[Cite as *Slyman v. Shipman, Dixon & Livingston, Co. L.P.A.*, 2009-Ohio-4126.]

IN THE COURT OF APPEALS

SECOND APPELLATE DISTRICT OF OHIO

MIAMI COUNTY

JEFFREY D. SLYMAN, ESQ.,	:	
Plaintiff-Appellant,	:	CASE NO. 2008-CA-35
	:	O P I N I O N
- vs -	:	
SHIPMAN, DIXON & LIVINGSTON, CO., L.P.A., et al.,	:	
	:	
Defendants-Appellees.		

APPEAL FROM MIAMI COUNTY COURT OF COMMON PLEAS
Case No. 07-733

Jeffrey D. Slyman, 575 South Dixie Drive, Vandalia, OH 45377, for plaintiff-appellant

Shawna D. Shugert, 103 Foley Drive, Vandalia, OH 45377, co-counsel for plaintiff-appellant

Robert C. Johnston, 215 West Water Street, P.O. Box 310, Troy, OH 45373, for defendants-appellees, Shipman, Dixon & Livingston, Co., L.P.A.

Surdyk, Dowd & Turner, Co. L.P.A., Robert J. Surdyk, Joshua R. Schierloh, One Prestige Place, Suite 700, Miamisburg, OH 45342, for defendant, Grant D. Kerber

POWELL, J.

{¶1} Plaintiff-appellant, Jeffrey D. Slyman, appeals the decision of the Miami County Court of Common Pleas granting summary judgment to defendants-appellees,

Grant D. Kerber, W. McGregor Dixon, Jr., Robert C. Johnston, James R. Livingston, and Charles H. Sell, II, as well as the law firm of Shipman, Dixon & Livingston Co., LPA (SDL), at which all of the aforementioned appellees are attorneys. For the reasons set forth herein, we affirm the trial court's judgment.

{¶2} This matter concerns appellant's termination as assistant law director for the city of Piqua. From November 1, 1999, through August 26, 2005, appellant served as the city's assistant law director. At the time of appellant's hire in 1999, his law partner, Stephen Klein, served as the city's law director. In January 2001, however, Kerber was appointed as law director for the city of Piqua. Kerber also worked as an attorney at SDL at the time of his appointment.

{¶3} On August 18, 2005, Kerber requested appellant's resignation, after obtaining the approval of city manager, Larry Wolke. Appellant refused to resign, however, and was ultimately terminated on August 26, 2005. On August 22, 2005, John Herndon, an associate at SDL, applied for the position of assistant law director. Herndon was hired to replace appellant on September 12, 2005.

{¶4} Following his termination, appellant filed an action in the United States District Court for the Southern District of Ohio, alleging due process claims against both the city of Piqua and Kerber pursuant to Section 1983, Title 42, U.S. Code. On March 12, 2007, the district court granted summary judgment to the city and Kerber, finding that appellant did not have a protected property interest in continued employment where his position was that of an unclassified, at-will employee. *Slyman v. City of Piqua* (S.D. Ohio 2007), 494 F.Supp 2d 732. The district court's decision was affirmed on appeal to the United States Court of Appeals for the Sixth Circuit. *Slyman v. City of Piqua* (C.A.6,

2008), 518 F.3d 425.

{¶5} In September 2007, appellant commenced the present action against the above-referenced appellees in the Miami County Court of Common Pleas, alleging claims for tortious interference with an employment relationship and civil conspiracy. The trial court granted summary judgment in favor of all appellees, finding that appellant's claims were barred by res judicata, and that appellant could not prove his claim for tortious interference where Kerber's position as law director included supervisory duties over appellant. The court likewise found that appellant's civil conspiracy claim failed as a matter of law where appellant could not demonstrate the existence of an underlying tort.

{¶6} Appellant now appeals the trial court's judgment, advancing three assignments of error for review. To facilitate our review, we address appellant's assignments out of order.

Assignment of Error No. 2:

{¶7} "THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT ON APPELLANT'S TORTIOUS INTERFERENCE CLAIM WHERE GENUINE ISSUES OF MATERIAL FACT EXIST THAT COULD LEAD A JURY TO CONCLUDE THAT APPELLEE KERBER ACTED IN HIS INDIVIDUAL CAPACITY AND PERSONALLY BENEFITTED FROM APPELLANT'S FIRING, AND THAT THE REMAINING APPELLEES INTENTIONALLY INTERFERED WITH APPELLANT'S EMPLOYMENT RELATIONSHIP."

{¶8} In his second assignment of error, appellant challenges the trial court's determination that no genuine issue of material fact remains to be litigated with respect

to his claim for tortious interference with an employment relationship. As detailed below, we find appellant's argument concerning this matter without merit.

{¶9} In reviewing a trial court's decision granting summary judgment, we apply a de novo standard of review, meaning "that we apply the same standards as the trial court." *GNFH, Inc. v. W. American Ins. Co*., 172 Ohio App.3d 127, 2007-Ohio-2722, ¶16. Summary judgment is appropriate pursuant to Civ.R. 56 where no genuine issues of material fact remain to be litigated, the moving party is entitled to judgment as a matter of law, and reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. Civ.R. 56(C); *Smith v. Five Rivers MetroParks* (1999), 134 Ohio App.3d 754, 760, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64. The moving party bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. If the moving party meets this burden, the nonmoving party has a reciprocal burden to set forth specific facts demonstrating a genuine issue for trial. Id.

