

STATE OF MICHIGAN
COURT OF APPEALS

BARI BLAKE WOOD,

Plaintiff-Appellee,

v

36TH DISTRICT COURT,

Defendant-Appellant,

and

LAWANDA CROSBY and 36TH DISTRICT
JUDGE WILLIAM C. MCCONICO,

Defendants.

BARI BLAKE WOOD,

Plaintiff-Appellee,

v

36TH DISTRICT COURT, LAWANDA CROSBY,
and 36TH DISTRICT JUDGE WILLIAM C.
MCCONICO,

Defendants-Appellants.

Before: LETICA, P.J., and BORRELLO and CAMERON, JJ.

PER CURIAM.

UNPUBLISHED

May 18, 2023

No. 360103

Wayne Circuit Court

LC No. 21-005544-CZ

No. 360226

Wayne Circuit Court

LC No. 21-005544-CZ

These consolidated appeals¹ involve allegations that defendants, 36th District Court (District Court), 36th District Court Judge William C. McConico, and LaWanda Crosby, wrongfully terminated the employment of plaintiff, Bari Blake Wood, as a magistrate judge for the District Court. In Docket No. 360103, the District Court appeals by right the trial court's order denying the District Court's motion for summary disposition of the claims against it and Crosby on the ground that the District Court and Crosby had governmental immunity. In Docket No. 360226, defendants appeal by leave granted² the trial court's order denying in part their motion for summary disposition of Wood's claims on grounds other than governmental immunity. For the reasons explained herein, we reverse the trial court's opinion and order denying defendants' motion for summary disposition, in part, and remand this case to the trial court for entry of an order dismissing Wood's claims in full.

I. BASIC FACTS

In January 2016, Wood was appointed to be a magistrate in the District Court. The District Court's then chief judge, Nancy Blount, appointed Wood to be the chief magistrate in November 2017.

Wood alleged that, during her employment as a magistrate, she observed the District Court's personnel commit legal and civil rights violations in criminal cases, which were done at the request of the District Court's administration. More specifically, she alleged that she saw other court personnel approve warrants that, in her view, lacked "crucial legal requirements." She stated that she was also instructed to approve search warrants submitted by certain police officers. Wood alleged that she was subject to numerous complaints by law enforcement officers because she would not "acquiesce in conducting criminal proceedings based on legally deficient warrants." She stated that the District Court's then administrator expressed dissatisfaction with Wood's failure to approve over 100 warrants from July 2018 through September 2018.

Wood alleged that the American Civil Liberties Union (ACLU) sued the District Court in federal court in April 2019, for allegedly habitually violating civil rights. Wood claimed that she was questioned by the District Court in May 2019 about an acquaintance who informed her of the litigation before the ACLU filed its complaint. She also alleged that the District Court was concerned that Wood would testify truthfully when deposed for that litigation.

In November 2019, the Supreme Court appointed Chief Judge McConico to serve as the District Court's chief judge. Wood alleged that Chief Judge McConico disapproved of Wood and decided to remove Wood as chief magistrate even before he assumed the office of chief judge. Chief Judge McConico took over as chief judge on January 1, 2020, and Crosby became the

¹ *Wood v 36th Dist Court*, unpublished order of the Court of Appeals, entered May 19, 2022 (Docket Nos. 360103 and 360226).

² *Wood v 36th Dist Court*, unpublished order of the Court of Appeals, entered May 19, 2022 (Docket No. 360226).

District Court's interim administrator on the same day. Wood alleged that Chief Judge McConico and Crosby fired her on January 9, 2020.

In April 2020, Wood sued the District Court, Chief Judge McConico, and Crosby in federal court. She alleged a First Amendment claim, a claim of termination contrary to public policy under Michigan law, and a claim that defendants violated Michigan's Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*

In March 2021, the federal court dismissed Wood's claim premised on a violation of the First Amendment because her speech activities all occurred as part of her employment as a governmental agent and such speech was not protected by the First Amendment. As for the remaining claims under Michigan law, the federal court recognized that it had the discretion to hear those claims under its supplemental jurisdiction, but it declined to do so after having dismissed the only claim for which it had original jurisdiction. For that reason, the federal court dismissed Wood's claims without prejudice.

