Order

Michigan Supreme Court
Lansing, Michigan

March 26, 2025

167057

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

GENNADY Y. PAREMSKY,
Plaintiff-Appellant,

v

SC: 167057
COA: 364046
Ingham CC: 21-000634-CK

COUNTY OF INGHAM, INGHAM COUNTY MEDICAL CARE FACILITY, GRETA WU, KIMBERLY COLEMAN, BRUCE BRAGG, LESLIE M. SHANLIAN, JENNIFER MACK, JASON KOONTZ, JENNIFER FIELDS, and JILL HOOKEY,
Defendants-Appellees.

_____/

By order of November 1, 2024, the county defendants were requested to answer the application for leave to appeal the February 15, 2024 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals in part and REMAND this case to the Ingham Circuit Court for further proceedings consistent with this order. Specifically, we reverse the Court of Appeals' holding that, as a matter of law, Susan O'Shea's statement that the plaintiff "was not to be terminated other than for a proper cause" fell short of describing an unequivocal and enforceable institutional commitment to guaranteeing the plaintiff employment but for just cause. To the contrary, we conclude that a reasonable jury could find that O'Shea's statement constituted a clear and unequivocal assurance of just-cause employment. See *Rood v Gen Dynamics Corp*, 444 Mich 107, 119 (1993). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

ZAHRA, J., would deny leave to appeal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 26, 2025

Clerk

a0319

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

GENNADY Y. PAREMSKY,

Plaintiff-Appellant,

v

COUNTY OF INGHAM, INGHAM COUNTY MEDICAL CARE FACILITY, GRETA WU, KIMBERLY COLEMAN, BRUCE BRAGG, LESLIE M. SHANLIAN, JENNIFER MACK, JASON KOONTZ, JENNIFER FIELDS, and JILL HOOKEY,

Defendants-Appellees.

UNPUBLISHED
February 15, 2024

No. 364046
Ingham Circuit Court
LC No. 21-000634-CK

Before: LETICA, P.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to, and dismissing claims against, defendants, Ingham County, the Ingham County Medical Care Facility (ICMCF), several of the ICMCF's employees (collectively the "county defendants"), and three employees of the Wage and Hour Division of the Michigan Department of Labor and Economic Opportunity (collectively the "WHD defendants"). We affirm.

I. FACTS

The trial court's order disposing of earlier related litigation provides a convenient summary of the facts underlying this case:

> Petitioner was employed by the ICMCF in various roles from 1997 to 2020. On October 5, 2020, he was involuntarily terminated from employment. As a result of this involuntary termination, the ICMCF did not pay out Petitioner's "paid time off" (PTO) fringe benefits.

> Petitioner filed a claim before the WHD[1] alleging the ICMCF had failed to pay or otherwise withheld $26,241.63 in PTO compensation, arguing that PTO is earned compensation which Petitioner had not forfeited. The ICMCF asserted that its written policy only provides for a PTO payout where an employee voluntarily terminates, and that since Petitioner was involuntarily terminated, he was not entitled to a PTO payout. The WHD found that the ICMCF's policy did only provide for a PTO payout where an employee voluntarily terminates, and contained no provision regarding a payout where an employee is involuntarily terminated. Where the ICMCF's policy was silent, the WHD declined to require the payment of fringe benefits to an involuntarily terminated employee and found that the ICMCF had not violated the Payment of Wages and Fringe Benefits Act[2] (the WFBA).
>
> Petitioner appealed the WHD's decision, and an Administrative Law Judge was assigned. Petitioner and the ICMCF filed opposing motions for summary disposition. Following a telephonic hearing and consideration of the briefs, the ALJ issued a final decision and order on June 2, 2021, determining that the written policy of the ICMCF did not provide for payout of accrued PTO upon involuntary termination. As a result, the ALJ affirmed the WHD's determination that Petitioner was not entitled to a payout of his accrued PTO and that the ICMCF had not violated the Act. . . . [*Paremsky v Ingham Co Med Care Facility*, opinion and order of the Ingham County Circuit Court, issued January 25 2022 (LC No. 21-000505-AA), p 2.]

The same judge who heard the instant case also heard the administrative appeal, and affirmed the final decision of the WHD. In that administrative appeal, the circuit court rejected plaintiff's contention that he was entitled to the disputed PTO compensation because the ICMCF's 2018 policy did not have a "forfeiture statement" affirmatively stating that any employee whose employment was involuntarily terminated was not entitled to the payment of unused PTO upon termination, and further explained:

> The plain reading of the provision of the ICMCF's 2018 Compensation Plan is a conditional statement: PTO will be paid if certain conditions are met. In this case, those conditions are: (1) the employee has worked for more than 12 months with [the ICMCF], (2) the employee provided a four week notice period, and (3) the

[1] The Department of Labor and Economic Opportunity's Wage and Hours Division.

