

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

Dr. B. David Ridpath,

Plaintiff,

v.

Case

No.: 3:03-02037

Hon. Judge

Chambers

Board of Governors
Marshall University,
Dan Angel, Bob Pruett,
F. Layton Cottrill, Esq.,
and K. Edward Grose,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT BOB PRUETT'S
MOTION FOR SUMMARY JUDGMENT**

In support of his Motion for Summary Judgment,
defendant Bob Pruett states as follows:

PROCEDURAL HISTORY

Plaintiff filed this action on August 4, 2003, alleging the following causes of action: Count I: a purported due process claim under 42 U.S.C. §1983 against Board of Governors of Marshall University ("Board"); Count II: a purported First Amendment Infringement claim under 42 U.S.C. §1983 against Defendants Angel, Cottrill and Grose ("Administrators") individually and as agents for Marshall University; Count III: a purported Civil Conspiracy claim

under 42 U.S.C. §1983 against all Defendants; Count IV: Breach of Contract claim against Defendants Board, Angel, and Cottrill; Count V: a Fraud claim against Defendant Board by and through its agent Defendant Grose; Count VI: a claim for Outrageous Conduct against Defendants Board, Grose, and Pruett; Count VII: a Tortious Interference with a Contract claim against Defendant Pruett; and Count VIII: a Legal Malpractice claim against defendant F. Layton Cottrill.

There were three causes of action against Defendant Pruett set forth in the original Complaint: Count III: a civil conspiracy claim under 42 U.S.C. 1983, Count VI: a state law claim for Outrageous Conduct, and Count VII: a state law claim for Tortious Interference with a Contract. On September 29, 2003, Defendant Pruett filed a motion to dismiss for failure to state a claim upon which relief may be granted. On November 10, 2003 this action was reassigned to the docket of the Honorable Robert J. Staker, and on January 20, 2004 plaintiffs were granted a motion for leave to file an amended complaint. The amended complaint added Hilliard as a defendant in counts I, III, VIII, and IX. The amended complaint also added claims under the common law of the state of West Virginia and under Article III, Section 10 of the Constitution of the State of West Virginia against defendants Angel, Cottrill, Grose and Hilliard, and added a claim against all defendants for violation of public policy in Count IX (mislabeled as Count VII).

On February 17, 2004 the court granted in part and denied in part defendant Pruett's motion to dismiss the complaint. The court's Order granted

the dismissal of Count III against Pruett sua sponte. Also, on February 17, 2004 the court granted in part and denied in part the Board and Administrators' motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), (6), and (7). The court's order granted the Board and Administrators' motion to dismiss Count III. The court also granted the Board and Administrators' motion to dismiss Count IX of the Complaint as to all defendants. Additionally, the portion of claims I and II seeking monetary relief against the Board and Administrators in their official capacity were dismissed. Lastly, the court dismissed the portion of claim V seeking punitive damages against the Board.

Subsequently, on March 5, 2004, the Board and Administrators filed a notice of interlocutory appeal challenging the District Court's ruling that they were not entitled to qualified immunity. One week later, Coach Pruett filed a similar notice seeking review of the court's ruling. Then, on April 27, 2004, the District Court issued a stay of proceedings until the Fourth Circuit could resolve the issue regarding qualified immunity. Also, on April 27, 2004, the District Court granted in part and denied in part Defendant Pruett's motion to dismiss the amended complaint filed on February 5, 2004 in accordance with the court's February 17, 2004 memorandum opinion and order; affirming the dismissal of claims III and IX of the amended complaint against Pruett. On October 3, 2005, the case was reassigned to Judge Robert C. Chambers as a result of the retirement of Judge Robert Staker.

On May 11, 2006, the Court of Appeals dismissed the appeal and affirmed the judgment of the District Court regarding qualified immunity in

accordance with its written opinion decided May 11, 2006. On August 10, 2006, the Court of Appeals granted appellants' motion for leave to file an amended petition for rehearing to discuss the impact of *Carcetti v. Ceballos*, 126 S.Ct. 1951 (2006) on assertions of qualified immunity by Angel, Cottrill, and Grose regarding the free speech claims. Then, on August 25, 2006, appellants filed their amended petition for rehearing. Thereafter, on October 16, 2006, the Court of Appeals denied the appellants' petition for rehearing.

