

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE C. BUSH,

Plaintiff-Appellant,

v

SHERRY ANN GREGORY, FRANCIS
TROESTER, and CITY OF ST. CLAIR SHORES,

Defendants-Appellees.

UNPUBLISHED

April 25, 2000

No. 211471

Macomb Circuit Court

LC No. 96-005332-NO

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant Sherry Ann Gregory were formerly married. When Gregory initiated divorce proceedings, she obtained an ex-parte restraining order precluding plaintiff from having any contact with her. As a result of an incident of domestic abuse that occurred shortly before Gregory filed for divorce, plaintiff was charged with assault and battery, MCL 750.81; MSA 28.276. As a pre-trial condition of bond, plaintiff was ordered to have no contact with Gregory.

Numerous police reports named plaintiff as the suspect in incidents of harassment, etc. against Gregory. Defendant Francis Troester, a detective for defendant City of St. Clair Shores, investigated the matter and delivered his findings to the prosecuting attorney. Plaintiff was charged with aggravated stalking, MCL 750.411i; MSA 28.643(9). He was tried by a jury and acquitted of the charge.

Subsequently, plaintiff filed suit in circuit court alleging false arrest and imprisonment, malicious prosecution, intentional infliction of emotional distress, violation of state constitutional rights, violation of 42 USC 1983, and conspiracy. Gregory moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), and Troester/St. Clair Shores moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). At a hearing, plaintiff voluntarily dismissed the claims of false arrest and imprisonment and violation of state constitutional rights; the court dismissed the claim of conspiracy.

The trial court granted summary disposition of the remaining counts. The trial court granted summary disposition of the claim of malicious prosecution on the ground that plaintiff could not establish lack of probable cause. On appeal, plaintiff challenges the trial court's decision as to this claim only.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

In an action for malicious prosecution, the plaintiff must prove: (1) that the defendant initiated a criminal prosecution against him; (2) that the criminal proceedings terminated in his favor; (3) that the private person who instituted or maintained the prosecution lacked probable cause for the action; and (4) that the action was undertaken with malice or a purpose other than bringing the offender to justice. The determination of the existence of probable cause involves the objective assessment of the conduct of a reasonable person under the circumstances. To constitute probable cause, there must be such reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious person in the belief that the person arrested is guilty of the offense charged. The existence of probable cause is a question of law for the court. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378, 381, 387; 572 NW2d 603 (1998).

Plaintiff argues that the trial court erred by granting defendants' motions for summary disposition of his claim of malicious prosecution. We disagree and affirm. "Stalking" is defined as "a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." MCL 750.411i(1)(e); MSA 28.643(9)(1)(e). An individual who engages in stalking is guilty of aggravated stalking if the actions constituting the offense are in violation either of a restraining order of which the individual has received actual notice, or of an injunction. MCL 750.411i(2); MSA 28.643(9)(2). The evidence showed that plaintiff was charged with aggravated stalking after numerous incidents of harassment of Gregory by plaintiff were reported to the police. Plaintiff was alleged to have engaged in the harassing behavior notwithstanding the fact that pursuant to the restraining order and the pre-trial conditions of bond, he was precluded from having any contact with Gregory. The evidence supported a finding that probable cause existed to charge plaintiff with aggravated stalking. *Matthews, supra*, 387. The trial court's grant of summary disposition of plaintiff's claim of malicious prosecution was proper. MCR 2.116(C)(8).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski