

**IN THE UNITED STATES DISTRICT COURT OF WEST VIRGINIA
SOUTHERN DISTRICT AT HUNTINGTON**

DR. B. DAVID RIDPATH,

Plaintiff,

Case No. 3:03-02037

Hon. Judge Chambers

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v.

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BOARD OF GOVERNORS
MARSHALL UNIVERSITY,
DAN ANGEL, BOB PRUETT,
F. LAYTON COTRILL, ESQ.,
and EDWARD GROSE,

*

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Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT BOB PRUETT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, B. David Ridpath, through counsel and in response to Defendant Bob Pruett's Motion for Summary Judgment, states as follows:

**STATEMENT OF FACTS RELEVANT TO DEFENDANT PRUETT'S MOTION FOR
SUMMARY JUDGMENT**

Defendant, Bob Pruett, was employed as Marshall University's (MU) Head Football Coach from 1996 to 2004. (Exhibit 1 - Deposition of Bob Pruett p. 7-8). While at MU, Pruett built a successful football program and became the University's highest paid employee – earning more than \$400,000 per year. (Ex. 1 - p. 11). At MU, Coach Pruett was expected to comply with NCAA rules and follow institutional procedures designed to ensure compliance with NCAA legislation. (Ex. 1 p. 20-21; Exhibit 2 – Deposition of Joyce LuAnn Humphrey p. 72).

Pruett was responsible for recruiting prospective student athletes to play football for MU. During the time period in question, NCAA legislation allowed its member institutions (including MU) to recruit student athletes who did not qualify academically to compete at the institutions. The legislation allowing academic non-qualifiers to enroll at an NCAA school was known as Proposition 48. (Student-athletes enrolling under Proposition 48 are referred to as “Props” or “non-qualifiers”). Props could enroll at an NCAA member institution but were not allowed to receive athletic scholarships and had limitations on their abilities to practice and compete. (Ex. 2 p. 26-27).

Pruett relied heavily on recruiting Props into his MU football program. The NCAA reported that between 1996 and 2000 there were 65 non-qualifiers at MU. (Exhibit 3 – Marshall University’s NCAA Public Infractions Report – p.5). In order to induce Props to attend MU, Pruettt promised to arrange for jobs to assist them with paying tuition. (See Affidavits of Former MU Prop Athletes Charlie Tynes (Exhibit 4) and Sam Goines (Exhibit 5). See also Affidavit of Former MU Strength and Conditioning Coach – Mike Jenkins (Exhibit 6)). The jobs were arranged through local businessman Marshall Reynolds – a “good friend” and business partner of Pruettt’s. (Ex. 1 p. 131-133). An investigation by the NCAA’s Enforcement Staff concluded that MU Prop athletes were paid \$25.00 per hour to perform menial tasks at Reynolds’ local business – McCorkle Machine Shop (also referred to as Chapman Printing – hereafter “McCorkle”). (Ex. 3 – p. 2). The jobs scheme was essential to Pruettt’s recruitment of prop athletes and created a significant competitive advantage for MU. As one MU student-athlete stated to the NCAA: “Due to this financial support, I was able to get through school for the year, without this support, I would not have made it.” (Ex. 3 p. 6).

The NCAA also investigated an incident of academic fraud which occurred at MU while Pruett was Head Football Coach. In the Spring of 1999, an assistant professor in the Health Physical Education Recreation Department who was also a volunteer flexibility coach for the MU athletic department provided copies of his final examination in PE 201 to football student-athletes prior to administering the test. (Ex. 3 – p. 8). The NCAA’s investigation did not link Defendant Pruett or his staff to the academic fraud – however, former MU Strength and Conditioning Coach Michael Jenkins has since implicated Pruett in the scandal (See Ex. 6).

Given Defendant Pruett’s direct involvement in these serious NCAA violations, he made several efforts to either cover-up or minimize the violations. In particular:

- 1) Pruett instructed Prop athletes NOT to report the jobs to MU’s NCAA Compliance Coordinator - Plaintiff Dave Ridpath (hereafter “Ridpath”) – despite clear written policies and procedures established by Ridpath –requiring all MU athletes to report their employment to the compliance office (See Ex. 4 & 5);
- 2) The paychecks for the Prop athletes were distributed through the football office (which was isolated from the Department of Athletics where Ridpath and others might detect the scheme); (Ex. 3 p.6; Exhibit 7 – Affidavit of B. David Ridpath);
- 3) Pruett misled NCAA investigators regarding his knowledge of both the jobs program and academic fraud scandal by feigning ignorance when he had direct involvement with and knowledge of both violations (Ex. 4, 5 & 6);
- 4) After the jobs program was discovered by the NCAA, Pruett orchestrated a cover-up designed to conceal the actual wage (\$25.00) being paid to prop athletes to work the arranged jobs (Ex. 4, 5 & 7).