On January 16, 2007, defendants Administrators and the Board voluntarily dismissed the cross-claim against Hilliard. Also, on the same date, the aforementioned defendants filed an amended answer and cross-claim against Hilliard. Subsequently, on February 13, 2007, Hilliard was dismissed from this action with prejudice. Plaintiff currently maintains the following claims against defendant Pruett: Count VI, a state law claim for Outrageous Conduct and Count VII, a state law claim for Tortious Interference with a Contract.

Facts

Plaintiff was an Assistant Athletic Director at Marshall University, with responsibility for compliance with National Collegiate Athletic Association ["NCAA"] regulations. (See Amended Complaint, ¶ 13.) In July of 1999, Marshall University self-reported a potential violation to the NCAA for academic fraud. (*Id.*, ¶ 20). During the investigation of academic fraud, Marshall University discovered and also self-reported improper employment assistance that was provided to non-qualified student athletes. (*Id.*, ¶ 20).

On September 22, 2001, as a result of the NCAA investigations, a hearing was held before the NCAA Committee on Infractions. (*Id.*, ¶ 31). Plaintiff alleges that during an investigation by the NCAA into possible infractions by Marshall University, Coach Pruett “falsely and/or inconsistently testified” that he believed plaintiff was monitoring employment of non-qualified student athletes and that neither Coach Pruett nor his staff were informed that athletes were required to report employment status to the student athlete employment program administered by the Compliance Office. (*Id.*, ¶ 26.)

Plaintiff alleges that all defendants encouraged the Plaintiff to vigorously defend Marshall University’s position throughout the NCAA investigation. (*Id.*, ¶ 30.) On October 1, 2001, plaintiff agreed to be re-assigned to the position of Director of Judicial Programs at Marshall University. (*Id.*, ¶¶ 33 and 34.) Plaintiff alleges that despite an agreement that it would be made clear to the NCAA that his reassignment was not for any wrongdoing as MU Compliance Director, defendants Marshall University and Angel informed the NCAA that Ridpath’s re-assignment was a “corrective action” taken by Marshall University for the NCAA violations. (*Id.*, ¶¶ 35 and 36.) Plaintiff alleges that defendants sacrificed his career in intercollegiate athletics in order to gain favorable treatment from the NCAA Infractions Committee for rule violations which occurred in the football program. (*Id.*, ¶ 44.) These allegations are contained in the portion of plaintiff’s Amended Complaint denominated as “Background Facts.” (*Id.*, pp. 3-9.)

ARGUMENT

I. Plaintiff cannot establish a *prima facie* case against Defendant Pruett for tortious interference with a contract or the tort of outrage.

Coach Pruett should be granted summary judgment on the basis that there is no genuine issue as to any material fact to be tried and he is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Panrell v. United Mine Workers of America*, 872 F. Supp. 1502 (N.D.W.Va. 1995). The law of West Virginia applies to the issues in this case according to the doctrine of *Erie R. Co. v. Thompkins*, 304 U.S. 62, 58 S. Ct. 817 (1938). Plaintiff is unable to demonstrate a *prima facie* case against defendant Pruett for tortious interference

with a contract or the tort of outrage as defined by West Virginia law.

A.) Plaintiff cannot establish a prima facie case against Defendant Pruett for tortious interference with a contract.

To establish a *prima facie* case of tortious interference with a contract, the plaintiff must show:

- (1) existence of a contractual or business relationship or expectancy;
- (2) an intentional act of interference by a party outside that relationship or expectancy;
- (3) proof that the interference caused the harm sustained; and
- (4) damages.

Syl. Pt. 2, *Torbett v. Wheeling Dollar Sav. & Trust Co.*, 173 W.Va.

210, 314 S.E.2d 166 (1983).

