2024 PA Super 191

PAUL MORRISSEY Appellant v. ST. JOSEPH'S PREPARATORY SCHOOL, ST. JOSEPH'S PREPARATORY SCHOOL FUND, REV. JOHN W. SWOPE, S.J. & JOHN PETRUZZELLI	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1909 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 190900684

BEFORE: LAZARUS, P.J., STABILE, J., and LANE, J.

OPINION BY LANE, J.: **FILED AUGUST 23, 2024**

Paul Morrissey ("Morrissey") appeals from the judgment entered in favor of St. Joseph's Preparatory School ("the Prep"), St. Joseph's Preparatory School Fund ("the School Fund"), Rev. John W. Swope, S.J. ("Father Swope") and John Petruzzelli ("Petruzzelli") (collectively, the "Defendants"). Pertinently, we hold the allegations averred in Morrissey's complaint pleaded a defamation claim sufficient to endure preliminary objections in the nature of a demurrer. Accordingly, we reverse in part and affirm in part, and remand for further proceedings as set forth in this opinion.

The Prep is a private, all-boys Jesuit preparatory school, and Father Swope was its former president. In 2004, Morrissey began working as a math teacher at the Prep and entered into a series of one-year contracts. Pertinent

to Morrissey's issues on appeal, his initial appointment letter stated: "Additional terms of employment may be found in the formal Letter of Transmittal and the documents accompanying it and listed therein." Letter, 6/21/04. The letter of transmittal, in turn, referred to, and had attached to it, the school's "Administrative and Professional Policies" ("APP"). This document set forth, *inter alia*, procedures to be followed in the event the Prep wished not to renew a faculty member's employment contract, including written notice to the teacher and periods of probation. By 2015, the APP became a part of the Prep's "Colleague Handbook" ("Handbook"), which included policies and guides for faculty. ***See*** N.T., 5/25/23, at 67; ***see also*** N.T., 5/24/23, at 76-77. The Handbook included the following phrase in bolded, underlined, and all capital text: "**NOTHING IN THIS POLICY IS DESIGNED TO MODIFY THE EMPLOYMENT AT-WILL-POLICY**." Handbook at 20.

In 2012, Morrissey was elected by the math faculty to be chair of the department. Throughout his employment, however, he was disciplined six times, for "anger[and] behaviorally being aggressive," N.T., 5/25/23, at 23, including, between 2011 and 2017, being placed on probation three times. ***See*** N.T., 5/15/23, at 40; N.T., 5/17/23, at 65; N.T., 5/16/23, at 36. In 2017, Petruzzelli became the principal of the Prep. As a part of Morrissey's third probation in 2017, Petruzzelli met with him four times, and in his formal notes, generally praised Morrissey's conduct.

After only one year as principal, however, Petruzzelli resigned from his position. In a subsequent exit interview, Petruzzelli stated a group of fifteen to twenty faculty members, including Morrissey, was "uncooperative[,] did not respect him as the Principal," and "made his working life very, very difficult, if not impossible." Interview Notes for Petruzzelli, 8/30/18, at 1-2.[1]

In October 2018, Father Swope informed Morrissey he was being demoted from his position as department chair and placed on a fourth probation for "bullying" Petruzzelli.[2] Complaint, 12/20/19, at ¶ 59. Father Swope also provided Morrissey with a memorandum entitled, "Deficiencies in Professional Performance," which Morrissey's complaint summarized as follows:

> . . . In this memo . . . Father Swope wrote that . . . Petruzzelli cited [Morrissey] and other faculty as the "primary reason for his decision to resign," because [Morrissey] and other faculty met . . . Petruzzelli with "confrontation, unproductive objections, and bullying behavior." Father Swope further listed several "examples" of [Morrissey's] conduct that . . . Petruzzelli supposedly cited in an exit interview, including conduct described as "mean and condescending," "confrontational and disrespectful," and "negative."

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[1] In his complaint, Morrissey averred that Petruzzelli made these statements to Father Swope in his exit interview. Complaint, 12/20/19, at 124. However, at trial, Father Swope testified the exit interview was conducted by David Lacey, an independent HR consultant. ***See*** N.T., 5/23/23, at 38; ***see also*** N.T., 5/15/23, at 125.

