

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 REPLY BRIEF AND APPENDIX

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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).

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INTRODUCTION

The University of Minnesota (the "University") and Joel Maturi ("Maturi") (collectively "Respondents") contend that the University can misrepresent its hiring authority to a prospective employee and avoid judicial review of its actions by the district court simply by labeling its misrepresentation as "quasi-judicial." However, the type of misrepresentation that was made in this case involved no administrative decision or administrative function. Therefore, the quasi-judicial doctrine is not applicable.

Appellant James R. Williams' ("Williams") common law claims are focused on conduct that occurred prior to any employment decision by Respondents. Consequently, Respondents' reliance on case law applying the quasi-judicial doctrine to adverse employment decisions made by executive agencies is misplaced. Williams' estoppel and negligent misrepresentation claims fall outside the scope of a proper application of the quasi-judicial doctrine and this Court should reverse the district court's dismissal of these claims.

Furthermore, Williams has sufficiently stated constitutional claims under 42 U.S.C. § 1983. The evidence in this case demonstrates that Williams was deprived of both his constitutionally protected property and liberty interests. The case law cited by Respondents in their brief is distinguishable from the case at hand, and Respondents have failed to make the requisite showing as to why Maturi is entitled to qualified immunity. Because Williams has stated claims for relief against Respondents, this Court should reverse the district court's dismissal of his constitutional claims as well.

ARGUMENT

I. The Quasi-Judicial Doctrine Does Not Apply To Williams' Claims For Promissory Estoppel, Equitable Estoppel, And Negligent Misrepresentation.

The parties agree on the genesis of the quasi-judicial doctrine and how the doctrine has been applied in previous Minnesota case law. For example, Respondents point out that “the certiorari rule is ‘founded on separation-of-powers considerations’” and that deference is granted to “‘administrative decision-making,’” including employment decisions of the University.¹ Respondents go on to say that “[r]egardless [of how] the claim is cloaked...[if it] involve[s] any inquiry into the [agency’s] discretionary decision to terminate,” the claim is limited to certiorari review.² Williams acknowledges these general propositions.

Where Williams and Respondents part ways is on how the law applies to the facts of this case and Williams’ claims for estoppel and negligent misrepresentation. These claims do not involve any “administrative decision-making,” “discretionary decision to terminate” or an employment decision of the University. Therefore, these claims cannot be governed by the quasi-judicial doctrine as it has been applied in Minnesota case law.

Understanding the sequence of events in this case is critical to why Williams’ claims are independent of any decision-making process by the University. On April 2, 2007, the University and Orlando “Tubby” Smith (“Coach Smith”) promised and represented to Williams that Coach Smith had authority to hire assistant coaches for the

¹ Respondents’ Brief at 9-10 (quoting *Tischer v. Hous. & Redevelopment Auth.*, 693 N.W.2d 426, 429 (Minn. 2005)).

² Respondents’ Brief at 11 (quoting *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996)).

University's men's basketball team.³ Williams relied on this promise and representation to his detriment by accepting a job offer from Coach Smith and resigning his position at Oklahoma State University ("OSU").⁴ Sometime thereafter, Maturi learned of Coach Smith's offer to Williams and decided he did not want to hire Williams after-all.⁵ Maturi's decision not to hire Williams was made after the University and Coach Smith had promised and represented to Williams that Coach Smith had authority to hire assistant coaches for the University, and after Williams had relied on that promise and representation to his detriment.

Williams has suffered two distinct wrongs at the hands of Respondents. First, the University and Coach Smith made false promises and misrepresentations to Williams regarding Coach Smith's hiring authority. Second, the University entered into an employment agreement with Williams and then subsequently decided not to honor that agreement. The district court held that the latter of these two wrongs involved a decision-making process by Respondents and that it therefore lacked subject matter jurisdiction. Williams has not appealed this portion of the decision.⁶ The district court further held, however, that it lacked jurisdiction to hear the claims related to the University's false promises and misrepresentations. These claims are distinct from any decision-making

³ A-14 to A-16 (Am. Compl. ¶¶ 10, 17-19).

⁴ A-14 to A-15 (Am. Compl. ¶¶ 11-15).

⁵ A-16 (Am. Compl. ¶ 22).