...Defendants are not liable for interference that is negligent rather than intentional, or if they show defenses of legitimate competition between plaintiff and themselves, their financial interest in the induced party's business, their responsibility for another's welfare, their intention to influence another's business policies in which they have an interest, their giving of honest, truthful requested advice, or other factors that show the interference was proper.

Id.

Plaintiff 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 part outside that relationship or expectancy, and 3) proof that the interference caused the harm sustained.

i.) Existence of a contractual or business relationship or

expectancy.

Plaintiff cannot satisfy the first element of tortious interference with a contract: 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. West Virginia is an “at-will” employment state—either party can end the employment relationship with or without cause. *Cook v. Heck’s Inc.*, 176 W. Va. 368, 372, 342 S.E.2d 453, 457 (1986).

With regard to an academic part-time position which Ridpath held, he testified:

- Q: And what was the last course you taught?
A: The last course I taught, I believe, was PLS 320, campus recreation management. And I believe that was the spring of 2003. It might have been the fall of 2002. I can’t remember.
Q: But you believe it was the spring of 2003?
A: I think so.
Q: Did you actually sign a contract to teach that course?
A: We do sign a contract to teach the courses, yes.
Q: Does it say in big bold letters on there that it’s an at-will employment relationship?
A: It does.
Q: Does it say on there it’s a nontenured track position?
A: Yes.
Q: So you had no expectation, according to the written document you just described, to ever teach it again, did you?
A: It’s not guaranteed, no.
Q: Not only not guaranteed, they explicitly tell you don’t rely on it, don’t they?
A: I believe so. I would have to go back and look at it.

See pages 557-558, Ridpath deposition. Also, in response to defendant Pruett’s Interrogatory No. 2 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.”

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

Plaintiff cannot satisfy the second element of tortious interference with a contract (an intentional act of interference) because he has admitted he has no knowledge that defendant Pruett exercised power in any way over his employment.

Q: I think we went over that the last time. Question No. 3, describe each incident or fact upon which you will rely to show that defendant Pruett exercised control in any way over your employment. Let's just go over this. These are all your impressions of Coach Pruett's power within the University, the answer to No. 3; is that correct?

A: Yes.

Q: There is no fact in there which states how he controlled or that he exercised control in any way over your employment, is there?

A: It doesn't appear so.

Q: So you don't have any knowledge of Coach Pruett's actual power or lack of power in controlling your employment, do you?

A: Only what was communicated to me and what I observed in other employment situations.

Q: I believe I said that you don't have any actual knowledge of any power that he exercised over your employment at Marshall University?

A: No.

See pages 577-578, Ridpath deposition, attached to Motion as Exhibit B. Dr. Dan Angel, President of Marshall University at the time of the alleged incidents, testified as follows:

Q: You made the decision to terminate Dave Ridpath immediately upon your return from Indianapolis, about 2001?

A: It was right after the NCAA hearing.

Q: The NCAA hearing was held on September 2, 2001, so it was –
A: December 22nd – November 22nd – September 22nd.
Q: So you made that decision when you got home from the hearing; is that correct?
A: Maybe even on the way home from the hearing.
Q: What role, if any, did Coach Pruett play in making that determination?
A: None.
Q: So Coach Pruett, you neither sought his advice nor did he make any statements regarding whether or not Mr. Ridpath should continue on as director of compliance at the Marshall University; is that correct?
A: That's correct.

See pages 208-209, Angel deposition, attached to Motion as Exhibit C. Plaintiff cannot present a prima facie case that defendant Pruett interfered with his employment because he supports his argument largely with speculation and inadmissible evidence.

