CASE NO. A08-765

MINNESOTA STATE LAW LIBRARY

State of Minnesota
In Court of Appeals

JAMES R. WILLIAMS,

Appellant,

vs.

THE BOARD OF REGENTS OF THE UNIVERSITY OF MINNESOTA, AND JOEL MATURI, individually and in his capacity as the Athletic Director for the University of Minnesota,

Respondents.

APPELLANT'S BRIEF AND APPENDIX VOLUME I

FAFINSKI MARK
& JOHNSON, P.A.
Donald Chance Mark, Jr. (#67659)
Anthony Gabor (#032579X)
Alyson M. Palmer (#341228)
Jennifer S. Pirozzi (#0347048)
Flagship Corporate Ctr., Ste. 400
775 Prairie Center Drive
Eden Prairie, Minnesota 55344
Telephone: (952) 995-9500
Fax: (952) 995-9577

UNIVERSITY OF MINNESOTA
Mark B. Rotenberg (#0126263)
Brian J. Slovut (#236846)
360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, Minnesota 55455
Telephone: (612) 624-4100
Fax: (612) 626-9624

Attorneys for Respondents

and

HUNEGS STONE LeNAEVE KVAS & THORNTON, P.A.
Richard G. Hunegs (#0048124)
1650 International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402
Telephone: (612) 339-4511
Fax: (612) 339-5150

Attorneys for Appellant

2008-EXECUTEAM /BRIEF SERVICES DIV , 2565 Hamline Ave. N , Ste. A., St Paul, MN 55113 651-633-1443 800-747-8793

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

Table of Contents

Table of Authorities iii

Statement of Issues 1

Statement of the Case 3

Statement of Facts 4

Argument 10

I. Standard of Review 10

II. The District Court Erred In Finding It Did Not Have Subject Matter Jurisdiction Over Williams' Common Law Claims For Promissory Estoppel, Equitable Estoppel, and Negligent Misrepresentation. 11

A. The Authority Relied Upon By The District Court In Dismissing Williams' Estoppel And Negligent Misrepresentation Claims Is Inapposite. 13

B. The District Court's Application and Expansion Of The Quasi-Judicial Doctrine Violates Fundamental Rights Guaranteed by the Minnesota Constitution 17

III. The District Court Erred in Finding That Williams' 42 U.S.C. § 1983 Property Interest Claims Must Be Dismissed Because He Failed To Avail Himself Of The University's Post-Termination Process 22

IV. Because Williams Both Denied The Substantial Truth Of The Allegations Made Against Him and Maturi's Comments To The Press Sufficiently Stigmatized Him, The District Court Erred In Dismissing Williams' 42 U.S.C. § 1983 Liberty Interest Claims. 29

A. Williams Properly Denied The Substantial Truth Of The NCAA Violations Against Him 30

B. Maturi's Statements Sufficiently Stigmatized Williams As He Has Been Unable To Gain Alternative Employment In His Chosen Profession Because Of Maturi's Public Comments 32

V. Maturi Is Not Entitled To Qualified Immunity On Either Of Williams' Constitutional Claims 34

Conclusion 37

Certificate as to Brief Length 39

Index to Appendix 40

Table of Authorities

Cases:

Bell v. Burson, 402 U.S. 535 (1971) 25

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) 25, 32, 33

Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550 (Minn. 2003) 10

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) 24, 25, 26, 28

Codd v. Velger, 429 U.S. 624 (1977) 30, 31

Coleman v. Reed, 147 F.3d 751 (8th Cir. 1998) 29

Dietz v. Dodge County, 487 N.W.2d 237 (Minn. 1992) 11, 18

Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin,
459 N.W.2d 671 (Minn. 1990) 11, 12, 16, 17

Fusari v. Steinberg, 419 U.S. 379 (1975) 25

Goldberg v. Kelly, 397 U.S. 254 (1970) 25

Gomez v. Toledo, 446 U.S. 635 (1980) 36

Goss v. Lopez, 419 U.S. 565 (1975) 25

Grundtner v. Univ. of Minnesota, 730 N.W.2d 323 (Minn. Ct. App. 2007) 12

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 36

Hogue v. Clinton, 791 F.2d 1318 (8th Cir. 1986) 30, 31

Kentucky v. Graham, 473 U.S. 159 (1985) 34, 35

Kobluk v. Regents of the Univ. of Minnesota, 1998 WL 297525
(Minn. Ct. App. June 9, 1998) 12

Maye v. Univ. of Minnesota, 615 N.W.2d 383 (Minn. Ct. App. 2000) 10, 12, 15

Michurski v. City of Minneapolis, No. C8-02-239, 2002 WL 1791983
(Minn. Ct. App. Aug. 6, 2002) 12, 13, 14, 15, 16

N. States Power Co. v. Franklin, 122 N.W.2d 26 (Minn. 1963) 10

Perry v. Sindermann, 408 U.S. 593 (1972).....25

Rehn v. Fischley, 557 N.W.2d 328 (Minn. 1997).....35

Schleck & Kraft v. Ramsey County, 939 F.2d 638 (8th Cir. 1991).....33

Shaw v. Board of Regents of Univ. of Minnesota, 594 N.W.2d 187
(Minn. Ct. App. 1999).....12

Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337 (1969).....25

Stone v. Badgerow, 511 N.W.2d 747 (Minn. Ct. App. 1994).....34

Tischer v. Hous. and Redevelopment Auth. of Cambridge,
693 N.W.2d 426 (Minn. 2005).....12, 16, 17, 19, 20, 21

Will v. Michigan Department of State Police, 491 U.S. 58 (1989).....35

Willis v. County of Sherburne, 555 N.W.2d 277 (Minn. 1996).....12, 16, 17, 18

Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895 (8th Cir. 1994).....32

Winskowski v. City of Stephen, 442 F.3d 1107 (8th Cir. 2006).....22, 23, 24, 27

Wisconsin v. Constantineau, 400 U.S. 433 (1971).....33

Statutes and Rules:

42 U.S.C. § 1983.....3, 6, 22, 29, 35, 36, 37

Minnesota Constitution.....18, 19, 20

STATEMENT OF ISSUES

1. When a government entity makes false promises and misrepresentations to an individual who is not a Minnesota public employee, does the district court have subject matter jurisdiction to decide claims brought against that government entity for promissory estoppel, equitable estoppel and negligent misrepresentation?

   District Court's Ruling: When a government entity makes false promises and misrepresentations to an individual who is not a Minnesota public employee, the district court does not have subject matter jurisdiction to review claims brought against the government entity for promissory estoppel, equitable estoppel, and negligent misrepresentation.

   Most Apposite Authority: None. This is a case of first impression.

2. Is an individual deprived of due process with respect to his constitutionally protected property interests under 42 U.S.C. § 1983 when the individual whose employment is being terminated makes repeated requests for an opportunity to be heard, both before and after termination, and those requests are denied?

   District Court's Ruling: Despite Respondents' admission that James Williams possessed a constitutionally protected property right, and that he made repeated requests for an opportunity to discuss the reasons for his termination with Joel Maturi and others, the district court dismissed James Williams' property right claims because he did not petition the University of Minnesota's Conflict Resolution Office for post-termination relief.

   Most Apposite Authority: *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972).

3. Did the district court err when it found that James Williams did not deny the substantial truth of the charges against him and that Mr. Williams was not sufficiently stigmatized by Joel Maturi's comments, thereby dismissing his claims for violation of his liberty interests under 42 U.S.C. § 1983?

   District Court's Ruling: Even though Joel Maturi's public comments regarding the reasons for James Williams' termination have prevented Mr. Williams from obtaining alternative employment within his chosen profession, and Mr. Williams has denied the substantial truth of those reasons, the district court dismissed his liberty interest claims because it held that Joel Maturi's public comments did not sufficiently stigmatize Mr. Williams and he had failed to deny the NCAA's findings.

