

STATE OF MICHIGAN  
COURT OF APPEALS

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NORMAN WRIGHT,

Plaintiff-Appellant,

v

GUARDSMARK, INC. and ARTHUR FRANCE,

Defendants-Appellees,

and

EQUITABLE LIFE ASSURANCE SOCIETY OF  
THE UNITED STATES, EQUITABLE  
VARIABLE LIFE INSURANCE COMPANY,  
DFNB CORPORATION, and GALBREATH  
COMPANY,

Defendants.

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UNPUBLISHED

July 9, 2002

No. 228946

Wayne Circuit Court

LC No. 99-903479-NI

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendants-appellees' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In a malicious prosecution action, the plaintiff has the burden of proving four elements: "(1) that the defendant has 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 his actions, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice.” *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).

Plaintiff contends that the trial court erred in dismissing his claim for malicious prosecution for a variety of reasons, one of which is that the dismissal of the criminal charges at the preliminary examination stage proved that probable cause was lacking. Because plaintiff has not cited any case law or other authority in support of his argument, the issue has not been preserved for appeal. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). That aside, his claim is without merit. The element of probable cause refers to whether the defendant had probable cause to believe that the plaintiff had committed a crime. *Matthews, supra* at 379. However, probable cause does not depend on actual guilt and there may be probable cause to believe a person guilty of a crime when he was actually innocent. Thus, the fact that the criminal proceedings were ultimately terminated in the plaintiff’s favor does not mean that probable cause for initiating the proceedings was lacking. *Drobczyk v Great Lakes Steel Corp*, 367 Mich 318, 322-323; 116 NW2d 736 (1962).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Martin M. Doctoroff