Q: Is it true, to the best of your knowledge, that President Angel in this letter stated, Consequently (sic), on September 27, I, I removed Mr. Ridpath from the University's department of athletics?
A: Yes.
Q: Is there any indication in that letter that anybody else assisted Doctor Angel, Mr. Angel in making that determination?
A: There's no indication in that letter.
Q: And that letter says that he heard testimony presented by the director of Compliance during our recent infractions hearing that I found troubling.
He made that determination, didn't he?
A: That's what the letter says.
Q: Do you know if the decision was made actually by September 27th?
Does that sound about right?
A: I guess it was. I was not informed until October 1st.
Q: Once again, you have no knowledge whatsoever that between the date of the hearing, which was 9/22, and the time, certainly by October 1st when this decision was communicated to you, that Coach Pruett had any influence, had done anything with regard to your reassignment?
A: Only secondhand.
Q: And the secondhand information that you have you received

from your attorney?
A: A man who represented himself as my attorney, yes.
Q: Mr. Hilliard –
A: Yes.
Q: – in one phone call.
A: It was one or two. I can't remember. But I do recall one.
Q: And Mr. Hilliard, whose client we can all agree was Marshall University –
A: Yes.
Q: – was revealing information that he had purportedly obtained in his role as counsel for the University; isn't that correct?
A: Yes.
Q: Which he shouldn't have disclosed to anybody who wasn't his client; isn't that correct?
A: Yes.
Q: So if, in fact, Mr. Hilliard was Marshall's counsel and if, in fact, anything he learned during any meetings was privileged, he could not have communicated that to you, assuming you were not his client?
A: I believe that's correct.

See pages 485-487, Ridpath deposition, attached to Motion as Exhibit B. Plaintiff cannot establish that defendant Pruett interfered with his employment at Marshall University. Instead, he relies upon inadmissible evidence and speculation which are insufficient to create a genuine issue of material fact. "Unsupported speculation is not sufficient to defeat a summary judgment motion." *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (see also *Ash v. United Parcel Service*, 800 F.2d 409, 411-12 (4th Cir. 1986); *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985). "...[E]vidence that would be inadmissible at trial may not be considered (in deciding motion for summary judgment)." *Wood Co. Airport Authority v. Crown Airways, Inc.*, 919 F.Supp. 960, 963 (S.D.W. Va. 1996). "Material that is inadmissible will not be considered on a motion for summary judgment because it would not establish a genuine issue of material fact if offered at trial and

continuing the action would be useless.” *Id.* (quoting Charles A. Wright & Arthur R. Miller, 10A *Federal Practice and Procedure* § 2727, at 156 (1983)).

iii.) Proof that the interference caused the harm sustained.

Plaintiff cannot satisfy the third element of tortious interference with a contract (proof that the interference caused the harm sustained) because he admitted he transferred positions, then left his employment with Marshall University of his own free will.

Instead of being terminated from his position as compliance director, plaintiff voluntarily accepted a position as the judicial director, a position that provided him with a higher wage. “On or about October 1, 2001, for numerous reasons both personal and professional, Ridpath agreed to be re-assigned to the position of Director of Judicial Programs at MU.” (Amended Complaint, ¶ 33, attached as Exhibit A.)

When the plaintiff eventually left employment with Marshall University, it was voluntarily and without compulsion.

Q: Correct me if I am wrong, did you quit at Marshall University?

A: Did I quit?

Q: Yeah.

A: Yeah. I accepted another position. I resigned.

Q: You quit, knowingly, voluntarily, without anybody putting a gun to your head or under duress, you voluntarily left Marshall University?

A: Yes.

(Ridpath deposition, page 660, attached as Exhibit B.) In addition, Dr. Angel has testified that he made the decision to terminate Mr. Ridpath’s position as the director of compliance with no

Plaintiff cannot establish the necessary elements of a *prima facie* case of tortious interference. As a matter of law, defendant Pruett is entitled to judgment in his favor on plaintiff's claim of tortious interference with contract.

B.) Plaintiff cannot establish a *prima facie* case against Defendant Pruett for the tort of outrage.

The tort of outrage is synonymous with intentional or reckless infliction of emotional distress. See *Tanner v. Rite Aid of West Virginia, Inc.*, 194 W.Va. 643, 461 S.E.2d 149 (1995) and *Travis v. Alcon Laboratories, Inc.*, 202 W.Va. 369, 375, 504 S.E.2d 419, 425 (1998). "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Syl. Pt. 6, *Harless v. First Nat'l Bank In Fairmont*, 169 W.Va. 673, 289 S.E.2d 692 (1982).