Most troubling to the Plaintiff is the fact that Pruett told the NCAA that he believed the Props were allowed to work because he had “checked it out a couple of times with Ridpath.” (Exhibit 8 – NCAA Infractions Hearing Transcript - p. 147 (NCAA Bates # 63); Ex. 2 p. 99; Ex.

3). To the contrary, Pruett’s assertion that Ridpath told him that Props could work is a flimsy half-truth that has been relied upon in an effort to insulate him from responsibility and place the

blame for a serious violation of NCAA rules on Ridpath and/or his allegedly faulty system for compliance. Specifically, in early December of 1999, long after Props had been working high paying off-campus jobs arranged by Pruett, Ridpath was asked if Prop athletes could work for ESPN assisting with the production of a football game to be held on MU's campus. Ridpath's initial response to the inquiry was "yes" (which is accurate - because Props can work so long as it is not arranged by the University – See Ex. 2 p. 60). Ridpath's interpretation ultimately turned out to be flawed because the NCAA determined that the level of involvement (or "intercession") by MU in arranging for the ESPN game employment constituted a rule violation. (Ex.7). Pruett has since attempted to stretch Ridpath's interpretation of NCAA legislation regarding the ESPN game into an endorsement by Ridpath of the off-campus employment scheme at McCorkle that was paying Prop athletes \$25.00 per hour to perform menial tasks.

In fact, Pruett NEVER asked Ridpath whether the off-campus employment of Prop athletes at McCorkle was permitted by NCAA rules. (Ex. 7). Ridpath did not know about the off-campus employment of Props at McCorkle until it was discovered by NCAA investigators and he most certainly did not approve it. (Ex. 7; Exhibit 9 – Affidavit of Kevin Klotz). The policy Ridpath had established at MU requiring all student-athlete employment to be reported to his office would have detected the jobs program at McCorkle – but Pruett and his staff told the Props they should not report the employment to Compliance. (Ex. 4 & 5).

It is worth noting that NCAA Enforcement Representative LuAnn Humphrey sensed that efforts were being made at MU to impede her investigation. In an email to David Price – Director of Enforcement at the NCAA – Humphrey wrote:

“Someone tried like hell to throw us off track on this thing from the beginning, and the evidence overwhelming points to a cover-up. But unfortunately, we may never know who was the real culprit.”

(Exhibit 10 - NCAA Bates Stamp #12).

At deposition, Humphrey confirmed that she had concerns that Coach Pruett and/or other members of the football staff were involved in a cover-up at MU. (Ex. 2 p. 44). However, the NCAA's investigation was ultimately hindered by a lack of full disclosure by the institution and she was unable to determine the "culprit". (Ex. 2 p. 81).

As a direct result of Pruett's dishonesty and/or lack of full disclosure, when MU ultimately came before the NCAA Committee on Infractions it appeared as if Ridpath was responsible for allowing serious violations at MU to occur because he had either misinterpreted the rules and/or did not have an effective system for compliance in place. Following the September 23, 2001 hearing, Committee Chair Thomas Yeager wrote MU informing the university that it was considering a finding of lack of institutional control. (Exhibit 11 - NCAA Bates #144). In response to Yeager's letter, multiple meetings and/or conversations were conducted including some combination of Defendants Pruett, Angel, Cottrill and Grose - as well as special NCAA Counsel to the University – Rich Hilliard. (Ex. 7). According to Hilliard, during those conversations Pruett expressed his opinion that "Dave [Ridpath] needs to go because he put us in jeopardy." (Ex. 7).