⁶ It should be noted that discovery in this matter revealed that the University's employment decision did not contain the necessary indicia of a quasi-judicial decision as described in *Univ. of Minnesota v. Woolley*, 659 N.W.2d 300, 303 (Minn. Ct. App. 2003), i.e., there was no investigation, weighing of evidence, or application of the facts to a proscribed standard by the University. While Williams is not appealing these claims, Williams does not concede that dismissal of these claims was proper or that a quasi-judicial decision did, in fact, take place.

process by Respondents and, therefore, outside the ambit of the quasi-judicial doctrine and should have been heard by the trial court. It is these claims that are the subject of this appeal.

To recover under an estoppel theory, the claimant must show: (1) there was a clear and definite promise; (2) the promisor intended to induce reliance and the promisee relied to his detriment; and (3) the promise must be enforced to prevent injustice.⁷ Each of these elements was alleged in Williams' Amended Complaint:⁸ Coach Smith and the University made a clear and definite promise that Coach Smith had authority to hire coaches for the University;⁹ Coach Smith and the University intended for Williams to rely on that promise and Williams did rely on that promise to his detriment when he resigned his position at OSU and made plans to move to Minnesota;¹⁰ and, finally, as a result of these actions by Coach Smith and the University, a gross injustice has occurred that must be rectified.¹¹ Each one of these elements was satisfied before Maturi had even considered Williams, much less make an administrative decision regarding Williams' employment with the University.

The same analysis applies to Williams' negligent misrepresentation claim. For negligent misrepresentation a claimant must show: "(1) a duty of reasonable care in conveying information; (2) breach of that duty by negligently giving false information;

⁷ *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992), *remanded on reh'g*, 481 N.W.2d 840 (Minn. 1992) (costs issue remanded).

⁸ All of Williams' allegations must be accepted as true as this is an appeal of a decision on a motion to dismiss. *See, e.g., N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963).

⁹ A-21 to A-22 (Am. Compl. ¶¶ 49, 56).

¹⁰ A-21 to A-22 (Am. Compl. ¶¶ 50-52, 57-59).

¹¹ A-21 to A-22 (Am. Compl. ¶¶ 53-54; 60).

(3) reasonable reliance on the misrepresentations, which proximately caused the injury; and (4) damages.”¹² Again, these elements are more than satisfied by the facts alleged in Williams’ Amended Complaint: Coach Smith and the University engaged in employment negotiations with Williams and had a duty of reasonable care in conveying Coach Smith’s hiring authority;¹³ Coach Smith and the University held out Coach Smith as having hiring authority when, in fact, they now claim he did not;¹⁴ Williams reasonably relied on this representation of authority which caused him to resign his position with OSU and make plans to move to Minnesota;¹⁵ Williams has suffered serious damages as a result.¹⁶ Just like the elements for estoppel, each element of Williams’ negligent misrepresentation claim was satisfied prior to, and irrespective of, any subsequent employment decision of Maturi.

Examination of the elements of these claims demonstrates precisely why *Michurski v. City of Minneapolis*¹⁷ is not applicable to the facts of this case. In *Michurski*, the Court held that it could not separate Michurski’s breach of contract claim from the city’s hiring decision.¹⁸ This is because there can be no recovery for breach of contract without examining whether there was a breach, and the alleged breach in

¹² *Granlund v. Lumley*, No. A06-970, 2007 WL 1412910 at *3 (Minn. Ct. App. May 15, 2007) (citation omitted) (A-380 to A-385 (*Granlund* unpublished opinion)).

¹³ A-23 to A-24 (Am. Compl. ¶¶ 67, 73).

¹⁴ A-24 (Am. Compl. ¶ 70).

¹⁵ A-24 (Am. Compl. ¶¶ 72, 74).

¹⁶ A-25 (Am. Compl. ¶ 75).

¹⁷ No. C8-02-238, 2002 WL 1791983 (Minn. Ct. App. August 6, 2002) (A-306 to A-309 (*Michurski* unpublished opinion)).

¹⁸ *Id.* at *3.

Michurski was the city attorney's hiring decision.¹⁹ Because analysis of the breach of contract claim required inquiry into the hiring decision, it was subject to the quasi-judicial doctrine.²⁰ While *Michurski* may be applicable to an analysis of Williams' breach of contract claim, that claim is not the subject of this appeal. *Michurski* has no application to Williams' estoppel and negligent misrepresentation claims.