   Most Apposite Authority: *Hogue v. Clinton*, 791 F.2d 1318 (8th Cir. 1986); *Pollock v. Baxter Manor Nursing Home*, 716 F.2d 545 (8th Cir. 1983).

4. Did the district court err when it found that Joel Maturi is entitled to qualified immunity on both James Williams' constitutional claims and James Williams' request for injunctive relief?

District Court's Ruling: Despite the Respondents' admission that qualified immunity does not apply to Joel Maturi in an official-capacity action, as well as their failure to allege sufficient facts to support their assertion of qualified immunity to an action against Joel Maturi individually, the district court held that Joel Maturi is entitled to qualified immunity as to all of James Williams' constitutional claims against him both individually, and in his official capacity as athletic director for the University of Minnesota.

Most Apposite Authority: *Stone v. Badgerow*, 511 N.W.2d 747 (Minn. Ct. App. 1994); *Kentucky v. Graham*, 473 U.S. 159 (1985); *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989); *Rehn v. Fischley*, 557 N.W.2d 328 (Minn. 1997).

STATEMENT OF THE CASE

On September 25, 2007, Appellant James R. Williams ("Williams") commenced this action in Hennepin County District Court against Respondents, The Board of Regents of the University of Minnesota (the "University") and Joel Maturi ("Maturi"), individually and in his capacity as the Athletic Director for the University (collectively "Respondents"), seeking damages and specific performance for breach of contract, promissory estoppel, equitable estoppel, intentional interference with contractual relations, negligent misrepresentation, negligence, defamation *per se*, and vicarious liability/respondeat superior. On December 13, 2007, Williams amended his Complaint and added four constitutional claims: two claims for violation of a property right pursuant to 42 U.S.C. § 1983 seeking both injunctive relief and monetary relief, and two claims for violation of a liberty right pursuant to 42 U.S.C. § 1983 seeking both injunctive relief and monetary relief.

On December 21, 2007, Respondents moved to dismiss all of Williams' claims and Williams opposed the motion. On January 23, 2008, Judge Regina M. Chu held a hearing on the matter. On March 18, 2008, the district court signed an Order and Memorandum[1] dismissing all of Williams' claims. Final judgment was entered on March 19, 2008. Williams' timely appeal followed.

[1] The ruling of the district court will be referred to herein as the "Memorandum."

STATEMENT OF FACTS

During the 2006-2007 collegiate basketball season, Williams was employed by Oklahoma State University ("OSU") as an assistant basketball coach.[2] While at OSU, and throughout his coaching career, Williams has achieved significant success. For example, during Williams' tenure with the OSU men's basketball team, the team was the Big 12 Tournament Champion in both 2004 and 2005 and reached the NCAA "Sweet 16" both years.[3] Additionally, Williams has coached numerous players who achieved "All American" status and numerous players who have been drafted and have played in the National Basketball Association.[4] In light of these achievements, Williams was ranked by *Basketball Times* magazine as one of the top fifteen best recruiters in the nation.[5]

On April 2, 2007, Orlando "Tubby" Smith ("Coach Smith"), who had recently been named head coach of the University's men's basketball team, offered Williams a position at the University as an assistant coach.[6] Coach Smith offered Williams an annual salary of $200,000, with $175,000 coming from the University and $25,000 coming from a University basketball camp.[7] Williams immediately accepted the University's offer and made plans to move to Minnesota, which included putting his home in Oklahoma up for sale.[8]

---

[2] A-13 (Am. Compl. 1 ¶ 2); A-60 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 1). Williams had held this position since 2004.
[3] A-13 (Am. Compl. 1 ¶ 3).
[4] A-14 (Am. Compl. 2 ¶ 4).
[5] A-14 (Am. Compl. 2 ¶ 6).
[6] A-14 (Am. Compl. 2 ¶ 10); A-61 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 2).
[7] A-14 (Am. Compl. 2 ¶ 10).
[8] A-14 (Am. Compl. 2 ¶ 11); A-61 to A-62 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 2-3).

At the time Williams accepted the University's job offer, he had one year remaining on his contract with OSU, which included a substantial salary and other benefits for the upcoming year (with a potential for a contract extension thereafter).[9] Accordingly, upon accepting the University's job offer, Williams informed Coach Smith that he intended to immediately contact Sean Sutton ("Coach Sutton"), the head men's basketball coach at OSU, to tender his resignation.[10] Coach Smith acknowledged and agreed with Williams' plan and even offered to call Coach Sutton himself to discuss Williams' resignation.[11] Williams declined Coach Smith's offer, but Williams did call Coach Sutton and informed him of his resignation.[12]

At all times during this interaction, Coach Smith acted as an agent of the University who held Coach Smith out as having express, implied and/or apparent authority to act on the University's behalf in hiring assistant coaches.[13] Williams understood Coach Smith to have such authority and acted in reliance upon the representations made to him by the University through Coach Smith.[14]

Thereafter, Williams was told that the University's Athletic Director, Maturi, had concerns about Williams' employment.[15] Despite repeated efforts by Williams to speak directly with Maturi about his concerns, Maturi refused to meet with Williams.[16] Maturi even went so far as to tell various local media that the University had never hired

---

[9] A-15 (Am. Compl. 3 ¶ 12).
[10] A-15 (Am. Compl. 3 ¶ 13); A-61 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 2).
[11] A-15 (Am. Compl. 3 ¶ 14); A-61 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 2).
[12] A-14 (Am. Compl. 2 ¶ 11); A-61 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 2).
[13] A-15 to A-16 (Am. Compl. 3-4 ¶¶ 17-19).
[14] A-14 (Am. Compl. 2 ¶ 11).
[15] *See* A-16 (Am. Compl. 4 ¶ 23); A-62 to A-63 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 3-4).
[16] A-17 (Am. Compl. 5 ¶ 26); A-63 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 4).

Williams.[17] In late May 2007, Williams received a form letter from the University thanking him for his interest in the assistant coaching position and indicating that the position had been filled by someone else.[18] Despite his efforts, Williams has been unable to secure a coaching position at other universities as a direct result of this incident.[19]

On September 25, 2007, Williams commenced this action to recover damages related to this incident and for specific performance. Williams asserted nine common law claims[20] and four constitutional claims: two claims for violation of a property right pursuant to the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and two claims for violation of a liberty right pursuant to the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.[21]

On December 21, 2007, Respondents moved to dismiss all of Williams' claims. Respondents argued that all of Williams' common law claims should be dismissed because they involved a challenge to a University employment decision and, therefore, the district court lacked subject matter jurisdiction to hear the claims under the quasi-judicial doctrine.[22] With respect to Williams' property interest claims against Maturi, Respondents conceded that Williams had a property interest at stake,[23] but argued that

---

[17] A-16 (Am. Compl. 4 ¶ 23).

[18] A-63 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 4); A-359 (Tr. at 33); A-221 (Ex. K attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

[19] A-17 (Am. Compl. 5 ¶ 25); A-64 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 5).

[20] Of these nine claims, Williams is appealing the dismissal of four of them: promissory estoppel, equitable estoppel, negligent misrepresentation, and vicarious liability/respondeat superior.

[21] Williams is appealing the dismissal of all of the constitutional claims brought against Maturi.

[22] A-37 to A-44 (Defs.' Mem. in Supp. of Mot. to Dismiss at 4-11).

