STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

West Virginia Real Estate Appraiser Licensing and Certification Board, Dean E. Dawson, Individually and as Chair of the West Virginia Real Estate Appraiser Licensing and Certification Board, Defendants Below, Petitioners

v.) No. 24-167 (Kanawha County No. C-22-P-268)

J. Edward Estep, L.R.A. No. 0606, Plaintiff Below, Respondent

MEMORANDUM DECISION

Respondent J. Edward Estep filed this action in the Circuit Court of Kanawha County challenging Petitioner West Virginia Real Estate Appraiser Licensing and Certification Board (the "Board") and Petitioner Dean E. Dawson's complaints, investigation, and suspension of his real estate appraiser license without a hearing.[1] The petitioners appeal the circuit court's order granting, in part, and denying, in part, the petitioners' motion for summary judgment based on qualified and statutory immunity. This Court has considered the parties' briefs, oral arguments, and the record on appeal. Upon review, we find there is no substantial question of law and no prejudicial error. Accordingly, a memorandum decision is appropriate. *See* W. Va. R. App. P. 21(c). For the reasons set forth below, we find that Mr. Estep has demonstrated sufficient evidence that a reasonable jury could find that the petitioners violated Mr. Estep's due process rights and acted with malice for purposes of defeating their immunity defenses. We therefore affirm the circuit court's order.

I. Factual and Procedural Background

Mr. Estep is a licensed real estate appraiser working in West Virginia. Mr. Dawson is also a licensed real estate appraiser and is Chair of the Board. In 2021, Mr. Estep and Mr. Dawson were hired as opposing expert witnesses in two civil cases.[2] After reviewing Mr. Estep's expert reports for the two cases, Mr. Dawson told a fellow Board member that Mr. Estep's work was substandard.

[1] The Board and Mr. Dawson are represented by counsel Charles R. Bailey. Mr. Estep is represented by counsel O. Gay Elmore, Jr.

[2] *Morrison v. Columbia Gas Transmission, LLC*, No. 3:20-cv-00674 (S.D.W. Va.); *Chapman v. Columbia Gas Transmission, LLC*, No. 3:20-cv-00652 (S.D.W. Va.).

On October 20, 2021, the Board held a regularly scheduled meeting. At the meeting, the Board reviewed Mr. Estep's expert reports for the two cases, determined they did not comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and voted to initiate two complaints against Mr. Estep (No. S21-005 and No. S21-007) ("the Board's complaints"). A property owner had previously initiated a complaint against Mr. Estep for his work in appraising a property in June 2020 (No. S20-013). At the same meeting, the Board voted unanimously[3] to suspend Mr. Estep's license under West Virginia Code §§ 30-38-14(c) (2025)[4] and 30-1-8(e)(1) (2025)[5], pending a hearing.

Mr. Dawson signed the Board's complaints and the Board's order suspending Mr. Estep's license ("the Board's Order") and entered them into the Board's official records on November 12, 2021. The Board's Order found "that extraordinary circumstances exist wherein the continued licensure of Mr. Estep will adversely affect the public welfare and integrity of the profession." The Board's Order further explained that Mr. Estep's failure to comply with USPAP standards constituted "a danger to the public and/or adversely affect[ed] the public welfare."

Mr. Estep filed a petition for a writ of mandamus, a motion for preliminary and/or permanent injunction, and a complaint against the Board in the Circuit Court of Kanawha County on November 23, 2021. Mr. Estep voluntarily dismissed his initial petition and filed an amended petition on July 27, 2022, adding Mr. Dawson as a defendant and requesting the circuit court to direct the Board to reinstate his real estate appraiser license, dismiss the three complaints against him pending before the Board, expunge all of the Board's records of allegations against him and

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[3] Mr. Dawson asserts that, as Chair of the Board, he only votes on Board actions in the event of a tie. Because the vote in this matter was unanimous, he was not required to vote.

[4] West Virginia Code § 30-38-14(c) provides:

> If the board finds that extraordinary circumstances exist which require immediate action, it may without notice or hearing enter an order taking any action permitted by this article. Immediately upon the entry of the order, certified copies shall be served upon all persons affected, who upon demand are entitled to a hearing at the earliest practicable time.

[5] West Virginia Code § 30-1-8(e) provides:

> Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority, except:
>
> (1) A board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public[.]

West Virginia Code § 30-1-8 was amended on June 12, 2026. This provision is now located in subsection (f) of the statute but otherwise remains unchanged.

his wrongful suspension, and prohibit Mr. Dawson from participating in any disciplinary matters related to Mr. Estep. In his complaint, Mr. Estep brought claims against the petitioners for (1) violating his due process rights, (2) defamation, (3) tortious interference with contract, and (4) the tort of outrageous conduct.