Respondents cite to *Hansen v. Independent School District 820*,²¹ *Kobluk v. Regents of University of Minnesota*,²² and *Grundtner v. University of Minnesota*²³ for support of their position that the quasi-judicial doctrine bars the district court from considering Williams' estoppel and negligent misrepresentation claims. But these cases only further highlight why the doctrine is not applicable to these claims.

The first case relied upon by Respondents, *Hansen*, is an unpublished opinion and the Court included no factual background in its decision. For this reason, it is difficult to make a fair comparison between the facts of this case and the *Hansen* case. The holding in *Hansen*, however, was that although the claimant had labeled his claims as misrepresentation and breach of contract, these claims could not be resolved without challenging a school district's decision.²⁴ Therefore, the quasi-judicial doctrine applied.

¹⁹ *Id.* ("The language in appellant's complaint ties his contract claim to the city's hiring decision.").

²⁰ *Id.* at *3-4.

²¹ No. C4-96-2476, 1997 WL 423567 (Minn. Ct. App. July 29, 1997) (A-386 to A-387 (*Hansen* unpublished opinion)).

²² No. C1-97-271, 1998 WL 297525 (Minn. Ct. App. June 9, 1998) (A-310 to A-313 (*Kobluk* unpublished opinion)).

²³ 730 N.W.2d 323 (Minn. Ct. App. 2007).

²⁴ *Hansen*, 1997 WL 423567 at *1 ("Although Hansen's claims were labeled as breach of contract and misrepresentation, essentially Hansen sought to challenge the school district's decision to not request him to perform any services during the term of the agreement.") (citation omitted).

This labeling of claims issue in *Hansen* is akin to the “cloaked” claims issue as described in *Willis*, and cited by Respondents; neither has any relevance to this case. Williams’ position is not that his estoppel and misrepresentation claims fall outside the quasi-judicial doctrine merely because they have been labeled or cloaked as “estoppel” or “misrepresentation.” On the contrary, Williams asks the Court to look beyond the labels attached to these claims and instead consider the essential elements of the claims and whether those elements require any inquiry into an administrative decision made by the University. This analysis shows that these claims were established prior to, and with no reference to, any decision made by Respondents. Therefore, the quasi-judicial doctrine cannot apply to these claims.

The second case relied upon by Respondents, *Grundtner*, is also not applicable. In *Grundtner*, the University decided not to renew the employment contract of one of its architects.²⁵ When the architect interviewed for a position with a new employer, the employer called the University as a reference.²⁶ The University told the new employer its reasons for not renewing the architect’s contract and the architect sued the University for defamation.²⁷ The Court of Appeals held that the quasi-judicial doctrine applied to the architect’s defamation claim: “[b]ecause the statements at issue here directly pertain to the reason for appellant’s termination, an inquiry into the facts surrounding appellant’s claim would require reviewing the university’s discretionary decision to terminate appellant.”²⁸ The elements of defamation (specifically the element that the statement be

²⁵ 730 N.W.2d at 326-27.

²⁶ *Id.* at 327-28.

²⁷ *Id.* at 328.

²⁸ *Id.* at 333.

false) can be demonstrated only by establishing whether the employment decision was proper. The defamation claim is intertwined with the employment decision and the quasi-judicial doctrine applies.

As has been previously discussed, the elements of Williams' estoppel and negligent misrepresentation claims were satisfied prior to, and independent of, the University's employment decision. These specific claims do not seek to remedy the University's failure to fulfill its employment agreement with Williams. Instead, these claims deal with a separate wrongdoing by the University—the University's misrepresentation of Coach Smith's hiring authority to Williams. Unlike *Grundtner*, the claims that are the subject of this appeal do not “directly pertain to the reason for appellant's termination.” Again, the quasi-judicial doctrine is not applicable.

The third case Respondents rely upon is *Kobluk*. In *Kobluk*, a veterinary surgeon employed by the University was denied tenure and he sued the University as a result.²⁹ The issue before the Court in *Kobluk* was whether the quasi-judicial doctrine applied to any decisions made by the University, and specifically whether it applied to his claims related to the tenure review process.³⁰ The Court found that “[t]he Board of Regents has the power to control and manage the University's affairs” and the quasi-judicial doctrine “acknowledged the existence of the power granted to the University.”³¹ Because the tenure review process is an internal management process of the University, it is entitled

²⁹ 1998 WL 297525 at *1.

