

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2022 CA 0491

LESLIE STEVEN ELLEDGE

VERSUS

INSA W. BECNEL

Judgment Rendered: NOV 04 2022

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On Appeal from the 23rd Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Trial Court Docket Number 120,876 Div. "B"

The Honorable Cody Martin, Judge Presiding

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BEFORE: WELCH, PENZATO, AND LANIER, JJ.

PENZATO, J.

Leslie Steven Elledge (plaintiff) appeals from the trial court’s judgment granting a motion for summary judgment filed by Insa Becnel (defendant) and dismissing all claims asserted by Mr. Elledge against Ms. Becnel, with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Mr. Elledge and Ms. Becnel were involved in an on again/off again dating relationship sometime prior to and during 2017. In January 2018, Mr. Elledge filed a petition for damages against Ms. Becnel, alleging that Ms. Becnel made false reports to law enforcement, which resulted in his unjustified arrest on November 12, 2017 and four-day detention. Specifically, Mr. Elledge asserts that Ms. Becnel “falsely reported to the Ascension Parish Sheriff’s Office that [he] was harassing and/or stalking her by making repeated unwanted contact with her via telephone and text.” Mr. Elledge further contends that Ms. Becnel sought a protective order against him based on false statements. According to the petition, the false report and statements were made in July 2017 and November 2017. Mr. Elledge alleges that he sustained various damages as a result of Ms. Becnel’s “intentionally false statements.”

Ms. Becnel filed the instant motion for summary judgment on July 22, 2021, seeking to dismiss all claims asserted by Mr. Elledge. Ms. Becnel contends that Mr. Elledge cannot satisfy his burden of proving that she deliberately misled law enforcement or that any such alleged misrepresentations led to his arrest on charges of stalking and trespassing. Instead, she maintains that Mr. Elledge was arrested as a result of “his own conduct that he has admitted to doing.” To support her motion, Ms. Becnel attached excerpts from the depositions of Officer Seth Boudreaux, the investigating officer, and Mr. Elledge.

Officer Boudreaux testified that he was dispatched to Ms. Becnel's residence on November 9, 2017. As part of his investigation, Officer Boudreaux looked through Ms. Becnel's cell phone, with her permission, including her emails and text messages. Officer Boudreaux also reviewed security videos that captured Mr. Elledge in Ms. Becnel's backyard on two occasions. During his deposition, Mr. Elledge confirmed that he was on Ms. Becnel's property, uninvited, twice – once in October 2017 and once in November 2017. Mr. Elledge admitted, and the video viewed by Officer Boudreaux confirmed, that he looked into Ms. Becnel's bedroom window during one of those visits and exposed his genitals and urinated in her backyard during the other. At the time, Mr. Elledge had no communication with Ms. Becnel and assumed she had blocked his number.

Officer Boudreaux confirmed there was probable cause to arrest Mr. Elledge on the charges of stalking, telephone communications, and trespass, based on the evidence he observed and the information obtained from Ms. Becnel. He also testified that Ms. Becnel did not have an opportunity to read his affidavit of arrest for Mr. Elledge before it was submitted, and she was not asked to approve its contents. Finally, Officer Boudreaux affirmed that any statements made in Ms. Becnel's petition for protective order had no effect on his affidavit for arrest. As Ms. Becnel points out, the petition for protection from abuse was filed after Mr. Elledge was arrested and, thus, could not have caused his alleged "unjustified arrest."

The hearing on Ms. Becnel's motion for summary judgment was originally set for September 27, 2021. On Mr. Elledge's request and as agreed to by the parties, the hearing was reset to November 8, 2021. The parties appeared in court on November 8th; however, a hearing on the motion did not go forward. Instead, the trial court reset the hearing to January 10, 2022, and ordered that Mr. Elledge's opposition was due by November 29, 2021 and that Ms. Becnel's reply was due by

December 3, 2021.

