

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

WARREN EASTERLING, :
 :
 Plaintiff-Appellant, : CASE NO. CA2011-06-108
 :
 - vs - : OPINION
 : 2/6/2012
 :
 CHRISTOPHER ARNOLD, et al., :
 :
 Defendants-Appellees. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2010-08-3276

Warren Easterling, 71 Arlington Avenue, Dayton, Ohio 45417, plaintiff-appellant, pro se

Christopher Arnold, 9636 Cincinnati-Columbus Road, Cincinnati, Ohio 45241, defendant-appellee, pro se

ACF Mortgage, 9636 Cincinnati-Columbus Road, Cincinnati, Ohio 45241, defendant-appellee

HENDRICKSON, P.J.

{¶ 1} Plaintiff-appellant, Warren Easterling, appeals a decision from the Butler County Court of Common Pleas granting summary judgment in favor of defendants-appellees, Christopher Arnold and all partners of ACF Mortgage, LLC (collectively, "ACF").¹ For the reasons discussed below, we affirm the decision of the trial court.

1. Pursuant to Loc.R. 6(A), we sua sponte remove this appeal from the accelerated calendar.

{¶ 2} In May 2009, Easterling entered into an employment contract with ACF. ACF is a mortgage brokerage firm in Butler County, Ohio, that employs licensed loan officers to generate and close mortgage loans. The employment contract contained a non-compete clause that prohibited Easterling from working in a competitive business within a 100 mile area for six months. On December 29, 2009, Greg Fail, one of the business partners of ACF, sent Easterling an email informing him that his employment with ACF was terminated and that ACF would waive the noncompete clause so that Easterling could seek other employment. On January 19, 2010, Fail sent Easterling an email advising him that his loan officer license had been returned to the State of Ohio.

{¶ 3} Easterling filed suit against ACF for intentional interference with economic relations. Both parties moved for summary judgment. The trial court granted ACF's motion for summary judgment and denied Easterling's motion. Easterling now appeals, asserting two assignments of error.

{¶ 4} Assignment of Error No. 1:

{¶ 5} THE TRIAL COURT JUDGE ERRED WHEN HE DECLARED THE MUTUALLY AGREED UPON CONTRACT AS NOT BEING EVIDENTIARY QUALITY MATERIAL AND REMOVED IT FROM EVIDENCE.

{¶ 6} Assignment of Error No. 2:

{¶ 7} AFTER REMOVAL OF THE EMPLOYMENT CONTRACT FROM EVIDENCE, THE TRIAL COURT ERRED WHEN IT GRANTED THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENIED THE PLAINTIFF'S COMPETING MOTION FOR SUMMARY JUDGMENT.

{¶ 8} This court's review of a trial court's ruling on a summary judgment motion is de novo, which means that we review the judgment independently and without deference to the trial court's determination. *Simmons v. Yingling*, 12th Dist. No. CA2010-11-117, 2011-Ohio-

4041, ¶ 18, citing *Burgess v. Tackas*, 125 Ohio App.3d 294, 296 (8th Dist.1998). We utilize the same standard in our review as the trial court uses in its evaluation of the motion.

{¶ 9} Summary judgment is appropriate when there are no genuine issues of material fact to be litigated, the moving party is entitled to judgment as a matter of law, reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Williams v. McFarland Properties, L.L.C.*, 177 Ohio App.3d 490, 2008-Ohio-3594, ¶ 7 (12th Dist.). To prevail on a motion for summary judgment, the moving party must be able to point to evidentiary materials that show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The nonmoving party must then present evidence that some issue of material fact remains to be resolved; it may not rest on the mere allegations or denials in its pleadings. *Id.* All evidence submitted in connection with a motion for summary judgment must be construed most strongly in favor of the party against whom the motion is made. *Morris v. First Natl. Bank & Trust Co. of Ravenna*, 21 Ohio St.2d 25, 28 (1970).

{¶ 10} In his first assignment of error, Easterling claims the trial court erred when it found the employment contract inadmissible. Civ.R. 56(C) provides an exclusive list of materials that a trial court may consider when deciding a motion for summary judgment. *Spier v. American Univ. of the Caribbean*, 3 Ohio App.3d 28, 29 (1st Dist.1981). Those materials are "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact." Civ.R. 56(C). "[A] party may properly introduce evidence not specifically authorized by Civ.R. 56(C) by incorporating it by reference through a properly framed affidavit pursuant to Civ.R. 56(E)." *Wilson v. AIG*, 12th Dist. No. CA2007-11-278, 2008-Ohio-5211, ¶ 29; *Drawl v. Cornicelli*, 124 Ohio App.3d 562, 569 (11th Dist.1997).

{¶ 11} In support of their respective motions for summary judgment, both Easterling and ACF submitted a copy of the employment contract by incorporating it by reference through an affidavit. Although Easterling contends that the court improperly excluded the employment contract from evidence when it determined the merits of the parties' competing motions for summary judgment, the record demonstrates otherwise. The trial court expressly mentioned and considered the employment contract in its decision. The first assignment of error is overruled.