[2] MCL 408.471 *et seq.* See also 1978 PA 390, amended by 1982 PA 524, § 1 ("AN ACT to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor; to require keeping of records; to provide for settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and to repeal certain acts and parts of acts.").

> employee voluntarily terminated. [Plaintiff] has not met these conditions. [*Id.* at 5.]

The circuit court rejected plaintiff's reliance on the 2003 policy regarding "resignations," concluding that it was irrelevant because plaintiff had not resigned. The court also rejected plaintiff's assertions that the matter was arbitrarily and capriciously decided. The court additionally rejected an equal protection claim, explaining:

> [T]here was a written conditional statement under which employees were to be paid accrued PTO, and [plaintiff] did not meet the conditions required by the written policy. Again, [plaintiff] spends significant time on the idea of a forfeiture statement, however, as discussed above . . . the matter of a forfeiture statement is irrelevant. Furthermore, although [plaintiff] cites to specific employees of the ICMCF that were allegedly treated differently, [plaintiff] provides no support for these assertions beyond the statements in his brief. This Court finds the Final Decision did not violate the Equal Protection Clause of the state or federal constitutions. [*Id.* at 8.]

The circuit court also rejected plaintiff's due-process arguments. With respect to procedural due process, the court noted that plaintiff initiated the proceedings and that he had the opportunity to be heard before an impartial decision-maker. The court remarked that plaintiff provided no evidence of the ALJ's bias, other than that the ALJ ruled against him. The court also noted that plaintiff offered no support for his allegations about "relationships between ICMCF employees and state employees," and held that his claim of bias was "entirely without merit" because it was based on speculation and unverified allegations. Concerning substantive due process, the court concluded that plaintiff failed to expose any arbitrary or capricious conduct that shocked the conscience.

Plaintiff sought leave to appeal the circuit court's affirmance of the WHD's final order, but this Court denied the application "for lack of merit in the grounds presented." *Paremsky v Ingham Co Med Care Facility*, unpublished order of the Court of Appeals, entered September 6, 2022 (Docket No. 360482), lv den 511 Mich 854 (2023).

While that administrative appeal was pending, plaintiff commenced the instant action, initially naming as defendants only the county defendants. The complaint set forth seven counts, all of which had their origins in the dispute over PTO compensation, the termination of plaintiff's employment, or the alleged double repayment of unauthorized personal charges on the ICMCF credit card.

Counts I and II respectively alleged common-law and statutory conversion of the value of the unpaid PTO on the ground that the county defendants deprived plaintiff of it when they removed those hours from his payroll account after he was terminated. Count III alleged breach of contract on the ground that the county defendants had failed to honor an agreement to compensate him for unused PTO.

Counts IV and V respectively alleged common-law and statutory conversion in connection with plaintiff's use of his ICMCF credit card. According to plaintiff, he transacted an unauthorized

purchase coming to $281.85 at Lowes Home Improvement with that card, then mailed a personal check to Lowes Card Services for the purchase, but Lowes purportedly lost that check. Plaintiff further alleged that he paid the ICMCF for all of his outstanding charges on the Lowes credit card with a personal check for $466.68, which included the $281.85 that he previously attempted to pay, after which Lowes purportedly cashed the check that had been reported as lost. Plaintiff asserted that he then requested from defendant ICMCF the $281.85 that he allegedly paid twice, but defendant refused his demand. Accordingly, plaintiff asserted that the defendant ICMCF converted $281.85 by refusing to reimburse his double payment.

Count VI alleged a breach of plaintiff's employment agreement on the ground that he was terminated without cause, despite having for-cause employment status. He alleged that the ICMCF's former administrator, Susan O'Shea, averred in a sworn statement that when plaintiff was hired, she told him that he would not be treated unfairly or terminated without cause, but that his October 5, 2020 termination was without just cause. Plaintiff claimed that he was entitled to recover what would have been his gross wages from that time until when he planned to retire in 2032.

Count VII alleged fraudulent misrepresentation against ICMCF's new administrator, defendant Leslie Shanlian. Plaintiff asserted that he was part of a leadership team that evaluated Shanlian when she was an applicant for the position, and that Shanlian misrepresented her past employment, character traits, and intentions about the position, thus disguising her ulterior motives to terminate many existing ICMCF leaders, including plaintiff, so that she could hire her friends and acquaintances. Plaintiff asserted that he would not have recommended her but for his reliance on those misrepresentations, and that without his recommendation Shanlian would not have been hired. Plaintiff further asserted that he detrimentally relied on Shanlian's misrepresentations because Shanlian terminated his employment without just cause.

In lieu of filing an answer, defendants moved for summary disposition. The trial court then dismissed Counts I to III on the ground that collateral estoppel barred relitigation of matters related to plaintiffs claim for PTO compensation.

The court declined to dismiss the conversion claims relating to the alleged $281.85 overpayment, concluding that a dispute existed because one of the payments was made to Lowes and it was unclear what involvement, if any, defendants had with regard to that payment. The court also opined that those claims might have been better stated under the rubric of unjust enrichment.