In May 2021, Wood sued the District Court, Chief Judge McConico, and the District Court's administrator, Crosby, in circuit court for allegedly wrongfully terminating her employment as a magistrate. She sued Chief Judge McConico and Crosby in both their official capacities and as individuals. She alleged that her termination was contrary to public policy, violated the WPA, and amounted to tortious interference with a prospective business relationship. Wood later amended her complaint and withdrew the WPA claim.

Defendants moved for summary disposition in August 2021. Defendants argued that the federal court "conclusively determined a material fact issue"—namely, that Wood's speech was made as part of Wood's job. Defendants maintained that the federal court's resolution of the First Amendment claim estopped Wood from arguing that her speech constituted an activity that was protected under Michigan law. They further argued that the federal court in effect determined that there was no causal relationship between Wood's speech and her termination. Defendants maintained that Wood could not relitigate whether she was wrongfully terminated for her speech.

Defendants also argued that Wood's tortious interference claim failed on other grounds. They contended that Wood had no valid expectancy in the chief magistrate position. They also asserted that Chief Judge McConico alone had the authority to terminate Wood's relationship, and, therefore, Crosby had no role in terminating Wood. They maintained that Wood did not allege that either Chief Judge McConico or Crosby acted for their own benefit, which she had to allege in order to establish that they, as agents for the District Court, interfered with Wood's relationship with the District Court. And they further asserted that Wood failed to allege or present evidence to corroborate that they had an improper motive.

Defendants maintained that the trial court had to dismiss Wood's wrongful termination claim because she failed to allege how any defendant was involved or reacted to her alleged refusal to act contrary to law. Wood also failed, they stated, to allege any facts that Chief Judge McConico or Crosby was aware of Wood's involvement in the ACLU litigation or how it came to be that they retaliated against her on the basis of that litigation. Wood's wrongful termination claim was, they argued, really just a disguised restatement of her federal First Amendment retaliation claim.

Indeed, defendants stated that there were no allegations against Crosby that established any claims against her because merely delivering a message of termination was not actionable.

Finally, defendants argued that Chief Judge McConico had absolute immunity from suit under MCL 691.1407(5). They similarly argued that Wood failed to plead in avoidance of Crosby's governmental immunity because Wood failed to allege that Crosby was grossly negligent.

In November 2021, the trial court entered its opinion and order denying in part and granting in part defendants' motion for summary disposition. The court determined, in relevant part, that Wood did not adequately allege her claim of tortious interference and dismissed that claim.³ The trial court further ruled that Chief Judge McConico had absolute immunity for his decision to terminate Wood's employment. The court, however, did not agree that governmental immunity applied to Crosby or the District Court. The court reasoned that further discovery was necessary to determine whether Crosby performed a governmental function and acted with gross negligence in Wood's termination. The court thus concluded that summary disposition of the claim against Crosby was inappropriate. Moreover, the court determined that, if Crosby was found to be grossly negligent, the District Court could then be held vicariously liable for Crosby's gross negligence. For these reasons, the trial court dismissed Wood's tortious interference claim and all the claims against Chief Judge McConico. The court, however, denied the motion to dismiss Wood's claim of wrongful termination contrary to public policy.

In January 2022, the District Court appealed by right the trial court's decision to deny defendants' motion to dismiss the claims against the District Court and Crosby on grounds that they were immune from suit (Docket No. 360103). Defendants appealed by leave granted the trial court's decision to deny their motion for summary disposition premised on grounds other than governmental immunity in February 2022 (Docket No. 360226).

II. JURISDICTIONAL CHALLENGE

In this Court, Wood challenges this Court's decision to grant leave to appeal in Docket No. 360226 for the same reasons that she raised in her answer in opposition to the application. Specifically, Wood argues that the District Court's application was untimely because it was filed more than 21 days after the trial court entered its order denying in part defendants' motion for summary disposition. She also claims that the District Court failed to include several requirements applicable to an application for leave to appeal.

"Whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review," and this Court must review whether it has jurisdiction even after granting leave to appeal. *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 172 (2009). This Court's jurisdiction is governed by statute and court rule. See MCL 600.308(2)(c); MCR 7.203(B)(1). Both provide that this Court has jurisdiction to grant leave to appeal interlocutory orders. *Id.*

³ The trial court's decision to dismiss this claim is not at issue on appeal.

Although the time limits for an appeal are jurisdictional, see MCR 7.205(A), this Court has jurisdiction to grant a delayed application for leave to appeal for applications filed within six months of the order from which the appeal has been taken. See MCR 7.205(A)(4)(a); *Chen*, 284 Mich App at 193. Even assuming that the District Court’s application was untimely under MCR 7.205(A)(1)(a), it was nevertheless within the six-month timeframe provided for delayed applications, see MCR 7.205(A)(4)(a). Therefore, this Court had jurisdiction to grant leave.

Wood also argues that the application for leave was defective as to both Crosby and the District Court because the application for leave did not meet the requirements of MCR 7.205(A)(4) (requiring a statement of facts explaining the reasons for the delay) and MCR 7.205(B)(1) (requiring the appellant to state how he or she would suffer substantial harm by awaiting final judgment). Unlike the time limits, these criteria are not jurisdictional, and this Court has the discretion to overlook them. See *Hoffman v Security Trust Co of Detroit*, 256 Mich 383, 385; 239 NW 508 (1931) (examining earlier Supreme Court appellate rules and concluding that the act and time of filing an appeal are jurisdictional, but that the “other acts necessary to complete an appeal are not jurisdictional”). Thus, this Court had jurisdiction to grant leave even if defendants failed to comply with those requirements. This Court granted leave over Wood’s challenge and Wood has not demonstrated that this Court lacked jurisdiction or otherwise abused its discretion when it granted leave. Therefore, we reject Wood’s jurisdictional challenge.

III. GOVERNMENTAL IMMUNITY

A. PRESERVATION

We first address the District Court’s argument that the trial court erred when it denied defendants’ motion for summary disposition premised on governmental immunity as to Crosby and the District Court. Wood contends that the District Court failed to adequately preserve these claims of error for appellate review.

In civil cases, Michigan follows “the ‘raise or waive’ rule of appellate review.” See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Under that rule, litigants must preserve an issue for appellate review by raising it in the trial court. See *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 344; 852 NW2d 180 (2014), vacated in part and lv den 497 Mich 927; 856 NW2d 692 (2014). To preserve an issue for appellate review, the party asserting error must demonstrate that the issue was raised in the trial court. See *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020). Moreover, the party asserting error must show that the same basis for the error claimed on appeal was brought to the trial court’s attention. See *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 642; 534 NW2d 217 (1995) (noting that the party asserting error objected on relevance, but asserted entirely different errors on appeal, and holding that only the ground for decision actually asserted in the trial court had been properly preserved). If a litigant does not raise an issue in the trial court, this Court has no obligation to consider the issue. *Bailey*, 304 Mich App at 344-345.

Wood argues that the District Court and Crosby did not preserve this claim of error for appellate review because they did not assert governmental immunity as a basis for dismissal in the trial court. The record does not support that assertion. In the trial court, defendants stated that Crosby had the immunity provided under MCL 691.1407(2). They also asserted that Crosby’s

actions did not amount to gross negligence as a matter of law and did not proximately cause Wood's termination. Defendants made the same argument at the hearing on their motion for summary disposition. Although the District Court did not specifically assert that it should be dismissed from the case because Wood failed to plead in avoidance of its immunity, it was implied that the trial court would have to dismiss the District Court if it determined that the District Court's agents were immune. Additionally, the trial court specifically addressed whether the District Court could be held vicariously liable and determined that there were questions of fact that precluded granting the motion for summary disposition as to Crosby on the ground that she was immune, making it possible that the District Court could also be held liable through vicarious liability. Because the issues were either raised or addressed in the trial court, they were adequately preserved for appellate review. See *Glasker-Davis*, 333 Mich App at 227.

B. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. See *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo whether the trial court properly interpreted and applied the relevant statutes and court rules. *Franks v Franks*, 330 Mich App 69, 86; 944 NW2d 388 (2019).

C. ANALYSIS

A party may move for "dismissal of or judgment on all or part of a claim" under MCR 2.116. See MCR 2.116(B). The moving party may assert as a ground for dismissal that he or she has "immunity granted by law." MCR 2.116(C)(7). The movant may support the motion under MCR 2.116(C)(7) with affidavits, depositions, admissions, or other documentary evidence, but is not required to do so. See MCR 2.116(G)(2). "When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). If the moving party supports a motion for summary disposition under MCR 2.116(C)(7) with documentary evidence, this Court analyzes the motion in the same way that it would a motion under MCR 2.116(C)(10). See *Kincaid v Cardwell*, 300 Mich App 513, 537 n 6; 834 NW2d 122 (2013). The reviewing court must consider the evidence in the light most favorable to the nonmoving party and determine whether the undisputed facts show that the moving party has immunity as a matter of law. *Id.* at 522. If the moving party properly supports the motion for summary disposition under MCR 2.116(C)(7), the burden shifts to the nonmoving party to identify evidence that establishes a question of fact as to whether the moving party has immunity. *Id.* at 537. When there is a question of fact as to whether the employees have immunity, the finder of fact must resolve the dispute. See *Guider v Smith*, 431 Mich 559, 572; 431 NW2d 810 (1988).

1. THE DISTRICT COURT

The Legislature stated that, except as otherwise provided under the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, a "governmental agency" of this state is "immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). A governmental agency includes a political subdivision. MCL 691.1401(a). In turn, a political subdivision includes a municipal corporation

or a court of a political subdivision. MCL 691.1401(e). The 36th District Court is a court in the city of Detroit, MCL 600.8101, MCL 600.8103(3), and MCL 600.8121a. Therefore, the 36th District Court is entitled to immunity under MCL 691.1407(1). See MCL 691.1401(a) and (e).

An agency's hiring, supervising, and firing of its employees constitutes the exercise or discharge of a governmental function. See *Galli v Kirkeby*, 398 Mich 527, 537-538; 248 NW2d 149 (1976) (stating that the board's supervision of its employee was a governmental function) (opinion by WILLIAMS, J.); see *id.* at 542, 545 (stating that supervising employees is a governmental function and agreeing that the board was immune for torts involving its hiring and supervision of employees) (COLEMAN, J., dissenting); see also *Bozarth v Harper Creek Bd of Educ*, 94 Mich App 351, 353; 288 NW2d 424 (1979) ("The screening, hiring[,] and supervision of teachers is a governmental function."). A claim of wrongful discharge sounds in tort and involves intentional misconduct as one cannot negligently fire an employee with malice. See *Phillips v Butterball Farms Co, Inc (After Second Remand)*, 448 Mich 239, 249, 250 n 27, 252 n 36; 531 NW2d 144 (1995). Moreover, a governmental agency does not cease to perform a governmental function when it performs an otherwise permitted act in an unauthorized manner. See *Richardson v Jackson Co*, 432 Mich 377, 385-387; 443 NW2d 105 (1989). An act is ultra vires only when the governmental agency lacked the legal authority to perform the act in any manner. See *id.* at 387; see also *Payton v Detroit*, 211 Mich App 375, 392; 536 NW2d 233 (1995) (quotation marks and citation omitted) (stating that whether immunity applies to the agency depends on the general nature of an employee's activity rather than the specific conduct alleged to have constituted a tort, and explaining that "[i]t would be difficult to envision any tortious act that would qualify as being part of a governmental function").

The District Court had the authority to terminate Wood's employment as a magistrate; accordingly, its termination of her employment was a governmental function, see *Galli*, 398 Mich at 537-538, for which it had absolute immunity from tort liability, see MCL 691.1407(1). For that reason, the District Court could not be directly liable in tort for terminating Wood's employment in violation of public policy. See *Richardson*, 432 Mich at 385-387; MCL 691.1407(1).

