

STATE OF MICHIGAN
COURT OF APPEALS

OCIE LEE CARSWELL, JR.,

Plaintiff-Appellant,

v

COUNTY OF WAYNE, OFFICER
PALUCKI and OFFICER MORRONE,

Defendants-Appellees,

and

JOHN DOE,

Defendant.

UNPUBLISHED

November 15, 2002

No. 232342

Wayne Circuit Court

LC No. 00-002567-NO

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendants, three arresting officers of the Wayne County Sheriff's Department, for claims of false arrest and imprisonment, conversion, assault and battery and gross negligence. On appeal, plaintiff only argues over the propriety of the dismissal of his false arrest claim, asserting a lack of probable cause for the arrest. We affirm.

A. Facts

The undisputed material facts in this case are as follows.¹ Plaintiff parked his sister's Corvette in the handicapped parking spot at a Kroger's grocery store in the city of Westland. The vehicle contained a cancelled handicapped parking permit in the name of a third person. Wayne County Sheriff Department Corporal Gerald Morrone waited until plaintiff left the store to ask him for his driver's license. When plaintiff reluctantly pulled out and opened his wallet to show his driver's license, Morrone noticed what appeared to be a police badge on the other side of plaintiff's wallet. Plaintiff refused to show the badge to Morrone and refused to answer

¹ These material facts are taken from defendant's brief on appeal, which contains a citation to the lower court record for the underlying facts.

Morrone's questions about the badge. Morrone wondered whether plaintiff could have used the badge to impersonate a police officer, and whether plaintiff was armed. Accordingly, plaintiff was arrested for violating the handicap permit statute and for disobeying the orders of a police officer.

B. Analysis

As a preliminary matter, we are compelled to note that plaintiff's brief on appeal contains numerous deficiencies that affect what is before the Court. First, plaintiff asserts on appeal that this case involves, *inter alia*, "racial profiling." Plaintiff's own complaint, however, does not support this assertion, as there is no such count or allegation in that pleading. It therefore was not a proper issue before the trial court, MCR 2.111(B)(1), and nor is it properly raised here. *Deal v Deal*, 197 Mich App 739, 741; 496 NW2d 403 (1993). Second, plaintiff only appealed the dismissal of his claim of false arrest. Plaintiff's appeal brief does not address his claims of false imprisonment, conversion, assault and battery, or gross negligence, even though these claims received an adverse trial court ruling. Failure to brief an issue on appeal constitutes abandonment of the question. *Gross v General Motors Corp*, 448 Mich 147, 162; 528 NW2d 707 (1995); *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 679 n 8; 625 NW2d 377 (2001). Third, plaintiff's brief on appeal contains only two citations to the lower court record - one to the transcript from the hearing on defendant's motion for summary disposition and the other to opinion evidence from some of the defendants' depositions. Neither citations address material facts, and therefore, plaintiff's brief in this Court runs contrary to our rules. See MCR 7.212(C)(6). Accordingly, the sole issue before us is whether a genuine issue of material fact existed regarding probable cause for plaintiff's arrest.

Plaintiff argues that the trial court misinterpreted the facts, and that the court erroneously ruled that probable cause existed for plaintiff's arrest. We conclude that no genuine issues of material fact exist in this case, and that a grant of summary disposition in defendants' favor was proper.

Defendants' motion for summary disposition was brought pursuant to MCR 2.116(C)(7), (8) and (10). Because the trial court indicated that it looked to admissible evidence in this case, the motion was decided pursuant to MCR 2.116(C)(10). On appeal, a trial court's grant or denial of summary disposition is reviewed *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Summary disposition of all or part of a claim or defense may be granted when, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The court may not make findings of fact or weigh credibility in deciding a summary disposition motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). To determine if a genuine issue of material fact exists, the test is whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ. *Id.* at 162.

This Court has recently held that false arrest and false imprisonment are separate causes of action. *Moore v City of Detroit*, 252 Mich App 384, 386-387; ___ NW2d ___ (2002). A false arrest is an illegal or unjustified arrest. *Lewis v Farmer Jack Div, Inc*, 415 Mich 212, 218; 327 NW2d 893 (1982). An action for false arrest cannot be maintained where the arrest is legal even if the person arrested is in fact innocent. *Id.*, n 2. To prevail on a false arrest claim, plaintiff must establish that the arrest was not legal, i.e., that it was made without probable cause. *Burns v Olde Discount Corp*, 212 Mich App 576, 581; 538 NW2d 686 (1995); *Blase v Appicelli*, 195 Mich App 174, 177; 489 NW2d 129 (1992).

Here, the trial court ruled that plaintiff failed to show any pretextual motivation for the arrest, or that the arrest lacked probable cause, because plaintiff committed a misdemeanor in the presence of an officer by unlawfully using a handicapped parking permit. It is undisputed in this case that violation of the statute is a misdemeanor, and that the statute allows a person to be arrested for its violation. MCL 257.675(5)(g); MCL 257.675(16)(a). MCL 764.15(a) provides that an officer may make a warrantless arrest if a misdemeanor is committed in the officer's presence.

From our de novo review of the record, we conclude that there was no genuine issue of material fact with respect to the legality of the arrest. It is undisputed that plaintiff's vehicle was parked in a handicapped parking spot without a valid permit, which is a misdemeanor. The vehicle was illegally parked in the presence of the arresting officers. Therefore, pursuant to MCL 764.15(1)(a), the warrantless arrest was proper.

Plaintiff argument that he was falsely arrested because Morrone and another arresting officer, Tom Palucki, testified that the customary procedure is to issue a ticket to the person who was fraudulently using a handicapped parking permit and that they have never arrested a person for such a violation is without merit. Here, while Morrone testified that he had never before arrested anyone for fraudulent use of a handicapped parking permit, he also testified that unanswered questions existed with respect to the vehicle that plaintiff was driving and the badge that he was carrying. Under the circumstances of this case, the arrest was legal and justified. It is undisputed that the LEIN check Morrone performed showed that the vehicle was registered in the name of a woman, while the handicap permit was expired and registered in the name of a man (not plaintiff). When confronted by Morrone, Plaintiff was fidgety and reluctant to show his driver's license. Plaintiff finally pulled out his wallet and showed his driver's license. Next to the driver's license, Morrone noticed what appeared to be a police badge. However, plaintiff refused to answer Morrone's persistent questions regarding that badge. In addition to Morrone's knowledge that plaintiff had committed a misdemeanor in Morrone's presence by illegally parking in a handicap spot, Morrone doubted whether plaintiff was legally carrying the badge. In light of the above, the arrest was legal and justified. *Lewis, supra*, 415 Mich at 218. Thus, the trial court properly granted summary disposition in defendants' favor.

As previously noted, plaintiff's remaining claims were either not appealed or were not properly argued, and therefore are abandoned. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998); *Gross, supra*, 448 Mich at 162.

Affirmed.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra