

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GEOFF GALLAS	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SUPREME COURT OF	:	NO. 96-6450
PENNSYLVANIA, et al.	:	

**ORDER AND MEMORANDUM**<sup>1</sup>

Yohn, J. November , 1998

When the Supreme Court of Pennsylvania (“Supreme Court”) reorganized the First Judicial District of Pennsylvania (“FJD”) on March 26, 1996, it eliminated the position of Executive Court Administrator for the FJD and thereby terminated plaintiff from his employment in that position. The plaintiff’s termination led to the instant litigation.

In his complaint, the plaintiff, Dr. Geoff Gallas, named a host of political figures and judges as defendants, including the Supreme Court and its Justices, some in both their individual and official capacities, alleging that his termination violated his contractual and civil rights. See First Am. Compl., 11/7/96. Most of the claims and defendants have already been dismissed. The only claim remaining is that State Senator Vincent Fumo,

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<sup>1</sup> This memorandum assumes knowledge of the facts of this case which are fully discussed in Gallas v. Supreme Court of Pennsylvania, No. Civ.A. 96-6450, 1997 WL 256972 (E.D. Pa. May 15, 1997); Gallas v. Supreme Court of Pennsylvania, No. Civ.A. 96-6450, 1998 WL 22081 (E.D. Pa. Jan. 22, 1998); Gallas v. Supreme Court of Pennsylvania, No. Civ.A. 96-6450, 1998 WL 352584 (E.D. Pa. June 15, 1998) and Gallas v. Supreme Court of Pennsylvania, No. 96-6450 (E.D. Pa. filed Aug. 25, 1998).

Congressman Robert Brady (as Chairman of the Democratic City Committee) and the Democratic City Committee tortiously interfered with Gallas' contractual relationship with the Supreme Court. These remaining defendants have filed summary judgment motions regarding this claim. Because plaintiff has not been able to bring forward any evidence to oppose defendants' properly supported summary judgment motions, defendants' motions will be granted.

I. **STANDARD FOR SUMMARY JUDGMENT**

Either party to a lawsuit may file for summary judgment and it will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is genuine only if there is sufficient evidence from which a reasonable jury could find for the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Where the nonmovant bears the burden of persuasion at trial, the moving party may meet its burden “by 'showing'-- that is, pointing out to the district court-- that there is an absence of evidence to support the nonmoving party's case.” Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Thus, summary judgment will be entered “against a party who fails to make a showing sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial.” Id. at 322.

When a court evaluates a motion for summary judgment, “the evidence of the

nonmovant is to be believed.” Anderson, 477 U.S. at 255. Additionally, “all justifiable inferences are to be drawn in [the nonmovant's] favor.” Id. Although “the movant has the burden of showing that there is no genuine issue of fact, . . . [the nonmovant] is not thereby relieved of his own burden of producing evidence that would support a jury verdict.” Id. at 256. The pleadings alone are not sufficient to oppose a “properly supported motion for summary judgment . . . .” Id. Furthermore, the nonmovant must show more than “the mere existence of a scintilla of evidence” for elements on which he bears the burden of production. Id. at 252. Thus, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Gallas has not presented any evidence, let alone sufficient evidence to create a genuine issue of material fact. After acknowledging in court that he lacked any evidence with which to oppose a motion for summary judgment, plaintiff's counsel was successful in persuading the court to extend the expired discovery deadline to allow plaintiff to take additional discovery. See Transcript of Hearing, 9/21/98 at pp. 8-9 (Exh. H to Fumo's Motion for Summ. J.). He then failed to schedule any depositions or submit any affidavits. See Transcript of Hearing, 10/22/98 at p. 14.<sup>2</sup> Thus, there is no evidence to

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<sup>2</sup> By orders of February 11, 1998 and March 9, 1998, respectively, discovery closed May 1, 1998 and trial was specially listed for October 26, 1998. On September 21, 1998, plaintiff requested permission to take depositions of numerous persons, not

support plaintiff's claims (a fact which plaintiff's counsel admitted at the 10/21/98 argument)<sup>3</sup> and therefore, defendants' motions for summary judgment will be granted. See Harper v. Delaware Valley Broadcasters, Inc., 743 F. Supp. 1076, 1090-91 (D. Del. 1990) (“A party resisting summary judgment cannot expect to rely on the bare assertions or mere cataloguing of affirmative defenses. . . . The requirement of pointing to specific facts to defeat a summary judgment motion is especially strong when the nonmoving party would bear the burden of proof at trial . . . .”), aff'd, 932 F.2d 959 (3d Cir. 1991).