[2] According to Morrissey's complaint, three other department chairs were also demoted and placed on probation for the same conduct toward Petruzzelli.

Complaint, 12/20/19, at ¶ 60. In May 2019, Father Swope informed Morrissey that his contract would not be renewed for the next school year.

Morrissey filed the underlying complaint, raising claims of breach of contract against both the Prep and the School Fund,[3] and tortious interference with existing and prospective contractual relations against Father Swope and Petruzzelli. Generally, Morrissey averred the Handbook was a valid and binding contract between himself, the Prep, and the School Fund, and the Prep failed to follow the Handbook's procedures for the non-renewal of a contract. The Prep responded there was no contract and Morrissey was an at-will employee. Additionally, the complaint presented a claim of defamation against Petruzzelli. In support, Morrissey alleged Petruzzelli made defamatory statements about him in his exit interview, when he was no longer an employee of the Prep.

The Defendants filed joint preliminary objections in the nature of a demurrer. On August 7, 2020, the trial court sustained the preliminary objections in part, and dismissed the claims against Petruzzelli and the Prep Fund, including the defamation claim against Petruzzelli.

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[3] Morrissey's complaint described the School Fund merely as a Pennsylvania corporation. ***See*** Complaint, 12/20/19, at ¶ 10.

The remaining breach of contract and tortious interference claims proceeded to a jury trial before another trial judge.[4] Morrissey and the Defendants each moved for directed verdicts, which were denied. The trial court instructed the jury, *inter alia*, as to at-will employment and whether the Handbook created a binding contract. ***See*** N.T., 5/26/23, at 144 (trial court instructing, in part: "The employment handbook is enforceable against the Prep if a reasonable faculty member . . . would interpret its provisions as evidencing the employer's intent to supplant — that means to override — the at-will rule and be legally bound legally by its representations in the handbook").

In returning its verdict, the jury found the Handbook, which included the APP, was not a binding contract between Morrissey and the Prep. As the jury found there was no contract, it did not reach the issues of whether Father Swope tortiously interfered with an employment contract. Morrissey filed a post-trial motion, which was denied, and the trial court entered judgment in favor of the Defendants.

Morrissey filed a timely notice of appeal, and both he and the trial court complied with Pa.R.A.P. 1925. In its Rule 1925(a) opinion, the trial court

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[4] The Honorable Frederica Massiah-Jackson, now retired, ruled on the preliminary objections, while the Honorable Michael E. Erdos presided over trial and post-trial motions.

suggests affirmance of the jury's verdict, but reversal of the dismissal of the defamation claim on preliminary objections.

Morrissey presents three issues for our review:

1. Whether the trial court, through then-presiding Judge Frederica Massiah Jackson, erred in dismissing the defamation claim against [Petruzzelli] even though Petruzzelli's statements were (a) capable of defamatory meaning, (b) capable of being proven true or implied the existence of undisclosed defamatory facts, and/or (c) not privileged because Petruzzelli acted out of malice.

2. Whether the trial court, through presiding Judge Michael E. Erdos, erred, such that a new trial is required with respect to the claims for breach of contract against [the Prep] and [Father Swope], by denying [Morrissey's] motion for a directed verdict on the issue of whether the [APP] was a binding contract (in which [Morrissey] argued that the APP was a binding contract as a matter of law) even though, among other things, (a) the terms of the APP were expressly incorporated by reference into [Morrissey's] employment contract, which the unrefuted evidence at trial showed was renewed every year, and/or (b) the terms of the APP were not illusory.

3. Whether the trial court, through presiding Judge Michael E. Erdos, erred, such that a new trial is required with respect to the claims for breach of contract against the Prep and tortious interference against Father Swope, by instructing the jury on the presumption of at-will employment, including by instructing the jury to consider whether the [Handbook] evidenced an intent to supplant the at-will employment doctrine, even though the presumption of at-will employment was rebutted as a matter of law by, among other things, the unrefuted evidence showing that (a) [Morrissey's] employment agreement with the Prep was for a defined term and permitted discharge only for cause, (b) the Prep's APP, which set out specific and detailed procedures governing when a tenured faculty member could be discharged, was expressly incorporated by reference into [Morrissey's] employment agreement and supplanted at-will employment, and/or (c) the Prep's HR Director admitted, in unrefuted testimony, that [Morrissey] was not an at-will employee.

