STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

RONALD DUPUIS II,

Plaintiff,

-v-

CITY OF HIGHLAND PARK,
a Michigan Municipal Corporation

Defendant.

Case No. 18-005616-CL
HON. JOHN A. MURPHY

OPINION

INTRODUCTION

This case is before the Court on Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(10). It is a retaliation case in which the Plaintiff, Police Officer Ronald Dupuis, alleges that he was terminated from his position as Sergeant of Highland Park Police Department for authorizing the arrest of Gregory Yopp and subsequently obtaining a warrant for a blood draw. Gregory Yopp is the adult son of Highland Park Mayor Hubert Yopp.

BACKGROUND

On January 14, 2018, Gregory Yopp was found passed out in his Tahoe. Yopp's right hand was on the wheel, and his head was tilted back against the headrest. The vehicle appeared to be in gear. Yopp's five-year-old child was in the backseat. Police Officer Bartynksi placed his patrol vehicle in front of the Tahoe and removed Yopp from behind the wheel. He searched

Yopp for weapons and found a canister of marijuana and three prescription drug pills.[1] Reserve Police Officer Marshall arrived to assist Bartynski and removed the child. **Plaintiff's Exhibit I.**

At some point Yopp informed the officers that he was the son of the mayor. Supervisory Officer Michael Ochs arrived on scene and contacted Sergeant Dupuis who was at headquarters. *Id.* Dupuis authorized the arrest of Yopp. **Plaintiff's Exhibit L.** Yopp was placed under arrest. Dupuis then requested the blood draw. Shortly thereafter, a judge signed the search warrant, and the officers brought Yopp to Henry Ford Hospital for a blood draw. **Plaintiff's Exhibit N.** Dupuis' report indicates that Yopp tested positive for marijuana, but the amount on Yopp's person "was an amount indicative of personal use and not in violation of his Medical Marijuana Card restrictions." *Id.* The police contacted the child's mother who came to the police station to retrieve her child and Yopp's personal property. *Id.*

Mayor Yopp also came to the police station to pick up his son when he received a call that his son was in police custody. He does not recall seeing Dupuis at the station, but he recalls that several officers were present when he arrived. He does not recall any specific conversations he had with any of the officers. After a time, the Mayor left with his son and family. **Plaintiff's Exhibit M.**

Unrelated to the arrest of Yopp, four months later on April 3, 2018, Dupuis was the officer in charge when a murder suspect Joseph Gray ingested a large quantity of hand soap. Joseph Gray had been detained for 88 hours without having appeared before a judge or being

[1] Yopp later filed a formal complaint against Bartynski for using excessive force during the arrest. Bartynski yanked Yopp out of the car and put his knee in Yopp's back. However, Dupuis was not part of that investigation.

charged with a crime. He wanted to get out of jail and drank the contents of a soap bottle from the prisoner's bathroom.[2] **Plaintiff's Exhibit H.**

Dupuis sent Gray by ambulance to Henry Ford Hospital without a police escort, claiming that they were short-staffed that day. Gray walked away from the hospital later that day. That evening, the Department was forced to use the media to seek the public's assistance in bringing Gray back into custody. Several days later, Gray turned himself in, and after being re-interviewed, he confessed to committing a homicide in Highland Park. **Defendant's Supplemental Exhibit A.**

The Department requested the Michigan State Police to conduct a criminal investigation into Dupuis' conduct. The Michigan State Police found Dupuis committed no criminal wrongdoing and made a reasonable command decision that may have avoided a civil right rights violation because Gray had been held well past the 48-hour limit without having been charged or appearing before a judge. *Id.*

On November 7, 2018, Police Chief Logan recommended termination for Dupuis for neglect of duty when he sent Gray to the hospital by EMS without a police escort. He explained that Dupuis put the community in danger and allowed Gray the opportunity to confront any witnesses to his murders. *Id.*

In addition to filing his complaint with this Court, Dupuis also challenged his termination in arbitration. Dupuis was represented by the business representative for Teamsters, Local 214. **Defendant's Supplemental Brief.**

