

[Cite as *Williams v. Hung*, 2024-Ohio-4682.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

THOMAS WILLIAMS, :
 :
 Plaintiff-Appellant, : No. 113661
 :
 v. :
 :
 MICHELLE HUNG, ET AL., :
 :
 Defendants-Appellees. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 26, 2024

Civil Appeal from the Cuyahoga County Common Pleas Court
Case No. CV-22-971623

Appearances:

Novak LLP and William J. Novak, *for appellant.*

Meyers, Roman, Friedberg & Lewis, Emily A. Imbrogno,
David M. Smith, and Joseph Pokorny, *for appellee*
Michelle Hung.

Speech Law LLC and Brian D. Bardwell, *for appellee*
Harry Williamson.

Hanna, Campbell & Powell, LLP, and John D. Latchney,
for appellee Brian Bardwell.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Plaintiff-appellant, Thomas Williams, appeals the trial court’s grant of judgment on the pleadings in favor of Michelle Hung, Harry Williamson, and Brian Bardwell. The trial court did not abuse its discretion by ruling on the motions for judgment on the pleadings on remand and correctly granted Hung’s, Williamson’s, and Bardwell’s motions for judgment on the pleadings. Accordingly, we affirm the judgment of the trial court.

PROCEDURAL HISTORY AND RELEVANT FACTS

Litigation History Among the Parties to This Appeal

{¶ 2} Williams was Lorain County Administrator between January 4, 2021, and August 18, 2021. Hung is an elected Lorain County Commissioner. Williamson was the 911 Director for Lorain County, Ohio until his termination on August 3, 2021. Brian Bardwell is an attorney in the State of Ohio who has represented Williamson in this case and other matters.

{¶ 3} On September 30, 2021, Williams filed a complaint in federal court (the “Federal Case”) against Lorain County Commissioners Hung and Matt Lundy in both their personal and official capacities. In the Federal Case, Williams alleged breach of his severance agreement with Lorain County, Ohio, retaliation for exercising his right to free speech, and breach of an alleged settlement agreement.

{¶ 4} On January 28, 2022, Williamson filed a lawsuit in the Lorain County Court of Common Pleas (the “Lorain County Case”) against Williams and others alleging he was wrongfully terminated.

{¶ 5} On May 23, 2022, Williams entered into a “Full, Final and Complete Release and Settlement Agreement” (“Settlement Agreement”) in resolution of the Federal Case. The Settlement Agreement reads in pertinent part:

For and in consideration of the sum of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) in the form of a check payable to “Thomas Williams and his attorney, William J. Novak,” Thomas Williams, and any and all of his respective agents, representatives, heirs, executors, administrators, attorneys, insurers, successors and assigns (hereinafter referred to as “Releasers”) hereby release and forever discharge Lorain County and Lorain County Commissioners Michelle Mung, Matthew Lundy, and David Moore, personally and in their official capacity as Lorain County Commissioners, and any and all of their current and former employees, agents, attorneys, and all of their respective insurers, successors and assigns (collectively hereinafter “Releasees”), as the case may be of and from:

(a) Any and all claims, demands, rights and causes of action of whatever kind and nature, of any kind or description, in law or in equity, whether or not well- founded in law or in fact, and demands of every kind and description, including but not limited to, attorneys’ fees, whether known or unknown, which Releasers now have or may have had, or which Releasers hereafter can, shall or may have for, upon, or by reason of the cause or anything whatsoever to the date hereof against Releasees.

(b) Without limiting in any way the generality of the foregoing, from any and all claims, demands, rights, and causes of action of whatever kind and nature, of any kind or description, in law or in fact, arising from, and by reason of all known and unknown, foreseen and unforeseen damages, including attorneys’ fees arising from Thomas Williams’ employment as Lorain County Administrator and his

termination from that position on or about August 18, 2021, which is the subject of the Complaint filed on or about September 30, 2021 against Michelle Hung and Matthew Lundy in the U.S. District Court for the Northern District of Ohio bearing Case No. 1:21-CV-01863 (hereinafter referred to as “Civil Action”), and/or for any acts performed in connection with the Civil Action, and/or in connection with this Release, including but not limited to, its execution or validity.

...

3. The Releasors acknowledge, declare, represent, warrant and agree that:

...

(d) That this Full, Final and Complete Release and Settlement Agreement is a general release and Releasors expressly assume the risk of any and all claims for damages which exist as of this date or which may exist in the future, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect Releasors’ decision to enter into this Full, Final and Complete Release and Settlement Agreement.