[23] Respondents maintained that they that disagreed Williams became an employee of the University, but for purposes of this motion, conceded that Williams was offered a

Williams did not have a due process right to meet with Maturi as part of that property interest.[24] As to Williams' liberty interest claims, Respondents argued that the claims failed because Williams did not deny the substantial truth of the allegations against him.[25] Finally, Respondents argued that all Williams' constitutional claims against Maturi failed because Maturi was entitled to qualified immunity.[26] In sum, Respondents' position was that Williams' only avenue for recourse related to the University and Maturi's conduct was to petition for a writ of certiorari from this Court.[27]

Williams responded that the district court did in fact have jurisdiction over the common law claims because they did not rely on a quasi-judicial decision by the University.[28] Specifically, with respect to the common law claims for promissory estoppel, equitable estoppel, and negligent misrepresentation, Williams emphasized that none of these claims required an analysis of the University's decision on whether to employ Williams, but rather dealt with the University's misrepresentations about Coach Smith's authority.[29] On his constitutional claims, Williams maintained that Maturi violated his due process rights by refusing to meet with him,[30] and that Williams has repeatedly denied the truth of the overwhelming majority of the violations of which he

---

position and became a University employee (A-329 to A-330 (Tr. at 3-4) ("We, of course, disagree with that but for purposes of this motion, we accept it")).

[24] A-302 (Defs.' Reply Mem. in Supp. of Mot. to Dismiss at 8).

[25] A-302 to A-303 (Defs.' Reply Mem. in Supp. of Mot. to Dismiss at 8-9).

[26] A-51 to A-57 (Defs.' Mem. in Supp. of Mot. to Dismiss at 18-24).

[27] A-339 to A-340 (Tr. at 13-14).

[28] A-65 to A-79 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 6-20).

[29] A-79, A-81 to A-82 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 20, 22-23); A-352 to A-353, A-366 to A-369 (Tr. at 26-27, 40-43).

[30] A-91 to A-94 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 32-35); A-358 to A-360 (Tr. at 32-34).

was accused, both at the time they were made, and presently.[31] Additionally, Williams argued that Maturi was not entitled to qualified immunity because he sued Maturi both in his official capacity and individually and that any arguable qualified immunity would apply to Maturi in his individual capacity.[32]

On March 18, 2008, the district court dismissed all of Williams' claims. In its Memorandum, the district court found that all of Williams' common law claims required review of a quasi-judicial employment decision by the University and that it did not have subject matter jurisdiction to review those claims.[33] With regard to Williams' promissory estoppel, equitable estoppel, and negligent misrepresentation claims, the court found that these claims could not be examined without reviewing whether an offer was made to Williams and the quasi-judicial doctrine precluded the court from making such an inquiry.[34] Because it dismissed these claims on jurisdictional grounds, the district court did not address the merits of these claims.

The district court also dismissed all of Williams' constitutional claims. On the claims for violation of Williams' property interest, the district court held that Williams did not have a viable due process claim because he failed to utilize the University's grievance procedure before challenging the University's decision.[35] On the claims for violation of Williams' liberty interest, the court found that Williams failed to demonstrate that he has been sufficiently stigmatized and that Williams failed to demonstrate that he

---

[31] A-94 to A-96 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 35-37); A-361 (Tr. at 35).
[32] A-96 to A-98 (Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss at 37-39).
[33] A-3 to A-8 (Memorandum at 3-8).
[34] A-7 to A-8 (Memorandum at 7-8).
[35] A-9 to A-10 (Memorandum at 9-10).

denied the charges for which he was terminated.[36] Finally, the district court held that Maturi is entitled to qualified immunity because his actions did not violate clearly established law.[37]

[36] A-10 to A-11 (Memorandum at 10-11).
[37] A-11 (Memorandum at 11).

ARGUMENT

I. Standard of Review.

The district court dismissed Williams' common law claims for promissory estoppel, equitable estoppel, and negligent misrepresentation on the grounds that the court lacked subject matter jurisdiction to decide the claims.[38] Review of the district court's decision on these grounds is *de novo*.[39] The district court dismissed Williams' constitutional claims on the grounds that he failed to state a claim upon which relief may be granted.[40] Review of the court's decision on these grounds is also *de novo*.[41]

On a motion to dismiss, all factual allegations must be accepted as true.[42] Dismissal is only appropriate when all the factual allegations, accepted as true, do not amount to a meritorious legal claim.[43] "In reviewing cases involving dismissal for failure to state a claim upon which relief can be granted pursuant to Rule 12.02(e), the question before the appellate court is whether the complaint sets forth a legally sufficient claim for relief."[44]

---

[38] A-7 to A-8 (Memorandum at 7-8).

[39] *See, e.g.*, *Maye v. Univ. of Minnesota*, 615 N.W.2d 383, 385 (Minn. Ct. App. 2000) ("Whether subject-matter jurisdiction exists is a question of law this court reviews de novo") (citation omitted).

[40] A-9 to A-11 (Memorandum at 9-11).

[41] *See, e.g.*, *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (citation omitted).

[42] *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963).

[43] *Id.*

[44] *Bodah*, 663 N.W.2d at 553 (citation omitted). Williams acknowledges that the district court's ruling was based on the pleadings. However, the Court should be aware that a voluminous district court record exists consisting of depositions, letters, emails, and other documents that are relevant to several issues.

II. The District Court Erred In Finding It Did Not Have Subject Matter Jurisdiction Over Williams' Common Law Claims For Promissory Estoppel, Equitable Estoppel, And Negligent Misrepresentation.

Williams' common law claims for promissory estoppel, equitable estoppel, and negligent misrepresentation relate to false promises and negligent misrepresentations made by the University in conjunction with an offer of employment. The question before the Court is whether the University is entitled to irresponsibly make false promises and misrepresentations that are relied upon, and produce serious implications on an individual's livelihood, and then invoke the quasi-judicial doctrine to avoid jurisdiction of the district court. Moreover, does the quasi-judicial doctrine apply when the University's promises and misrepresentations require no decision-making and were made to an individual who is a prospective employee of the University?[45]

This is a case of first impression in Minnesota. None of the authority relied upon by the district court or Respondents addresses the specific issue presented in this case. Every one of the cases cited by Respondents in their motion to dismiss and relied on by the district court concerns employees challenging the decisions of their public employer—not a single case addresses false promises made by a public employer to a private individual who is a potential employee. *See Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 672 (Minn. 1990) (challenge by 13-year public school teacher who was denied reinstatement by school district after an extended leave of absence); *Dietz v. Dodge County*, 487 N.W.2d 237, 238 (Minn. 1992) (challenge by nurse

[45] Williams argued to the district court that he later became an employee of the University and the University accepted this fact as true, as it must on a motion to dismiss. The promissory estoppel, equitable estoppel and negligent misrepresentation claims, however, are based upon actions that occurred before acceptance of the job offer and, therefore, for these claims, Williams was not yet an employee of the University.

administrator who was terminated by county nursing home board); *Willis v. County of Sherburne*, 555 N.W.2d 277, 278-79 (Minn. 1996) (challenge by county employee who was terminated by board of county commissioners); *Tischer v. Hous. and Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 427-28 (Minn. 2005) (challenge by HRA executive director who was terminated by the city council); *Grundtner v. Univ. of Minnesota*, 730 N.W.2d 323, 326-28 (Minn. Ct. App. 2007) (challenge by University employed architect who was terminated by the University); *Michurski v. City of Minneapolis*, No. C8-02-238, 2002 WL 1791983 at *1-2 (Minn. Ct. App. Aug. 6, 2002)[46] (challenge by city employee of hiring decision made by city attorney's office); *Maye*, 615 N.W.2d at 384-85 (challenge by a University security officer of promotion decisions made by the University); *Shaw v. Bd. of Regents of Univ. of Minnesota*, 594 N.W.2d 187, 189 (Minn. Ct. App. 1999) (challenge by University employed construction project manager who was terminated by University); *Kobluk v. Regents of Univ. of Minnesota*, No. C8-97-2264, 1998 WL 297525 at *1 (Minn. Ct. App. June 9, 1998)[47] (challenge by University professor who was denied tenure by the University).