The District Court also could not be vicariously liable for the wrongful discharge of Wood by one of its employees. Wrongful discharge involves an intentional act performed in contravention of public policy, see *Phillips*, 448 Mich at 239, 249, 250 n 27, 252 n 36; see also *Suchodolski v Mich Consol Gas Co*, 412 Mich 692, 695-696; 316 NW2d 710 (1982) (recognizing an implied cause of action for wrongful termination when the termination would be in violation of a clearly mandated public policy expressed through law), and it is well settled that a governmental agency cannot be held vicariously liable for its employee's intentional torts, see *Payton*, 211 Mich App at 392-393.

Relying on *Malcolm v East Detroit*, 437 Mich 132; 468 NW2d 479 (1991), the trial court determined that the District Court could be vicariously liable for Crosby's tort. In that case, our Supreme Court stated that a governmental agency could be vicariously liable for an employee's torts "in those instances when governmental immunity does not apply." *Id.* at 140. Understood in context, the Supreme Court did not create a vicarious-liability exception to governmental immunity; it recognized that ordinary principles of vicarious liability apply to a governmental agency when there is an exception to the agency's immunity. See *id.* And this Court has specifically held that, unless an exception to the agency's immunity applies, the immunity

provided under MCL 691.1407(1) applies even when the agency's employee could be held personally liable for his or her tort. See *Yoches v Dearborn*, 320 Mich App 461, 475-477; 904 NW2d 887 (2017).

Wood had the burden to plead in avoidance of the District Court's governmental immunity. See *Mack v Detroit*, 467 Mich 186, 190; 649 NW2d 47 (2002). Because Wood failed to do so, the trial court should have granted the District Court's motion to dismiss her claim that the District Court could be liable for wrongfully discharging her in contravention of public policy. Accordingly, we reverse the trial court's decision to deny the District Court's motion for summary disposition premised on immunity.

2. CROSBY

The Legislature provided that lower ranking governmental employees have immunity if the employee acted or reasonably believed that he or she was acting within the scope of his or her authority; the employee was engaged in a governmental function; and the employee's act did not amount to gross negligence that was the proximate cause of the plaintiff's injury. See MCL 691.1407(2). The immunity provided under MCL 691.1407(2) applies to negligent acts; and artful pleading cannot transform an intentional tort into one involving negligence. See *Smith v Stolberg*, 231 Mich App 256, 258-259; 586 NW2d 103 (1998). Because wrongful termination in violation of public policy is an intentional tort, *Phillips*, 448 Mich at 239, 249, 250 n 27, 252 n 36; *Suchodolski*, 412 Mich at 695-696, Crosby was entitled to governmental immunity unless the exception to individual immunity for intentional torts applied.

Our Supreme Court has reaffirmed that a governmental employee may be entitled to governmental immunity even for an intentional tort under the common law that existed before the enactment of the GTLA. See *Odom v Wayne Co*, 482 Mich 459, 472-476; 760 NW2d 217 (2008). The Court explained the test that courts must apply when assessing whether a governmental employee has immunity for an intentional tort under the common law:

If the plaintiff pleaded an intentional tort, determine whether the defendant established that he is entitled to individual governmental immunity under the *Ross*^[4] test by showing the following:

- (a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,
- (b) the acts were undertaken in good faith, or were not undertaken with malice, and
- (c) the acts were discretionary, as opposed to ministerial. [*Id.* at 480.]

⁴ *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984).

In the general allegations of her amended complaint, Wood alleged that, from July to September 2018, the prosecutor's office, the chief judge, and the court administrator expressed dissatisfaction with Wood's refusal to approve deficient warrants. Wood alleged that there was a meeting with outside counsel after the ACLU sued the District Court and that someone questioned her at length about "how she came to learn of the potential for litigation." She asserted that the "attendees" demanded to know the identity of the person from whom she learned about the litigation and demanded to see Wood's phone. Wood alleged that "Defendants" learned about Wood's upcoming deposition and believed that Wood's honesty would undermine "Defendants' defense" and would "negatively impact their position in litigation." Wood alleged that Crosby "learned" all this "information" at "around" the end of 2019, and she stated that "the Court Administrator notified Plaintiff that Defendant McConico decided to remove Plaintiff from the Chief Magistrate position immediately" because he "disapproved" of Wood. Wood stated that "Defendants terminated Plaintiff's employment" on January 9, 2020.

