STATE OF MICHIGAN

COURT OF APPEALS

JERRY GALILEI,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY, DENNIS SIRIANI, ROUGE STEEL COMPANY and MELVIN BAGGETT,

Defendants-Appellees,

and

WILLIAM HORNBERGER and A. DAVID MEINZINGER,

Defendants.

UNPUBLISHED
October 3, 2000

No. 211423
Wayne Circuit Court
LC No. 95-519440-NZ

Before: Owens, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Plaintiff, Jerry Galilei, was an afternoon shift maintenance supervisor for defendant Rouge Steel Company's Hot Mill operation. Rouge Steel Company ("Rouge") was formerly a part of defendant Ford Motor Company ("Ford"). Basically, plaintiff was terminated from his position at the Rouge steel plant for allegedly removing Rouge property from the plant without authorization.[1] Plaintiff then brought suit against Ford, Ford security supervisor Dennis Siriani, Rouge, and several Rouge employees, including Melvin Baggett, William Hornberger, and A. David Meinzinger. The claims made by plaintiff

[1] Based on anonymous tips, Ford security personnel stopped plaintiff as he was attempting to leave the employee's parking lot at the end of his shift. Plaintiff's car was full of items found in the normal inventory of the Rouge operations warehouse, including multiple pairs of work gloves, five gallon jugs of Absopure water, hand cleaner "in industrial quantities," boxes of paper towels, floor mats, "c" clamps, metal tubing, and caster wheels.

against defendants were assault and battery (Count I), false imprisonment/false arrest (Count II), malicious prosecution (Count III), slander and/or libel (Count IV), tortious interference with economic relations (Count V), negligent failure to train (Count VI), and intentional infliction of emotional distress (Count VII).

With regard to Ford and Siriani, Counts IV (slander and/or libel) and VI (negligent failure to train) were dismissed on their motion for summary disposition. During a subsequent jury trial (involving only defendants Ford and Siriani), Count V (tortious interference with economic relations) and Count VII (intentional infliction of emotional distress) were dismissed upon Ford and Siriani's motion for a directed verdict. As to the balance of the claims against Ford and Siriani, assault and battery, false imprisonment/false arrest, and malicious prosecution, the jury returned a no cause verdict in favor of Ford and Siriani as to these claims.

With regard to the other defendants, Rouge and its employees (Baggett, Hornberger and Meinzinger) also moved for summary disposition prior to trial. The trial court granted summary disposition on all counts as to Rouge and on all but the tortious interference with economic relations and intentional infliction of emotional distress claims against the three individual Rouge defendants. The three individual Rouge employees then filed an interlocutory appeal from the denial of summary disposition on the claims. By peremptory order dated February 20, 1997, this Court reversed the trial court and directed it to dismiss the two remaining counts against the individual Rouge defendants. Therefore, all claims against Rouge and its employees were dismissed prior to the jury trial.

Following the jury trial (which resulted in a no cause verdict in favor of Ford and Siriani), plaintiff filed an appeal as of right challenging the trial court's decision to grant summary disposition to Ford and Siriani on the negligent failure to train claim, the trial court's decision to grant summary disposition to Rouge, Baggett, Hornberger and Meinzinger on the malicious prosecution claim, the intentional infliction of emotional distress claim, and the tortious interference with economic relations claim, and the trial court's decision to allow the admission of certain evidence at trial.

Subsequently, this matter was referred to this Court's settlement program. During settlement discussions, plaintiff stipulated to dismiss individual Rouge employees Hornberger and Meinzinger from this appeal. This Court entered an order dismissing Hornberger and Meinzinger from this appeal on December 3, 1998.

On appeal, plaintiff first argues, without almost any elaboration whatsoever, that the trial court erred in granting Ford/Siriani's motion for summary disposition on plaintiff's claim of negligent failure to train. We disagree.