{¶ 6} On November 11, 2022, Williams filed a complaint in the Cuyahoga County Court of Common Pleas (“the “Cuyahoga County Case”) against Hung, Williamson, and Bardwell, which complaint is the subject of this appeal. On January 23, 2023, Williams filed an amended complaint (the “Amended Complaint”) alleging the following causes of action against Hung, Williamson, and Bardwell: civil abuse of process, civil recovery for criminal acts, civil conspiracy, and negligence. Underlying the causes of action are allegations Williams learned during discovery in the Lorain County Case that Hung provided Williamson with information from Lorain County Commissioners’ executive sessions and Bardwell

used that information in the Lorain County Case. Further, he alleges this information was wrongfully withheld during discovery in the Federal Case, claiming Hung perjured herself in a deposition by denying she disclosed the information and that Bardwell wrongfully did not disclose his source of the information used in the Lorain County Case.

{¶ 7} In the Cuyahoga County Case, Bardwell appeared individually and as counsel for Williamson. Williams filed a motion to disqualify Bardwell from representing Williamson, and January 30, 2023, the trial court disqualified Bardwell from serving as legal counsel for Williamson. Williamson filed an interlocutory appeal of that decision, and on December 14, 2023, this court reversed the trial court's order and remanded the matter for further proceedings consistent with our opinion. *Williams v. Hung*, 2023-Ohio-4540 (8th Dist.).

{¶ 8} While the issue of Bardwell's disqualification was before this court, Hung; Williamson, through new counsel; and Bardwell each filed motions for judgment on the pleadings by October 23, 2023. After remand of the case, the trial court granted the motions for judgment on the pleadings on February 21, 2024, and dismissed the lawsuit. It did not hold further hearings or rule upon Williams's motion to disqualify Bardwell.

Motions for Judgment on The Pleadings in the Cuyahoga County Case

{¶ 9} Within her motion for judgment on the pleadings, Hung argued Williams released all claims against her and was barred from bringing an action

against her. Further, Hung argued that because of the Settlement Agreement, Williams could only maintain an action for rescission of the Settlement Agreement on the basis of fraud, which must be pled with particularity, and Williams did not do so in the Amended Complaint. Within his motion for judgment on the pleadings, Williamson argued that because he was a former employee of Lorain County at the time the Settlement Agreement was entered into, he was also released from future litigation. He also argued Williams failed to allege fraud with particularity in the Lorain County Case. Bardwell argued that his conduct alleged in the Amended Complaint was not actionable because he was immune from suit under Ohio's litigation privilege and that Williams could not maintain an action against him because he lacked standing to sue Bardwell.

Trial Court's Decision Granting the Motions on the Pleadings

{¶ 10} The trial court granted Hung's and Williamson's motions on the doctrine of waiver and release. It found that the Settlement Agreement in the Federal Case released both Hung and Williamson. The trial court relied on language in the Settlement Agreement and found

that the terms of the Settlement Agreement are clear and unambiguous. Based on the language of the settlement agreement, the court finds that [Williams] knowingly and voluntarily released both Defendant Hung and Defendant Williamson from the claims which give rise to the present suit. Indeed, Defendant Hung is explicitly referenced as an individual who was released and forever discharged from any future claims, both known and unknown, by the plaintiff. As a former employee of Lorain County, Defendant Williamson is

undisputedly contemplated for and similarly protected under the clear terms of the Settlement Agreement.

{¶ 11} The trial court addressed Williams’s argument that the Settlement Agreement was void or voidable and found it not well taken because Williams

at best, . . . can only claim that the Settlement Agreement was procured by fraud in the inducement. Even, assuming arguendo, that the Court could accept this allegation for fraud in the inducement as true, [Williams’s] claims in the present action are still nonetheless barred as [Williams] did not comply with the “tender-back rule” as required by Ohio case law. See *Weisman v. Blaushild*, 8th Dist. Cuyahoga No. 88815, 2008-Ohio-219; *Haller v. Borrer Corp.*, 50 Ohio St.3d 10, 552 N.E.2d 207 (1990); *Berry v. Javitch, Block & Rathbone, L.L.P.*, 127 Ohio St.3d 480, 2010-Ohio-5772, 940 N.E.2d 1265. See also *Gildner v. Accenture, Ltd.*, Ct. of Cl. No. 2007-05067-PR.

{¶ 12} As to Bardwell, the trial court granted his motion for judgment on the pleadings because it found that

any and all conduct and/or statements by Defendant Bardwell which give rise to the pending claims against him are absolutely and unequivocally barred by the doctrine of litigation privilege.

...

[A]ll of the claims in plaintiff’s Amended Complaint (civil abuse of process, civil recovery for criminal acts, civil conspiracy, and negligence) against Bardwell are premised upon the fact that Bardwell allegedly “adamantly and improperly refused to answer questions regarding his source for the text messages and confidential executive session information.”