The petitioners moved for summary judgment in December 2023, arguing that discovery failed to reveal any improper motivation on the part of Mr. Dawson or the Board and that they are entitled to qualified immunity. Mr. Dawson also asserted he is entitled to statutory immunity under West Virginia Code § 30-38-10(a) (2025).[6] The circuit court granted, in part, and denied, in part, the petitioners' motion for summary judgment on February 23, 2024. The circuit court granted summary judgment on the claim for the tort of outrageous conduct and, based on the parties' agreement, dismissed the tortious interference with contract claim. However, the circuit court denied summary judgment based on qualified and statutory immunity. The circuit court found that there was sufficient evidence that a reasonable jury could find that the petitioners acted with malice or violated Mr. Estep's "clearly established constitutional or statutory right."[7] The petitioners appeal the circuit court's order regarding its immunity determinations.

II. Standard of Review

The petitioners appeal the circuit court's order partially denying summary judgment based on qualified immunity for both petitioners and denying summary judgment based on statutory immunity for Mr. Dawson. We have previously explained that "[a] circuit court's denial of summary judgment that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the 'collateral order' doctrine." Syl. Pt. 2, *Robinson v. Pack*, 223 W. Va. 828, 679 S.E.2d 660 (2009).

Mr. Dawson's statutory immunity defense rests on West Virginia Code § 30-38-10(a), which grants Board members immunity from liability for actions taken in good faith and without malice. We assume, without deciding, that Mr. Dawson's statutory immunity claim does not fall under the collateral order doctrine for purposes of permitting interlocutory review. *See Logan Reg'l Med. Ctr. v. A.J.*, No. 24-413 (W. Va. Nov. 9, 2026) (dismissing an appeal from an order denying a motion to dismiss on a statutory immunity defense by a non-governmental actor for lack of jurisdiction under the collateral order doctrine). However, as discussed below, our qualified immunity analysis turns on whether genuine issues of material fact exist as to whether the Board, and its Chair, Mr. Dawson, acted with malice. Because Mr. Dawson's statutory immunity defense also turns on the question of malice, our findings on the qualified immunity defense necessarily resolve the statutory immunity issue in this particular case. Our analyses of the two immunities are therefore "inextricably intertwined," and in the interest of judicial economy, we will review

[6] West Virginia Code § 30-38-10(a) provides: "Members of the board will be immune from individual civil liability for actions taken in good faith and without malice, within the scope of their duties as board members." This statute was amended in 2022 after the events of this case, but the language of subsection (a) remains the same.

[7] The status of Mr. Estep's defamation claim and request for injunctive relief are unclear based on the record presented on appeal.

Mr. Dawson's statutory immunity defense. *See Cabell County Commission v. Whitt*, 242 W. Va. 382, 391, 836 S.E.2d 33, 42 (2019) (citing *Henry v. Purnell*, 501 F.2d 374, 376 (4th Cir. 2007)); *see also Henry*, 501 F.2d at 376 ("Claims are 'inextricably intertwined' when the resolution of one claim necessarily resolves the other claim.").

Having determined that the circuit court's summary judgment order is properly before this Court, we review the order de novo. Syl. Pt. 1, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002) ("This Court reviews *de novo* the denial of a motion for summary judgment, where such a ruling is properly reviewable by this Court.").

A court should only grant summary judgment when there is no genuine issue of material fact. *See* Syl. Pt. 3, *Aetna Cas. & Sur. Co. v. Fed. Ins. Co. of N.Y.*, 148 W. Va. 160, 133 S.E.2d 770 (1963); *see also* W. Va. R. Civ. P. 56(a). "[A] genuine issue does not arise unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that party. . . . A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law." Syl. Pt. 5, in part, *Jividen v. Law*, 194 W. Va. 705, 461 S.E.2d 451 (1995). The court's role at summary judgment is not to weigh the evidence, but rather "to determine whether there is a genuine issue for trial." *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 59, 459 S.E.2d 329, 336 (1995) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). In reviewing the underlying facts on an appeal of an order granting or denying summary judgment, "we must draw any permissible inference from the underlying facts in the light most favorable to the party opposing the motion," that is, Mr. Estep. *Maston v. Wagner*, 236 W. Va. 488, 498, 781 S.E.2d 936, 946 (2015) (quoting *Williams*, 194 W. Va. at 59, 459 S.E.2d at 336).

Courts ultimately determine whether immunity bars a civil action such as this one. However, if there "is a bona fide dispute as to the foundational or historical facts that underlie the immunity determination," those issues of fact are for the jury to determine, and the questions of statutory or qualified immunity are not appropriate for summary judgment. Syl. Pt. 1, in part, *Hutchison v. City of Huntington,* 198 W. Va. 139, 479 S.E.2d 649 (1996). With these standards in mind, we turn to the parties' arguments.