{¶10} Under Ohio law, it is well-established that either party to an employment-at-will arrangement may terminate the relationship for any or no reason, "provided that the termination is not otherwise unlawful." *Smiddy v. Kinko's, Inc.*, Hamilton App. No. C-020222, 2003-Ohio-446, ¶8, citing *Greeley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St.3d 228, 234, and *Chapman v. Adia Services, Inc.* (1997), 116 Ohio App.3d 534, 541. An at-will employee may only maintain a tort claim against his or her employer "where the employer discharges the employee in violation of a public policy

clearly expressed in either the state or federal constitutions, state statutes, administrative rules and regulations, or the common law." Id.

{¶11} 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 person 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. 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." *Lennon v. Cuyahoga Cty. Juvenile Court*, Cuyahoga App. No. 86651, 2006-Ohio-2587, ¶19, citing *Costaras v. Dunnerstick,* Lorain App. No. 04CA008453, 2004-Ohio-6266.

{¶12} Liability for tortious interference with an employment relationship "does not extend to a supervisor who terminates or otherwise impairs the plaintiff's employment while in the course of [the supervisor's] own duties." *Hatton v. Interim Health Care of Columbus, Inc.*, Franklin App. No. 06AP-828, 2007-Ohio-1418, ¶25. "A person in a supervisory capacity or other position of authority over the employee cannot be sued for interfering with the employment relationship that it is his duty to monitor, supervise, or enforce." *Smiddy*, 2003-Ohio-446 at ¶9. Liability will not arise even in instances where a supervisor's conduct may be characterized as malicious. *Anderson v. Minter* (1972), 32 Ohio St.2d 207, 213.

{¶13} In this case, appellant asserts claims for tortious interference with an

employment relationship against Kerber, his immediate supervisor, as well as the law firm of SDL and several of its members. First, with respect to Kerber, we find the trial court correctly granted summary judgment. As the district court found, which appellant does not dispute on appeal, the nature of appellant's position as assistant law director was that of an unclassified, at-will employee. *Slyman*, 494 F.Supp.2d at 737. See, also, *Blauvelt v. City of Hamilton*, Butler App. No. CA2008-07-174, 2009-Ohio-2801, ¶34-35. "[D]ecisions concerning appointment, promotions, and termination of assistant law directors are committed to the sound discretion of the city law director or other official responsible for the performance of assistant law directors in the city's employ." *Blauvelt* at ¶34.

{¶14} Kerber's position as law director clearly included supervisory duties over appellant, and Kerber was permitted to terminate appellant at his discretion, for any or no reason at all. Notably, the record demonstrates that Kerber sought and obtained the approval of city manager, Larry Wolke, prior to requesting appellant's resignation. Moreover, there is no indication that appellant's termination was predicated upon unlawful grounds. As a result, we find the trial court did not err in determining that summary judgment was warranted in favor of Kerber as to appellant's tortious interference claim.

{¶15} Second, with respect to the remaining appellees, we likewise find the trial court correctly entered summary judgment as to appellant's claim for tortious interference. Regardless of whether said appellees were aware of appellant's employment as assistant law director and discussed his possible termination with Kerber, we find appellant has failed to demonstrate he was injured by appellees' alleged

conduct where Kerber had the authority to terminate appellant for any or no reason. As stated, there is no indication in the record that appellant's termination was based on pretext such that appellant could maintain an action in tort against Kerber.

{¶16} Based upon the foregoing, we find the trial court did not err in granting appellees summary judgment on appellant's claim for tortious interference with an employment relationship. Appellant's second assignment of error is therefore without merit and is overruled accordingly.

Assignment of Error No. 3:

{¶17} "THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT ON APPELLANT'S CIVIL CONSPIRACY CLAIM WHERE GENUINE ISSUES OF MATERIAL FACTS EXIST THAT COULD LEAD A JURY TO CONCLUDE THAT APPELLEES ACTED MALICIOUSLY IN CONSPIRING TO INJURE APPELLANT."

{¶18} Appellant also argues the trial court erred in granting appellees summary judgment on his civil conspiracy claim. To prevail on a claim for civil conspiracy, it is essential that a plaintiff demonstrate the existence of an underlying unlawful act. *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 475, 1998-Ohio-294. Because we have already determined that summary judgment was appropriately granted to appellees on appellant's claim for tortious interference, appellant's claim for civil conspiracy must also fail as a matter of law. Appellant's third assignment of error is therefore without merit and is hereby overruled.

Assignment of Error No. 1:

{¶19} "THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION FOR

SUMMARY JUDGMENT BASED ON THE PRINCIPLES OF RES JUDICATA WHERE APPELLANT'S CURRENT TORT CLAIMS WERE NEVER SUBJECT TO A FINAL ADJUDICATION ON THE MERITS."

{¶20} Finally, appellant argues the trial court erred in granting appellees summary judgment on the basis of res judicata. We decline to address the merits of this argument, as said argument is moot in light of our resolution of appellant's second and third assignments of error. Appellant's first assignment of error is therefore overruled.

Judgment affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.

Bressler, P.J., Powell and Ringland, JJ., of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.

Copies to:

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