The current elements for a *prima facie* case of the tort of outrage (a.k.a. intentional or reckless infliction of emotional distress) are as follows:

- "(1) conduct by the defendant which is atrocious, utterly intolerable in a civilized community, and so extreme and outrageous as to exceed all possible bounds of decency;
- (2) the defendant acted with intent to inflict emotional distress or acted recklessly when it was certain or substantially certain such distress would result from his conduct;
- (3) the actions of the defendant caused the plaintiff to suffer emotional distress; and
- (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it."

Syl. Pt. 3, *Travis v. Alcon Laboratories, Inc.*, 202 W.Va. 369, 504 S.E.2d 419.

Plaintiff 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."

Defendant Pruett's Interrogatory No. 4 asked plaintiff for each fact upon which he relied concerning the allegation that defendant Pruett engaged in outrageous conduct. Plaintiff responded as follows:

Defendant Pruett knowingly violated NCAA rules, and did not report any potential violations to plaintiff as per policy which damaged the integrity of the compliance program plaintiff worked so hard to develop.

Defendant Pruett signed yearly statements saying he was not aware of any NCAA violations at the institution while he was presiding over the illegal jobs for props program. Defendant Pruett covered up those violations and blamed others, specifically the plaintiff, while initially pledging full support to plaintiff, but working behind the scenes to make sure plaintiff was blamed and received public scorn.

Defendant Pruett lied to NCAA investigators and the NCAA COI, in clear violation of NCAA bylaws 19, 32, and 10.1 which severely hampered the institutional, MAC and NCAA investigations. This was done again to protect his own personal and selfish interests, despite the harm it did to the plaintiff.

Defendant Pruett blamed plaintiff for said violations, and spoke about plaintiff in a negative fashion to the media and the public which painted plaintiff in a false light and resisted appeals for the athletes' suspensions to protect his own standing and power position. Additionally, he induced athletes to sign false statements under the guise that they would be able to play.

See Plaintiff's Responses to Defendant Bob Pruett's Interrogatories and Request for Production of Documents, pages 10-11.

Plaintiff makes these contentions to support his claim of the tort of outrage. However, despite intensive discovery in this matter, plaintiff cannot present sufficient evidence to support a *prima facie* case against defendant Pruett that he did the above activities and/or conducted himself in such a manner

as to constitute conduct that was “atrocious, utterly intolerable in a civilized community, and/or so extreme and outrageous as to exceed all possible bounds of decency.”

i.) Plaintiff cannot establish that defendant Pruett knowingly violated NCAA rules, lied to NCAA investigators, or wrongfully signed yearly statements saying he was not aware of NCAA violations.

Plaintiff relies on these assertions to support his claim of the tort of outrage against defendant Pruett. However, plaintiff can produce no admissible evidence that would establish a *prima facie* case against defendant Pruett with regards to these allegations. See Ridpath deposition pp. 589-608. In that testimony, counsel for defendant Pruett, Edward Kowal, asks plaintiff for his support for these allegations. Plaintiff says, based on his personal belief, that defendant Pruett lied to the NCAA when he said he did not recall plaintiff asking him if nonqualifiers were working. He also says he believes defendant Pruett knew about days of employment and wages of nonqualifiers and deliberately lied about them, without supporting these claims with evidence.

Based on this testimony, plaintiff was not able to provide information that would support a *prima facie* case against defendant Pruett for the tort of outrage. *Id.* Instead, he relies largely on his own speculation that defendant Pruett knowingly violated NCAA rules and lied to NCAA investigators. “Unsupported speculation is not sufficient to defeat a summary judgment motion.” *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (citing *Ash v. United Parcel Service*, 800 F.2d 409, 411-12 (4th Cir. 1986); *Ross v.*

Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985).

As the Court is aware, the NCAA conducted its own investigation into Marshall University's infractions of the NCAA rules. The NCAA investigators did not find that defendant Pruett knowingly violated NCAA rules or lied to them.