III. Discussion

The petitioners assert that they are entitled to qualified immunity. We have previously explained that when determining "whether the State, its agencies, officials, and/or employees are entitled to immunity," we must first determine whether the actions complained of "constitute legislative, judicial, executive or administrative policy-making acts or involve otherwise discretionary governmental functions." Syl. Pt. 10, in part, *W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014). If the actions arise "from judicial, legislative, executive or administrative policy-making acts or omissions, both the State and the official involved are absolutely immune." *Id.* However, if the actions are discretionary, we must determine whether Mr. Estep "has demonstrated that such acts or omissions are in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive." *Id.* at 497, 766 S.E.2d at 756, Syl. Pt. 11, in part. If Mr. Estep cannot make "such a showing, both the State and its officials or employees charged with such acts or omissions are immune from liability." *Id.*

The petitioners assert that all their actions, including suspending Mr. Estep's license without a hearing, were discretionary government functions. Mr. Estep agrees that the petitioners' actions were discretionary. Because the parties admit the petitioners' actions were discretionary, we must decide whether Mr. Estep has demonstrated sufficient evidence that the petitioners' actions violated his clearly established rights or were otherwise fraudulent, malicious, or oppressive, such that a reasonable jury could find the petitioners so acted.

Mr. Estep asserts that Mr. Dawson abused his position as Chair of the Board and acted maliciously because of a personal vendetta against Mr. Estep after the two served as opposing expert witnesses immediately before the Board initiated disciplinary proceedings against Mr. Estep. He argues that the petitioners violated his due process rights under the West Virginia Constitution and acted maliciously by suspending his license without a hearing, when no extraordinary circumstances existed to justify the Board's action.

Under the Due Process Clause of the West Virginia Constitution, "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers." W. Va. Const. art. III, § 10. Procedural due process fundamentally includes the opportunity to be heard. *See Hutchison*, 198 W. Va. at 154, 479 S.E.2d at 664. The Legislature codified that right in West Virginia Code § 30-38-14 by setting forth the procedural requirements the Board must follow when a licensed real estate appraiser is accused of wrongdoing. Among those requirements, the Board "shall provide notice and hearing to the accused party in advance of the entry of any order." W. Va. Code § 30-38-14(a). However, the Board may suspend a real estate appraiser license without a hearing when it "finds that extraordinary circumstances exist which require immediate action[.]" W. Va. Code § 30-38-14(c).

Mr. Estep argues the petitioners violated clearly established procedural due process law by depriving him of his real estate appraiser license[8] without first granting him a hearing. Mr. Estep asserts that the Board's findings that "extraordinary circumstances exist wherein the continued licensure of Mr. Estep will adversely affect the public welfare and integrity of the profession," and additionally finding that "the continued practice of real estate appraising by Mr. Estep in the State of West Virginia would constitute a danger to the public and/or adversely affect the public welfare," were unfounded and pretextual. Mr. Estep asserts that there is no evidence that he is a danger to the public or that his licensure adversely affects the public. Instead, Mr. Estep contends that, at Mr. Dawson's suggestion, the Board's Order included the appropriate language under West Virginia Code § 30-38-14(c) to suspend his license without giving him an opportunity to be heard, as required by the Constitution of West Virginia and West Virginia Code § 30-38-14(a).

To support his claims, Mr. Estep points to evidence that Mr. Dawson initiated the Board's complaints against him for his work as an expert witness. Mr. Estep also points to Mr. Dawson's participation in the investigation and the suspension of Mr. Estep's license, even though Mr.

[8] There is a liberty interest "in the pursuit of a lawful occupation," and this Court has "consistently protected people from arbitrary state interference with their right to pursue a lawful occupation by demanding procedural regularity from government when it licenses private employment." *Major v. DeFrench*, 169 W. Va. 241, 286 S.E.2d 688 (1982) (citations omitted).

Dawson admitted to a conflict of interest in the matter. Finally, Mr. Estep relies on the Board's October 20, 2021, meeting minutes, in which Mr. Dawson participated. Specifically, Mr. Dawson indicated that some items the Board discussed regarding Mr. Estep's license should not be discoverable. In addition, Mr. Estep argues Mr. Dawson told the Board to suspend his license without a hearing. The meeting minutes quote Mr. Dawson as saying, "[the Attorney General] said there's two choices after filing a complaint. We can have a hearing or if we feel he is an immediate danger to the public we can go ahead and suspend his license without a hearing." Another Board member then said, "He's got two complaints against him. I think we can decide he's a menace to the appraisal community." When other Board members suggested granting Mr. Estep a hearing before suspending his license, Mr. Dawson stated, "well we have an outside reviewer saying he's a danger to the community so I think we can act on that today." Mr. Estep contends that the independent appraiser the Board hired to investigate his work never asserted that Mr. Estep was a danger to the community, and the Board had no other evidence that he was. Nevertheless, the Board voted unanimously to suspend Mr. Estep's license without granting him a hearing. Further, as Board chair, Mr. Dawson signed the Board's Order and the Board's complaints despite his conflict of interest.