It appears that summary disposition was granted to defendants pursuant to MCR 2.116(C)(10). This Court reviews a trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) de novo. *Paul v Lee*, 455 Mich 204, 210; 568 NW2d 510 (1997). A motion under MCR 2.116(C)(10) must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b); *Cole v Ladbroke Racing*, 241 Mich App 1, 7; 614 NW2d 169 (2000). The adverse party may not rest on mere allegations or denials of a pleading, but must, by affidavits or other

appropriate means, set forth specific facts to show that there is a genuine issue for trial. MCR 2.116(G)(4); *Cole, supra,* 241 Mich App 7.

In his complaint, plaintiff alleged that Ford failed to adequately train Siriani, presumably in matters of security. In Ford/Siriani's motion for summary disposition, they requested that summary disposition be granted on the negligent failure to train claim on the grounds that there was "no evidence that Ford failed to properly train Siriani." Plaintiff's amended response to Ford/Siriani's motion for summary disposition contained nothing more than a vague assertion that Siriani's training was inadequate. Additionally, plaintiff's amended response contained no discussion of what training should have been provided to Siriani. In his deposition, plaintiff admitted that he had no evidence to indicate that Siriani had not been properly trained. At the hearing on the motion for summary disposition, counsel for plaintiff acknowledged that she had no expert who could address what training should have been provided and she provided no documentary proof to indicate that Siriani had been improperly trained. In sum, there is nothing in the record to indicate that Siriani's training was somehow inadequate for his position or that Siriani was in need of further training and that Ford negligently failed to supply same. Plaintiff failed to provide even the most rudimentary factual support for this claim. Under these circumstances, the trial court properly granted summary disposition on this claim.

Plaintiff also argues that Rouge breached its duty to train Baggett, Hornberger and Meinzinger. However, plaintiff conceded below that summary disposition was proper with regard to the Rouge defendants' motion for summary disposition on the negligent failure to train claim. Therefore, he cannot now claim that summary disposition was improper. A party is not allowed to assign error on appeal to something his own counsel deemed proper in the trial court. *People v Green,* 228 Mich App 684, 691; 580 NW2d 444 (1998).

Next, plaintiff argues that the trial court erred in granting the Rouge defendants' motion for summary disposition on the malicious prosecution claim. We disagree. There was no evidence to indicate that Rouge (or any of its employees) initiated the prosecution. Additionally, the record reveals that there was probable cause to prosecute plaintiff. Therefore, the trial court properly granted summary disposition on the malicious prosecution claim. *Matthews v Blue Cross & Blue Shield of Michigan,* 456 Mich 365, 378; 572 NW2d 503 (1998); *Cox v Williams,* 233 Mich App 388, 391; 593 NW2d 173 (1999).

Plaintiff also claims that the trial court erred in granting the Rouge defendants' motion for summary disposition on the intentional infliction of emotional distress claim. Specifically, plaintiff claims that "the actions of Appellee Rouge and its Agents/Employees should have been considered extreme and outrageous. They kept Appellant under surveillance for eight (8) years, based only on rumor and conjecture."

Before reaching the merits of the claim with regard to Rouge, we note that, with regard to the three individual Rouge defendants, the law of the case doctrine prohibits this Court from deciding that the trial court erred in granting the motion for summary disposition on the intentional infliction of emotional distress claim. The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue. *Grievance*

Administrator v Lopatin, 462 Mich 235, 261-262; ___ NW2d ___ (2000). The decision of an appellate court is controlling at all subsequent stages of litigation, so long as it is unaffected by a higher court's opinion. *Johnson v White,* 430 Mich 47, 53; 420 NW2d 87 (1988); *Reeves v Cincinnati, Inc (After Remand),* 208 Mich App 556, 559; 528 NW2d 787 (1995). The law of the case doctrine applies to questions already presented in the same case by the same parties. *Manistee v Manistee Firefighters Ass'n,* 174 Mich App 118, 125; 435 NW2d 778 (1989). It also applies to issues resolved in interlocutory proceedings. *Marysville v Pate, Hirn & Bogue, Inc,* 196 Mich App 32, 34; 492 NW2d 481 (1992).