### **III. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

Plaintiff was an at-will employee. Plaintiff has two remaining claims of interference with contractual relations. First, he claims that as an at-will employee, he had a reasonable expectation of on-going or future employment as the Executive Court Administrator, a prospect unjustly interrupted by the defendants. See Gallas v. Supreme

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including any justice of the Pennsylvania Supreme Court. The court granted permission to take the requested depositions after the close of discovery. See Order 9/21/98. After obtaining permission to take the depositions after discovery had closed, plaintiff never even attempted to schedule them with defense counsel.

<sup>3</sup> During the hearing on October 22, 1998, plaintiff's counsel admitted that he had not attempted to take any depositions in the extension period which the court granted to allow him to take depositions: “[T]hat is true that we did not contact [opposing counsel and counsel for other witnesses] to schedule [depositions].” Transcript of Hearing, 10/22/98 at p. 14. Further, plaintiff's counsel admitted that, given what evidence was on the record, he knew of no alternative to summary judgment:

The Court: “All right, if there is nothing on the record what choice do I have other than to grant summary judgment?”

Mr. Brown: “I'm unaware of another option right now, your Honor.”  
Transcript of Hearing, 10/22/98 at p. 23.

Court of Pennsylvania, No. 96-6450 at 4-5 (E.D. Pa. filed Aug. 25, 1998). Second, he claims that the defendants' interference caused him to lose the benefits of the alleged severance agreement he had secured from the FJD and the Supreme Court. See id.

This case is governed by Pennsylvania law. Pennsylvania law recognizes both interference with existing contractual relations and interference with prospective contractual relations as branches of the tort of interference with contractual relations.<sup>4</sup> See U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 925 (3d Cir. 1990); see also Adler, Barish, Daniels, Levin and Creskoff v. Epstein, 393 A.2d 1175, 1882-83 (Pa. 1978) (explaining cause of action for interference with an existing contract); Glenn v. Point Park College, 272 A.2d 895, 897 (Pa. 1971) (extending cause of action to include interference with prospective business relations).

Tortious interference with an existing contract occurs when one party “intentionally and improperly interferes with the performance of a contract . . . between another and a third person by inducing or otherwise causing the third person not to perform the contract . . . .” Adler, Barish, 393 A.2d at 1183 (quoting Restatement (Second) of Torts). The elements of the prospective interference tort are: “1) a prospective contractual relation; 2) the purpose or intent to harm the plaintiff by preventing the relation from occurring; 3) the absence of privilege or justification on the

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<sup>4</sup> For a detailed discussion of Pennsylvania law regarding tortious interference with contractual relations as it relates to plaintiff's claims, see Gallas v. Supreme Court of Pennsylvania, No. 96-6450 (E.D. Pa. filed Aug. 25, 1990).

part of the defendant; and 4) the occasioning of actual damage resulting from the defendant's conduct.” Silver v. Mendel, 894 F.2d 598, 602 (citing Glenn v. Point Park College, 272 A.2d 895, 899 (Pa. 1971)). As discussed in the opinion issued in this case on August 25, 1998, the alleged interference with Gallas' employment would most probably be analyzed as interference with a prospective contractual relation, while the alleged interference with Gallas' severance agreement would be analyzed as interference with an existing contractual relationship. See Gallas v. Supreme Court of Pennsylvania, No. 96-6450, pp. 8-9 (E.D. Pa. filed August 25, 1998). The distinction, however, is irrelevant because plaintiff has not established the necessary elements of either.

Plaintiff has not brought forward any evidence to demonstrate that defendants actually did anything to harm plaintiff's contractual relations, either existing or prospective. Looking at plaintiff's evidence in the most favorable light, the most that plaintiff has established is that the individual defendants did not like plaintiff and threatened plaintiff on one occasion, three years before plaintiff's position was actually terminated. The evidence, however, does not demonstrate that any of the defendants (or anyone else) ever acted on such a threat, or had any type of contact with any justice of the Pennsylvania Supreme Court to even attempt to act on such a threat. Defendants Senator Fumo and Congressman Brady both deny that they directly or indirectly contacted any justice of the Supreme Court regarding plaintiff's employment. See Declaration of Congressman Robert A. Brady, ¶¶ 1-5 (Exh. E to Brady's Motion for Summ. J.);

