

# MICHIGAN Lawyers Weekly

## Lapeer Judge Loses ‘Donut Gate’ Appeal

By: Kelly Caplan in News In Brief July 29, 2020



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A judge and former Lapeer County prosecutor lost his battle in the Court of Appeals for a political-scandal-turned-legal-battle known locally as “Donut Gate.”

The case, *Konschuh v. Turkelson, et al.* (MiLW 08-102901, 15 pages), spans several years, proceedings in two circuit courts and an

investigation led by the Attorney General’s office. It involves claims of conspiracy, malicious prosecution and retaliation for the appointment of Byron Konschuh — and not Tim Turkelson — to the bench.

And Turkelson allegedly was miffed that Konschuh criticized Turkelson’s appointee to prosecute DUIs — because the appointee himself had three DUI convictions.

Back in April 2013, plaintiff Konschuh was appointed to fill a vacancy on the Lapeer County Circuit Court. Previously, he served as the county prosecutor for about 13 years.

Defendant Turkelson was appointed to fill the vacated county prosecutor position; he then hired defendant John Miller as chief prosecuting attorney.

Later that same year, the defendants noticed something hinky with the accounting for the BounceBack and Law Enforcement Officers Regional Training Commission programs.

Miller asked the Lapeer County Treasurer — who happened to be his wife — if the money had been deposited into a bank account in Lapeer County. She reached out to the bank, and was told that the checks had been deposited into Konschuh’s bank account.

After reporting the missing money to the County Administrator, Turkelson sought advice from the Prosecuting Attorneys Association of Michigan. PAAM contacted the AG’s office and an investigation ensued.

Konschuh was put on paid administrative leave by the Lapeer County Circuit Court chief judge; in July 2014, the AG’s special prosecutor charged Konschuh with five counts of felony embezzlement.

A plea agreement was reached — a Genesee County Circuit Court judge dismissed the pending felony charges and Kenschuh pleaded no contest to one misdemeanor accounting violation. After a delayed sentence, he returned to the bench and filed the current suit. So how did this ever get dubbed Donut Gate?

Well, Kenschuh said Miller wrote a 2017 letter to the editor of the *Lapeer County Press*, falsely accusing him of embezzlement:

“Had I been the prosecutor who charged Kenschuh with five counts of felony embezzlement I would have convicted him at trial. And that would have resolved this whole mess over a year ago. Kenschuh expensed doughnuts, lunches and even \$3 parking receipts. Taxpayers already paid for those minor luxuries yet he now tries to mislead the public into thinking he took the money to pay himself back?!? YOU DON’T NEED A LAW DEGREE TO UNDERSTAND THAT KIND OF EMBEZZLEMENT.”

The Court of Appeals panel said the statements were “substantially true,” noting that Kenschuh “was charged with five felony counts of embezzlement for receiving 42 separate checks which totaled \$1,022,” and he testified “that some of the funds he received were reimbursements for parking fees, and purchases of donuts and lunches for his staff. To the extent that plaintiff contends the statements constituted accusations of criminal activity, those ‘accusations’ were based substantially on facts that had already been alleged and which he pleaded to in a criminal action.”

The panel upheld the Lapeer County Circuit Court’s grant of summary disposition for the defendants on the bases of governmental immunity, failure to state a claim for relief and no genuine issue of material fact.

The unpublished per curiam decision was issued by Judges Michael J. Riordan, Douglas B. Shapiro and Amy Ronanye Krause.

*Case information provided by Stanley Okoli*

**Type of action:** Civil

**Injuries alleged:** malicious prosecution, libel/slander, constitutional violations (First and Fourth Amendment), negligence and gross negligence

**Name of case:** Kenschuh v. Tim Turkelson et. al.

**Court/Case no./Date:** Michigan Court of Appeals, Court of Appeals No. 349041

**Name of judge:** Michael J. Riordan, Douglas B. Shapiro, Amy R. Krause

**Date of Verdict or Settlement** 07/23/2020

**Plaintiff Demand:** \$1.5 million

**Defendant’s Highest offer:** \$0

**Attorney for defendants:** Stanley Okoli, James Acho, Linda Davis Friedland