Also, plaintiff cannot establish a *prima facie* case against defendant Pruett that shows defendant Pruett was aware of NCAA violations at the time he signed yearly statements. Plaintiff has no evidence supporting this claim. *Id.* Instead, he relies largely upon speculation which is insufficient to create a genuine issue of material fact. *Id.*

ii. Plaintiff cannot establish a prima facie case that defendant Pruett worked behind the scenes to make sure plaintiff was blamed or received public scorn or spoke about plaintiff in a negative fashion to the media and the public which painted plaintiff in a false light.

- Q: ...You said Defendant Pruett blamed Plaintiff for said violations, spoke about Plaintiff in a negative fashion to the media. When did he ever do that?
- A: Well, I know for sure that he spoke to Chuck Landon with the Charleston *Daily Mail*, because he wrote a pretty unflattering editorial about me, ironically, on September 12, 2001. Bob even told me himself that he had spoke to Chuck Landon and said that he was trying to defend me against –
- Q: I want to know what evidence you have that he ever spoke to the media and gave them false information about you, other than what you surmise?
- A: No. That's the one.
- Q: That's Landon?
- A: Uh-huh.
- Q: Did Landon tell you that?
- A: No.
- Q: So you are just surmising that? You don't know that Pruett spoke to Landon in any light about you, isn't that correct?
- A: Only based upon what Bob told me.
- Q: I think Pruett said he just tried to defend you.
- A: I think he was trying to sugarcoat it. He knew what was

coming.

Q: So you are guessing that when he told you he was trying to defend you he really meant that he wasn't trying to defend you?

A: I didn't see a lot of defending in the article.

Q: You don't have any knowledge whatsoever that Pruett spoke to any media member about you in a false manner, do you?

A: It's based on belief.

Q: You don't have any evidence to support that contention, do you?

A: No.

Q: You're agreeing with the statement?

A: I think I answered it.

Q: Well, I am going to make you answer it again. You are agreeing with the statement?

A: The question is?

Q: The statement is you have no evidence to support the contention that Pruett spoke about you in a negative fashion to the media?

A: No direct evidence, no.

Q: Nor do you have any indirect evidence, do you?

A: Indirect evidence from the articles that came out, yes, and the access that Pruett has to reporters.

Q: And that's just your guess, is it not?

A: At this point in time, yeah.

See pages 592-594, Ridpath deposition, attached to Motion as Exhibit B. This testimony demonstrates plaintiff has no evidence to support the contention that defendant Pruett spoke about him in a negative fashion to the media.

iii. Plaintiff cannot establish conduct by the defendant that creates liability for the tort of outrage.

The tort of outrage requires conduct that is "atrocious, utterly intolerable in a civilized community, and/or so extreme and outrageous as to exceed all possible bounds of decency." Syl. Pt. 3, *Travis v. Alcon Laboratories, Inc.*, 202 W.Va. 369, 504 S.E.2d 419. This is a very high standard to meet.

"[L]iability (for tort of outrage) clearly does not extend to mere

insults, indignities, threats, annoyances, petty oppressions, or other trivialities.”

Tanner v. Rite Aid of W. Va., Inc., 194 W. Va. 643, 651, 461 S.E.2d 149, 157

(citing Restatement (Second) of Torts § 46(1)(1965)).

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice,’ or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. *Liability* (for tort of outrage) *has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community....*

Id. at 156-157. Plaintiff cannot establish that defendant Pruett’s conduct was of such a degree as to constitute the tort of outrage. As such, defendant Pruett is entitled to summary judgment against the plaintiff for this claim.

II. Conclusion

Based on the foregoing, there is no genuine issue as to any material fact, and defendant is entitled to judgment against the plaintiff as a matter of law on the basis that the plaintiff cannot establish a *prima facie* case against defendant Bob Pruett for tortious interference with a contract or the tort of outrage.

WHEREFORE, for the foregoing reasons, the defendant, Bob Pruett, respectfully requests that this Court grant his motion for summary judgment as to plaintiff’s claims of the tort of outrage and tortious interference with a contract as alleged in plaintiff’s Amended Complaint, Count VI and VII.

Inasmuch as there would be no remaining claims against this defendant, the amended complaint should be dismissed in its entirety against him.

s/Edward M. Kowal, Jr.

Of Counsel for Defendant
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