In granting Respondents' motion to dismiss Williams' claims for promissory estoppel, equitable estoppel, and negligent misrepresentation, the district court extended the scope and application of the quasi-judicial doctrine set forth in *Dokmo* and its progeny. Such an extension improperly curtails individual liberties guaranteed by the Minnesota Constitution and is contrary to the purpose that underlies the doctrine. The

[46] A-306 to A-309 (*Michurski* unpublished opinion).
[47] A-310 to A-313 (*Kobluk* unpublished opinion).

Court of Appeals should reverse the district court's order granting Respondents' motion to dismiss these claims.

A. The Authority Relied Upon By The District Court In Dismissing Williams' Estoppel And Negligent Misrepresentation Claims Is Inapposite.

In its Memorandum, the district court cited to only one unpublished opinion in dismissing Williams' claims for promissory estoppel, equitable estoppel, and negligent misrepresentation—*Michurski v. City of Minneapolis*.[48] The district court described the *Michurski* decision as one involving "[s]imilar claims" to Williams' claims that were dismissed on the grounds that the claims could not "be examined without reviewing the city's discretionary, quasi-judicial hiring decision."[49] The district court then dismissed Williams' claims "for the same reason."[50] The district court erred in applying *Michurski* to the facts of this case because, unlike *Michurski*, Williams' claims do not require review of a quasi-judicial hiring decision.

Michurski involved a claim for breach of contract brought by a current Minneapolis city employee.[51] The city employee brought his claim after the Minneapolis city attorney's office decided not to hire him as an investigator.[52] When applying for the position, the city employee claimed the former city attorney had already orally promised him the position.[53] The current city attorney denied there was any binding agreement on

---

[48] No. C8-02-238, 2002 WL 1791983 (Minn. Ct. App. Aug. 6, 2002); A-7 to A-8 (Memorandum at 7-8).
[49] A-7 (Memorandum at 7) (quoting *Michurski*, 2002 WL 1791983 at *1-2).
[50] A-7 (Memorandum at 7).
[51] *Michurski*, 2002 WL 1791983 at *1.
[52] *Id.* at *2.
[53] *Id.* at *1-2.

him to hire the city employee and decided to instead hire the individual who he felt was best suited for the position based upon her qualifications and experience.[54]

The trial court dismissed the breach of contract claim for lack of jurisdiction, and the Court of Appeals affirmed.[55] At the Court of Appeals, the city employee recognized that the current city attorney's decision not to hire him was quasi-judicial and the district court lacked jurisdiction to review that decision.[56] However, the city employee tried to distinguish his breach of contract claim by arguing that his claim arose out of the alleged oral promise made to him by the former city attorney, and not the subsequent hiring decision of the current city attorney.[57] The Court of Appeals rejected this argument. The Court of Appeals reasoned that the city employee's claim was inextricably intertwined with the current city attorney's decision not to hire him, i.e., the Court cannot examine a breach of contract claim without necessarily examining the alleged "breach," which in this case was the city attorney's hiring decision.[58] The Court explained, "the city's hiring action cannot be separated from appellant's claim for lost-income damages. <u>The language in appellant's complaint ties his contract claim to the city's hiring decision</u>."[59]

The analysis and reasoning applied by the Court in *Michurski* is inapposite to the facts of this case. Here, the University made a bona fide job offer to Williams and induced Williams to rely upon that job offer to his detriment. The conduct Williams complains of is irrespective of any subsequent decision by the University not to hire him

---

[54] *Id.* at *2.
[55] *Id.* at *2-4.
[56] *Id.* at *2.
[57] *Id.*
[58] *Id.* at *3-4.
[59] *Id.* at *3 (emphasis added).

after all. Williams was wronged when the University represented to him that Coach Smith had the ostensible authority to hire him, made an offer of employment to him, and then (after Williams had resigned from his current position, placed his house on the market, and made plans to move to Minnesota) claimed Coach Smith did not in fact have final hiring authority for the University.

Unlike *Michurski*, this case does not require review of a quasi-judicial decision. The Court need not consider whether Respondents created a standard, investigated their options, and applied that criteria to a hiring decision (although clearly they did not)—all the indicia of a quasi-judicial decision.[60] For purposes of the estoppel and negligent misrepresentation claims, the ultimate decision on hiring Williams and how or why it was later made is irrelevant. What is relevant is the fact that Respondents have claimed Coach Smith did not have authority to hire Williams, and this claim is contrary to the representations and promises that were made to Williams by the University at the time it made its employment offer to Williams. To determine whether Williams has stated viable legal claims, the Court need only consider whether Williams alleged that Respondents promised and represented to him that Coach Smith had final hiring authority, that Respondents' promise and representation was false, and that Williams relied on that promise and representation to his detriment.[61] Nothing in this determination requires review of a quasi-judicial decision by Respondents.

---

[60] *See, e.g., Maye*, 615 N.W.2d at 386.

[61] All of which Williams alleged in his Amended Complaint and on a motion to dismiss must be accepted as true. See A-15 to A-16, A-24 (Am. Compl. 3-4, 12, ¶¶ 17-18, 71, 74).

Williams' estoppel and negligent misrepresentation claims are not wrongful termination claims "cloaked in the mantle of breach of contract"; nor are they claims that are "inevitably centered on" the University's decision to terminate Williams' employment.[62] Rather, Williams' claims focus on misrepresentations and false promises made by Respondents as part of their job offer to Williams, and unlike *Michurski*, Williams' claims are not tied in any way to (or require any review of) a later hiring decision that may have occurred.

Additionally, *Michurski* involved actions taken by a government entity against a current public employee. Williams' claims focus on actions taken by the University against a private individual, prior to Williams becoming a Minnesota public employee. This is an important distinction and the significant reasons for not permitting the quasi-judicial doctrine to extend to actions of this nature will be discussed more in depth below. For now, it is sufficient to note this as another reason why *Michurski* is distinguishable from the facts of this case.

The *Michurski* decision is inapposite because the facts of *Michurski* and the analysis applied in that case are not applicable to this case. The quasi-judicial doctrine as set forth in *Dokmo* and its progeny does not apply here.

---

[62] Minnesota courts have held that if a "claim is cloaked in the mantle of breach of contract, when the alleged breach of the employment contract of a governmental employee results in termination of the claimant's employment by an executive body ... the claimant may contest the employer's action by certiorari alone." *Willis*, 555 N.W.2d at 282. *See also Tischer*, 693 N.W.2d at 432 (reiterating that "when a public employee's claim of breach of an employment contract is inevitably centered on the executive body's decision to discharge her, it will be viewed as a wrongful employment termination claim for jurisdictional purposes and certiorari is the exclusive remedy for judicial review of that claim").

B. The District Court's Application And Expansion Of The Quasi-Judicial Doctrine Violates Fundamental Rights Guaranteed By The Minnesota Constitution.

The district court's application of the quasi-judicial doctrine expands the doctrine beyond its purpose. Under the district court's ruling in this case, executive bodies like the University are permitted to make false promises and negligent misrepresentations to anybody (public employee or not), induce reliance upon those promises and representations, and then later label its promises and representations as "quasi-judicial" to avoid any meaningful review by the district court. This interpretation goes far beyond preservation of separation of powers. Instead, it gives the executive branch the upper hand by closing out judicial review of damaging actions by the executive branch and necessarily limiting the principle of checks and balances in favor of dictatorial power.

The quasi-judicial doctrine carries with it inherent dangers which have been repeatedly recognized by several Minnesota Supreme Court justices. For example, in the *Dokmo* dissent, Justice Wahl observed:

> In effect, the school district argues dichotomous positions: on the one hand, that it did not terminate Dokmo, so it was not required to follow statutory termination procedures, and on the other hand, that it did terminate Dokmo, so she could only challenge its action by writ of certiorari. To allow the school district to have it both ways is unfair and not in accordance with law.[63]

Similarly, in the *Tischer* dissent, Justice Paul Anderson observed:

> By our decision in *Willis* and here today, we have essentially established a system by which a government entity can shield itself from any meaningful review of its actions under an employment contract. There are genuine issues of material fact regarding Tischer's breach of contract action. She is

[63] 459 N.W.2d at 678 (Wahl, J., dissenting; joined by Yetka, J. and Keith, J.).