LAW AND ARGUMENT

Assignments of Error

{¶ 13} Williams raises four assignments of error, which read:

1. The trial court committed reversible error when it failed to comply with the mandate of this Court of Appeals.
2. The trial court committed reversible error when it shielded Defendant Brian Bardwell with litigation immunity.
3. The trial court committed reversible error when it granted Defendant Harry Williamson the status of a third-party beneficiary under the terms of the release and settlement agreement from the Federal Case.
4. The trial court committed reversible error when it permitted Defendant Michelle hung to enforce the release and settlement from the Federal Case.

The Trial Court Did Not Commit Error by Ruling on the Motions for Judgment on the Pleadings

{¶ 14} Within his first assignment of error, Williams argues that the trial court could not rule on the motions for judgment on the pleadings because this court mandated the trial court first address his motion to disqualify Bardwell from representing Williamson. In resolving Williamsons’s interlocutory appeal regarding Bardwell’s disqualification, we found that “we are unable to determine whether the court’s decision [to disqualify Bardwell] was within its discretion or an abuse of its discretion. . . . We therefore, remand this case for further clarification — via written findings, an evidentiary hearing, or both.” *Williams*, 2023-Ohio-4540, at ¶ 21 (8th Dist.).

{¶ 15} A “trial court has broad discretion in managing its docket, setting case schedules, and scheduling orders.” *Williams v. Schneider*, 2018-Ohio-968, ¶ 146 (8th Dist.). While the interlocutory appeal regarding Bardwell’s disqualification was

pending, the parties engaged in motion practice, exchanged evidence, and attended pretrial conferences on other issues in the case. After our remand, the trial court exercised its discretion in scheduling to hold a hearing and rule upon the motions for judgment on the pleadings. In doing so, the issue of whether to disqualify Bardwell was rendered moot, especially where Williamson obtained new counsel to file his motion for judgment on the pleadings.

{¶ 16} In reviewing our mandate in *Williams*, we do not read it as precluding the trial court from determining others matters. Nothing in our prior opinion mandated the issue of disqualification be determined first or prior to a determination of the motions for judgment on the pleadings. The trial court had the authority “to manage and administer its own docket and to ensure the orderly and expeditious disposition of cases.” *Norris v. Greater Cleveland Regional Transit Auth.*, 2022-Ohio-3552, ¶ 17 (8th Dist.). Accordingly, we do not find that the trial court erred by first determining the motions for judgment on the pleadings.

{¶ 17} *Williams*, in claiming the trial court ignored our mandate, relies on our opinion in *In re A.O.*, 2015-Ohio-1038 (8th Dist.). In *In re A.O.*, our remand to the juvenile court was an order to issue legal custody of a minor to a specific party. On remand, the juvenile court did not do so and instead conducted another custody hearing, eventually granting custody to a different party. In contrast, the trial court in this case did not take any actions or issue any ruling regarding Bardwell’s disqualification in opposition to our opinion. Instead, it exercised its discretion to

rule upon the motions for judgment on the pleadings where there was no issue regarding Bardwell's representation of Williamson. As such, we cannot say that the trial court erred in exercising its discretion or that it wavered from the mandate.

**The Trial Court Properly Granted Bardwell's, Hung's, and
Williamson's Motions for Judgment on the Pleadings**

{¶ 18} In the second assignment of error, Williams argues that the trial court improperly granted Bardwell's motion for judgment on the pleadings because he alleged specific conduct for which the doctrine-of-litigation privilege does not apply. Bardwell argues that he is entitled to immunity under the doctrine. In the third and fourth assignments of error, Williams argues the Settlement Agreement did not cover Hung's alleged conduct nor did it release Williamson. He further alleges he could maintain the action because the settlement in the Federal Case was induced by fraud.

{¶ 19} A ruling on a motion for judgment on the pleadings is reviewed de novo on appeal. *Daher v. Cuyahoga Community College Dist.*, 2021-Ohio-2103, ¶ 6 (8th Dist.). For a defendant to be entitled to dismissal under Civ.R. 12(C), it must appear beyond doubt that the plaintiff cannot prove a set of facts that provide for the requested relief after construing the material factual allegations in the complaint and all reasonable inferences therefrom in the plaintiff's favor. *Id.* at ¶ 7.

{¶ 20} "An attorney is immune from liability to third persons arising from his performance as an attorney in good faith on behalf of, and with the knowledge

of his client, unless such third person is in privity with the client.” *Scholler v. Scholler*, 10 Ohio St.3d 98 (1984), paragraph one of the syllabus. This court has noted that this litigation privilege regarding an attorney’s conduct is “broadly applied to tort claims” unless the plaintiff can show he is in privity with the attorney or that the attorney acted with malice. *FV-I, Inc. v. Townsend-Young*, 2020-Ohio-5184, ¶ 65 (8th Dist.).