Morrissey's Brief at 3-4.

In his first issue, Morrissey avers the trial court erred in sustaining in part the Defendants' preliminary objections in the nature of demurrer, and dismissing his defamation claim against Petruzzelli. "When an appeal arises from an order sustaining preliminary objections in the nature of a demurrer, which results in the dismissal of a complaint, the Superior Court's scope of review is plenary." ***Betts Indus. v. Heelan***, 33 A.3d 1262, 1264 (Pa. Super. 2011) (citations omitted). "We review the trial court's decision for an abuse of discretion or an error of law." ***Id***. at 1265 (citations omitted). "[T]he trial court commits an 'abuse of discretion' when its judgment is manifestly unreasonable, or when the law is not applied, or if the record shows that the decision resulted from partiality, prejudice, bias or ill will." ***Id***. (citations omitted).

> "A demurrer tests the sufficiency of challenged pleadings." ***Id***.
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> A preliminary objection in the nature of a demurrer is properly [sustained] where the contested pleading is legally insufficient. Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer. All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true.

Hill v. Ofalt, 85 A.3d 540, 547 (Pa. Super. 2014) (citation omitted).

"[W]here a preliminary objection to the complaint in the nature of a demurrer is filed, there is no burden on the plaintiff to prove the cause of

action. The [only] issue . . . before the court [is] whether the facts in the complaint itself are sufficient to entitle the plaintiff to relief." ***Int'l Union of Operating Eng'rs v. Linesville Constr. Co.***, 322 A.2d 353, 356 (Pa. 1974). "Fact-based defenses, even those which might ultimately inure to the defendant's benefit, are thus irrelevant on demurrer." ***Betts Indus.***, 33 A.3d at 1265 (citations omitted). "[T]he only relevant inquiry is whether the facts as pleaded state an actionable claim . . . ." ***Orner v. Mallick***, 527 A.2d 521, 523 (Pa. 1987). "A demurrer by a defendant admits all relevant facts sufficiently pleaded in the complaint and all inferences fairly deducible therefrom, but not conclusions of law or unjustified inferences." ***Mercer v. Newell***, 254 A.3d 755, 758 (Pa. Super. 2021) (citation omitted).

Finally, we note:

> . . . As an appellate court reviewing the approval of a demurrer, we must accept as true all well-pleaded material facts in the complaint as well as all inferences reasonably deducible therefrom. This Court is concerned only with determining the legal sufficiency of appellant's complaint; we must decide whether sufficient facts have been plead which would permit recovery if ultimately proven.

Reilly v. Stroehmann Bros. Co., 532 A.2d 1212, 1213 (Pa. Super. 1987) (citation omitted). Preliminary objections, which would result in the denial of claim or a dismissal of suit, may only be sustained where the case is free and clear of doubt. ***Hill***, 85 A.3d 547-48 (citation omitted).

With respect to defamation, this Court has stated:

> To prevail on the merits of a defamation claim, the plaintiff must prove: (1) the defamatory character of the communication;

> (2) publication by the defendant; (3) its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. 42 Pa.C.S.[A.] § 8343(a).
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> When the issue is properly raised, the defendant has the burden of proving: (1) the truth of the defamatory communication; (2) the privileged character of the occasion on which it was published; and (3) the character of the subject matter of defamatory comment as of public concern. 42 Pa.C.S.[A.] § 8343(b).

Constantakis v. Bryan Advisory Servs., LLC, 275 A.3d 998, 1022 (Pa. Super. 2022) (paragraph break added). With respect to a defendant's claim of privilege, to defend against a defamation claim, this Court has explained:

> Pennsylvania law recognizes the absolute privilege of employers to publish defamatory matter in notices of employee termination. Thus, a letter articulating the reasons for an employee's termination which is published only to the employee "'may not be made the subject of an action in libel, regardless of whether the allegations of cause are true or false and regardless of the actual motive behind the dismissal.'"