> entitled to a forum in which she can make a record which, upon appeal, would provide us with a meaningful basis to make a decision. Anything less would result in us blindly deferring to a government entity's decision.[64]

Other dissenting justices have voiced similar concerns about the application and impact of the quasi-judicial doctrine.[65]

The concerns of these justices relate to the existing reach of the quasi-judicial doctrine as established by Minnesota case law. But the apprehension of these justices did not even contemplate application of the doctrine extending to false representations made by a government entity to an individual who is not a Minnesota public employee. If there are already concerns that public employees become "second class citizens"[66] under the current scope of the doctrine, what does that say about its application to individuals like Williams?

The Minnesota Constitution tells us that "[g]overnment is instituted for the security, benefit and protection of the people" and no person is to be disfranchised of

---

[64] 693 N.W.2d at 435 (Anderson, J., dissenting; joined by Page, J.).

[65] *See, e.g., Dietz*, 487 N.W.2d at 242 ("Under the majority's decision, however, the choice to make an adequate record is left in the hands of a participant in the controversy. That unavoidably produces a one-sided record. That, combined with our deference for the lower tribunal, is virtually guaranteed to result in an affirmance of the tribunal's decision. Such a process can hardly be mistaken for a meaningful review") (Gardebring, J., dissenting; joined by Wahl, J.); *Willis*, 555 N.W.2d at 283 ("When an employee raises an issue limited to interpretation of the provisions of his or her employment contract, however, such concerns are not ordinarily implicated. I do not believe this court's holding in *Dietz* was intended to give governmental bodies the right to breach their employment contracts free from judicial intervention. As Willis warns, such an application of the writ of certiorari procedure would, in effect, make 'second class citizens' out of public employees") (Keith, C.J., dissenting; joined by Gardebring, J. and Page, J.).

[66] *Willis*, 555 N.W.2d at 283 (Keith, C.J., dissenting; joined by Gardebring, J. and Page, J.).

their fundamental rights or privileges.[67] The Minnesota Bill of Rights outlines what these fundamental rights and privileges entail.[68] One such right is the entitlement to a trial by jury, which "shall remain inviolate."[69] Another such right is the entitlement "to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."[70]

Balanced against these fundamental rights is the concept of separation of powers. Under the Minnesota Constitution, no person of the judiciary shall exercise any of the powers belonging to the executive branch, and vice-versa.[71] It is this concept of separation of powers where we find the roots of the quasi-judicial doctrine. The Minnesota Supreme Court explained the important interaction between separation of powers and the quasi-judicial doctrine in *Tischer*:

> We have recognized that the decision of an executive body to terminate an employee is a discretionary exercise of its administrative powers. ... Separation of powers requires that such discretionary decisions be granted deference by the judiciary to avoid usurpation of the executive body's administrative prerogatives. ... Because a direct action in the district court would contemplate de novo review, we have concluded that review by certiorari is required to provide appropriate deference and to minimize judicial intrusion into administrative decision-making.[72]

Tischer explains that the quasi-judicial doctrine ensures that the judicial branch does not impede upon the exercise of powers rightfully belonging to the executive branch.

---

[67] Minn. Const., art. 1, § 1.
[68] *Id.*, art. 1.
[69] *Id.*, art. 1, § 4.
[70] *Id.*, art. 1, § 8.
[71] *Id.*, art. 3, § 1.
[72] 693 N.W.2d at 429 (internal citations omitted).

It is important to understand that the holding of *Tischer* is not being challenged here. What is being challenged is the application of principles outlined in *Tischer* to the facts of this case. To properly review that application, it is important to not only look at what the *Tischer* court said, but also what it did not say. *Tischer* does not stand for the principle that the judicial branch takes second chair to the executive branch on any and all matters the executive branch happens to touch. *Tischer* does not say that the executive branch may simply utter the words "quasi-judicial" and automatically avoid *de novo* review of its conduct. And *Tischer* does not say that the University has the power to divest a private individual of his fundamental right of a trial by jury with respect to any and all of its actions simply by virtue of being part of the executive branch.

This Court is being asked now to determine how far the reach of the quasi-judicial doctrine extends. In doing so, the Court must necessarily determine where the executive branch's power ends and where an individual's fundamental rights (and the judiciary's power to enforce those rights) begin. The Court must answer how far the State of Minnesota will let individual liberties to be whittled away in the name of separation of powers.

This case goes beyond the University making a discretionary decision related to one of its own employees, which has been the classical application of the quasi-judicial doctrine. Now the University argues that the judiciary must also defer to its judgment in making false promises and misrepresentations to a private citizen. Such an application goes beyond separation of powers and improperly elevates the executive branch as the supreme and controlling branch of our government. Such an application violates the fundamental rights guaranteed in the Minnesota Constitution.

The University must do more than merely label its actions as "quasi-judicial" to avoid *de novo* review of those actions. It is not an intrusion for the Court to make certain there was a true quasi-judicial process as contemplated by *Tischer*, and accord some semblance of due process to one in this situation. Similarly, the University cannot engage in a decision-making process after the fact and then call everything that happened up to that point "quasi-judicial." There is no reason for the Court to shy away from scrutinizing the actions of the University that directly violate constitutional guarantees. Such scrutiny cannot be considered usurpation by the Court of the University's administrative prerogatives.

Williams has stated valid claims against Respondents for estoppel and negligent misrepresentation. None of these claims requires review of a quasi-judicial decision. If this Court were to affirm the motion to dismiss, it would be doing so in blind deference and abdication of judicial powers based entirely on Respondents' label of its actions, without recognizing Respondents' conduct for what it really was—a false promise and a misrepresentation—and not a decision-making process entitled to deference. As such, Williams respectfully requests that this Court reverse the district court's dismissal of his promissory estoppel, equitable estoppel, and negligent misrepresentation claims, and remand for further proceedings.

III. The District Court Erred In Finding That Williams' 42 U.S.C. § 1983 Property Interest Claims Must Be Dismissed Because He Failed To Avail Himself Of The University's Post-Termination Process.

The University admitted that Williams had a property interest in his continuing employment with the University as an assistant men's basketball coach.[73] The district court did not hold otherwise.[74] Instead, the district court based its decision to dismiss Williams' property interest claims entirely on *Winskowski v. City of Stephen*, 442 F.3d 1107 (8th Cir. 2006).[75] The district court ruled that because Williams did not follow the University's post-termination grievance procedure, his property right claims must be dismissed.[76] This reliance is misplaced, and *Winskowski* is distinguishable.