In early October of 2001, Defendant Edward Grose, MU's Vice President for Administration, ultimately met with Ridpath and "negotiated" a transfer from his job as the Director of Compliance in the Athletic Department to the Director of Judicial Affairs. (Exhibit 12 – Deposition of Edward Grose p. 61). Ridpath was given a raise and promised that his transfer would not be linked to the NCAA infractions. (Ex. 7). Despite this assurance, Ridpath's transfer outside the department of athletics was labeled a "corrective action" in response to the serious

NCAA violations at MU and was reported in the NCAA Public Infractions Report dated December 21, 2001. (Ex. 3).

According to expert witness Kathy Noble (a former NCAA Infractions Appeals Committee Member and college athletic administrator) it is common for NCAA member institutions to self-impose sanctions, penalties and/or corrective actions (including the termination, re-assignment or reprimand of staff members) in hopes of minimizing the potential impact of NCAA violations which have occurred at the institution. (Written Report of Expert Witness Kathy Noble - Ex. 13 p. 9). In Plaintiff's FRCP 26(a) expert witness report, Noble further states:

In reviewing the Marshall Infractions Report, it is not made clear that the employment violations had been occurring long before Dr. Ridpath arrived at Marshall. The head football coach during Dr. Ridpath's tenure, stated that the practice had been going on before his arrival in 1996. I was astonished that the football staff that arranged the employment is never mentioned in a penalty or corrective action. Yet it appears obvious that they knew that these employment arrangements were illegal and went to some lengths to conceal them from the compliance office. (See Exhibit 13 p. 9).

Without question, MU and Pruett benefited by laying blame on Ridpath and publicly characterizing his transfer to another department at the university as a "corrective action" in response to the serious NCAA violations at MU – effectively destroying Ridpath's career in college athletics administration. In the mean time, Defendant Pruett (who witnesses now say was directly involved with both the academic fraud and impermissible employment violations) received only a letter of reprimand and was required to attend a regional compliance seminar. (Ex. 3 p.18-19).

The NCAA Public Infractions Report is replete with false statements and conclusions which reflect negatively upon Ridpath. For example, the report states: "No one at the university, including the compliance director, knew that employment by the athletics

representative of nonqualifiers was impermissible.” (Ex. 3. p. 13). This statement not only implies that Ridpath was incompetent – it reads as if the employment of nonqualifiers is strictly prohibited under any circumstance – which is not true. (Ex. 2. p. 60). Under NCAA bylaws, Prop athletes can work – however, they cannot work for boosters earning \$25.00 per hour at jobs that have been arranged for by their football coach.

Because the Infractions Report made no specific findings of violation against Ridpath, he lacked standing to challenge / appeal the false findings and conclusions contained in the Infractions Report. As indicated in Kathy Noble’s Expert Witness Report:

“Unfortunately, when no findings are made against an individual in an infractions case, they have no basis for an appeal. Essentially there is nothing to appeal. However, in this case Dr. Ridpath’s career was effectively ruined by this corrective action, yet he had no opportunity to clear his name through an appearance before the Committee on Infractions or the Infractions Appeals Committee. In fact, during my tenure on the Appeals Committee, there were occasions when we had to refuse to hear an appeal because there had been no findings of violations against the individual.”

(Exhibit 13 – p. 8).

Defendant MU could have appealed to set the record straight but they were apparently pleased with the end result as their high profile football program and coach were relatively unaffected by the serious NCAA violations that occurred.

BRIEF AND ARGUMENT

Summary Judgment Standard

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law. Fed. R.Civ. P. 56(c). A “genuine” dispute about a material fact exists “if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby, Inc.* 577 U.S 242 (1986).

The party seeking summary judgment bears the initial burden of showing that there is an absence of evidence to support the non-moving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). However, in determining if a material dispute does in fact exist, the non-moving party’s evidence is believed to be true and all justifiable inferences are to be drawn in his favor. 477 U.S. at 255.

I. DEFENDANT PRUETT IS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW ON PLAINTIFF’S CLAIM OF TORTIOUS INTERFERENCE WITH A CONTRACT.

As more fully set out in Plaintiff’s Statement of Disputed Facts, there are multiple (and at times nuanced) factual disputes about whether Defendant Pruett tortiously interfered with a contract to which Ridpath was a party. Pruett argues that Ridpath cannot establish a prima facie case of tortious interference with a contract because he cannot satisfy the following elements: 1) existence of a contractual or business relationship or expectancy, 2) an intentional act of interference by a party outside that relationship or expectancy, and 3) proof that the interference caused the harm sustained.