Miketic v. Baron, 675 A.2d 324, 327-28 (Pa. Super. 1996) (citation omitted).

In his first issue, Morrissey avers the trial court erred in sustaining the Defendants' preliminary objections in the nature of a demurrer to his defamation claim against Petruzzelli. In support, Morrissey cites the trial court's Rule 1925(a) opinion, which suggests this ruling — made by another trial judge — should be reversed. Specifically, Morrisey first avers Petruzzelli's statement, that he was the "primary reason for [Petruzzelli's] decision to resign," was factual in nature because it was either true or false. Morrissey's

Brief at 35-36; ***see also*** Complaint, 12/20/19, at ¶ 60. Morrisey further argues the following statements by Petruzzelli were opinions, but nevertheless actionable because they implied the existence of undisclosed defamatory facts: that Morrissey was "condescending" to colleagues and was "confrontational and disrespectful." Morrissey's Brief at 37-38; ***see also*** Complaint, 12/20/19, at ¶ 60. Morrisey claims these statements led Father Swope to conclude that he lacked honor and integrity, was disrespectful and confrontational, and was not fit to teach at the Prep.[5] Morrissey also maintains that his complaint alleged that Petruzzelli's defamatory statements were contradicted by his earlier notes, made following their probation meetings, which "regularly complimented [his] professionalism and performance." Morrissey's Brief at 42 (emphasis omitted). Morrissey asserts "the most reasonable inference is that [Petruzzelli's] later contradictory statements were intentionally false and maliciously made to curry favor with Father Swope." ***Id***. at 43. Finally, Morrissey asserts that to the extent Petruzzelli would argue

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[5] On appeal, Morrissey argues additional statements made by Petruzzelli were actionable — that Morrisey "would 'trip you up with legal speak,'" pointedly correct Petruzzelli whenever Morrissey disagreed with a decision, "would not timely respond" to requests, thrived on confrontation with others, acted as if he were above reproach, and "acted disrespectfully to [Petruzzelli] during Academic Council." Morrissey's Brief at 36-39. While these statements were introduced at ***trial***, Morrissey did not plead these statements in his ***complaint***. As review of preliminary objections in the nature of a demurrer focuses solely on the averments in a complaint, we do not address these additional statements.

he had a conditional privilege to make these statements to Father Swope, that question is an issue for the finder of fact. ***Id***. at 40.

As stated above, the pretrial motions court judge sustained, in part, the Defendants' preliminary objections and dismissed Morrisey's defamation claim. This motions court did not, however, set forth its reasoning. Following a jury trial on the remaining claims, the trial court opined that the earlier, preliminary objections ruling should be reversed. The trial court suggested that, as pleaded in the complaint, Petruzzelli's statements: (1) were factual statements that "can either be proven to be true" or implied "the existence of undisclosed defamatory facts," and (2) could have led Father Swope to conclude that Morrissey lacked honor and integrity and was not a person to be relied upon as a teacher. Trial Court Opinion, 9/6/23, at 7. The trial court also reasoned that it could "be inferred, at least at the preliminary objection phase, that [Father Swope's non-renewal] of Morrissey's contract after fifteen years . . . grievously fractured his standing in the community." ***Id***. The trial court also reasoned that "to the extent there existed a conditional privilege for Petruzzelli to make defamatory statements to Swope," "dismissing the defamation claim at the pleadings stage" was not appropriate. ***Id***. at 8. The trial court thus suggested Morrissey's defamation claim against Petruzzelli be reinstated and this case be remanded for further proceedings.

After careful review of Morrisey's complaint and the documents attached thereto, we are constrained to conclude that the pretrial motions court erred

in sustaining preliminary objections in the nature of a demurrer as to the defamation claim. To prevail on his defamation claim, Morrissey was required to prove: (1) the defamatory character of Petruzzelli's statements and their application to him; (2) publication by Petruzzelli; (3) understanding by Father Swope of the statement's defamatory meaning and the intent that it be applied to the Morrissey; (4) special harm resulting to Morrissey; and (5) Petruzzelli's abuse of any conditionally privileged occasion. ***See Constantakis***, 275 A.3d at 1022. In considering the Defendants' demurrers, we are required, as was the trial court, to: (1) admit as true all the material facts pleaded in Morrissey's complaint and grant all inferences reasonably deducible therefrom; and then (2) determine whether the complaint was legally sufficient. ***See Hill***, 85 A.3d at 547. Indeed, for purposes of filing their demurrers, the Defendants admitted all relevant facts sufficiently pleaded by Morrissey. ***See Mercer***, 254 A.3d at 758.

