IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

WILLIAM G. DYKES,	:	APPEAL NO. C-160579 TRIAL NO. A-1502721
SUSAN L. HOGAN,	:	
and	:	*JUDGMENT ENTRY.*
LORA A. BOCKHORST,	:	
Plaintiffs-Appellants,	:	
vs.	:	
TEMPLE BAPTIST COLLEGE, dba, OHIO MIDWESTERN COLLEGE,	:	
and	:	
SCOTT REESE,	:	
Defandants,	:	
and	:	
DARREL HORSLEY,	:	
CECIL EGGERT,	:	
JUNIOR GREENLEE,	:	
JAMES FEICHTENER,	:	
and	:	
THOMAS TRAMMEL,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiffs-appellants William G. Dykes, Susan L. Hogan, and Lora A. Bockhorst ("the employees") were employees of defendant Temple Baptist College, a small nonprofit college. They contest the entry of summary judgment on their claims seeking back pay and other damages in favor of the directors of the college, defendants-appellees Darrel Horsley, Cecil Eggert, Junior Greenlee, James Feichtener, and Thomas Trammel ("the directors"). The employees claimed that the directors were personally liable for unpaid wages after the college had experienced serious financial difficulties and was unable to pay the employees. The employees had also brought claims for back pay and damages against the college and its former president.

In their capacities as members of the college's board of regents, the directors voted on matters presented to the board by the college's administration, including the college's budget, policies, and procedures. The board also approved the hiring of some employees, as recommended by the administration. The employees each had a written employment contract with the college. The contract did not provide that the directors would personally guarantee the employees' wages. While the directors often acted as advocates for the college and expressed their belief that the financial difficulties were being addressed, there was no evidence that the directors ever personally promised to pay the employees' wages.

The trial court granted the directors' motion for summary judgment on the employees' claims against them for fraud and for violations of R.C. 4113.15, Ohio's wage-payment statute. The entry of summary judgment became final and appealable following the dismissal of all claims against the former president and the court's agreed entry of judgment against the college and in favor of the employees in the aggregate amount of $84,416. The employees filed a timely appeal.

In a single assignment of error, the employees claim that the trial court erred in entering summary judgment in favor of the directors on the employees' claim for back wages under R.C. 4113.15.[1] We disagree.

Because summary judgment presents only questions of law, an appellate court reviews the entry of summary judgment de novo, without deference to the trial court's determinations. *See Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). We note that a court is not precluded from granting summary judgment simply because of the multiplicity of claims or the volume of the record. *See Gross v. Western-Southern Life Ins. Co.*, 85 Ohio App.3d 662, 666-667, 621 N.E.2d 412 (1st Dist.1993).

Rather, when, as here, the parties moving for summary judgment discharge their initial burden to identify the absence of genuine issues of material fact on an essential element of the nonmoving parties' claims, the nonmoving parties then have a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth specific facts, by the means listed in Civ.R. 56(C) and 56(E), demonstrating that triable issues of fact exist. *See* Civ.R. 56; *see also Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

R.C. 4113.15(A) provides that, "Every individual, firm, partnership, association, or corporation doing business in this state shall * * * pay all its employees the wages earned by them" at regular intervals. *See Oil, Chem. & Atomic Workers Internatl. Union v. Martin Marietta Energy Sys., Inc.*, 97 Ohio App.3d 364, 370, 646 N.E.2d 883 (4th Dist.1994). But the statute does not state that directors of a corporation shall be liable, as "individuals," if the employer fails to pay its employees. Rather, it provides that if an

[1] The employees have not presented any arguments on appeal regarding the entry of judgment on their fraud claim. *See* App.R. 16(A); *see also State v. Perez*, 1st Dist. Hamilton Nos. C-040363, C-040364 and C-040365, 2005-Ohio-1326, ¶ 21-23 (to receive consideration on appeal, trial errors must be argued and supported by legal authority and citation to the record).

individual is doing business in this state, the individual, as the employer, must pay her employees.

In sole reliance on *Welch v. Prompt Recovery Servs., Inc.*, 9th Dist. Summit No. 27175, 2015-Ohio-3867, ¶ 13, the employees maintain that the directors of an employer are liable, under R.C. 4113.15, if the employer fails to pay its employees. Their reliance is misplaced.

In *Welch*, the court affirmed a decision in favor of an employee on her claims for unpaid wages against Prompt Recovery, her employer, and against its president. The court held that because the president "fell within the relevant definitions of employer" found in R.C. 4111.03(D)(2)—"any person or group of persons, acting in the interest of an employer in relation to an employee"—he was personally liable for the employee's back wages under R.C. 4113.15. *Welch* at ¶ 13. The employees maintain that since Temple Baptist College's directors were acting in the interests of the college in relation to the employees that they too were liable for wages.

But we decline to follow *Welch*. First, the factual determinations regarding the scope of the president's control over the company that underpin the analysis had been made by a magistrate and were beyond the compass of the trial court or the appellate court to review since no transcript of the proceedings had been prepared. *See id.* at ¶ 10.

Second, the definition of employer used by the court has no application to R.C. 4113.15. R.C. 4111.03(D) expressly states that the definition of employer is for use "in this section," i.e., R.C. 4111.03, regulating overtime pay. To graft that definition of an employer onto R.C. 4113.15 would effectively repeal the General Assembly's clear statement that "The members, the directors, and the officers of a corporation shall not be personally liable for any obligation of the corporation." R.C. 1702.55. The principle that directors of a corporation are generally not liable for the debts of the corporation "is ingrained in Ohio

law." *Dombroski v. WellPoint, Inc.*, 119 Ohio St.3d 506, 2008-Ohio-4827, 895 N.E.2d 538, ¶ 16.

Even construing the evidence most strongly in the employees' favor, the directors were entitled to judgment as a matter of law under the clear language of R.C. 1702.55 and 4113.15. Moreover, the employees cannot establish a genuine issue of material fact as to whether the corporate veil of the college should have been pierced, as they have not shown that the directors' control over the college was so complete that the college had no separate mind of its own. *See Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d 274, 617 N.E.2d 1075 (1993); *see also Dombroski*. The assignment of error is overruled.

Therefore, the trial court's entry of summary judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and **MYERS, JJ.**

To the clerk:

Enter upon the journal of the court on June 30, 2017
per order of the court _____.
Presiding Judge