The trial court dismissed Count VI, concluding, as a matter of law, that plaintiff's allegations did not establish an enforceable promise that he would be terminated only for just cause. The court held that O'Shea's alleged representation that plaintiff would be treated "fairly" did not establish a just-cause employment contract, especially in light of an affidavit that defendants obtained from O'Shea "clarifying" that she did not tell plaintiff that he was other than an at-will employee.

The circuit court dismissed the claim of fraudulent misrepresentation against Shanlian on the ground that plaintiff lacked standing to sue Shanlian for representations made to a prospective employer.

The trial court entered an order on April 6, 2022, dismissing all claims but for Counts IV and V "for the reasons stated on the record and herein[.]" The court did, however, allow plaintiff to file an amended complaint.

The amended complaint added as defendants three individual employees of the WHD, in their personal capacities only, alleging that their "presence . . . is essential for rendering the complete relief to Plaintiff, as they refused to . . . require Defendant ICMCF to pay Plaintiff his already earned PTO compensation . . . ," and set forth 17 claims.

Counts I through VII mirrored plaintiff's original complaint. The new Count VIII recast the claim against defendants Ingham County and the ICMCF in relation to the $281.85 at issue in Counts IV and V as one of unjust enrichment; Count IX restyled the claims for PTO compensation as fraudulent misrepresentation and concealment on the part of defendants Ingham County and the ICMCF for having promised such compensation as part of inducing plaintiff to work for the ICMCF; Count X restyled the contract claim predicated on the alleged guarantee that plaintiff would be subject to termination for only just cause as a claim of fraudulent misrepresentation and concealment on the part of defendants Ingham County and the ICMCF; Counts XI and XII presented the PTO claim, in connection with all county defendants, as constitutional claims of a taking without compensation, a violation of due process, and also under 42 USC 1983; Counts XIII and XIV respectively characterized the county defendants' decision to terminate plaintiff without a hearing as violations of constitutional due process and equal protection, along with 42 USC 1983; Count XV asserted that the county defendants violated plaintiff's equal-protection rights, and also 42 USC 1983, insofar as they terminated him while other similarly situated employees were not terminated; Count XVI asserted that the WHD defendants violated substantive due process and 42 USC 1983 by refusing to adjudicate plaintiff's WHD claim according to applicable law and policy; and Count XVII asserted that the WHD defendants violated plaintiff's equal-protection rights, along with 42 USC 1983, by refusing to require the ICMCF to pay the PTO compensation at issue while the WHD routinely required such payments for other similarly situated claimants.

The trial court dismissed with prejudice all the claims other than those seeking recovery of the $281.35 overpayment, explaining:

> I had already dismissed certain claims. Those cannot be revived through the first amended complaint. Even to the extent that they are restated does not revive those claims.
>
> With regard to the counts that were dismissed, the additional counts are also now dismissed based on my ruling today.

Concerning the newly added WHD defendants, the Court stated that the claims against them

> are barred by the doctrine of collateral estoppel because, to a large extent, the claims in the amended complaint are . . . repackaged claims that are restated in a way to try to assert a claim that had already been ruled upon in the context of the administrative action and the prior rulings of this Court.

The court alternatively held that the claims against the WHD defendants "would be within the court of claims's jurisdiction and there has not been . . . a timely notice" with regard to those defendants, and also that "there is qualified immunity that protects these individuals" along with "governmental tort liability [immunity] under the act that protects these individuals."

Concerning the claims for recovery of the alleged overpayment of $281.85, Counts IV, V, and now VIII, the trial court agreed with defendants that, because that was the only facet of plaintiff's case left standing, "we would not meet the jurisdiction of the court to continue that claim." See MCL 600.8301 ("The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed $25,000.00.).[3]

This appeal followed.

II. STANDARDS OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ford Credit Int'l, Inc v Dep't of Treasury*, 270 Mich App 530, 534; 716 NW2d 593 (2006). Likewise, "[c]ollateral estoppel and res judicata present questions of law" subject to review de novo. *King v Munro*, 329 Mich App 594, 599; 944 NW2d 198 (2019). Whether a party has standing to bring an action also presents a question of law subject to review de novo. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004).

MCR 2.116(C)(7) authorizes motions for summary disposition premised upon "prior judgment." When deciding a motion under that subrule, the court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. See *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999).

"When reviewing an order of summary disposition under MCR 2.116(C)(10), we examine all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists on which reasonable minds could differ." *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). This Court accepts as true all factual allegations supporting the claim "to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Id.*

III. PRECLUSION

Plaintiff argues that the trial court erred by concluding that the administrative action and appeal to the circuit court precluded relitigation of his claims for PTO compensation. We disagree.

[3] Plaintiff protests that the trial court failed to appreciate that his claims added up to damages well in excess of $25,000, but the latter argument presupposes vindication of plaintiff's other appellate claims of error.

"Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006), citing 1 Restatement Judgments, 2d, § 27, p 250.