Morrissey's complaint averred: in an exit interview, Petruzzelli made "false" and "defamatory" statements about him; "Father Swope understood the defamatory meaning of these statements;" Petruzzelli made the statements with malice and without any privilege or justification; and as a result, Morrissey suffered damages. Complaint, 12/20/19, at ¶¶ 123-28. We hold these averments — which, again, we accept as true — pleaded a defamation claim sufficient to endure preliminary objections. ***See Int'l Union of Operating Eng'rs***, 322 A.2d at 356; ***see also Hill***, 85 A.3d at 547. Any

further factual and legal questions — for example, of whether the statements were in fact defamatory, whether Petruzzelli had a privilege to make the statements or made them with malice, and what effect they had on Father Swope — were not relevant to the demurrer analysis. ***See Betts Indus.***, 33 A.3d at 1265. We thus conclude that Morrissey is entitled to relief on his first issue. We reverse the portion of the August 7, 2020 order that sustained, in part, the Defendants' preliminary objections in the nature of a demurrer and dismissed Morrisey's defamation claim against Petruzzelli. We remand for further proceedings limited to this defamation claim.

In his second issue, Morrissey asserts the trial court erred in denying his motion for a directed verdict on the issue of whether the APP was a binding contract. We first consider the relevant standard of review:

> In reviewing a trial court's decision whether . . . to grant judgment in favor of one of the parties, we must consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner. Our standard of review when considering motions for a directed verdict and judgment notwithstanding the verdict are identical. We will reverse a trial court's grant or denial of a judgment notwithstanding the verdict only when we find an abuse of discretion or an error of law that controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court.
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> There are two bases upon which a [directed verdict] can be entered; one, the movant is entitled to judgment as a matter of law and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the

> record and concludes that, even with all factual inferences decided adverse to the movant, the law nonetheless requires a verdict in his favor. Whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.
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> Determinations of credibility [and conflicts in evidence] are for the fact finder.

Janis v. AMP, Inc., 856 A.2d 140, 143-44 (Pa. Super. 2004) (citations omitted).

This Court has stated:

> The well-settled rule in Pennsylvania is that: "[a]bsent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason." The at-will presumption, uniquely present in employment contracts, is that an employment agreement is presumptively terminable at will by either party; meaning, an employee may leave a job for any or no reason and an employer may discharge an employee for any or no cause.

Reilly, 532 A.2d at 1213 (citations omitted).

> In order to rebut the presumption of at-will employment, a party must establish one of the following: (1) an agreement for a definite duration; (2) an agreement specifying that the employee will be discharged for just cause only; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception." . . . When considering a purported employment contract, "the courts must remain flexible and not allow the [at-will] presumption to foreclose proof of the parties' intent. Though the rule is a procedural safeguard, a court's primary task is to ascertain and enforce [the parties'] intent.

Janis, 856 A.2d at 144 (citations omitted).

With respect to an employee handbook, this Court has stated:

> In ***Richardson v. Charles Cole Memorial Hospital***, . . . 466 A.2d 1084, 1085 ([Pa. Super.] 1983), we held that an employer's

> "unilateral act of publishing its policies" in an employee handbook "did not amount to the 'meeting of the minds' required for a contract" when "[t]he terms of the handbook were not bargained for by the parties and any benefits conferred by it were mere gratuitous." . . .
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> We also believe that cases which find contractual significance in handbooks have bypassed an important inquiry. Before we can decide whether there is a valid offer and acceptance with the distribution of a handbook, a threshold question must be asked: With the distribution of the handbook, does the at-will employee reasonably understand that the employer intended to alter the pre-existing at-will status?

Reilly, 532 A.2d at 1215-16 (citations omitted).

