STATE OF MICHIGAN

COURT OF APPEALS

CHARLES SEPTOWSKI and PEGGY SEPTOWSKI,

Plaintiffs-Appellants,

v

CITY OF RIVER ROUGE,

Defendant-Appellee.

UNPUBLISHED
August 27, 1999

No. 206995
Wayne Circuit Court
LC No. 93-331047 NZ

Before: Hoekstra, P.J., and O'Connell and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant in this case for malicious prosecution, intentional infliction of emotional distress, intentional interference with a contractual business relationship, and intentional interference with economic advantage. We affirm.

Plaintiffs argue that the doctrine of collateral estoppel precluded the trial court from granting summary disposition to defendant because the criminal charge against plaintiff Charles Septowski was dismissed after a finding of no probable cause at the preliminary examination. We conclude that plaintiffs have waived any review of this issue. The record indicates that plaintiffs admitted that their state-law claims were subject to summary disposition. Plaintiffs' opposition to defendant's motion for summary disposition instead focused on the federal civil-rights claim that plaintiffs sought to add to their complaint. Because plaintiffs not only failed to raise this issue in the trial court but also conceded that their state-law claims were subject to summary disposition, we need not address plaintiffs' argument. *Dep't of Transportation v Pichalski*, 168 Mich App 712, 722; 425 NW2d 145 (1988). Nonetheless, we expressly reject plaintiffs' argument and conclude that the doctrine of collateral estoppel has no application to this case. It is well-settled in Michigan that the discharge of an accused at the preliminary examination, alone, is not evidence of a lack of probable cause in a subsequent action for malicious prosecution. *Meehan v Mich Bell Telephone Co*, 174 Mich App 538, 562; 436 NW2d 711 (1989); *Koski v Vohs*, 426 Mich 424, 432 n 5; 395 NW2d 226 (1986); *Stefanic v Montgomery*

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Ward & Co, 358 Mich 460, 462; 100 NW2d 250 (1960); *Prine v Singer Sewing Machine Co*, 176 Mich 300, 320; 142 NW 377 (1913); *Davis v McMillan*, 142 Mich 391, 402; 105 NW 862 (1905).[1]

Plaintiffs also argue that the trial court erred in denying their motion to amend their complaint to add a federal civil-rights claim pursuant to 42 USC 1983. We review the trial court's decision whether to grant leave to amend the complaint for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Ordinarily, a motion to amend should be granted, but it may be denied if the amendment would be futile. *Id*. at 658. Reversal is required if the trial court failed to specify its reasons for denying the motion, unless the amendment would be futile. *Dowerk v Oxford Twp*, 233 Mich App 62, 75; 592 NW2d 724 (1998). An amendment would be futile if, "ignoring the substantive merits of the claim, it is legally insufficient on its face." *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

Initially, we note that the order denying plaintiffs' motion to amend states that it is denied "for the reasons stated on the record." Plaintiffs have not provided this Court with a transcript that would indicate what these stated reasons were, nor have they indicated that a hearing was not held. Therefore, we need not review this issue. *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). Furthermore, were we to reach this issue, we would conclude that plaintiffs' proposed amendment would have been futile because plaintiffs did not point to any specific policy or custom pursuant to which defendant was acting that would subject it to liability under § 1983. See *Monell v Dep't of Social Services of New York*, 436 US 658, 694; 98 S Ct 2018; 56 L Ed 2d 611 (1978).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Robert J. Danhof

[1] The trial court based its ruling on the law-of-the-case doctrine, concluding that it was bound by this Court's decision in *Septowski v Poisson*, unpublished opinion per curiam of the Court of Appeals, issued December 19, 1995 (Docket No. 176869), a case that was consolidated with the instant case in the trial court. Because plaintiffs do not challenge this application of the law-of-the-case doctrine, we do not address the issue whether the law-of-the-case doctrine applies to separate actions that have been consolidated in the trial court.