Preclusion doctrines "are applicable to administrative decisions (1) that are adjudicatory in nature, (2) when a method of appeal is provided, and (3) when it is clear that the Legislature intended to make the decision final absent an appeal." *William Beaumont Hosp v Wass*, 315 Mich App 392, 399; 889 NW2d 745 (2016) (quotation marks and citation omitted). In this case, there is no dispute that the proceedings before the WHD were adjudicatory in nature and the result was appealed to the circuit court. Therefore, matters thus decided were not subject to relitigation between those parties or their privies.

At the March 2, 2022 motion hearing, the trial court explained:

> As to Count 1, common law conversion of Plaintiff's PTO valued at $22,656.92; Count 2, statutory conversion of that same PTO amount; Count 3, breach of contract for failure to compensate for the PTO funds or the PTO equivalent. All of those counts are dismissed based on collateral estoppel. They have already been litigated between the parties in the . . . administrative proceedings case and the appeal that I ruled on.

At the November 4, 2022 motion hearing, after plaintiff filed his amended complaint, the trial court further explained:

> There is sufficient privity with regard to the nature of the claims between the currently named defendants and the previously litigated issues, the ruled-upon issues for collateral estoppel to apply to these issues that are pending now with regard to the wage and fringe benefits asserted to be due in this case.
>
> . . . These claims are based on a disagreement with the result of the administrative process of determining . . . under the Wage & Hour Division whether the benefits requested are payable to [plaintiff]. The fact that these individuals did the job they did but came to a different conclusion than Plaintiff . . . has does not constitute a basis for making these claims that have been asserted in the first amended complaint.
>
> . . . I had already dismissed certain claims. Those cannot be revived through the first amended complaint. Even to the extent that they are restated does not revive those claims.
>
> With regard to the counts that were dismissed, the additional counts are also now dismissed based on my ruling today.

"Generally, collateral estoppel applies if the following elements are satisfied: '(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full [and fair] opportunity to litigate

the issue; and (3) there must be mutuality of estoppel.' " *Charter Twp of Canton v 44650, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 354309); slip op at 12 (alteration in original; quotation marks, citation, and footnote omitted), quoting *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004); see also *Pereida v Wilkinson*, 592 US 224, 239 n 6; 141 S Ct 754; 209 L Ed 2d 47 (2021) ("parties seeking to assert issue preclusion have the burden of proving that an issue of *fact or* law has been actually litigated and determined by a valid and final judgment") (emphasis added; quotation marks, citation, and alteration omitted).

At issue, then, is what legal or factual matters were actually decided in the administrative proceedings and subsequent appeal to the circuit court, and the extent to which the instant defendants stood in privity with parties to the administrative matter.

A. THE ADMINISTRATIVE APPEAL

In the administrative appeal of the WHD's final decision, the circuit court recognized the applicability of MCL 408.473, which states that "[a]n employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy." The court also observed that the ICMCF's 2018 Compensation Plan included "as a conditional statement: PTO will be paid if certain conditions are met. In this case, those conditions are: (1) the employee has worked more than 12 months with [the ICMCF], (2) the employee provided a four week notice period, and (3) the employee voluntarily terminated." As the court noted, "there is no dispute that [plaintiff] was involuntarily terminated." The court further held that, because plaintiff was involuntarily terminated, his reliance on the ICMCF's handbook provisions governing resignations was inapt, and that "there is no provision in either the 2018 Plan or the Handbook that provides for the payment of fringe benefits (here, PTO) under these circumstances (involuntary termination)." The court answered plaintiff's reliance on the WFBA's provision that "[a]n employer shall not withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee," MCL 408.474, by stating its agreement with the ICMCF and WHD that "MCL 408.474 is inapplicable because it concerns benefits which are 'due' to an employee," which was not the case here, because "the written policies of the ICMCF do not provide that the fringe benefit of a PTO payout is 'due' to involuntarily terminated employees." Accordingly, the court concluded that the WHD's "Final Decision was based on competent, material, and substantial evidence on the whole record," and "was not made in violation of the WFBA."

The circuit court rejected plaintiff's argument that "the Final Decision was made upon an unlawful procedure," on the ground that "the Final Decision did analyze whether the fringe benefit was covered by a written policy and whether Petitioner met all conditions to receive payment of the fringe benefit." The court further rejected plaintiff's constitutional due-process[4] argument on the grounds that "[t]here is no question that [plaintiff] received notice of the nature of the proceedings," or that "[plaintiff] had an opportunity to be heard before an impartial decision maker

[4] US Const, Am XIV, § 1; Const 1963, art 1, § 17.

at a meaningful time and in a meaningful manner, having been provided the opportunity for briefing and for a hearing before an administrative law judge."