³⁰ *Id.* at *3. *Kobluk* argued that the quasi-judicial doctrine did not apply because the University has statewide jurisdiction and review of the discretionary reasons for denying tenure was not required. *Id.*

³¹ *Id.* at *4.

to deference by the courts.³²

It cannot be reasonably argued that the appealed common law claims involve an internal management process of the University. Neither the University nor the Board of Regents has been granted constitutional power to misrepresent its hiring authority to a private individual. There is no “existence of power” to acknowledge here. *Kobluk* tells us that the University is entitled to make internal management decisions free of judicial interference, so long as the decisions are not arbitrary. *Kobluk* says nothing about actions taken by the University outside its internal management process. And *Kobluk* certainly does not say that the University is entitled to misrepresent its authority in a transaction with a third-party and avoid judicial review, which is precisely what the University has done in this case.

Finally, Respondents misunderstand Williams’ argument with respect to his status as a private individual. Williams does not contend that the law regarding the quasi-judicial doctrine should be altered in some way because he is a private individual. Instead, Williams identified this distinction because it represents an anomalous application of the quasi-judicial doctrine. Accordingly, some of the usual assumptions that are made in cases involving this doctrine do not hold true in this case.

A claimant that is a University employee at the time of the alleged wrongdoing is not similarly situated to a claimant that is a private individual. The courts recognize that the University must manage its employees and make internal decisions related to those employees. It follows then that when a University employee makes a claim even

³² “[T]he internal management of the University has been constitutionally placed in the hands of the regents alone.” *Id.* at *3 (quoting *Winberg v. Univ. of Minnesota*, 499 N.W.2d 799, 803 (Minn. 1993)).

remotely related to his employment with the University, it is often true that the alleged wrongdoing was related to a University internal administrative function and the remedy is, therefore, limited to writ of certiorari.

When a claimant is a private individual, as in this case, and not acting under the University's structure and purview, the law does not necessarily characterize a University action toward that person as an internal administrative function. Although Respondents assert that the quasi-judicial doctrine is applicable to this case because the doctrine applies to hiring decisions and "[h]iring decisions, of course, usually will involve non-employees," this appeal does not involve a hiring decision. This is a case of a false promise and misrepresentation made by the University to a private individual regarding who has hiring authority for the University. Respondents cite to no case law dealing with this fact pattern and no case law applying the quasi-judicial doctrine in these circumstances (in fact, they cite to no case involving any claim of wrongdoing to any private individual).

It is one thing for the judicial branch to grant deference to the University in how it internally manages its own employees. It is quite another thing when the University makes false promises and misrepresentations to an outsider, a private person. Such actions cannot be characterized as internal employee management decisions or administrative functions and such actions are not entitled to deference under the quasi-judicial doctrine. The district court's application of the doctrine in this context expands the existing scope of the quasi-judicial doctrine and indeed makes this case one of first impression regarding application of the doctrine.

Williams' claims for estoppel and negligent misrepresentation do not involve a hiring decision, nor any other internal administrative decision or function, of Respondents. These claims are based entirely on the false promises and misrepresentations that were made to Williams by Coach Smith and the University regarding Coach Smith's hiring authority. The quasi-judicial doctrine has no application in this context. Williams respectfully requests the Court to reverse the district court's dismissal of these claims.

II. Respondents Have Failed To Demonstrate That Qualified Immunity Applies To Williams' Constitutional Claims.

Respondents' argument on the applicability of qualified immunity to Williams' constitutional claims is unnecessarily ambiguous and unclear. On the one hand, Respondents seem to concede, as they must, that qualified immunity, to the extent it applies at all in this case, does not apply to the 42 U.S.C. § 1983 claims brought for injunctive relief against Maturi in his official capacity as Athletic Director for the University.³³ However, in their next sentence, Respondents argue that, "the analysis required for qualified immunity shows that the claims against Maturi fail both for damages and for injunctive relief."³⁴

To be clear, and despite Respondents' assertion to the contrary, there need be no further analysis of qualified immunity as to Williams' 42 U.S.C. § 1983 claims against Maturi in his official capacity for injunctive relief. As explained in Williams' initial brief, qualified immunity simply does not apply to Williams' constitutional claims for injunctive relief against Maturi in his official capacity.

