasonable

minds can only conclude that plaintiff's arrest and prosecution were not procured or carried out by employees of defendant, and, moreover, that there was probable cause to arrest and prosecute plaintiff. As such, plaintiff cannot prevail under a theory of false arrest, malicious prosecution, or abuse of process. *See Koss v. Kroger Co.*, 10th Dist. No. 07AP-450, 2008-Ohio-2696, ¶ 23; *Robb v. Chagrin Lagoons Yacht Club, Inc.*, 75 Ohio St.3d 264, 269 (1996); *Yaklevich v. Kemp, Schaeffer & Rowe Co., L.P.A.*, 68 Ohio St.3d 294, 298 (1994).

{¶ 9} With respect to any claim arising from defendant's employment practices, plaintiff contends that Genovese and others subjected him to "harassment" and "intimidation," were "unprofessional" with him, "micromanaged" him, failed to properly or fairly evaluate his job performance, failed to comply with internal rules or procedures, and engaged in unlawful gender discrimination. Plaintiff's allegations, however, particularly as to any claim for unlawful discrimination, are largely conclusory, and plaintiff has failed to provide any evidence that would tend to support a claim for unlawful discrimination or any other cause of action based upon the terms or conditions of his employment. Accordingly, reasonable minds can only conclude that defendant is entitled to judgment as a matter of law on any such claim.

{¶ 10} Although plaintiff vaguely alleges that defendant harmed his reputation, the complaint does not set forth facts that would support a claim for defamation, which is defined as the unprivileged publication of false and defamatory matter about another. *Watley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-902, 2008-Ohio-3691, ¶ 26. To the extent that plaintiff's allegations in this regard may pertain to statements that Genovese made to Deputy Hippely or others, to the effect that she feared for her safety after receiving plaintiff's e-mail, no evidence has been presented to show that such statements were false.

{¶ 11} Insofar as the complaint includes an allegation that plaintiff's constitutional "due process" rights were somehow violated, it is well-settled that the court of claims

lacks subject matter jurisdiction over such claims. *Bell v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-920, 2011-Ohio-6559, ¶ 22.

{¶ 12} Finally, insofar as the complaint seems to suggest that Genovese and other current or former employees of defendant, including Mark Charville, Andrew Shella, James Smith, and Jeffrey Wagner, are not entitled to personal immunity pursuant to R.C. 9.86 and 2743.02(F), plaintiff has failed to present any evidence to support such a determination, and the evidence presented by defendant does not suggest that these individuals acted outside the scope of their employment, or with malicious purpose, in bad faith, or in a wanton or reckless manner.

{¶ 13} In short, plaintiff has not demonstrated that there are any genuine issues of material fact remaining for trial. Therefore, the court concludes that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
PATRICK M. MCGRATH
Judge

cc:

Amy S. Brown
Velda K. Hofacker
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Donald E. Pryor
626 Franklin Avenue, #183
Kent, Ohio 44240

001
Filed November 15, 2013
To S.C. Reporter April 17, 2015