{¶ 12} In his second assignment of error, Easterling argues that the trial court erred in granting summary judgment to ACF. Essentially, Easterling contends that the evidence submitted demonstrates that ACF intentionally interfered with his economic relations by returning his loan officer license to the state of Ohio and by prohibiting Easterling from working as a loan officer for six months, pursuant to the noncompete clause. Easterling reasons that the trial court should have entered summary judgment in his favor.

{¶ 13} Interference with economic relations is a category of torts that includes two separate causes of action, interference with a contract and interference with a business relationship. Tortious interference with a contract generally occurs when a person, without privilege to do so, induces or otherwise purposely causes a third person not to perform a contract with another. *Becker Equip. Inc., v. Flynn*, 12th Dist. No. CA2002-12-313, 2004-Ohio-1190, ¶ 15. The elements of the tort include 1) the existence of a contract, 2) the defendant's knowledge of a contract, 3) the defendant's intentional procurement of the contract's breach, 4) the lack of justification, and 5) the resulting damages from that breach. *Knox Mach., Inc. v. Doosan Mach., USA, Inc.*, 12th Dist. No. CA2002-03-033, 2002-Ohio-5147, ¶ 21. In order to prevail, a party must demonstrate that the wrongdoer "intentionally and improperly" interfered with its contractual relations with another. *Becker Equip.* at ¶ 15, quoting *Dryden v. Cincinnati Bell Tel. Co.*, 135 Ohio App.3d 394, 400 (1st Dist.1999).

{¶ 14} "The tort of interference with a business relationship occurs when a person, without privilege to do so, induces or otherwise purposefully causes a third person not to enter into or continue a business relationship with another." *DK Prods., Inc. v. Miller*, 12th Dist. No. CA2008-05-060, 2009-Ohio-436, ¶ 9, citing *Diamond Wine & Spirits, Inc. v. Dayton Heidelberg Dist. Co.*, 148 Ohio App.3d 596, 2002-Ohio-3932, ¶ 23 (3rd Dist.). Unlike tortious interference with a contract, tortious interference with a business relationship includes interference with prospective contractual relations not yet reduced to a contract. *Knox Mach.* at ¶ 23. The elements of the tort include 1) a business relationship, 2) the tortfeasor's knowledge thereof, 3) an intentional interference causing a breach or termination of the relationship, and 4) damages resulting therefrom. *Id.* at ¶ 22. Moreover, tortious interference with a business relationship requires that the defendant "intentionally and improperly interfere with the plaintiff's prospective contractual or business relations by 1) inducing or otherwise causing a third person not to enter into or continue the prospective relation, or 2) preventing the plaintiff from acquiring or continuing the prospective relation." *DK Prods.* at ¶ 10 citing *Dryden* at 400.

{¶ 15} In the present case, ACF submitted evidence that shows there are no genuine issues of material fact and that it is entitled to judgment as a matter of law under both theories of recovery. Both intentional interference with a contract and intentional interference with a business relationship require a contract or a business relationship with a *third party*. The employment contract, emails, and affidavit submitted in the present case only specified a business relationship between Easterling and ACF. Thus, these materials did not suffice as a "contract" or a "business relationship" with a third party. Moreover, ACF did not attempt to interfere with Easterling's ability to enter into a business relationship with others. In fact, ACF expressly waived enforcement of the noncompete clause thereby inviting Easterling to enter into contracts and engage in business with other parties.

{¶ 16} Easterling failed to present evidence that created a genuine issue of material fact, which would have precluded the trial court from entering judgment in ACF's favor. Although Easterling submitted a copy of his employment contract with ACF, and various emails exchanged between the parties, the evidence failed to demonstrate that Easterling had a contract or business relationship *with a third party*. Easterling argues that ACF has interfered with his ability to enter into future contracts or business relationships by returning his loan officer license to the state of Ohio. However, neither tort contemplates a tortfeasor's actions on future contracts or business relationships. *Knox Mach.* at ¶ 26. Further, ACF's return of the loan officer license does not prevent Easterling from seeking employment as a loan officer, as Easterling's license is easily transferable to a new employer. Easterling's bare assertions that ACF has intentionally interfered with his economic relations are not enough to create a genuine issue of material fact. *Hillstreet Fund III, L.P. v. Bloom*, 12th Dist. No. CA2009-07-178, 2010-Ohio-2961, ¶ 10. Accordingly, the trial court did not err in granting ACF's motion for summary judgment.

{¶ 17} We further find that the trial court did not err in denying Easterling's motion for summary judgment. Easterling failed to present evidence establishing his prima facie case for intentional interference with economic relations. The second assignment of error is overruled.

{¶ 18} Judgment affirmed.

PIPER and HILDEBRANDT, JJ., concur.

Hildebrandt, J., of the First Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5 (A)(3), Article IV of the Ohio Constitution.