Mr. Elledge filed an opposition to Ms. Becnel's motion for summary judgment on November 29, 2021. He primarily argues that the motion is premature, alleging inadequate time for discovery. Mr. Elledge asserts that he has been unable to depose Ms. Becnel, despite his best efforts, due to delays caused by Ms. Becnel. Mr. Elledge also alleges that genuine issues of material fact remain; however, no evidence is attached to his opposition. Instead, he simply sets forth unsupported allegations concerning the veracity of Ms. Becnel's statements to police.

A contradictory hearing was held on January 24, 2022, six months after the motion for summary judgment was filed. After taking the matter under advisement, the trial court issued a signed judgment on January 31, 2022, granting Ms. Becnel's motion for summary judgment.¹ In its written reasons, the trial court expressly found that Mr. Elledge had "ample" and "adequate time for discovery," noting that he "made no effort to obtain further discovery" and "did not try to compel the discovery that he argue[s] is still needed." On the merits, the trial court found that Ms. Becnel satisfied her summary judgment burden of proof by establishing that Mr. Elledge's arrest was based on his admitted conduct and Officer Boudreaux's review of Ms. Becnel's cell phone and the video footage. Conversely, Mr. Elledge failed to meet his burden of producing factual support sufficient to establish the existence of a genuine issue of material fact or that Ms.

¹ The judgment and reasons for judgment are contained in the same document, contrary to the mandate of La. C.C.P. art. 1918(B), which provides, "When written reasons for judgment are assigned, they shall be set out in an opinion separate from the judgment." However, the Louisiana Supreme Court has held that this language is merely precatory and does not render a judgment, identified as such and complete in every respect, invalid merely because it contains surplus language. See *Matter of Succession of Pellette*, 2018-0728 (La. App. 1st Cir. 4/16/19), 2019 WL 1614718, *4 (unpublished), citing *Hinchman v. International Brotherhood of Electrical Workers, Local Union # 130*, 292 So.2d 717, 720 (La. 1974). The judgment here contains proper decretal language as required by La. C.C.P art. 1918 and is a valid final judgment subject to this court's jurisdiction. *Matter of Succession of Pellette*, 2019 WL 1614718, *4 (This court's appellate jurisdiction extends to final judgments.)

Becnel is not entitled to judgment as a matter of law.

Mr. Elledge filed the instant appeal, identifying one assignment of error – the trial court erred in granting Ms. Becnel’s motion for summary judgment before allowing him a reasonable opportunity to conduct discovery and, specifically, before he was able to take Ms. Becnel’s deposition.

DISCUSSION

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The requirement that a summary judgment should be considered only after “adequate discovery” has been construed to mean that there is no absolute right to delay action on a motion for summary judgment until discovery is complete. Rather, the requirement is only that the parties have a fair opportunity to carry out discovery and to present their claims. Unless a party shows a probable injustice, a suit should not be delayed pending discovery when it appears at an early stage that there is no genuine issue of fact. *Campbell v. Dolgencorp, LLC*, 2019-0036 (La. App. 1st Cir. 1/9/20), 294 So.3d 522, 527. Trial courts have broad discretion when regulating pre-trial discovery, and this discretion will not be disturbed on appeal absent a clear showing of abuse. It is not an abuse of the trial court’s wide discretion in discovery matters to grant a motion for summary judgment before discovery is complete. *Campbell*, 294 So.3d at 527.

In *Campbell*, 294 So.3d at 527, the plaintiff asserted that the defendant’s motion for summary judgment was premature, because the defendant refused to participate in meaningful discovery. Rejecting the plaintiff’s argument, this court noted that the defendant’s motion was filed two years after it was named in the plaintiff’s suit. Despite the plaintiff’s assertion that the defendant’s La. C.C.P. art.

1442 deposition was needed, he did not request a continuance of the summary judgment hearing. Additionally, the plaintiff did not file a motion to compel discovery. “Considering the trial court’s broad discretion in regulating discovery, we find no clear showing of abuse of discretion.” *Campbell*, 294 So.3d 527-28.