West Virginia recognizes a cause of action based on tortious interference with contractual relations. *Torbett v. Wheeling Dollar Sav. & Trust Co.*, 173 W.Va. 210, 314 S.E.2d 166, 171 (1983) (citing *Consolidation Coal Co. v. Disabled Miners of Southern West Virginia*, 328 F.Supp. 1248, *modified*, 442 F.2d 1261, *cert. denied*, 404 U.S. 911 (1971)). The interference may be with existing or prospective contractual, business or employment relationships. *Id.* This tort consists of “inducing or otherwise causing a third person not to enter into or continue the prospective relation.” *Id.* (quoting Restatement (Second) of Torts § 766B (1979)).

A. Existence of a contractual or business relationship of expectancy.

Defendant Pruett asserts that Ridpath cannot satisfy the existence of a contractual or business relationship or expectancy, because he was an at-will employee who could be terminated without cause by the Marshall University President at any time. Specifically, Defendant Pruett cites to Plaintiff’s Response to Defendant Pruett’s Interrogatory No. 2, where plaintiff stated, “[t]he Plaintiffs (sic) employment relationship with Marshall University consisted of serving at the will and pleasure of the president of Marshall University for one year periods beginning in November 1997 until August 2004.”

From November 1997 until October of 2001, Ridpath had an employment relationship with Marshall University to serve as its Compliance Director in the Department of Athletics. Although a written contract for continued employment did not exist – a reasonable expectation of continued employment clearly did. The fact that Ridpath was an at-will employee with a non-tenured track position does not mean he did not have a contractual relationship with a reasonable expectation to continue his career in college athletic administration at Marshall University.

B. An intentional act of interference by a party outside that relationship or expectancy.

Plaintiff has alleged that Defendant Pruett knowingly and intentionally interfered with his employment relationship at MU by recommending that he be transferred to a department outside of athletics in order to gain favor with the NCAA Committee on Infractions and to protect his football program and himself from further sanction or scrutiny by the NCAA. Pruett's summary judgment motion asserts that Ridpath cannot satisfy the second element of tortious interference with a contract: an intentional act of interference by Pruett. Specifically, Pruett argues that Ridpath cannot present a prima facie case that he interfered with Ridpath's employment because Ridpath supports his argument largely with speculation and inadmissible evidence. As illustrated by the Statement of Disputed Facts set out above, this argument is without merit.

It is no surprise that Pruett now contends he had nothing to do with Ridpath's reassignment. However, evidence to the contrary not only exists – it is compelling. Given Pruett's direct involvement in the major NCAA infractions (and subsequent efforts to conceal same), he had a clear motive to lay blame on Ridpath. Furthermore, according to Rich Hilliard, MU's special NCAA legal counsel, Pruett was directly involved in discussions regarding Ridpath's fate that took place following the September 22, 2001 NCAA Infractions Hearing (Ex. 7). Indeed, Hilliard told Ridpath directly that Pruett was behind the decision to transfer Ridpath to another department outside of athletics and to label his transfer a "corrective action" in response to the NCAA violations. (Ex. 7).

Although former MU President Dr. Dan Angel now denies that Pruett influenced his decision to transfer Ridpath, his recollection of the sequence of events following the NCAA hearing is questionable. Defendant Angel has admitted that Pruett had considerable influence at

MU. (See Exhibit 14 – Deposition of Dan Angel p. 186). Angel also acknowledges that the MU Board of Governors was concerned about the fate of Coach Pruett after the infractions process. (Ex. 14 p. 201). Indeed, it is not “mere speculation” that Pruett had the ability to influence personnel decisions at MU. The fact that he denies involvement in Ridpath’s reassignment is a disputed fact for the jury to decide.

For all of the aforementioned reasons (not the least of which is Pruett’s clear motive to scapegoat Ridpath) it is clear that there are genuine issues of material fact that are in dispute and a reasonable jury could conclude that Defendant Pruett has tortiously interfered with a contract to which Ridpath was a party.

C. Proof that the interference caused the harm sustained.

Defendant Pruett argues Ridpath cannot prove that his interference, if any, caused the harm sustained because Ridpath agreed to the transfer and then ultimately left his employment at MU of his own free will. To the contrary, Ridpath agreed to be re-assigned to the position of Director of Judicial Programs at MU under the premise that MU would make it clear to the NCAA (and the public) that his reassignment was NOT for any wrongdoing as MU Compliance Director. Contrary to their agreement, Ridpath’s reassignment was labeled a “corrective action” taken by MU as the result of NCAA rule violations at the University.