Morrissey asserts the trial court erred in denying his motion for a directed verdict on the issue of whether the APP was a binding contract. First, Morrissey maintains: (1) the letter appointing him to be a faculty member stated that "[a]dditional terms of employment may be found in the formal Letter of Transmittal and the documents accompanying it and listed therein;" and (2) in turn, the transmittal letter specifically "listed" the APP. Morrissey's Brief at 47. Morrissey thus concludes the APP — which included procedures to be followed in the event the Prep wished to not renew his contract — "were enforceable as those terms were explicitly incorporated into [his] employment contract."[6] ***Id***. at 47-48.

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[6] Additionally, Morrissey refutes the Prep and Father Swope's argument in their own motion for directed verdict — that even if the APP were a contract, *(Footnote Continued Next Page)*

In denying Morrissey's motion for a directed verdict on his breach of contract claim, the trial court concluded that provisions in the Handbook supported a finding that he was an at-will employee, and furthermore "that the purported contract was illusory."[7] Trial Court Opinion, 9/6/23, at 5. In support, the trial court cited these statements in the Handbook: (1) "**NOTHING IN THIS POLICY IS DESIGNED TO MODIFY THE EMPLOYMENT AT-WILL POLICY**;" and (2) "[t]here may be situations where the need arises for the Prep to revise, add, or cancel policies or benefits, and the Prep reserves the right to do so with or without advance notice." Trial Court Opinion, 9/6/23, at 5.

Morrissey correctly recounts that his appointment letter stated that "[a]dditional terms of employment may be found in the formal Letter of Transmittal and the documents accompanying it and listed therein," and that this letter of transmittal, in turn, referred to, and had attached to it, the school's APP. Letter, 6/21/04. Additionally, there was trial testimony that that by the 2014-2015 school year, the APP was incorporated into the Handbook. ***See*** N.T., 5/25/23, at 67-68.

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it was illusory and therefore unenforceable. However, Morrissey concedes the trial court rejected that argument. ***See*** Morrissey's Brief at 49.

[7] ***See also In re Estate of Rosser***, 821 A.2d 615, 623 (Pa. Super. 2003) (stating that if a promise to perform "is entirely optional with the promisor, it is said to be illusory and, therefore, lacking consideration and unenforceable[, and t]he promisor has committed him/herself to nothing").

On appeal, however, Morrissey does not acknowledge, let alone dispute, the trial court's reasoning that the above cited provisions in the Handbook supported a finding that the Handbook was not a contract between the parties, and instead, Morrissey remained an at-will employee.[8] In the absence of any challenge to the particular — and only — basis given by the trial court for denying relief, we cannot find the trial court abused its discretion. ***See Janis***, 856 A.2d at 143-44; ***see also In re M.P.***, 204 A.3d 976, 986 (Pa. Super. 2019) (stating that this Court is an error correcting court).

Furthermore, on the merits we do not find the trial court abused its discretion or made an error of law. ***See id***. To rebut the presumption that he was an at-will employee, Morrissey had to have shown, pertinently, that he and the Prep had an agreement that he would be discharged for just cause only. ***See id***. at 144. At trial, Morrissey sought to show, consistent with his argument on appeal, that the APP or the Handbook (which incorporated the APP) constituted such an agreement. However, the above two provisions in the Handbook — that nothing in the Handbook was designed to modify the at-will employment, and that the Prep reserved the right to revise, add, or cancel policies without advance notice — weighed against a directed verdict in his

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[8] In Morrissey's brief, the "statement of the case" section does state the Handbook contained this "disclaimer:" that "NOTHING IN THIS POLICY IS DESIGNED TO MODIFY THE EMPLOYMENT-AT-WILL POLICY." Morrissey's Brief at 21 (some capitalization omitted). Nevertheless, there is no further reference to this provision of the Handbook and, importantly, no discussion of the trial court's analysis of this provision.

favor. In light of these two provisions, Morrissey could not show that on this evidentiary record, "no two reasonable minds could disagree that the outcome should have been rendered in [his] favor," nor that "the evidence was such that a verdict for [him] was beyond peradventure." ***See id***. at 143-44. Thus, the trial court properly denied Morrissey's motion for a directed verdict. For the foregoing reasons, we conclude no relief is due on Morrissey's second issue.

