



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: September 11, 2008
SUBJECT: Kocenda v. Troy et. al.

Plaintiff David Kocenda filed a lawsuit against the City of Troy, Troy Police Chief Charles Craft, Captain Edward Murphy, Captain Colleen Mott, Lieutenant Richard Hay, Lieutenant Charles Pappas, and Lieutenant Robert Rossman. The lawsuit was filed in Oakland County Circuit Court and assigned to Judge Fred M. Mester. In his complaint, Kocenda alleged Defamation (Count I) and Intentional Infliction of Emotional Distress (Count II).

According to the original complaint, the Plaintiff, who is a police officer for the City of Troy, was offered a job as a police officer for the City of Palm Beach Gardens, Florida. This offer was subsequently retracted, based on the background investigation. Kocenda claims that the Troy defendants provided false information about him during the background investigation.

On February 13, 2008, Judge Mester granted our Motion for Summary Disposition, and dismissed Kocenda's case against the City and the individual officers. This dismissal was based, in part, on the fact that Kocenda had not timely filed his defamation claims against the City and the individual defendants. Kocenda then filed an untimely Motion for Reconsideration on April 10, 2008. This Motion for Reconsideration was denied on May 19, 2008 by Judge Mester. Thereafter, Kocenda filed a Claim of Appeal with the Michigan Court of Appeals on May 30, 2008.

After unsuccessfully seeking a voluntary dismissal of the claim of appeal from Kocenda's attorney, we filed an immediate motion to dismiss the claim of appeal, since there is no automatic right to appeal when the claim is not timely filed. Kocenda failed to file his Motion for Reconsideration or a claim of appeal within the allocated 21 days. The Court of Appeals agreed with this position, and granted our motion and dismissed the appeal on August 27, 2008. A copy of the order is attached.

The dismissal of the claim of right does not preclude a filing of an application for leave to appeal. However, if Kocenda were to file such an application, the Court of Appeals has the absolute discretion to decide whether the case is worthy of further consideration. This decision is generally based on whether the case presents unique issues or whether there was a clear abuse of discretion in granting of the motion for summary disposition.

In the meantime, as the prevailing party in a motion to dismiss, we can request reimbursement of our costs under the internal rules of the Michigan Court of Appeals. We have requested such reimbursement.

Please let us know if you should have any questions.

Court of Appeals, State of Michigan

ORDER

David Kocenda v City of Troy

Docket No. 285725

LC No. 2007-085524-CZ

Bill Schuette
Presiding Judge

William C. Whitbeck

Donald S. Owens
Judges

The motion to dismiss this appeal for lack of jurisdiction is GRANTED. The claim of appeal was not timely filed because it was not filed within 21 days after entry of the February 14, 2008 final order. MCR 7.204(A)(1)(a). MCR 7.204(A)(1)(b) is inapplicable because the motion for reconsideration in the circuit court was not filed until April 10, 2008, more than 21 days after the entry of the February 14, 2008 final order and the circuit court did not grant appellant extended time to file such a postjudgment motion within that 21-day period.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 27 2008

Date

Sandra Schultz Mengel
Chief Clerk