Conversely, the petitioners argue that Mr. Dawson was required to report Mr. Estep to the Board after learning of his poor work product in the two civil cases. Therefore, they maintain that Mr. Dawson's actions were not malicious and did not violate Mr. Estep's due process rights. The petitioners further argue that their conduct in suspending Mr. Estep's license without a hearing could not have violated his due process rights because West Virginia Code § 30-38-14(c) explicitly granted the petitioners the right to suspend Mr. Estep's license without a hearing if they found "extraordinary circumstances exist[ed]." In support, the petitioners argue they had an independent appraiser investigate Mr. Estep's work product. The independent appraiser found Mr. Estep's work contained "serious errors and violations of pertinent laws" and the USPAP. The petitioners argue that Mr. Estep's "total neglect of the minimum requirements that are set forth within licensing, including the USPAP and law violations" harmed the public and the credibility of the appraisal licensing profession. The petitioners also point to the Board's order, signed by Mr. Dawson, suspending Mr. Estep's license, in which the Board found that Mr. Estep was a danger to the public.

We have explained that qualified immunity is not "an impenetrable shield that requires toleration of all manner of constitutional and statutory violations by public officials." *Hutchison*, 198 W. Va. at 148, 479 S.E.2d at 658. Indeed, we have previously found that when the evidence presented at summary judgment could lead a reasonable jury to conclude that the actor presenting the qualified immunity defense had violated clearly established law or otherwise acted maliciously, fraudulently, or oppressively, the matter was not ripe for summary judgment and must be presented to the factfinder. *See, e.g.*, *Maston*, 236 W. Va. at 507, 781 S.E.2d at 955 (affirming a circuit court's order denying summary judgment based on qualified immunity when there were questions of material fact underlying the immunity defense best left to the jury).

Here, the evidence presented by the parties, viewed in the light most favorable to Mr. Estep, presents genuine issues of material fact as to whether Mr. Dawson violated Mr. Estep's due process rights and acted maliciously by initiating, participating in, making decisions in, and otherwise influencing the Board's disciplinary proceedings against Mr. Estep, ultimately leading to the Board

suspending Mr. Estep's license without a hearing on the alleged ground of "extraordinary circumstances."[9] Additionally, the parties' evidence presents genuine issues of material fact as to whether the Board violated Mr. Estep's due process rights and acted maliciously by suspending Mr. Estep's license without a hearing, at Mr. Dawson's suggestion, on the alleged ground of "extraordinary circumstances."

Mr. Dawson also asserts that he is entitled to statutory immunity under West Virginia Code § 30-38-10(a). The Legislature granted members of the Board, like Mr. Dawson, immunity "from individual civil liability for actions taken in good faith and *without malice*, within the scope of their duties as board members." W. Va. Code § 30-38-10(a) (emphasis added). For the same reasons that there are genuine issues of material fact relating to whether Mr. Dawson acted maliciously for his qualified immunity defense, there are also genuine issues of material fact relating to whether Mr. Dawson acted maliciously for his statutory immunity defense.

IV. Conclusion

For the foregoing reasons, we affirm the circuit court's immunity findings in its February 23, 2024, Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment.

Affirmed.

ISSUED: November 9, 2026

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[9] Whether Mr. Dawson is entitled to qualified immunity depends on whether his actions were within the scope of his duties, authority, or employment as the Chair of the Board. *A.B.*, 234 W. Va. at 497, 766 S.E.2d at 756, Syl. Pt. 12, in part ("If the plaintiff identifies a clearly established right or law which has been violated by the acts or omissions of the State, its agencies, officials, or employees, or can otherwise identify fraudulent, malicious, or oppressive acts committed by such official or employee, the court must determine whether such acts or omissions were within the scope of the public official or employee's duties, authority, and/or employment."). If Mr. Dawson acted outside "the scope of his duties, authority, and/or employment, the State and/or its agencies are immune from vicarious liability, but the public employee or official is not entitled to immunity[.]" *Id.* However, if Mr. Dawson acted within the scope of his official duties, he is entitled to qualified immunity for personal liability unless his acts violate clearly established laws or are "fraudulent, malicious, or otherwise oppressive." Syl., in part, *State v. Chase Sec., Inc.*, 188 W. Va. 356, 424 S.E.2d 591 (1992).

However, the parties have not fully addressed whether Mr. Dawson acted within the scope of his duties, authority, or employment. Therefore, we decline to consider whether Mr. Dawson acted within the scope of his duties, authority, or employment.

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan