

IN THE COURT OF APPEALS OF IOWA

No. 7-064 / 06-0392
Filed March 28, 2007

INDIAN HILLS COMMUNITY COLLEGE,
Plaintiff-Appellant,

vs.

**INDIAN HILLS BOOSTER CLUB, and
CHARLES C. TALBOT,**
Defendant-Appellee.

Appeal from the Iowa District Court for Appanoose County, Annette J. Scieszinski, Judge.

Indian Hills Community College appeals from the ruling granting summary judgment and dismissing its claims against Charles C. Talbot. **AFFIRMED.**

John Moreland, Ottumwa, and Bradley Grothe and Joseph Goedken of Osborn, Bauerle, Milani, Grothe & Mitchell, L.L.P., Centerville, for appellant.

James Carney of Carney & Appleby, P.L.C., Des Moines, and Aaron Oliver of Hansen, McClintock & Riley, Des Moines, for appellee Charles C. Talbot.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

Indian Hills Community College appeals from the ruling granting summary judgment and dismissing its claims against Charles C. Talbot. We affirm.

Background Facts and Proceedings.

In this summary judgment proceeding, one fact is wholly undisputed: since the 1970's, Charles Talbot has been an avid supporter of Indian Hills Community College athletics and widely recognized by the school and community for his fund-raising success. In 1992, Indian Hills awarded Talbot the Indian Hills Community College Outstanding Service Award. In 1998 Talbot was again honored by the college when it named the baseball hitting center after him. However, Indian Hills' lack of oversight of the raised funds eventually caused the relationship to deteriorate, leading to this action for an accounting and to enjoin Talbot's further use of the college's name and logo in his fund-raising efforts.

In his affidavit in support of summary judgment, Talbot claims to have made personal gifts to the college totaling over \$45,000 and raised additional funds for the athletic programs in excess of \$97,000. Since 1988, Talbot assisted in two annual fund-raising activities for the baseball team: the first involved selling advertising signs on the outfield wall of the baseball field; the second concerned the "Annual Sports Banquet," a dinner and auction spearheaded by the baseball coach.

Originally, Talbot, along with John Riggall and Bob Traxler, operated together merely as informal boosters for the sports teams. The group was not incorporated in any fashion and did not operate under any bylaws or operating agreement. In 2001, Talbot, Riggall, and Traxler incorporated the "Indian Hills

Booster Club” as a nonprofit corporation, and in 2002 they filed amended articles of incorporation in which the Club’s announced sole purpose was, “To promote and support the best interests and welfare of the Indian Hills Community College sports programs.” All three men served as the Club’s directors, however, only Talbot was named individually in this action. Prior to the Club’s incorporation, Talbot had approached Keith Sasseen, the Executive Vice President of Finance and Records for the school, to discuss the creation of a tax-exempt booster club. According to Sasseen, he informed Talbot that the creation of such an entity would require approval from the school and its board of trustees. Talbot proceeded without requesting such approval from the school. After incorporation, the Club’s main activities continued to be the sales of outfield signs and the Annual Sports Banquet.

In January of 2002, F. James Lindenmeyer became president of Indian Hills Community College and later that summer or fall he held a meeting with Talbot, Riggall, and Traxler. It was from this meeting that Lindenmeyer discovered that their Booster Club had a separate financial account used to deposit raised funds and in turn disburse funds when requested by the baseball coach. After further investigation, Lindenmeyer again contacted Talbot, Riggall, and Traxler, informing them they needed to run the donated funds through a school-audited account. Despite Lindenmeyer’s request, the three kept the raised funds in a separate Booster Club account and did not provide Indian Hills with the Club’s financial records.

On April 20, 2004, Indian Hills filed a petition in equity against Talbot and the Booster Club alleging counts of conversion and unauthorized acts of a

purported agent. It also sought an accounting, imposition of a constructive trust, and an injunction. A later amended petition sought to enjoin Talbot and the Booster Club from using the school's alleged common-law trademarks and demanded an accounting of all funds produced by the various fund-raising events. On December 14, 2005, Talbot, but not the Booster Club, moved for summary judgment. Following a hearing the district court granted the motion and dismissed Indian Hills' claims against Talbot.¹ Indian Hills appeals.

Summary Judgment Standards.

We review a summary judgment ruling for the correction of errors at law. *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2001). Our supreme court has set forth the standard of review of a district court's entry of summary judgment:

In reviewing the grant of summary judgment . . . the question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. The requirement of a 'genuine' issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. We examine the record in a light most favorable to the party opposing the motion for summary judgment to determine if movant met his or her burden.

Rants v. Vilsack, 684 N.W.2d 193, 199 (Iowa 2004)

Summary Judgment.

¹ Although the claims against the Indian Hills Booster Club remained and were set for trial, Indian Hills Community College and the Indian Hills Booster Club subsequently settled their portion of this case. As an element of that settlement, the parties stipulated that Indian Hills' ability to appeal from the summary judgment ruling on the claims solely against Talbot would be preserved.

In granting summary judgment, the district court found no dispute of material fact as to any wrongdoing that would support Indian Hills' claims (1) that Talbot infringed upon the school's "common-law trademark"; or (2) that Talbot's activities constituted "unfair competition" under federal law. It also found no support for the demand for an accounting as there was absolutely no evidence of misconduct by Talbot or that he derived any personal or financial benefit from his fund-raising activities. In addition, the court held that Talbot was immune under the provisions of Iowa Code sections 504A.101 and 613.19 (2003).

Immunity.

In its "Conclusions of Law," the district court determined that "Talbot, as a volunteer for the Booster Club, is immune from personal liability for his actions on behalf of the group. The College is unable to show that there is any controverted fact that, if proven, would trigger an exception to Talbot's immunity." In support of this ruling, it cited Iowa Code sections 504A.101 (relating to nonprofit corporations) and 613.19 (relating to unincorporated clubs and associations). On appeal, Indian Hills claims the district court's determination of Talbot's immunity is in error. Finding this issue dispositive of the appeal, we turn to the code sections.

Iowa Code section 613.19 provides:

Personal liability.

A director, officer, employee, member, trustee, or volunteer, of a nonprofit organization is not liable on the debts or obligations of the nonprofit organization and a director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal

benefit. For purposes of this section, "nonprofit organization" includes an unincorporated club, association, or other similar entity, however named, if no part of its income or profit is distributed to its members, directors, or officers.

Section 504A.101, a provision of the Iowa Nonprofit Corporation Act, provides

Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts nor obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Upon our review of these broad-ranging personal liability statutes and the facts of this record on summary judgment, we conclude the district court correctly determined that Talbot is immune from the claims made against him, and that no genuine issue of material fact remains that would trigger any exception to the immunity.

It is not disputed that Talbot acted as a director, officer, or volunteer of the Booster Club, both before and after its official incorporation. Thus, the first elements of both section 504A.101 and 613.19 are satisfied. Both provisions impart immunity for similar actions. In that respect, they provide that an individual, as defined above, is not personally liable for the "debts or obligations" of the organization or corporation. Furthermore, sections 504A.101 and 613.19 identically provide immunity for "a claim based upon an act or omission of the person performed in the discharge of the person's duties" Here, Indian Hills notes in its appeal brief that it is seeking to recover personally from Talbot based

on his “tortious conduct.” These Code provisions plainly render an individual in the shoes of Talbot immune for such conduct.

We next look to the types of organizations under which this immunity may attach. Section 504A.101 is part of the Iowa Nonprofit Corporation Act, and thus the immunity it details applies to nonprofit corporations. It is undisputed the Booster Club was incorporated as a nonprofit organization. Section 613.19 applies to directors, officers and volunteers of a “nonprofit organization’ [which] includes an unincorporated club, association, or other similar entity” This section renders Talbot immune for any actions taken on behalf of the Booster Club prior to its incorporation. Before that time, Talbot, Riggall and Traxler acted informally as an “unincorporated club” under the name Indian Hills Booster Club and conducted largely the same activities as they did after incorporation.

Finally, we address the exceptions to immunity provided in both provisions, and after viewing the facts in the light most favorable to Indian Hills, find none of them to be applicable to Talbot. Under section 613.19, such conduct would be for “acts or omissions which involve intentional misconduct or knowing violation of the law or for a transaction from which the person derives an improper personal benefit.” Similarly, section 504A.101 provides an exception “for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.” As the district court noted in its summary judgment ruling, there has been “[n]o material evidence . . . presented, and there is no dispute over any fact leading to any reasonable inference that would support the College’s claims for wrongdoing” on the part of Talbot. Furthermore,

“there is no showing that any of his activism on behalf of the Booster Club has been illegal or inappropriate.” We agree. Absent the raising of even a single inappropriate act from which a material fact could be in dispute, the claims against Talbot must fail, and appropriately so at the summary judgment stage. See Iowa R. Civ. P. 1.981.

Conclusion.

Accordingly, due to our conclusion that the court correctly determined that sections 504A.101 and 613.19 provided Talbot immunity for any personal liability in this case, we need not address the remainder of Indian Hills’ theories of recovery against Talbot personally. Because he is afforded personal immunity, he cannot be held liable for any alleged tortious actions taken on behalf of the Indian Hills Booster Club. We therefore affirm the district court’s order granting summary judgment.

AFFIRMED.