Here, after the trial court initially denied the individual Rouge defendants' motion for summary disposition on the intentional infliction of emotional distress claim, the three individual Rouge employees filed an interlocutory appeal from the denial of summary disposition on the intentional infliction of emotional distress claim (as well as from the trial court's denial of summary disposition on the tortious interference with economic relations claim). By peremptory order dated February 20, 1997, this Court, after ruling on the merits of the case, reversed the trial court and directed it to dismiss the intentional infliction of emotional distress claim and tortious interference with economic relations claim. This Court's decision has not been overturned by a higher court. Therefore, because this Court has already determined summary disposition was appropriate with regard to the three individual Rouge defendants on the claims of intentional infliction of emotional distress and interference with economic relations, the law of the case doctrine prevents this Court from deciding this issue differently now.[2]

With regard to defendant Rouge, the trial court properly granted summary disposition to Rouge on the intentional infliction of emotional distress claim.[3] There was no genuine issue of fact concerning whether defendant Rouge's conduct rose to the required level of extreme and outrageous conduct. Plaintiff makes nothing more than an unsubstantiated allegation that Rouge and its employees were continuously investigating him for eight years prior to the incident in question and there is no evidence in the record to support this assertion. While there was a short investigation of plaintiff in 1993, there is no indication that there was any type of ongoing investigation involving plaintiff. Because there is no evidence that Rouge acted in a tortiously outrageous manner, the trial court properly granted Rouge's motion for summary disposition on the intentional infliction of emotional distress claim. *Graham v Ford,* 237 Mich App 670, 674-675; 604 NW2d 713 (1999).

Next, with regard to plaintiff's claim that the trial court erred in granting Rouge's motion for summary disposition on the tortious interference with economic relations claim, plaintiff conceded below that summary disposition was proper on this claim. Because plaintiff admitted below that summary

---

[2] Moreover, to the extent that plaintiff argues that the trial court improperly granted Hornberger and Meinzinger's motion for summary disposition on this claim (as well as on the tortious interference with economic relations claim), plaintiff stipulated to dismiss these defendants from this appeal and this Court entered an order to that effect. Therefore, they are no longer parties to this appeal.

[3] Note that our Supreme Court has never specifically recognized or adopted the tort of intentional infliction of emotional distress. See *Smith v Calvary Christian Church,* 462 Mich 679, 686, n 7; 614 NW2d 590 (2000); *Roberts v Auto-Owners Ins Co,* 422 Mich 594; 374 NW2d 905 (1985).

disposition was proper with regard to Rouge on the interference with economic relations claim, he cannot now claim that summary disposition was improper. *Green, supra,* 228 Mich App 691.

Lastly, plaintiff claims that the trial court abused its discretion in admitting Exhibits 1 through 11, items that either were the items or were similar to the items found in plaintiff's car and trunk as he was leaving the Rouge plant on the night of the incident in question. Without much elaboration, plaintiff claims that the exhibits were more prejudicial than probative. However, plaintiff did not object on this basis below; therefore, this claim is not preserved for appellate review. MRE 103(a)(1); *People v Grant,* 445 Mich 535, 553; 520 NW2d 123 (1994). In any event, it does not appear that the trial court abused its discretion in admitting the exhibits. *People v Starr,* 457 Mich 490, 494; 577 NW2d 673, reh den 459 Mich 1203 (1988). There is no real dispute that the now-challenged evidence was probative on the claims of false imprisonment/false arrest and malicious prosecution. MRE 401. The probative value of the evidence was not outweighed by any prejudicial effect. MRE 403.[4] However, even if the trial court abused its discretion in admitting the exhibits, the error was harmless in light of the other properly admitted evidence regarding the items found in plaintiff's car including plaintiff's own testimony and the photographs of the items found in plaintiff's car.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra

[4] Additionally, where defendants presented uncontradicted evidence that the exhibits were similar or identical to items found in plaintiff's car, the fact that defendants did not show that the items were the exact ones removed from plaintiff's car should not have prevented the exhibits from being admitted at trial as demonstrative evidence. *People v Castillo,* 230 Mich App 442, 444; 584 NW2d 442 (1998).