The circuit court rejected plaintiff's argument that "the Final Decision violated the Equal Protection Clauses of the state and federal constitutions"[5] predicated on his having been treated "differently from similarly situated claimants," on the ground that, in contrast to the cases on which plaintiff relied, this case involved "a written conditional statement under which employees were to be paid accrued PTO, and Petitioner did not meet the conditions required by the written policy."[6]

The circuit court also rejected plaintiff's argument that "the Final Decision was arbitrary and capricious," including as recast under the rubric of substantive due process, on the grounds that "the ICMCF, the WHD, and the Final Decision correctly interpreted the written policies of the [ICMCF] in the 2018 Compensation Plan and the ICMCF Handbook."

Because the circuit court in that earlier case held that the ICMCF, and the WHD in turn, correctly determined that plaintiff was not entitled to the PTO compensation he claimed, as a matter of contract,[7] policy, and operation of the WFBA, and because the circuit court additionally rejected plaintiff's arguments as presented under the rubrics of conversion, due process, and equal protection, the court in this case correctly held that those claims based on disagreements with those approved administrative decisions may not here be revived, including by presenting those disagreements under additional common-law or constitutional rubrics.

Preclusion thus obviously applies in connection with defendants Ingham County and the ICMCF. The question thus becomes the extent to which preclusion applies to the ICMCF and WHD employees, as privies of those institutions.

B. PRIVITY

The requirement of identical parties or their privies is often described as mutuality, meaning that the party seeking to take advantage of the earlier adjudication would have been bound

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[5] US Const, Am XIV, § 1; Const 1963, art 1, § 2.

[6] The court thus apparently saw no need to observe that the United States Supreme Court has "never found the Equal Protection Clause implicated in the specific circumstance where . . . government employers are alleged to have made an individualized, subjective personnel decision in a seemingly arbitrary or irrational manner." *Engquist v Oregon Dep't of Agriculture*, 553 US 591, 605; 128 S Ct 2146; 170 L Ed 2d 975 (2008).

[7] Apparently, having concluded that the preclusion doctrine applied, the court did not feel obliged to recite the rule that "evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 485-486; 986 NW2d 427 (2022) (quotation marks, citation, and alteration omitted), oral argument on whether to grant leave ordered 510 Mich 937 (2022). Or that "[c]ourts may not imply a contract under an unjust-enrichment theory if there is an express agreement covering the same subject matter." *Zwiker*, 340 Mich App at 482.

by it had the issue been decided in the other party's favor. See *Lichon v American Universal Ins Co*, 435 Mich 408, 427-428; 459 NW2d 288 (1990). "To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert. The outer limit of the doctrine traditionally requires both a substantial identity of interests and a working functional relationship in which the interests of the nonparty are presented and protected by the party in the litigation." *Adair v Michigan*, 470 Mich 105, 122; 680 NW2d 386 (2004) (quotation marks and citations omitted). Accordingly, "a perfect identity of the parties is not required, only a 'substantial identity of interests' that are adequately presented and protected by the first litigant." *Id.*

Moreover, "where collateral estoppel is being asserted defensively against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required." *Monat*, 469 Mich at 680-681.

Plaintiff argues that, to the extent that he sued the individual defendants in their personal capacities, they lacked privity with their respective employers. We disagree.

" '[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity," and thus "is not a suit against the official personally, for the real party in interest is the entity.' " *Proctor v Saginaw Co Bd of Comm'rs*, 340 Mich App 1, 11; 985 NW2d 193 (2022), quoting *Kentucky v Graham*, 473 US 159, 166; 105 S Ct 3099; 87 L Ed 2d 114 (1985). Accordingly, the individual defendants who made or administered the administrative decisions of which the circuit court approved in the administrative appeal were obviously in privity with their respective employers as regards those decisions or actions.

Plaintiff argues that the question of privity does not arise in connection with the late-added WHD defendants, on the grounds that the "WHD was not a party" in the administrative appeal of its final decision, "and could not have been bound by any judgment, but only Employer would be." Plaintiff is correct insofar as he had claimed PTO compensation from defendant ICMCF, who held the funds at issue, and the WHD never held those funds but instead was the administrative authority to whom the matter was eventually referred, and whose final decision was appealed to the circuit court. That agency was bound by the results of that appeal just as any decisional forum is bound by the results of appeals of its decisions to superior authority. Regardless, we need not consider whether an administrative agency, who never had custody of, or any interest in, the res at issue, stands in the shoes of the parties to a controversy it had decided for purposes of application of collateral estoppel.

Again, the trial court stated that "[t]here is sufficient privity with regard to the nature of the claims between the currently named defendants and the previously . . . ruled-upon issues for collateral estoppel to apply to these issues that are pending now with regard to the wage and fringe benefits asserted to be due in this case." By referring to "the nature of the claims," the court was apparently recognizing that the "mutuality of estoppel requirement is suspended" when collateral estoppel is " 'asserted defensively to prevent a party from relitigating an issue that such party has already had a full and fair opportunity to litigate in a prior suit.' " *Charter Twp of Canton*, ___ Mich App at ___; slip op at 12, quoting *Monat*, 469 Mich at 691-692 (alteration in original; quotation marks, citation, and footnote omitted). Plaintiff does not deny that he had the opportunity to present his case before the WHD and circuit court. Accordingly, the circuit court's

vindication in the administrative appeal of the WHD's determination that plaintiff was not entitled to the PTO compensation plaintiff sought precluded plaintiff's claims against the WHD's employees who were responsible for that affirmed decision through defensive application of collateral estoppel.