Wood alleged in her claim for wrongful termination contrary to public policy that she was "expected to acquiesce in violation of laws" concerning the conduct of arraignments and the issuance of warrants, but that she refused to do so. Wood claimed that her "termination was carried out in retaliation" for her refusal to violate law or acquiesce in the violation of law and that her termination "violated clearly established public policy." Wood alleged that her termination was also as a result of her intention to exercise her right to testify truthfully. And she further alleged that the "actions of Defendants, their agents, representatives, and employees were intentional, wanton, willful, malicious and taken in bad faith, in deliberate disregard of and with reckless indifference to the rights and sensibilities of Plaintiff." Those actions, Wood stated, led to her termination.

As an individual employee, Crosby had the burden to establish her immunity as an affirmative defense. See *Odom*, 482 Mich at 478-479. Crosby did not submit evidence to establish that she had immunity and it does not appear on the face of the allegations that Crosby is entitled to immunity under the test stated in *Odom*. Wood alleged that defendants as a group fired her. It is clear that Crosby did not in fact fire Wood because, by law, only the chief judge could terminate a magistrate's employment. See MCL 600.8501(3) ("Each [36th District Court] magistrate appointed . . . shall serve at the pleasure of the chief judge of the thirty-sixth district."). Nevertheless, Wood alleged that defendants, which included Crosby, fired her, and that they acted intentionally, maliciously, and in bad faith in violation of public policy. Wood's allegations were sufficient to defeat Crosby's claim of immunity in the absence of evidentiary support to the contrary.

The trial court did not err when it denied the motion for summary disposition premised on Crosby's immunity.

IV. FAILURE TO STATE A CLAIM

A. STANDARD OF REVIEW

We next address defendants' argument that the trial court erred in several respects when it denied defendants' motion for summary disposition of Wood's wrongful termination claim under

MCR 2.116(C)(8). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co*, 285 Mich App at 369.

B. ANALYSIS

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim. See *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). When reviewing such a motion, the trial court must accept all the factual allegations made in the complaint as true and decide the motion on the pleadings alone. *Id.* at 160. This Court must also accept as true all reasonable inferences from the allegations. See *Theisen v Knake*, 236 Mich App 249, 252; 599 NW2d 777 (1999). But a complainant's allegations that amount to merely legal or factual conclusions may not be accepted as true on a motion to dismiss. See *Stann v Ford Motor Co*, 361 Mich 225, 232; 105 NW2d 20 (1960). A motion for summary disposition under this subrule can only be granted when the claim is so clearly unenforceable that no factual development could possibly justify recovery. *El-Khalil*, 504 Mich at 160.

Defendants spend a considerable amount of time addressing whether and to what extent the trial court erred when it relied on allegations from Wood's earlier complaint when determining whether defendants had established grounds for dismissing Wood's wrongful termination claim under MCR 2.116(C)(8). Defendants' arguments are not well taken.

This Court's review is de novo, and this Court must review the motion in the same way that the trial court was required to review it. *El-Khalil*, 504 Mich at 159. Because this Court's review is de novo, this Court must conduct its review independently and without any deference to the trial court's assessment. See *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019). Moreover, even if the trial court erred when it considered alternate allegations, this Court would have to affirm the trial court if it nevertheless came to the correct result. See *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 345; 941 NW2d 685 (2019) (even if the trial court assigned the wrong reason for granting summary disposition, an appellate court will not disturb the trial court's decision if it reached the correct result). Consequently, it is immaterial whether the trial court incorrectly identified allegations from an earlier complaint.

Defendants also assert that the trial court had an obligation to consider the e-mail from Chief Judge McConico to his predecessor when analyzing whether Wood's allegations stated a claim for wrongful discharge in violation of public policy. When considering a motion brought under MCR 2.116(C)(8), the reviewing court may only consider the pleadings; it may not consider evidence submitted in support of the motion. See MCR 2.116(G)(2) and (G)(5).