Deposition of Senator Vincent J. Fumo, 4/1/98, pp. 192-93 (Exh. E to Fumo's Motion for Summ. J.). No affidavits or depositions of any Pennsylvania Supreme Court justice have been proffered to establish that any defendant contacted a justice with regard to plaintiff's job. Plaintiff has not pointed to any other evidence of contact that any of the defendants had with the Pennsylvania Supreme Court to try to remove Gallas from his job. Plaintiff admitted in his deposition that he had no first hand knowledge of any contact by any defendants with any justice of the Pennsylvania Supreme Court. See Deposition of Dr. Geoff Gallas (Exh. D to Fumo's Motion for Summ. J.); Transcript of Hearing, 10/22/98 at p. 10. Three members of the Pennsylvania Supreme Court, Justices Cappy, Zappala and Nigro, have submitted affidavits stating that no such contact occurred. See Affidavit of the Honorable Ralph J. Cappy, Justice of the Supreme Court of Pennsylvania, ¶¶ 6, 37, 38, 42 (Exh. B to Brady's Motion for Summ. J.); Affidavit of the Honorable Russell M. Nigro, Justice of the Supreme Court of Pennsylvania, ¶¶ 4, 5 (Exh. G to Brady's Motion for Summ. J.); Affidavit of the Honorable Stephen A. Zappala, Justice of the Supreme Court of Pennsylvania, ¶¶ 4, 5 (Exh. H to Brady's Motion for Summ. J.). Further, Justice Cappy explained in his affidavit that the termination of plaintiff's position was part of a long-term plan to restore management of the FJD to the FJD. See Affidavit of the Honorable Ralph J. Cappy, Justice of the Supreme Court of Pennsylvania, ¶¶ 5-34. Plaintiff has not submitted depositions, answers to interrogatories, admissions, documents

or affidavits to establish the elements of his claim.<sup>5</sup> Plaintiff's brief in response to the motion for summary judgment did no more than rely on allegations in his complaint, which is not enough to defeat the motion for summary judgment. See Anderson, 477 U.S. at 255-56. Further, plaintiff has not submitted a response to defendants' statement of

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<sup>5</sup> The complaint in this action was filed on September 23, 1996, and has been pending for twenty-five months. Plaintiff agreed at the original scheduling conference that he needed five months for discovery. Stays of discovery were granted due to qualified immunity issues from December 11, 1997 to January 21, 1998, and April 10, 1998 to June 15, 1998, a total of four months only. There were no limitations on discovery during any other period of time although plaintiff voluntarily decided to defer discovery while some of the motions were pending.

The discovery deadline was originally fixed as October 20, 1997 and thereafter extended to December 19, 1997 and then to May 1, 1998. On September 4, 1998, the court granted plaintiff permission to depose ten witnesses designated by plaintiff in order to develop the claim for interference with a contract. On September 21, 1998, the court again permitted depositions of six designated witnesses. Plaintiff never attempted to even schedule these depositions. The trial date was originally fixed at January 20, 1998 and thereafter continued to May 18, 1998 and then to September 8, 1998. On March 9, 1998, the case was specially listed for October 26, 1998. On October 19, 1998, one week before the specially listed trial date, plaintiff filed a motion to continue the trial and extend discovery, even though plaintiff had taken almost no discovery in the two years prior to that date.

Because the motions for summary judgment will be granted, and this will dispose of all remaining claims and parties, plaintiff's motion to continue and extend will be denied as moot, as plaintiff conceded in his brief it should be if the motions for summary judgment are granted. However, in view of the almost total lack of diligence in pursuing discovery during the prior two years, the numerous prior extensions of discovery deadlines and trial dates that were granted, the imminence of the specially listed trial date, and the opposition of the defendants, it is impossible to conceive that plaintiff's motion would not be denied on its merits. The court made every effort to give plaintiff the opportunity to develop his multiple claims against multiple defendants over an extended period of time, and plaintiff failed to do so.

facts, as required by the scheduling order.<sup>6</sup> Plaintiff's counsel twice admitted in court the lack of evidence of any contacts with the Pennsylvania Supreme Court and since that acknowledgment, plaintiff has not submitted any evidence of contacts. See Transcript of Hearing, 9/21/98, at pp. 8-9 (Exh. H to Fumo's Motion for Summ. J.). Thus, plaintiff has failed to establish the necessary elements of tortious interference with contractual relations.

#### **IV. CONCLUSION**

Plaintiff has failed to produce any evidence to support his claim of tortious interference with contractual relations. Thus, plaintiff has failed to meet his burden to oppose defendants' properly supported motion for summary judgment. Therefore, defendants' motions for summary judgment will be granted. An appropriate order follows.

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<sup>6</sup> The Scheduling Order in this case, which was issued February 11, 1998, requires that any party filing a motion for summary judgment must file a statement of facts as to which that party contends there is no genuine issue of fact to be tried. See Scheduling Order, February 11, 1998, ¶ 7. The party opposing summary judgment is then required to respond. See id. The Scheduling Order states that “[a]ll factual assertions set forth in the statement required to be served by the moving party shall be deemed admitted unless controverted by the statement required to be served by the opposing party.” Id. Plaintiff has not responded to defendants' statements of facts, and therefore, those facts are deemed admitted.