³³ Respondents' Brief at 17.

³⁴ *Id.*

With respect to the claims against Maturi for damages in his individual capacity, Respondents have still not explained how Maturi is entitled to qualified immunity. Maturi was aware no later than April 10, 2007 that Williams had a constitutionally protected property interest. At that time, Maturi received a letter from Williams' attorney informing him that Williams believed that he had been hired by Coach Smith and was a University employee. Maturi was thus put on notice that his prior and any subsequent refusals to meet with Williams would be a violation of Williams' constitutional rights. These rights were clearly established. All Respondents have done in their brief is recite the law pertaining to qualified immunity. This is insufficient. The burden is on the party asserting an immunity defense to demonstrate that it is entitled to immunity.³⁵ Respondents must show more, but obviously cannot, before the qualified immunity doctrine may be applied to this matter.

III. Maturi Violated Williams' Clearly Established Constitutionally Protected Property Rights.

A. Williams Sufficiently Availed Himself Of Post-Termination Process.

Williams denies that he failed to avail himself of any post-termination process, and therefore his property interest claim should be allowed to proceed. The case law cited by Respondents in support of their argument regarding Williams' "failure" to avail himself of the University's grievance procedures is factually dissimilar and easily distinguishable.

In *Riggins v. Board of Regents of University of Nebraska*,³⁶ Yolanda Riggins ("Riggins") worked in the custodial services division of the University of Nebraska.³⁷

³⁵ *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

³⁶ 790 F.2d 707 (8th Cir. 1986)

She was employed there for almost six years.³⁸ On February 3, 1983, Riggins had some sort of problem with a co-worker and filed a complaint.³⁹ The police investigated the complaint, but no charges were filed.⁴⁰ The next day, John Marker (“Marker”), the assistant manager of the custodial services division, wrote Riggins a letter informing her that she was to be transferred to a different shift and into a different building.⁴¹ She never received this letter as she refused to meet with Marker as well as her immediate supervisor, Bruce Kennedy (“Kennedy”).⁴² Marker recorded this in a report he eventually shared with Riggins and the University of Nebraska’s affirmative action officer.⁴³ On February 9, Riggins met with John Dzerk (“Dzerk”), the operations manager of the division.⁴⁴ Dzerk read Riggins the report prepared by Marker and allowed her to discuss her reasons for refusing to meet with Marker and Kennedy.⁴⁵ Dzerk and Riggins also discussed her prior work history.⁴⁶ After investigating her claims, Dzerk decided that Riggins had not been honest about her previous encounters with Marker and Kennedy.⁴⁷ On February 15, Dzerk wrote to Riggins informing her that her employment was terminated as of February 7 due to insubordination.⁴⁸

³⁷ *Id.* at 708.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 708-09.

⁴² *Id.* at 709.

⁴³ *Id.*

⁴⁴ *Id.* Riggins was given advance notice of her meeting with Dzerk and she knew it was to discuss her alleged insubordination. *Id.* at 709.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

The University of Nebraska had a formal grievance procedure that Riggins could have followed after her termination.⁴⁹ However, the *Riggins* court made a point of noting that Riggins was aware of the policy as she had used it in the past.⁵⁰ In fact, Riggins made a deliberate choice not to use the University of Nebraska's grievance procedure.⁵¹ She claimed that the program was constitutionally inadequate because it would not have allowed her to confront or cross-examine witnesses.⁵²

Here, unlike the *Riggins* case, Williams had only been employed for a matter of days before he became aware that his employment was in jeopardy. As such, he had not yet been brought to campus, and had not been introduced to the University's policies and procedures. Moreover, Williams did not deliberately decide not to make use of the University's grievance procedure. He was unaware of it. No one from the University told him about it. Respondents' argument that as a University employee, "he was expected to know and follow University policies" is both unrealistic and ludicrous. How exactly was Williams expected to know and follow University policies? Is this knowledge somehow imbued to University employees upon their acceptance of University employment? More likely, University employees are subject to some type of orientation process wherein they are informed of the various University programs and policies at their disposal. Unfortunately, this never happened for Williams.

One of the many facts that make this case unique is that Williams, unlike the plaintiffs in the case law cited by Respondents, was not employed for any length of time

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 710.