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[2] "Subject Gray stated 'I cant stay here no more, Clayton.'" **Plaintiff's Exhibit H.**

In a thoughtful and well-reasoned opinion, the arbitrator made several findings, three of which have impact on this case. First, the arbitrator found that the Department did not treat Dupuis disparately. Second, the arbitrator found that Dupuis committed neglect of duty when he sent Gray to the hospital without a police escort because the evidence showed that officers were available to accompany Gray. Finally, the arbitrator found that although Dupuis "was wrong to fail to provide an escort for Gray . . . the Michigan State Police [investigation] and report are strong mitigating factors and show that Gray should not have been held at 88 hours." *Id.* at 15. The arbitrator reinstated Dupuis with seniority but denied back pay and benefits "due to the seriousness of the underlying charge." *Id.* Since Depuis has been reinstated, he now seeks damages in this case on his claim of retaliation.

ARGUMENTS

As an initial matter, Defendant argues that the arbitrator's findings have a preclusive effect under the doctrine of collateral estoppel. Defendant further argues that there is no causal connection between Dupuis' termination and Dupuis' ordering the arrest and search warrant for the Mayor's son Gregory.

Plaintiff argues that the Mayor ordered his firing because he authorized the arrest and subsequent search of the Mayor's son. Plaintiff also argues that the arbitrator's opinion has no preclusive effect because it dealt with separate issues.

STANDARD OF REVIEW

Under MCR 2.116(C)(10), a party may move for summary disposition on the grounds that, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact. Summary disposition is proper "if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* A genuine issue of material fact exists

"when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Moreover, summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

A party opposing a motion brought under MCR 2.116(C)(10) cannot rest solely upon the allegations or denials of his pleadings, but must come forward with specific facts to establish the existence of a material factual dispute. *Morganroth v Whitall*, 161 Mich App 785, 788; 411 NW2d 859 (1987); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). If the nonmoving party fails to produce evidence sufficient to demonstrate an essential element of its claim, summary disposition in favor of the moving party is proper. *Bernardoni v Saginaw*, 499 Mich 470, 472; 866 NW2d 109 (2016).

ANALYSIS

I. Collateral Estoppel

Porter v. City of Royal Oak explains "that collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Porter v City of Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). *Porter* further instructs that the principle also applies to factual findings made during grievance hearings and arbitration proceedings. *Id.*

Dupuis argues that the arbitrator's findings are not preclusive and cites as his authority *Moszyk v Bay City*, an unpublished opinion per curiam of the Court of Appeals, issued January 25, 2005 (Docket No. 252273). In *Moszyk*, the Court of Appeals concluded that the "arbitration of the plaintiff's claim does not preclude plaintiff from pursuing a claim under the WPA in the trial court . . . ." because there were separate issues facing the trial court than what was addressed in arbitration. *Id.* at 4-5. *Moszyk* instructs that in the "subsequent action, the ultimate issue must be identical and not merely similar to that involved in the first action." *Id.*

Comparing the issues in this case against the issues at arbitration, the Court finds that collateral estoppel does not apply. The central issue in this case is whether Dupuis was fired as retaliation for authorizing the arrest and search of the Mayor's son. In arbitration, however, the dispositive issue was whether Dupuis' suspension and discharge was for just cause. Albeit related, the issues are separate. Notably, the arbitrator's decision did not reach the question of retaliation.

However, the arbitrator's findings are relevant to determining whether Dupuis was fired as retaliation for authorizing the arrest the Mayor's son because they provide additional evidence that there was not disparate treatment among the officers and that the reason Dupuis was fired was because he committed neglect of duty that was serious enough to prevent him from receiving any backpay or benefits for the time during his suspension. While these findings do not preclude a claim for retaliation, they certainly weigh against a claim for retaliation because they cut against Plaintiff's contention that he was fired *because* he authorized the arrest of the Mayor's son. Considering this, the remaining issue is whether Plaintiff proffers sufficient evidence to create a material dispute of fact that he was fired as retaliation.