First, it is important to note that *Winskowski* does not discuss, analyze, or deal with any constitutionally protected property interests, but only with Winskowski's claimed liberty interests.[77] Winskowski was the City of Stephen ("Stephen"), Minnesota's chief of police and its only full-time police officer.[78] In November 1998, Stephen's city council began considering proposals to disband its police department and purchase police protection from Marshall County.[79] Winskowski and his wife attended a December 7, 1998 council meeting in which the elimination of Stephen's police department was discussed.[80] At this meeting, one of the Stephen city council members

---

[73] A-332 (Tr. at 6).
[74] A-9 to A-10 (Memorandum at 9-10).
[75] *Id.*
[76] A-10 (Memorandum at 10).
[77] While the appellee in *Winskowski* did bring a property interest claim, he did not appeal the jury's verdict in favor of the City of Stephen on that claim.
[78] *Winskowski*, 442 F.3d at 1108.
[79] *Id.*
[80] *Id.*

leveled several significant criticisms at Winskowski concerning his job performance.[81] In response, Winskowski requested a grievance hearing.[82] At the council's December 14, 1998 meeting, Winskowski was allowed to respond to the council's criticisms in a closed session.[83] Ultimately, the Stephen city council decided to purchase police services from the county, and terminated Winskowski's employment.[84]

After his termination, Winskowski did not request an additional post-termination public hearing, but instead initiated an action in federal court.[85] The jury ultimately returned a verdict in favor of Winskowski with respect to his liberty interest claim.[86] Stephen moved for judgment as a matter of law after the jury's verdict, but this motion was denied.[87] The Court of Appeals reversed the district court's judgment entered in favor of Winskowski, and ordered judgment be entered instead in favor of Stephen.[88] Specifically, the court held that, "[a]ssuming that Winskowski was entitled to a post-termination name-clearing hearing, the only question remaining is whether Stephen improperly denied him one. Winskowski's claim in this regard fails in its incipiency because Winskowski never requested any post-termination process from Stephen."[89] *Winskowski* does not specify exactly what post-termination process was available, but

[81] *Id.* at 1108-09.
[82] *Id.* at 1109.
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.* at 1108.
[87] *Id.*
[88] *Id.* at 1112.
[89] *Id.* at 1110 (emphasis added).

simply holds that Winskowski could not prevail on his liberty interests claim because he did not request any post-termination process.[90]

Williams' situation is different. Williams repeatedly asked to meet not only with Maturi, but the president of the University, the University's counsel, and/or the University's compliance officials.[91] He did so both before and after he was terminated.[92] Unlike the *Winskowski* case, however, Maturi refused to meet with, or allow Williams to present his side of the story at any time. In its Memorandum, the district court focused solely on Williams' alleged failure to seek a grievance hearing after his termination. Because Williams had a constitutionally protected property interest in his continued employment, he was also entitled to notice and a hearing prior to his termination.

In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985), the U.S. Supreme Court held that, "[a]n essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'"[93] The "root requirement" of due process is that an individual be given a hearing before being deprived of a significant property interest.[94] Importantly, this includes giving an employee with a constitutionally protected property

---

[90] *Id.*

[91] A-17 (Am. Compl. 5 ¶ 26); A-219 to A-220 (Ex. J attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

[92] A-17 (Am. Compl. 5 ¶ 26); A-135 (Ex. B at 98, attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss); A-219 to A-220 (Ex. J attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

[93] (quotation omitted).

[94] *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (citations omitted)

interest in his employment "some kind of hearing" prior to his discharge.[95] As stated in *Loudermill*,

> [t]he need for some form of pretermination hearing ... is evident from a balancing of the competing interests at stake. These are the private interests in retaining employment, the governmental interest in the expeditious removal of unsatisfactory employees and the avoidance of administrative burdens, and the risk of an erroneous termination.[96]

The *Loudermill* court recognized the importance of the private interest at stake: "the significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood."[97] The court further recognized that employment disputes, in particular, often involve fact disputes, and that a pre-termination hearing will ensure that an accurate decision is reached: "Even where the facts are clear, the appropriateness or necessity of the discharge may not be; in such cases, the only meaningful opportunity to invoke the discretion of the decisionmaker is likely before the termination takes effect."[98] Thus, the employee must be given notice and an opportunity to respond.[99]

The private interests referenced in *Loudermill* are clearly applicable to this matter. Maturi's failure to provide Williams with due process has deprived him of his livelihood. Williams immediately resigned his position with OSU after Coach Smith hired him.

---

[95] *Id.* (*citing Bd. of Regents of State Colleges v. Roth,* 408 U.S. 564, 569-70 (1972) and *Perry v. Sindermann,* 408 U.S. 593, 599 (1972)).
[96] *Id.* at 542-43.
[97] *Id.* at 543 (*citing Fusari v. Steinberg,* 419 U.S. 379, 389 (1975); *Bell v. Burson,* 402 U.S. 535, 539 (1971); *Goldberg v. Kelly,* 397 U.S. 254, 264 (1970); *Sniadach v. Family Finance Corp. of Bay View,* 395 U.S. 337, 340 (1969)).
[98] *Id.* (citations omitted); *see also Goss v. Lopez,* 419 U.S. 565, 583-84 (1975) (finding that requiring effective notice and informal hearing permitting student to give his version of events prior to suspension will provide a meaningful hedge against erroneous action).
[99] *Loudermill,* 470 U.S. at 546.

Now, as a direct result of Respondents' conduct, Williams has been unable to secure alternative employment since his termination. Williams became aware within a day or two after his hiring that Maturi had concerns over his alleged past NCAA violations.[100] Despite Williams' requests to Coach Smith for a meeting with Maturi, Maturi refused to meet with him. Williams was not allowed to "present his side of the story" to insure that Maturi had made an accurate determination of the facts. Also, contrary to Respondents' argument that Williams did not have a due process right to meet with Maturi specifically, *Loudermill* clearly holds that Williams did have a constitutional due process right to meet with Maturi personally. In this case, Maturi was the "decisionmaker" referenced in *Loudermill,* and Williams should have been able to present his side of the story to Maturi directly.

As noted in *Loudermill*, dismissals often involved factual disputes. This case is no exception. Williams has consistently denied the vast majority of the violations attributed to him.[101] He only sought an opportunity to discuss the matter with Maturi and/or other University officials. Maturi's refusal to meet with Williams before his termination deprived Williams of his constitutionally protected property interest in continued employment, and a meaningful opportunity to address and counter the reasons for his termination. Further, a meeting with Maturi would not have placed any special or additional administrative burdens on Maturi or the University. Williams' position with

[100] A-130 to A-131 (Ex. B at 76-81, attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).
[101] A-361, A-363 (Tr. at 35, 37).

the University was not filled until late May 2007.[102] Instead, a meeting would have allowed Maturi an opportunity to make an informed decision prior to depriving Williams of a constitutionally protected right.

Finally, Williams must highlight for the Court that Respondents' position that Williams' should have utilized the University's grievance policy is both disingenuous and unrealistic when viewed from a practical and "real world" vantage point. Williams had not worked for the University for almost twenty years.[103] Once he had been hired by Coach Smith, he was only a University employee for a matter of a day or two before Maturi's concerns over his hiring were brought to his attention.[104] This is not like the *Winskowski* case, where Winskowski had been employed by Stephen for eighteen years prior to his termination[105] and was likely aware of his post-termination process, but simply failed to request it. Williams never even had the opportunity to come to the University's campus. Williams was arguably unaware of the University's grievance policy—a grievance policy that had been implemented years after his initial departure.[106] Williams only knew that he had been offered a job by one of the most respected and well-known college basketball coaches in the United States, and now, for reasons that were twenty to thirty years old and substantially untrue, his livelihood was in jeopardy.

Respondents emphatically argue that Williams was never offered the position of assistant basketball coach, that he was never hired and, therefore, that he was not

---

[102] A-221 (Ex. K attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss); A-359 (Tr. 33).
[103] A-246 (Ex. V attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).
[104] A-130 to A-131 (Ex. B at 76-81, attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).
[105] 442 F.3d at 1108.
[106] A-325 (University of Minnesota Office for Conflict Resolution).

employed by the University. The University even sent Williams a letter dated May 29, 2007, signed by Coach Smith thanking him for his interest in the position, but informing him that the position had been filled.[107] As a result, any relief Williams would have sought from the University's grievance procedures would have no doubt been denied, as the grievance policy clearly indicates that its procedures are intended only for University employees.[108] Respondents' current position is simply a game of "gotcha" where Respondents now attempt to conveniently avoid the consequences of their actions by arguing Williams did not utilize the University's employee grievance procedure – a grievance procedure that for all practical purposes was never really available to Williams.