Ridpath’s Complaint alleges that the labeling of his transfer to another department at the university as a “corrective action” is a charge of serious character defect against him as it calls into question his honesty, integrity and professional competence as an NCAA Compliance Coordinator. In hindsight, it has essentially destroyed Ridpath’s career as a college athletic administrator.

Had Defendant Pruett been forthcoming to the NCAA about his own role in and responsibility for the NCAA infractions at Marshall University – his own reputation and career would be in ruins – not Plaintiff’s. Instead, Defendant Pruett exerted his considerable influence at Marshall to offer Ridpath as a sacrificial lamb to the NCAA. Absent Pruett’s actions (or calculated inaction), Ridpath’s role in the Infractions case would have been unremarkable and his transfer outside of the Department of Athletics would not have been characterized to the public (and his prospective employers) in a false and negative light. Again, there are genuine issue of material facts that are in dispute relating to Plaintiff’s damages and the cause thereof, therefore Defendant’s Motion for Summary Judgment must be denied.

II. DEFENDANT PRUETT IS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW ON PLAINTIFF’S CLAIM OF OUTRAGEOUS CONDUCT.

Defendants assert that Dave Ridpath cannot establish that Defendant Pruett’s conduct was “atrocious, utterly intolerable in a civilized community, and/or so extreme and outrageous as to exceed all possible bounds of decency.” *Travis v. Alcon Laboratories, Inc.*, 202 W.Va. 369, 504 S.E.2d 419 (1998). In evaluating a defendant’s conduct in an intentional or reckless infliction of emotional distress claim, the role of the trial court is to first determine whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to constitute the intentional or reckless infliction of emotional distress. Whether conduct may reasonably be considered outrageous is a legal question, and whether conduct is in fact outrageous is a question for jury determination. *Travis v. Alcon Labs., Inc.*, 202 W.Va. 369 (citing *Love v. Georgia-Pacific Corp.*, 209 W.Va. 515, 550 (2001)). If proven as asserted, there is sufficient evidence by which a jury could determine that Defendant Pruett’s conduct was outrageous.

The issue of whether or not Defendant Pruett's conduct may reasonably be considered outrageous has already been considered and ruled upon by the Court. Specifically, in denying the Defendant's pre-answer motion to dismiss, Judge Robert J. Staker held:

3. *Outrageous Conduct*

“Next, MU and its administrators and Pruett assert that Ridpath has failed to plead facts that could be considered outrageous conduct. Considering the Court's findings from above, as well as the allegation that he was fired for exercising his right to free speech, the Court holds that all of the defendants' conduct, as alleged, to be extreme and outrageous, and the motions are overruled.” *See Memorandum Opinion and Order Entered February 17, 2004 at page 27. (Emphasis added).*

The same question of law is again before the Court – which has already found that Defendant's conduct, as alleged, to be extreme and outrageous. It is therefore, for a jury to decide whether the allegation is proven at trial.

Defendant Pruett also cites to *Tanner v. Rite Aid of W. Va., Inc.*, stating, “liability (for tort of outrage) does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” 194 W. Va. 643, 651 (1995). In the instant case, Plaintiff is alleging that Defendant Pruett was an active participant in the rule violations at MU and provided false and misleading testimony to the NCAA Enforcement Staff and Committee on Infractions. Instead of accepting responsibility for his own misdeeds, Defendant Pruett (together with MU) sacrificed Ridpath's good name, reputation, and occupation so that he could keep his own. Pruett's actions can hardly be classified as “mere insults, annoyances, petty oppression and trivialities.” The ultimate fact question of whether or not Defendant Pruett committed the acts alleged is one for the jury.

CONCLUSION

As illustrated above, Plaintiff's causes of action against Defendant Pruett for tortious interference with a contract and the tort of outrage are fact intensive and at times nuanced. However, despite Pruett's basic contention that Plaintiff's theories of recovery rely on mere speculation – there are clearly genuine issues of disputed fact and Defendant Pruett is not entitled summary judgment as a matter of law on either claim. Accordingly, Plaintiff respectfully requests that Defendant Pruett's Motion for Summary Judgment be denied.

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