⁵² *Id.* at 711.

prior to his termination.⁵³ Accordingly, he was unfamiliar with the University's formal grievance procedures. Most significantly, unlike *Riggins*, Williams did not make a deliberate choice not pursue a grievance process purportedly available to him because he thought it was constitutionally inadequate; nor did he simply fail to request a post-termination hearing like the plaintiff in *Winskowski*. On the contrary, Williams emphatically requested relief. He sought a meeting with Maturi and other University officials.⁵⁴ These requests were all ignored. Further, at no time did the University notify Williams that a formal process was available. But under the unique circumstances of this case, it is clear that Williams did attempt to avail himself of a form of post-termination process and was ignored. As such, the dismissal of Williams' property interest claim should be reversed, and allowed to proceed.

B. Williams Was Entitled To A Pretermination Hearing.

Respondents admitted that Williams possessed a constitutionally protected property right, and Williams has alleged that Maturi deprived him of that right without due process of law. One of the ways in which Respondents violated Williams' right to due process was by denying him a pretermination hearing.⁵⁵

Respondents' argument that the pretermination hearing mandated by *Loudermill* "has no meaning in this case" simply because Williams had been recently hired is a red

⁵³ See *Winskowski v. City of Stephen*, 442 F.3d 1107, 1108 (8th Cir. 2006) (plaintiff employed eighteen years); *Riggins*, 790 F.2d at 708 (plaintiff employed almost six years); *Smith v. Sorensen*, 748 F.2d 427, 429 (8th Cir. 1984) (plaintiffs employed at least seven years).

⁵⁴ A-219 to A-220 (Ex. J attached to Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss).

⁵⁵ Contrary to Respondents' assertion, Williams did cite *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), to the district court. See A-93 to A-94.

herring. The holdings in *Loudermill* and *Schleck v. Ramsey County*⁵⁶ were not predicated upon the length of time the respective plaintiffs had been employed. Instead, the *Loudermill* and *Schleck* plaintiffs were entitled to notice and an opportunity to be heard prior to their termination based upon the fact that they each had a constitutionally protected property interest, not because of the length of their service. In fact, the *Loudermill* court specifically recognized the inherent danger that termination without an opportunity to be heard may bring upon an employee: “While a fired worker may find employment elsewhere, doing so will take some time and [the worker] is likely to be burdened by the questionable circumstances under which he left his previous job.”⁵⁷ As noted in Williams’ initial brief, Respondents’ actions have indeed placed a burden upon Williams’ ability to obtain alternative employment. Because Williams possessed a constitutionally protected property interest which was violated by Maturi’s failure to allow him an opportunity to be heard, this Court should reverse the district court and allow Williams’ property interest claims to proceed.

C. Maturi Is Not Entitled to Qualified Immunity Because Williams’ Property Rights Were Clearly Established At The Time Maturi Refused To Meet With Williams.

At the time Maturi decided to terminate Williams’ employment, Maturi was aware that Williams had a protected property interest. Specifically, Maturi knew that Williams believed he had been hired as an assistant coach, and was requesting a meeting with him to discuss the concerns Maturi had raised about the NCAA violations. Maturi chose not to meet with Williams.

⁵⁶ 939 F.2d 638 (8th Cir. 1991).

⁵⁷ 470 U.S. 532, 543 (1985).

“Government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁵⁸ But in order for this qualified immunity to attach, “the contours of the right must be sufficiently clear that a reasonable official would understand that what she is doing violates that right.”⁵⁹ In other words, “whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the ‘objective legal reasonableness’ of the action.”⁶⁰ In sum, qualified immunity does not apply when the unlawfulness of the action is apparent.⁶¹

The pre-existing law with respect to deprivation of an individual’s property right without due process has been clearly established. Accordingly, the unlawfulness of Maturi’s inaction is apparent. Maturi was put on notice no later than April 10, 2007 that Williams believed he had been hired as an assistant basketball coach with the University, and therefore possessed a constitutionally protected property right. Despite this knowledge, Maturi failed to give Williams a meaningful opportunity, at any time, to present his side of the story with respect to the NCAA violations. Any reasonable athletic director at a major collegiate institution would recognize that in such a circumstance, some type of meeting is necessary to at least provide the employee with the opportunity to address the allegations against him. Because Maturi failed to comply with

⁵⁸ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

⁵⁹ *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

⁶⁰ *Id.* at 639.