Moreover, contrary to the Respondents' position and the district court's ruling, Williams did seek a post-termination hearing. He may not have referred to it as a grievance hearing, or filled out the appropriate form at the University, but without a doubt Williams did seek an opportunity to be heard anytime and anywhere.[109] It is also important to note that the University's grievance policy describes methods of resolving employment-related conflicts after they have arisen. *Loudermill* makes clear that an individual with a constitutionally protected property interest is entitled to notice and a hearing prior to any action that would deprive him of that right. As such, whether or not Williams petitioned the University's Conflict Resolution office is immaterial.

---

[107] A-221 (Ex. K attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss); A-359 (Tr. at 33).

[108] A-316 (University of Minnesota Board of Regents Policy Conflict Resolution Process for Employees at 2).

[109] A-219 to A-220 (Ex. J attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

Respondents admitted that Williams had a constitutionally protected property interest in continuing employment.[110] Williams undeniably sought a meeting with Maturi and several other individuals from the University after he was made aware of Maturi's concerns about his alleged prior NCAA violations. It is clear that Maturi failed to provide Williams with any due process before or after depriving him of his property right. Accordingly, the Court should reverse the district court's dismissal of Williams' property right claims against Maturi and allow these claims to be heard.

IV. Because Williams Both Denied The Substantial Truth Of The Allegations Made Against Him And Maturi's Comments To The Press Sufficiently Stigmatized Him, The District Court Erred In Dismissing Williams' 42 U.S.C. § 1983 Liberty Interest Claims.

The district court is correct that Williams is required to establish three elements in order to state a claim for a violation of his constitutionally protected liberty interest: (1) that the reason for his discharge stigmatized him; (2) that the administrators made the reasons public; and (3) that Williams denied the charges for which he was terminated.[111] The district court acknowledged that Maturi made the reasons for Williams' termination public. However, the district court erred when it ruled that Williams did not deny the charges against him, and that Maturi's comments to the press did not reach the level of stigmatization necessary to state a claim.[112]

---

[110] A-332 (Tr. at 6).
[111] *Coleman v. Reed,* 147 F.3d 751, 754-55 (8th Cir. 1998).
[112] A-10 to A-11 (Memorandum at 10-11).

A. Williams Properly Denied The Substantial Truth Of The NCAA Violations against Him.

The district court ruled that Williams' liberty interest claims fail, in part, because Williams did not deny that the NCAA found that he had committed NCAA violations.[113] In support of its decision, the district court cited *Codd v. Velger*, 429 U.S. 624 (1977), and noted that, "there must be some factual dispute between an employer and a discharged employee which has some significant bearing on the employee's reputation."[114]

While Williams did not deny that the NCAA found that he had committed some NCAA violations, there absolutely are factual disputes between Maturi and Williams, and Williams did deny the substantial truth of the charges leveled by the NCAA.[115]

In *Codd*, the Supreme Court reversed the Second Circuit Court of Appeals and ordered the district court's entry of judgment adverse to Codd to be reinstated.[116] The Court did so because it found that Codd had never asserted that the reports that he attempted to commit suicide were false.[117] Specifically, the Court held:

> '[t]he purpose of such notice and hearing is to provide the person an opportunity to clear his name.'...But if the hearing mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute between an employer and a discharged employee which has some significant bearing on the employee's reputation. Nowhere in his pleadings or elsewhere has respondent affirmatively

---

[113] A-10 (Memorandum at 10).
[114] *Id.* (*quoting Codd*, 429 U.S. at 627).
[115] *See Hogue v. Clinton,* 791 F.2d 1318, 1322 n.4 (8th Cir. 1986) (noting that the plaintiff must at least deny the substantial truth of the charges); A-361, A-363 (Tr. at 35, 37).
[116] *Codd*, 429 U.S. at 629.
[117] *Id.* at 627.

> asserted that the report of the apparent suicide attempt was substantially false.[118]

In order to establish a liberty interest, it is not necessary, despite the district court's ruling, for Williams to deny that the NCAA found that he committed violations, or prove that the charges are false; it is only necessary for Williams to deny the substantial truth of the charges.[119] Indeed, Williams has absolutely denied the substantial truth of NCAA violations both at the time they were made, and throughout this litigation. He testified at his deposition that he had no knowledge of, and did not commit the overwhelming majority of the violations attributed to him.[120]

Although Williams did not allege that he denied the truth of the NCAA violations in his Amended Complaint, there is substantial evidence to support this claim. As the Supreme Court noted in *Codd*:

> [o]ur decision here rests upon no overly technical application of the rules of pleading. Even conceding that the respondent's termination occurred solely because of the report of an apparent suicide attempt, a proposition which is certainly not crystal clear on this record, respondent has <u>at no stage of this litigation</u> affirmatively stated that the "attempt" did not take place as reported.[121]

In this case, contrary to the plaintiff in *Codd*, Williams has vehemently and repeatedly denied the substantial truth of the NCAA's findings during this litigation. Moreover, Respondents suffered no prejudice by the absence of this denial in the Amended Complaint as they were present at Williams' deposition and have been aware of Williams' denials for some time. As such, to the extent it is necessary to prevail,

---

[118] *Id.* (internal quotation omitted).
[119] *See Hogue,* 791 F.2d at 1322 n.4 (8th Cir. 1986) (citation omitted).
[120] A-361, A-363 (Tr. at 35, 37).
[121] 429 U.S. at 628 (emphasis added).

Williams should be freely allowed leave to amend his Complaint to include his denial of the substantial truth of the NCAA violations. Because Williams had denied the substantial truth of the allegations against him, this Court should reverse the district court's finding that no factual dispute exists between Maturi and Williams concerning the NCAA violations.

B. Maturi's Statements Sufficiently Stigmatized Williams As He Has Been Unable To Gain Alternative Employment In His Chosen Profession Because Of Maturi's Public Comments.

The district court erred when it ruled that Maturi's statements did not reach the level of stigmatization necessary to state a claim.[122] Citing *Winegar v. Des Moines Independent Community School District*, 20 F.3d 895 (8th Cir. 1994), the district court ruled that because Williams was not accused of dishonesty or immorality, his liberty interests claims fail as a matter of law.[123] However, comments which may stigmatize an employee are not limited to accusations of dishonesty, immorality, criminality, and racism.[124]

In *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) the U.S. Supreme Court recognized the broad nature of an individual's liberty interest:

> '[w]hile this court has not attempted to define with exactness the liberty...guaranteed (by the Fourteenth Amendment), the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to

[122] A-10 to A-11 (Memorandum at 10-11).
[123] A-11 (Memorandum at 11).
[124] *See Winegar*, 20 F.3d at 899 (noting that "[t]he requisite stigma has generally been found when an employer has accused an employee of dishonesty, immorality, criminality, racism, and the like") (citation omitted).

> marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized...as essential to the orderly pursuit of happiness by free men.' ... In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed. ... For 'where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.'[125]

Similarly, in an earlier case, the Supreme Court acknowledged that an individual's right to be heard "before being condemned to suffer a grievous loss of any kind, even though it may not involve stigma and hardships of a criminal conviction," is a basic tenet of society.[126] "The Court has held, for example, that a State, in regulating eligibility for a type of professional employment, cannot foreclose a range of opportunities 'in a manner... that contravene(s) ... Due Process,'...and, specifically, in a manner that denies the right to a full prior hearing."[127]

Due to the stigma that has attached to Williams as a result of Maturi's comments, he has been unable to secure employment as a men's college basketball coach. Although Williams was seriously considered for the position of assistant basketball coach at two schools after his termination from the University[128]—the University of Kentucky and Florida State University—once those institutions were made aware of Maturi's comments, Williams was told that there was a perception that he had recently done

---

[125] *Roth,* 408 U.S. at 572-73 (internal quotations and citations omitted).
[126] *Wisconsin v. Constantineau,* 400 U.S. 433, 437 (1971) (quotation omitted and emphasis added).
[127] *Roth,* 408 U.S. at 574 (internal quotations and citations omitted); *see also, Schleck v. Ramsey County,* 939 F.2d 638, 642 (8th Cir. 1991) (a public employee has the right to a name-clearing hearing at a meaningful time if his termination is accompanied by publication of stigmatizing reasons for his termination that might impair future employment opportunities).
[128] A-17 (Am. Compl. 5 ¶ 25); A-362 (Tr. at 36).

something wrong. As a result, both schools withdrew from their discussions with Williams.[129] To date, Williams has still been unable to secure alternative employment.