Notwithstanding MCR 2.116(G)(2) and (G)(5), there are some written instruments that will be treated as part of the pleadings. "If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading" MCR 2.113(C)(1). If an instrument is required to be attached under MCR 2.113(C)(1), it is part of the pleading "for all purposes," MCR 2.113(C)(2).⁵ Nevertheless, even when attached to a complaint, the assertions

⁵ The parties refer to MCR 2.116(F)(1) and (2), but the provisions of that court rule were moved to MCR 2.113(C). See 501 Mich ccxciii.

in an attached written instrument may not be taken as true unless adopted by the plaintiff; that is, the assertions cannot be used as substantive evidence to defeat the plaintiff's claim. See *El-Khalil*, 504 Mich at 163 (holding that the trial court erred by considering e-mails attached to the complaint as substantive evidence in a motion brought under MCR 2.116(C)(8) because the plaintiff did not adopt the e-mails as true, but only attached them as evidence of the defendants' retaliatory conduct).

In this case, Wood quoted the e-mail at issue in her complaint:

Five days after he was appointed, on November 27, 2019, Defendant McConico emailed Chief Judge Blount. He stated that as a result of recent meetings regarding his appointment 'it became clear that [he] should receive a copy' of the ACLU's complaint, as he anticipated being named as a defendant upon assuming his new role.

Wood's allegation was limited to asserting two facts: that McConico e-mailed his predecessor and that he stated that he should receive a copy of the ACLU's complaint. Because Wood adopted the e-mail for those allegations, the trial court could consider the e-mail when evaluating the specific allegations involving the e-mail in a motion under MCR 2.116(C)(8). But defendants attempted to use the e-mail to establish as a matter of law that Chief Judge McConico did not have an improper motive for terminating Wood's employment. Wood never alleged any such fact, so the trial court could not use the whole e-mail or e-mail chain as substantive evidence to defeat Wood's claims because Wood did not adopt the e-mails as true. See *El-Khalil*, 504 Mich at 163. Therefore, the trial court did not err to the extent that it refused to consider the e-mail for substantive purposes beyond the allegations adopted by Wood.

In order to assert a claim for wrongful termination contrary to public policy, Wood had to allege that defendants had the authority to terminate her employment, that they actually terminated her employment, and that they did so for reasons contrary to this state's public policy. See *Suchodolski*, 412 Mich at 695. To establish the last element, Wood had to allege that defendants acted in contravention of an explicit legislative statement prohibiting discharge, discipline, or other adverse treatment, or discharged her for refusing to violate state law, or discharged her for exercising a right conferred by a well-established legislative enactment. *Id.* at 695-696.

In her general allegations, Wood alleged that she had been employed as a magistrate with the District Court. She stated that she was instructed to approve warrants for certain officers in 2016, and observed others approve warrants that were deficient throughout 2018. She stated that she refused to do likewise, which led to complaints about her in 2018. She also informed the former chief judge and other magistrates about a conversation in which an acquaintance told her about possible ACLU litigation, and the ACLU subsequently did sue.

Wood alleged that Chief Judge McConico did not assume his office as chief judge and Crosby did not become the court administrator until January 1, 2020. She stated that Chief Judge McConico was "briefed" on the potential problems with Wood before he assumed his office. Wood further alleged that "Defendants"—collectively—"terminated Plaintiff's employment" on January 9, 2020.

In her allegations specific to her claim of wrongful termination, Wood alleged that she was expected to violate the law applicable to warrants and arraignments and that she refused to do so. She stated that her “termination was carried out in retaliation for her failure and/or refusal to violate or acquiesce in the violation of laws.” She also asserted that she had a well-established right to testify truthfully and that “Defendants” improperly terminated her because she intended to testify truthfully. She further alleged that the actions of “Defendants” were willful, malicious, and taken in bad faith.