II. Retaliation

MCL 15.362 states:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee . . . reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

Id. To establish a prima facia case for retaliation, a plaintiff must show that (1) she was engaged in protected activity as defined by the act, (2) the plaintiff was discharged or discriminated against, and (3) a causal connection exists between the protected activity and the discharge or adverse employment action. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

In order to establish the third prong, which is at play here, "Plaintiff must show something more than merely a coincidence in time between protected activity and adverse employment action." *Id.* at 186. Rather, "to prevail, plaintiff [must] show that [the] employer took adverse employment action *because of* plaintiff's protected activity . . . Plaintiff [must] demonstrate that the adverse employment action was in some manner influenced by the protected activity . . . ." *Id.*

Here, Plaintiff fails to produce evidence sufficient to demonstrate that Defendant fired him *because* he authorized the arrest of the Mayor's son. Nothing in the record concretely, specifically raises a question of material fact. Dupuis' entire theory of retaliation turns on speculation, or "rumor mill" as Dupuis styles it, **Defendant's Exhibit C at 60,** which is insufficient to survive summary disposition.

Mayor Yopp testified that he was not involved in the investigation regarding his son's arrest. Furthermore, the investigation that resulted from that arrest had nothing to do with Dupuis but rather focused on Officer Bartynski's treatment of Gregory Yopp at the time of arrest. With respect to the investigation regarding Dupuis and the soap incident, the Mayor stated that he was not involved in it or with the decision to terminate Dupuis.

Moreover, Dupuis admitted in his deposition that he has no documentary evidence to support a theory of retaliation. **Defendant's Exhibit C at 6.**

Additionally, the arbitrator found that there was no disparate treatment among the officers and that although Dupuis had mitigating factors that should soften an adverse employment action, Dupuis did commit neglect of duty when he sent Gray to the hospital unescorted. This violation was serious enough to prevent him from receiving any backpay or benefits for the time during his suspension. To that end, Dupuis seeks to litigate in this case whether he was wrongfully terminated. However he provides nothing by way of evidence that shows that the Department's decision to terminate him for letting Gray walk free was in some manner influenced by his authorization of Gregory Yopp's arrest and subsequent search. The evidence reflects that the two events are merely a coincidence in time, which as *West* instructs, is not enough to show retaliation. *West*, 469 Mich at 183.

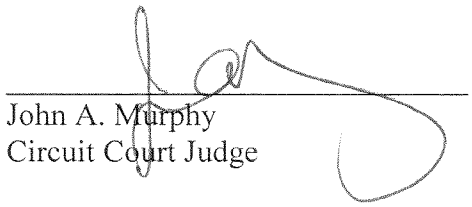
Dupuis attempts to create a factual dispute with respect to the Mayor's propensity to retaliate. Dupuis points to a prior case from 2015 in which his attorney successfully litigated a similar claim of retaliation involving the Highland Park Police Department, the Mayor, and the Mayor's son. The evidence is offered to show that the Mayor acted in conformity with prior acts of wrongdoing. However, the cases are distinct factually, and the first case does not

provide on point evidence relating to this case that demonstrates a causal connection between Dupuis' authorizing the arrest Gregory Yopp and Dupuis' subsequent termination. Furthermore, the admissibility of this evidence is suspect under Rule 404 of the Michigan Rules of Evidence.

Therefore, considering that Dupuis' claim rests solely on allegations without sufficient evidence to create a factual dispute with respect to a causal connection between the protected activity and the adverse employment action, his claim cannot survive summary disposition.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is GRANTED.



John A. Murphy
Circuit Court Judge

Dated: October 30, 2019

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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the City of
Detroit, County of Wayne, State of Michigan,
on October 30, 2019
PRESENT: THE HONORABLE JOHN A. MURPHY

Pursuant to MCR 2.116(C)(10), this Court GRANTS Defendant's Motion for Summary Disposition.

SO ORDERED.

John A. Murphy
Circuit Court Judge