However, "Persons suing or being sued in their official or representative capacity are, in contemplation of law, distinct persons, and strangers to any right or liability as an individual, and consequently a former judgment concludes a party only in the character in which he or she was sued." 46 Am Jur 2d, Judgments, § 558, p 921. This principle does not bar operation of the preclusion doctrine, however, "where a party to one action in his or her individual capacity and to another action in his or her representative capacity is in each case asserting or protecting his or her individual rights," and thus "will personally benefit from a judgment in his or her representative capacity, or where there is privity between the individual and the representative." *Id.* (citation omitted).

In this case, plaintiff attempts to distinguish the WHD defendants' individual capacities from their official capacities by asserting that this action "is against the state employees in their personal capacities for his constitutional substantive due process violations because they refused to perform their mandatory duties, and for equal protection violations because they singled him out for adverse treatment without any rational basis, while the WHD requires payment of such earnings to similarly situated employees." But plaintiff thus characterizes the individual defendants as acting in their individual capacities for having made the administrative decisions, and taken the administrative actions, to which plaintiff objected in the administrative proceedings, and of which the circuit court approved as "in accordance with the law." Plaintiff thus fails to allege conduct on the part of the individual defendants outside the performance of their administrative duties.

Plaintiff emphasizes that he invoked 42 USC 1983 against the individual defendants in their personal capacities, and relies on *Hafer v Melo*, 502 US 21, 28; 112 S Ct 358; 116 L Ed 2d 301 (1991), in which the United States Supreme Court stated that "Congress enacted § 1983 to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." (Quotation marks and citations omitted.) The Court thus rejected the argument that a state actor may be subject to liability under § 1983 for only "acts taken under color of state law . . . outside the official's authority or not essential to the operation of state government," but not for actions "both within the official's authority and necessary to the performance of governmental functions." *Id.*

Regardless, plaintiff predicated his § 1983 claims on alleged violations of due process and equal protection. Because the circuit court in the administrative appeal held that the ICMCF, and the WHD in turn, correctly determined that plaintiff was not entitled to the PTO compensation he claimed, while rejecting plaintiff's arguments as presented under the rubrics of due process and equal protection, plaintiff's attempts to revive those constitutional claims through the device of predicating § 1983 claims on them is precluded by operation of collateral estoppel.

Further, as noted earlier, the United States Supreme Court has "never found the Equal Protection Clause implicated in the specific circumstance where . . . government employers are

alleged to have made an individualized, subjective personnel decision in a seemingly arbitrary or irrational manner." *Engquist v Oregon Dep't of Agriculture*, 553 US 591, 605; 128 S Ct 2146; 170 L Ed 2d 975 (2008). The Court added that "an at-will government employee generally has *no claim based on the Constitution at all*." *Id.* at 606 (emphasis added; quotation marks, citation, and alteration omitted).

As concerns specifically the WHD defendants, plaintiff asserts without elaboration that they "took the matter outside the WHD's realm and into their own 'personal' hands under the color of law, while misusing authority entrusted to them by the state." Not only does plaintiff not explain what actions of those defendants might be characterized as purely personal, as opposed to in furtherance of legitimate WHD business, collateral estoppel itself militates against recognizing this argument, given that the circuit court in the administrative appeal specifically held that plaintiff's argument that the WHD, thus its operatives, " 'aided and abetted' the ICMCF in wage theft" was "without merit."

For these reasons, the trial court correctly dismissed all of plaintiff's claims for PTO compensation on the ground that they were precluded by the doctrine of collateral estoppel.

IV. JUST-CAUSE EMPLOYMENT STATUS

Plaintiff argues that the trial court erred by dismissing his claims predicated on violation of a guarantee of job security but for just cause, asserting that the evidence established the existence of an oral and implied agreement for just-cause status. We disagree.

"Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163; 579 NW2d 906 (1998). To rebut the presumption, an employee must show "a contract provision for a definite term of employment, or one that forbids discharge absent just cause," which requires:

> (1) proof of a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a legitimate expectation of job security in the employee. [*Id.* at 164 (quotation marks and citations omitted).]

Plaintiff attached to his amended complaint a sworn statement from former administrator Susan O'Shea, dated September 2, 2021, whose attestations included the following:

> 14. I assured [plaintiff] that no one at the facility would unfairly treat him or unfairly terminate his employment, as long as he continued to provide maintenance services and oversee the facility's building and equipment.
>
> * * *
>
> 16. The employment of [plaintiff], a key management employee, on whom the facility's proper operation depended, and whom I requested to head the Maintenance Department, was not to be terminated other than for a proper cause.