In his final issue, Morrissey asserts the trial court erred in instructing the jury on the presumption of at-will employment where, he maintains, the presumption was rebutted as a matter of law. We consider the relevant standard of review:

> . . . When reviewing an allegation of an incorrect jury instruction, the appellate court must view the entire charge to determine whether the trial court clearly and accurately presented the concepts of the legal issue to the jury and should not reverse, as a result of the instruction, unless the trial court committed an abuse of its discretion. . . .

Janis, 856 A.2d at 147 (citation omitted). We further note that "to preserve a jury-instruction challenge for appeal — absent a specific contemporaneous objection — a litigant must file a proposed point for charge, and the trial court must explicitly accept or reject the proposed instruction." ***Jones v. Ott***, 191 A.3d 782, 786 (Pa. 2018).

This Court has stated:

> The existence of a contract, the terms thereof, and the sufficiency of those terms to rebut the at-will presumption [are] within the province of the jury in the first instance, their finding reviewable

> by the trial court thereafter. In interpreting a contract to ascertain the intention of the parties[,] the court may consider the totality of the surrounding circumstances, the situation of the parties, the objects they apparently had in mind, and the nature and subject matter of the agreement.

Robertson v. Atl. Richfield Petroleum Prods. Co. Div. of Atl. Richfield Co., 537 A.2d 814, 819 (Pa. Super. 1987).

Morrissey asserts the trial court erred in instructing the jury on the presumption of at-will employment. In support, he presents two arguments, which we address *seriatim*. First, Morrissey argues the at-will jury instruction confused the jury and was prejudicial, because the instruction "narrowly focused . . . on whether the provisions of the Handbook evidence[d] an intent to overcome the at-will presumption." ***Id***. at 57. Morrissey claims "the instruction did not provide . . . a framework for assessing [how] evidence [of his employment contract] weighed . . . upon the question of whether terms of the APP were contractual." ***Id***. at 58.

Our review of the trial notes of testimony reveals that Morrissey did not present this argument before the trial court, either at the charging conference or after the jury instruction was given — that the instruction was confusing or prejudicial because it "narrowly focused . . . on whether the provisions of the Handbook evidence[d] an intent to overcome the at-will presumption."[9]

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[9] At the charging conference, Morrissey did refer to a risk of confusing the jury, but as to another issue:

(Footnote Continued Next Page)

Morrisey's Brief at 57. Accordingly, he has waived it for our review. ***See Jones***, 191 A.3d at 786.

Next, Morrissey argues the trial court erred in instructing the jury on the presumption of at-will employment where, he maintains, he rebutted the presumption as a matter of law. Morrissey contends his employment agreement specified he could only be discharged for cause, and that the Prep reserved the right to terminate his employment if his conduct was "unbecoming." Morrissey's Brief at 55. Morrissey further asserts the employment contract was for one academic year only, and was thus a terminal contract. Finally, Morrissey claims the Prep's director of human resources,

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> And when we look[at] the actual contract back from 2004 that . . . was renewed each year[, it] specifically incorporates the APP. . . . I think there is an argument that perhaps . . . the entire handbook is not a contract. I'm not conceding that. But perhaps the entire handbook is not a contract, but the APP is. . . . I don't want there to be ***confusion*** on the part of the jury about that because what our claim is relates specifically to the APP.

N.T., 5/25/23, at 20-21 (emphasis added). This theory, however, is distinct from Morrissey's current argument on appeal — that the instruction "narrowly focused . . . on whether the provisions of the Handbook evidence[d] an intent to overcome the at-will presumption." Morrisey's Brief at 57. Thus, as stated above, we determine the present argument on appeal to be waived. ***See PCS Chadaga v. Torres***, 252 A.3d 1154, 1158 (Pa. Super. 2021) (stating that "[a] new and different theory of relief may not be successfully advanced for the first time on appeal").

Mike Dougherty, agreed in his trial testimony that Morrissey "was not an at-will employee."[10] ***Id***. at 56 (*quoting* N.T., 5/25/23, at 67).