⁶¹ *Id.*

clearly established law and violated Williams' constitutionally protected property rights, the district court's dismissal of his property claims must be reversed.

IV. Maturi Violated Williams' Constitutionally Protected Liberty Interests.

Maturi's comments to the press regarding the reasons for Williams' termination and the subsequent fallout violated Williams' constitutionally protected liberty interests. These comments were stigmatizing to Williams and, as noted in Williams' initial brief, Williams has emphatically denied the substantial truth of the NCAA's findings. Williams has satisfied all three elements required to state a claim for a violation of his constitutionally protected liberty interest.

Williams has established that he denied the charges for which he was terminated (i.e. the NCAA violations). This case is analogous to *Codd v. Velger*, 429 U.S. 624 (1977), as described in Williams' initial brief. In *Codd*, the Supreme Court reversed the Second Circuit Court of Appeals and ordered the district court's entry of judgment adverse to Velger to be reinstated.⁶² The Court did so because it found that Velger had never asserted that the reports that he attempted to commit suicide were false.⁶³ 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 asserted that the report of the apparent suicide attempt was substantially false.⁶⁴

⁶² *Codd v. Velger*, 429 U.S. 624, 641 (1977).

⁶³ *Id.* at 884.

⁶⁴ *Id.*

Williams has denied the substantial truth of the NCAA violations 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.⁶⁵ As such, this Court should reverse the district court's ruling that no factual dispute exists between Maturi and Williams concerning the NCAA violations.

Furthermore, Respondents' argument that because Maturi's statements do not accuse Williams of "dishonesty, immortality, criminality, racism and the like,"⁶⁶ they cannot be considered stigmatizing is simply without merit. Both the *Schleck* case and *The Board of Regents of State Colleges v. Roth*,⁶⁷ make clear that publication of stigmatizing reasons for an employee's termination that might impair future employment opportunities require notice and a hearing.⁶⁸

Finally, Respondents' contention that Williams has not alleged that he requested a "public name-clearing meeting" is simply false. Respondents cite no authority that requires the meeting to be "public," or referred to as a "name-clearing meeting." Williams' Amended Complaint contains at least two paragraphs alleging that Williams

⁶⁵ A-361, A-363 (Tr. at 35, 37).

⁶⁶ Respondents' Brief at 30.

⁶⁷ 408 U.S. 564 (1972).

⁶⁸ *Schleck*, 939 F.2d at 642 (a public employee has the right to 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); *Roth*, 408 U.S. at 573 (finding that 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).

repeatedly requested an opportunity to meet with Maturi to discuss the matter and the alleged NCAA infractions.⁶⁹

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

V. Maturi Is Not Entitled To Qualified Immunity On Williams' Liberty Interest Claims.

Maturi's comments to the press with respect to Williams' previous NCAA infractions violated Williams' clearly established liberty interests. As an experienced and reasonable athletic director at a major collegiate institution, Maturi knew or should have known that making public statements regarding an individual's prior NCAA violations could stigmatize that individual such that his reputation and integrity may be called into question and could affect his ability to obtain alternative employment. As such, the liberty interest claim for damages against Maturi must be allowed to proceed.

CONCLUSION

For the foregoing reasons, Williams respectfully requests 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.

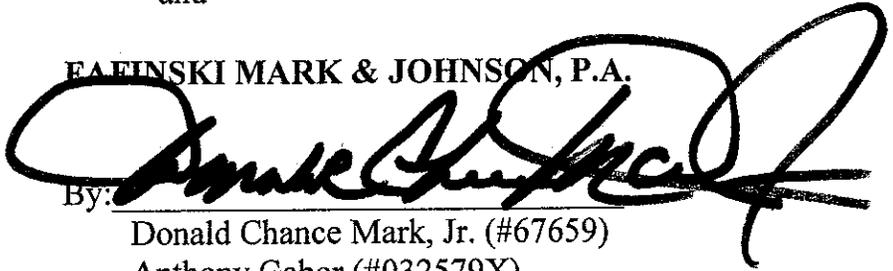
⁶⁹ A-31 to A-32 (Am. Compl. ¶¶ 114, 120).

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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 4,850 words. This brief was prepared using Microsoft Office Word 2003 software.

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