Wood identified a duty that would be actionable under this state’s common law: an employer is prohibited from retaliating against an employee for refusing to violate this state’s law. See *id.* at 695.⁶ Wood’s allegation that she was terminated for refusing to issue search warrants and conduct arraignments in a way that was contrary to this state’s laws established the link between her conduct and the impermissible retaliation. But Wood did not directly allege that any defendant was her employer or supervisor such that he or she would have had a duty to refrain from retaliating against her under this state’s common law.

When evaluating the allegations, this Court must accept as true all reasonable inferences that may be drawn from the allegations. *Theisen*, 236 Mich App at 252. By alleging that she was appointed to be a magistrate for the District Court, it can reasonably be inferred that the District Court was Wood’s employer. The allegation that Chief Judge McConico and Crosby assumed their respective offices with the District Court in January 2020 permits an inference that they had some authority to act on behalf of the District Court, but it did not establish what that authority might be. Wood alleged that all defendants terminated her employment, which indicates that Chief Judge McConico and Crosby were each her employer in addition to the District Court, or that they each had the authority to terminate her employment. That allegation, however, amounted to a factual conclusion that was unsupported by allegations establishing the nature of their authority. For that reason, the conclusion could not be taken as true. See *Stann*, 361 Mich at 231-232 (rejecting an allegation that a hospital was a private hospital as a factual conclusion, which could not be accepted as true, because there were no allegations as to the organization, sources of income, purposes, or manner of operation that would support the conclusion); see also *State ex rel Gurganus v CVS Caremark Corp*, 496 Mich 45, 63; 852 NW2d 103 (2014) (“However, conclusory statements that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action.”). Wood failed to allege facts that established that Chief Judge McConico or Crosby had the authority to take an adverse employment action, which would give rise to a common law duty to refrain from doing so in violation of public policy. See *Suchodolski*, 412 Mich at 695. Accordingly, because Wood failed to allege an essential element of her claim for wrongful termination in violation of public policy against those two defendants, the trial court

⁶ If Wood had limited her claim to an allegation that she refused to “acquiesce” in violations, the result might have been different. The verb acquiesce suggests that others were violating the law and defendants retaliated because Wood would not allow such violations without some form of intervention, which implicates whistleblowing and possible preemption. Wood, however, did not limit her allegations to refusing to acquiesce. She also alleged that defendants retaliated against her for refusing to “violate” those same laws.

should have granted the motion for summary disposition of the wrongful termination claim as to them under MCR 2.116(C)(8).

Ordinarily, when a court grants summary disposition under MCR 2.116(C)(8), it must give the plaintiff the opportunity to amend his or her complaint to cure the defect unless, in relevant part, amendment would be futile. See *Weymers v Khera*, 454 Mich 639, 658-659; 563 NW2d 647 (1997). In this case, the District Court and Chief Judge McConico are immune from suit. Additionally, Wood cannot amend her complaint to allege that Crosby had the authority to terminate her because—as a matter of law—magistrates serve at the pleasure of the District Court’s chief judge. See MCL 600.8501(3). Consequently, amendment to correct the defect in the allegations would be futile as to Crosby and correcting the defect as to Chief Judge McConico would not avoid his immunity.

For these reasons, the trial court erred when it denied defendants’ motion for summary disposition under MCR 2.116(C)(8) as to Crosby. Accordingly, we reverse the trial court’s decision to deny defendants’ motion for summary disposition as to the wrongful termination claim against Crosby.

V. CONCLUSION

The trial court erred when it denied defendants’ motion for summary disposition of the claims against the District Court on the ground that the District Court was immune from suit. The trial court also erred when it concluded that Wood adequately alleged a claim for wrongful termination against Crosby. Wood failed to allege that Crosby had any authority to fire Wood and cannot correct that failing because Crosby had no authority as a matter of law. For these reasons, we reverse the trial court’s opinion and order in relevant part in both dockets. We further remand this case to the trial court to dismiss Wood’s wrongful termination claim against the District Court and Crosby.

Reversed and remanded for entry of an order consistent with our opinion. We do not retain jurisdiction. As the prevailing parties, defendants may tax their costs. See MCR 7.219(A).

/s/ Anica Letica
/s/ Stephen L. Borrello
/s/ Thomas C. Cameron