The trial court concluded the jury instruction, concerning at-will employment, was properly given "because the issue of whether the Handbook created a contract was, under the specific facts of this case, not one that could be decided as a matter of law by the [c]ourt." Trial Court Opinion, 9/6/23, at 5.

First, we determine Morrissey has preserved this issue for appeal, as he objected to the inclusion of this jury instruction, on the same theory, at the charging conference. ***See*** N.T., 5/25/23, at 76. However, we determine no relief is due. To rebut the presumption that he was an at-will employee, Morrissey had to have established he and the Prep had an agreement that he would be discharged for just cause only. ***See Janis***, 856 A.2d at 144.

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[10] The relevant testimony arose as follows:

> [Morrissey's attorney:] Would you agree with me that someone who has an employment contract for a set term is not — necessarily not an at-will employee?
>
> [Dougherty:] I would agree.
>
> Q. You saw that [Morrissey's] employment was for a set term. It was for one year that kept getting renewed. It wasn't a 30-year term. It was a one-year term. ***But you'd agree with me that [Morrissey] was not an at-will employee, correct?***
>
> A. Correct.

N.T., 5/25/23, at 67 (emphasis added).

However, the Prep and Father Swope presented evidence of the two provisions in the Handbook, discussed above — again, that nothing in the Handbook was designed to modify the at-will employment, and that the Prep reserved the right to revise, add, or cancel policies without advance notice. On the other hand, as Morrissey argues on appeal, the Prep's director of human resources agreed, in his trial testimony, that Morrissey was not an at-will employee due to the one-year terms of each of his contracts. In light of this evidentiary record, the jury was properly tasked with weighing the competing evidence and finding, in the first instance, whether a contract existed, what its terms were, and whether the sufficiency of those terms rebutted the presumption of at-will employment. ***See Robertson***, 537 A.2d at 819; ***see also Janis***, 856 A.2d at 143-44. We thus hold the trial court did not abuse its discretion in charging the jury on the presumption of at-will employment and instructing it to determine whether the Handbook or the APP evidenced the Prep's intent to supplant the at-will rule. ***See Janis***, 856 A.2d at 147.

Furthermore, the trial court's phrasing of the jury instruction was proper. The trial court charged the jury as follows:

> Under Pennsylvania law, an employer may terminate an employee for any reason or no reason, unless the plaintiff proves that the termination violated an agreement concerning that employee's employment. We generally call that at will if you can just terminate for any reason or no reason.
>
> In this case, . . . Morrissey claims that the colleague [H]andbook, and, specifically, the APP, was a contract and that the Prep breached the non-renewal process outlined in the APP when it

> decided not to renew . . . Morrissey's contract for another one-year term.
>
> . . . Morrissey claims that the Prep's [H]andbook, and, specifically, the APP, was an enforceable contract. An employee handbook may create a contractual relationship between an employer and employee. The employment [H]andbook is enforceable against the Prep if a reasonable faculty member hired before 2014 would interpret its provisions as evidencing the employer's intent to supplant the at-will rule and be legally bound by its representations in the [H]andbook.
>
> I will read that again.
>
> The employment [H]andbook is enforceable against the Prep if a reasonable faculty member hired before 2014, would interpret its provisions as evidencing the employer's intent to supplant — that means to override — the at-will rule and be legally bound legally by its representations in the [H]andbook.
>
> The jury may not presume that the employer intended to be bound legally by distributing the [H]andbook, nor that the employee believed that the [H]andbook was a legally binding instrument.
>
> That's not a presumption. It's something you have to determine.

N.T., 5/26/23, at 144-45. We hold this instruction "clearly and accurately presented the concepts of the legal issue to the jury." ***See Janis***, 856 A.2d at 147. For the foregoing reasons, we conclude no relief is due on Morrissey's third issue.

In sum, we reverse the portion of the trial court's August 7, 2022 order that dismissed, on preliminary objections in the nature of a demurrer, Morrissey's defamation claim against Petruzzelli. We remand for further proceedings on the defamation claim. We affirm the remaining portions of the order and judgment entered.

Judgment reversed in part and affirmed in part. Case remanded for further proceedings consistent with this opinion. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/23/2024