{¶ 21} Williams argues that the Ohio Supreme Court limited the scope of the litigation immunity to only defamatory statements in *State v. Brown*, 171 Ohio St.3d 303 (2022), ¶ 26, where it held “the litigation privilege that shields a person from civil liability for defamatory statements that the person made during a judicial proceeding and were reasonably related to that proceeding does not extend to protect that person from criminal prosecution.” We do not read this holding to limit the litigation privilege to only claims of defamation.¹

{¶ 22} In the Amended Complaint, Williams alleged Bardwell received information from a Lorain County Commissioner executive meeting from Williamson via Hung and then used that information in filing the Lorain County Case. He further alleged Bardwell contacted him regarding settlement of the Lorain County Case. This conduct is typical of an attorney. Williams also alleged Bardwell withheld information in the Federal Case during a deposition. However, Bardwell

¹ After *Brown* was decided, we note the Tenth District Court applied the doctrine-of-litigation immunity to an attorney’s conduct other than defamation in *Silveous v. 5 Starr Salon & Spa, LLC*, 2023-Ohio-841 (10th Dist.).

relied on the attorney-client privilege in refusing to answer questions during the deposition. Again, asserting an attorney-conduct privilege is typical on the part of a lawyer. Williams did not allege he was in privity with Bardwell, as such he could only maintain claims against Bardwell if he alleged facts indicating that Bardwell acted with malice. We do not read the Amended Complaint as alleging malice. Accordingly, Bardwell was entitled to judgment on the pleadings and the trial court did not err.

{¶ 23} The second assignment of error is overruled.

{¶ 24} In his third and fourth assignments of error, Williams argues that the trial court erred by granting Hung and Williamson judgment on the pleadings. Hung and Williamson argue they were released from liability under the Settlement Agreement and Williams did not properly alleged fraud in the amended complaint.

{¶ 25} “A release is an absolute bar to a later action on any claim encompassed within it, absent a showing of fraud, duress, or other wrongful conduct in procuring it.” *Lucarell v. Nationwide Mut. Ins. Co.*, 2018-Ohio-15, ¶ 48. Williams settled the Federal Case and entered into the Settlement Agreement. In doing so, Williams released Hung specifically by name and Lorain County and its “current and former employees” from liability for

any and all claims . . . arising from, and by reason of all known and unknown, foreseen and unforeseen damages . . . arising from Thomas Williams’ employment as Lorain County Administrator and his termination . . . which is the subject of the Complaint filed [in the Federal Case], and/or for any acts performed in connection with the

Civil Action, and/or in connection with this Release, including but not limited to, its execution or validity.

{¶ 26} We find, as did the trial court, that both Hung and Williamson, a former employee of Lorain County, were released from liability by the Settlement Agreement. Although a settlement agreement bars litigation, a person may later bring a case against those released in certain circumstances. In *Haller v. Borrer Corp.*, 50 Ohio St.3d 10, 13 (1990), the Ohio Supreme Court held at paragraphs one and two of the syllabus that

1. A release from liability obtained by fraud in the factum is void ab initio. A release obtained by fraud in the inducement is only voidable. Fraud in the factum can exist only where an act or misrepresentation of one party causes another to agree to the release without an understanding that he has done so and that the releasee will no longer be liable on the claims concerned.
2. A releasor may not attack the validity of a release for fraud in the inducement unless he first tenders back the consideration he received for making the release. Where fraud in the factum is alleged, no tender is required.

{¶ 27} In the Amended Complaint, Williams did not allege fraud in the factum, e.g., that the Settlement Agreement itself was procured by fraud. As such, to maintain his action against Hung and Williamson, he would have had to allege in the Amended Complaint facts constituting fraud in the inducement. Even were we to construe the Amended Complaint as doing so, Williams was further required to allege he returned the proceeds from the Settlement Agreement. *Haller* at 13 (“[T]he releasor must allege that the release was obtained by fraud and that he has

tendered back the consideration received for his release.). Williams did not do so. As such, Hung and Williams were entitled to judgment on the pleadings.

{¶ 28} The third and fourth assignments of error are overruled.

CONCLUSION

{¶ 29} After we determined an interlocutory appeal regarding Bardwell's disqualification in representing Williamson and remanded the matter to the trial court, the trial court exercised its discretion to rule on the motions for judgments on the pleadings, rendering the issue of disqualification moot.

{¶ 30} Bardwell, Hung, and Williamson were entitled to judgment on the pleadings. The facts Williams alleged in the Amended Complaint against Bardwell were of conduct typical of an attorney and did not allege Bardwell acted with malice. As such, Bardwell was entitled to the application of the doctrine-of-litigation privilege. The Settlement Agreement released Hung and Williamson from further litigation. Further, Williams did not allege he returned the proceeds from the Settlement Agreement and, as such, Hung and Williams were entitled to judgment on the pleadings.

{¶ 31} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

MICHELLE J. SHEEHAN, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
FRANK DANIEL CELEBREZZE, III, J., CONCUR