> Based on [plaintiff's] skills, character, and dedication, this was highly unlikely. This understanding was made clear during our meetings.

The county defendants, however, attached to their motion to strike that statement their own affidavit from O'Shea, dated October 13, 2021, which included the following attestations:

> 8. [Plaintiff] remained an at-will employee at all times after leaving the bargaining unit and becoming Lead Maintenance Technician and later Director of Maintenance—including after 2007 and up to the time of my retirement.
>
> 9. I did not promise [plaintiff] that he would only be terminated "for cause," which was the employment status of our bargaining unit members. Rather, I reminded him that he would be treated fairly, just as I treated all other employees.
>
> 10. My promises of fair treatment are what I was referring to in paragraph 16 of my sworn statement drafted by [plaintiff's wife], and at no time did I make any promises to change the legal status of [plaintiff's] at-will employment.

The trial court explained its decision to dismiss the claims based on plaintiff's alleged just-cause employment status as follows:

> The motion was based on . . . alleged representation by former employee Susan O'Shea as to saying that [plaintiff] would be fairly treated.
>
> I think under the case law that does not establish a just-cause contract and, in fact, the . . . clarification affidavit by Ms. O'Shea indicates that her statements went no further than to say fair treatment as any other employee would be fairly treated. So she did not distinguish a particular agreement between the Defendant and the Plaintiff.

Plaintiff suggests that these sworn statements create an evidentiary conflict, which the trial court erroneously resolved while failing to view the evidence in the light most favorable to plaintiff, as the nonmoving party. We conclude, however, that the trial court correctly held, as a matter of law, that O'Shea's first statement fell short of describing an unequivocal and enforceable institutional commitment to guaranteeing plaintiff employment but for just cause. We also disagree that O'Shea's two affidavits created an evidentiary conflict, but rather cannot reasonably be interpreted other than as the trial court did.

Plaintiff additionally protests that defendants deprived him of his "right to continued employment" in violation of his constitutional due-process rights because there was no hearing, and of his equal-protection rights because "he was singled out for an adverse treatment without rational basis." However, "[a] public employee does not have a property interest in continued employment when the position is held at the will of the employee's superiors and the employee has not been promised termination only for just cause." *Manning v Hazel Park*, 202 Mich App 685, 694; 509 NW2d 874 (1993), citing *Bishop v Wood*, 426 US 341; 96 S Ct 2074; 48 L Ed 2d 684 (1976). Moreover, as noted earlier, "an at-will government employee generally has no claim

based on the Constitution at all." *Engquist*, 553 US at 606 (quotation marks, citation, and alteration omitted).

For these reasons, the trial court did not err by dismissing plaintiff's claims predicated on a violation of a guarantee that he would be subject to termination only for just cause.

V. STANDING

Plaintiff argues that the trial court erred by concluding that he lacked standing to sue defendant Leslie Shanlian because of how she represented herself while applying for her position with the ICMCF. Again, we disagree.

Plaintiff's general allegations in his amended complaint included the following:

> 53. . . . Plaintiff's damages arose out of his detrimental reliance on Defendant Leslie Shanlian[']s fraudulent misrepresentations and concealment when she applied for a position of an Administrator with Defendant ICMCF.
>
> 54. Had Defendant Shanlian told the truth about her past employment indicative of her vicious, conniving propensities and unfairness to co-workers, her inability to perform her job duties which was bound to result in downgrading ICMCF which the existing team built up to the 5-star rating for the community and so that they can work there until retirement, and her intentions to be unfair to and unfairly terminate employment of the leadership members including Plaintiff, Plaintiff, a decision-maker, would not have recommended her for hiring, she would not have unfairly terminated Plaintiff without cause after she was hired, would not have converted his earnings, and he would not have suffered damages for wrongful taking, fraud, breach of contract, constitutional violations, and conversion, which she committed and/or authorized.

The allegations for Count VII included the following:

> 134. In August-September of 2020, Plaintiff, a long-term valuable member of the leadership team, along with other directors, was given a responsibility by Defendant Ingham County DHS Board to choose the next Administrator, and had to evaluate the character and fitness of Defendant Leslie M. Shanlian, based on the employment information she supplied to the Defendant DHS Board and her responses to inquiries during her interview by the ICMCF directors.
>
> 135. As a job applicant, Defendant Shanlian had a duty to the interviewing directors, including Plaintiff, to disclose complete and truthful information about her past employment, her character propensities, and true intentions for a position of an Administrator she was applying for.
>
> 136. During her interview by Directors, Defendant Leslie M. Shanlian misrepresented and concealed the true information about her vicious propensities, her past negative employment history, and her intentions to bully the existing directors, including Plaintiff, out by terminating them in a harassing and unfair