Williams has established his constitutionally protected liberty interest. The evidence clearly demonstrates that: (1) the reasons for Williams' termination were made public; (2) those reasons have stigmatized Williams such that he has been unable to obtain gainful employment in his chosen profession; and (3) Williams has repeatedly denied the substantial truth of the charges against him. This Court should reverse the district court's dismissal of Williams' liberty interest claims against Maturi, and allow those claims to proceed.

V. Maturi Is Not Entitled To Qualified Immunity On Either Of Williams' Constitutional Claims.

Minnesota and federal law both make it clear that to the extent qualified immunity applies to Maturi, he can only invoke it in relation to the property and liberty interest claims brought against him in his individual capacity.[130] As such, the property and liberty interests claims asserted against Maturi in his official capacity as the Athletic Director for the University are not subject to qualified immunity, and should be allowed to proceed.

---

[129] A-147-150 (Ex. B at 151-165, attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

[130] *See Kentucky v. Graham,* 473 U.S. 159, 166-67 (1985) ("When it comes to defenses to liability, an official in a personal-capacity action may, depending on his position, be able to assert personal immunity defenses, such as objectively reasonable reliance on existing law") (emphasis added) (citations omitted); *Stone v. Badgerow,* 511 N.W.2d 747, 750-51 (Minn. Ct. App. 1994) ("In addition to defense on the merits, officials are accorded qualified immunity from suit when sued in their personal capacity") (emphasis added).

The district court erred when it ruled that qualified immunity applies to the property and liberty claims brought against Maturi in his official capacity. "In an official-capacity action, these defenses are unavailable."[131] Moreover, when a plaintiff seeks injunctive relief against a state official in his official capacity, the official qualifies as a person under § 1983 because "official-capacity actions for prospective relief are not treated as actions against the State."[132] Indeed, Respondents acknowledged that qualified immunity does not apply to the claims against Maturi for injunctive relief.[133]

Additionally, the district court's finding that Maturi is entitled to qualified immunity in his individual capacity is premature. The burden is on the party asserting an immunity defense to demonstrate that it is entitled to immunity.[134] The party must "allege facts sufficient for a court to determine as a matter of law that the immunity applies."[135]

In this case, Respondents simply asserted that Maturi is entitled to immunity because of his position. All Respondents have established is that he may be eligible for qualified immunity. This is wholly inadequate. Respondents failed to allege any facts whatsoever that would enable the district court to properly conclude that he is entitled to qualified immunity.

---

[131] *Graham*, 473 U.S. at 167 (citations omitted).
[132] *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 71 n.10 (1989) (quotation omitted).
[133] A-337 (Tr. at 11).
[134] *Rehn v. Fischley,* 557 N.W.2d 328, 333 (Minn. 1997).
[135] *Id.* (emphasis added) (citation omitted).

"Qualified or 'good faith' immunity is an affirmative defense that must be pleaded by a defendant official."[136] The defense has objective and subjective elements.[137] "The objective element involves a presumptive knowledge of and respect for 'basic, unquestioned constitutional rights.'"[138] The qualified immunity defense fails if "an official 'knew or reasonably should have known that the action he took within his sphere of official responsibility would violate constitutional rights of the [plaintiff]...'"[139] The court must determine whether the law was "clearly established" at the time of the official's action.[140] "If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct."[141]

Respondents cannot claim that Maturi did not know, or reasonably should not have known, that his actions at the time clearly violated these established laws.[142] Maturi has been an athletic director at a number of collegiate institutions including the University, and has been involved in the terminations of several coaches and assistant coaches.[143] Further, Maturi admitted receiving the April 10, 2007 letter from Williams' attorney requesting a meeting with him and other University officials. The letter also

---

[136] *Harlow v. Fitzgerald,* 457 U.S. 800, 815 (1982) (*citing Gomez v. Toledo,* 446 U.S. 635 (1980)).
[137] *Id.*
[138] *Id.*
[139] *Id.* (emphasis omitted).
[140] *Id.* at 818.
[141] *Id.* at 818-19.
[142] Respondents must admit that the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 were well-established law in April 2007. Section 1983 was originally enacted by Congress in 1871.
[143] A-187, A-189 (Ex. H at 57, 63, 145-149, attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

contains Williams' assertion that he was offered and accepted a position as an assistant men's basketball coach. As such, Maturi was aware that Williams may have a protected property interest, and was put on notice that his conduct could violate that interest. This is further evidenced by the fact that he forwarded the letter to the University's Office of General Counsel and requested advice.[144] Accordingly, the qualified immunity doctrine does not apply to Maturi in either his individual or official capacity.

CONCLUSION

For the foregoing reasons, Williams respectfully respects that this Court reverse the district court's dismissal of his promissory and equitable estoppel, negligent misrepresentation, vicarious liability/respondeat superior claims, as well as his 42 U.S.C. § 1983 property and liberty interest claims.

[144] A-213 (Ex. H at 448, attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

HUNEGS STONE LeNAEVE KVAS
& THORNTON, P.A.
Richard G. Hunegs (#0048124)
1650 International Centre
900 Second Avenue South
Minneapolis, MN 55402
Telephone: 612.339.4511
Facsimile: 612.339.5150

and

FAFINSKI MARK & JOHNSON, P.A.

Dated June 16 2008

By: _____

Donald Chance Mark, Jr. (#67659)
Anthony Gabor (#032579X)
Alyson M. Palmer (#341228)
Jennifer S. Pirozzi (#0347048)
Flagship Corporate Center, Suite 400
775 Prairie Center Drive
Eden Prairie, MN 55344
Telephone: 952.995.9500
Facsimile: 952.995.9577

Attorneys for Appellant James R. Williams

Certificate as to Brief Length

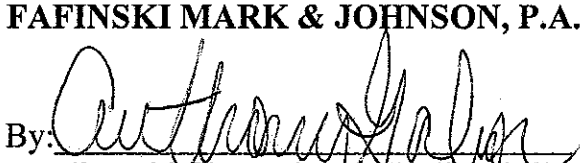
I hereby certify that this brief conforms to the requirements of the Minn. R. Civ. App. P. 132.01, subd. 3, for a brief produced with a proportional font of 13 pt. The length of the brief is 8,178 words. This brief was prepared using Microsoft Office Word 2003 software.

HUNEGS STONE LeNAEVE KVAS & THORNTON, P.A.
Richard G. Hunegs (#0048124)
1650 International Centre
900 Second Avenue South
Minneapolis, MN 55402
Telephone: 612-339-4511
Facsimile: 612-339-5150

and

FAFINSKI MARK & JOHNSON, P.A.

Dated June 16, 2008

By: 

Donald Chance Mark, Jr. (#67659)
Anthony Gabor (#032579X)
Alyson M. Palmer (#341228)
Jennifer S. Pirozzi (#0347048)
Flagship Corporate Center, Suite 400
775 Prairie Center Drive
Eden Prairie, MN 55344
Telephone: 952-995-9500
Facsimile: 952-995-9577

Attorneys for Appellant James R. Williams