For similar reasons, we find no merit in Mr. Elledge’s assignment of error. The trial court did not abuse its discretion in finding that Mr. Elledge had adequate time for discovery. The record reflects that Ms. Becnel filed the motion for summary judgment three and a half years after Mr. Elledge filed his petition for damages. Although Mr. Elledge maintains that he acted diligently to depose Ms. Becnel, he did not file a motion to compel her deposition. Ms. Becnel’s motion for summary judgment was pending for six months; yet, Mr. Elledge made no attempt to conduct discovery after the motion was filed. Mr. Elledge did not file an affidavit in accordance with La. C.C.P. art. 967(C), which states,

If it appears from the affidavits of a party opposing the motion that for reasons stated he cannot present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Finally, Mr. Elledge failed to show a “probable injustice” would occur if ruling on Ms. Becnel’s motion for summary judgment was not delayed pending discovery. *See Campbell*, 294 So.3d at 527. The assertions made by Mr. Elledge in opposition to Ms. Becnel’s motion could have been supported by documents in Mr. Elledge’s possession or which he could have obtained. Ms. Becnel’s deposition testimony is immaterial to Mr. Elledge’s arguments. For instance, Mr. Elledge asserts that Ms. Becnel misled law enforcement by deleting some of their text messages and other communications before allowing Officer Boudreaux to look through her phone. Mr. Elledge maintains that “unaltered phone records” show there was “extensive two-way communication” between the parties leading

up to the time of his arrest. These records, which could have been authenticated via affidavit or deposition, are not attached to Mr. Elledge's opposition.² See La. C.C.P. arts. 966(D)(4) and 967(A). Additionally, Mr. Elledge could have submitted excerpts from his deposition or his own affidavit, recounting his version of what occurred between the parties in the weeks prior to his arrest and the nature of their alleged on-going relationship. He did not. Mr. Elledge offered nothing to create a genuine issue of material fact, in spite of having access to documents that purportedly support his position and are not contingent upon Ms. Becnel's deposition.

Ms. Becnel's summary judgment evidence establishes that Mr. Elledge was arrested based on his own admitted conduct, observed by Officer Boudreaux. The evidence further shows that Mr. Elledge's arrest was not based on any statements made by Ms. Becnel in connection with her petition for protective order. Thus, Ms. Becnel satisfied her summary judgment burden of pointing out to the court the absence of factual support for one or more elements essential to Mr. Elledge's claim that she made materially false statements to police, which led to his arrest and the issuance of a protective order against him.³ Once this was done, the burden shifted to Mr. Elledge to produce factual support sufficient to establish the existence of a genuine issue of material fact or that Ms. Becnel is not entitled to judgment as a matter of law. See La. C.C.P. art. 966(D)(1). Mr. Elledge offered nothing more than conclusory allegations and unsupported speculation, which are insufficient to support a finding of a genuine issue of material fact. *Ritchey v. State*

² Mr. Elledge also asserts that the District Attorney dismissed the charges against him "when it was made clear" that the facts conveyed by Ms. Becnel to law enforcement were "materially false." He makes the same assertion regarding the purported dismissal of Ms. Becnel's protective order. However, no documents from either proceeding are attached to Mr. Elledge's opposition. See La. C.C.P. arts. 966(A)(4) and 967(A).

³ In light of this conclusion, we pretermitt discussion of Ms. Becnel's contention that her report to law enforcement concerning Mr. Elledge's purported criminal activity constitutes a privilege and is a defense to a defamation action under Louisiana law.

Farm Mutual Automotive Ins. Co., 2017-0233 (La. App. 1st Cir. 9/15/17), 228 So.3d 272, 279. When a motion for summary judgment is made and properly supported, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in La. C.C.P. art. 967, must set forth specific facts showing that there is a genuine issue for trial. La. C.C.P. art. 967(B); *Ritchey*, 228 So.3d at 279. Thus, on our *de novo* review of the record, we find the motion for summary judgment was properly granted. *See Campbell*, 294 So.3d at 526.

CONCLUSION

For the above reasons, we affirm the January 31, 2022 judgment granting the motion for summary judgment in favor of Isna Becnel against Leslie Steven Elledge, dismissing all claims asserted by Mr. Elledge against Ms. Becnel, with prejudice. Costs of this appeal are assessed to Mr. Elledge.

AFFIRMED.