> manner, so that she could free up resources to hire her friends for high-paying executive positions at the 5-star thriving facility built by the existing leadership team.
>
> * * *
>
> 142. During her job interview, Defendant Leslie M. Shanlian falsely said that she would continue working with the existing ICMCF directors on fair terms, that she was kind, and that she would go out of her way to accommodate ICMCF existing employees and co-workers with conflicting views and/or personalities, but would not terminate their employment unfairly.
>
> * * *
>
> 158. Plaintiff recommended Defendant Leslie M. Shanlian for a position of the Administrator by acting in reliance on Defendant Leslie M. Shanlian's mis-representations and concealment of her true propensities . . . .
>
> 159. As soon as Defendant Leslie Shanlian was hired based on recommendations of Plaintiff and other directors, she unfairly and without a proper/just cause terminated Plaintiff's employment with Defendant ICMCF in a harassing/bullying manner, misappropriated his earned PTO compensation of $26,241.63, his overpayment check proceeds of $281.85, and took away his property right in continued employment at the facility . . . .

The trial court dismissed this claim "based on lack of standing of this individual plaintiff to sue for Ms. Shanlian's representations to the prospective employer in her job interview with them," without elaboration.

"An action must be prosecuted in the name of the real party in interest . . . ." MCR 2.201(B).

> Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).]

"A real party in interest is one who is vested with the right of action on a given claim . . . ." *Olin v Mercy Health Hackley Campus*, 328 Mich App 337, 344; 937 NW2d 705 (2019) (quotation marks and citations omitted). The real-party-in-interest rule "protects the defendant by requiring that the claim be prosecuted by the party who by the substantive law in question owns the claim asserted against the defendant." *Id.* at 345 (quotation marks, citation, and alteration omitted).

Plaintiff does not argue that an employee has a general right to recover damages stemming from a superior's adverse decisions or actions, but suggests that he is entitled to do so in connection with defendant Shanlian, on the grounds that he had some role in the ICMCF's decision to hire her, that his recommendation resulted from the deceptive ways she presented herself during the hiring process, and that she then made decisions and took actions adverse to him. But plaintiff cites no authority for the proposition that an employee falsely induced to recommend an applicant to their employer, who is then unhappy after that recommendation is followed, has suffered a compensable injury.

Instructive is this Court's recognition that "a suit to enforce corporate rights or to redress or prevent injury to a corporation, whether arising from contract or tort, ordinarily must be brought in the name of the corporation, and not that of a stockholder, officer, or employee." *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 474; 666 NW2d 271 (2003). Accordingly, if a corporate entity is misled into hiring a poor manager, any attendant cause of action belongs to that corporate entity, not its individual employees—including those who participated in the hiring decision.

In this case, although the ICMCF accepted recommendations from some of its employees, apparently including plaintiff, the ICMCF was the entity that ultimately decided to hire Shanlian. Accordingly, the ICMCF was the only party with standing to assert a claim premised on Shanlian's alleged misrepresentations in the hiring process. Because plaintiff's claims against defendant Shanlian are not distinct from those of the ICMCF, he lacked standing to raise them.

Further, a claim of fraudulent misrepresentation requires proof that the plaintiff suffered injury as the result of reliance on the alleged misrepresentation. See *Titan Ins Co v Hyten*, 491 Mich 547, 555; 817 NW2d 562 (2012). In this case, plaintiff pleaded that he was part of a team that interviewed and recommended Shanlian, but left the trial court to speculate on whether she would not have been hired but for his recommendation. Although plaintiff asserts that, but for his recommendation, the ICMCF would not have hired Shanlian, and thus that Shanlian's decisions adverse to plaintiff would not have come about, such speculation does not satisfy the causation element of fraudulent misrepresentation.

Alternatively, this claim against defendant Shanlian was fatally flawed because plaintiff failed to plead actionable damages. His bases for damages were that Shanlian "terminated Plaintiff's employment . . . , misappropriated his earned PTO compensation . . . [and] his over-payment check proceeds of $281.85, and took away his property right in continued employment at the facility." But as discussed earlier, plaintiff had no right to continued employment because he was an at-will employee, he failed to prevail on his claim for PTO compensation in earlier administrative proceedings, and his claim for an overpayment of $281.85 was not actionable in the trial court because it fell below that tribunal's jurisdictional limit, see MCL 600.8301.

For these reasons, we reject plaintiff's challenge to the trial court's decision to dismiss the claim of fraudulent misrepresentation and concealment against defendant Shanlian.

Affirmed.[8]

/s/ Anica Letica
/s/ Mark J. Cavanagh
/s/ Brock A. Swartzle

[8] Plaintiff also challenges the trial court's alternative reasoning relating to its duty to defer to the jurisdiction of the Court of Claims, and governmental immunity. In fact, the trial court did not develop or explain those alternatives sufficiently for them to stand as alternative bases for affirmance in relation to the myriad claims and defendants in this case. We need not remand for further such development, however, because we are satisfied that the court correctly dismissed all of plaintiff's claims for the reasons the court relied on in the main.