

STATE OF MICHIGAN
COURT OF APPEALS

TOMMIE LEE REED,

Plaintiff-Appellant,

v

OFFICER DANIEL SITARSKI and OFFICER
MICHAEL SMITH,

Defendants-Appellees.

UNPUBLISHED
July 26, 2012

No. 299662
Wayne Circuit Court
LC No. 05-519875-NZ

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of no cause of action in favor of defendants in this malicious prosecution action. We affirm.

This malicious prosecution case is before us for the second time. After reviewing an appeal from defendants regarding an instructional error that occurred in the first trial, this Court remanded “for a new trial on the malicious prosecution claim.” *Reed v Sitarski*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281041, 281403). Plaintiff now argues that on remand the trial court improperly submitted all of the elements of his malicious prosecution claim¹ to the jury because the only issue to be resolved concerned damages. We disagree.

¹ To substantiate this claim, plaintiff had the burden of proving (1) that defendants initiated or maintained a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that defendants lacked probable cause for their actions, and (4) that their actions were undertaken with malice or a purpose in instituting the criminal claim other than bringing plaintiff to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).

“Whether a trial court followed an appellate court’s ruling on remand is a question of law that this Court reviews de novo.” *Schumacher v Dep’t of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007). It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court.” *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Here, this Court did not limit the new trial to any specific issue but mandated a new trial on the malicious prosecution claim. Consequently, the trial court did not err by submitting all of the elements of the malicious prosecution claim to the jury.²

Plaintiff also argues that the trial court abused its discretion by denying his motion for a new trial because the jury’s finding that defendants did not initiate or continue his criminal prosecution was against the great weight of the evidence. We disagree.

A trial court may grant a new trial if the verdict was against the great weight of the evidence or was contrary to law. MCR 2.611(A)(1)(e). This Court reviews a trial court’s decision to deny a motion for a new trial for an abuse of discretion. *Allard v State Farm Ins Co*, 271 Mich App 394, 406; 722 NW2d 268 (2006). An abuse of discretion occurs when the result falls outside of the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). “A trial court’s determination that a verdict is not against the great weight of the evidence will be given substantial deference by the appellate court.” *Arrington v Detroit Osteopathic Hosp Corp*, 196 Mich App 544, 560; 493 NW2d 492 (1992). In reviewing the trial court’s decision, this Court must conduct an in-depth analysis of the record. *Id.* “When a party claims that a jury verdict is against the great weight of the evidence, this Court may overturn the verdict only when it is manifestly against the clear weight of the evidence.” *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 498; 668 NW2d 402 (2003). The trial court may not set aside a jury’s verdict if there is competent evidence to support it nor substitute its judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

Plaintiff sought to show that there were inconsistencies between prior statements defendants made regarding the search of plaintiff. Plaintiff elicited that during a prior proceeding Officer Sitarski testified that he did not remove drugs from plaintiff’s person even though his reports suggests such, and that he most recently testified that he now does not recall who removed the drugs. Plaintiff also attempted to undermine Officer Smith’s testimony that he observed Officer Sitarski remove the drugs. Defendants responded to plaintiff’s implicit allegations that defendants falsified their reports by highlighting consistencies in their testimony while pointing to inconsistencies in plaintiff’s testimony. Lieutenant Stephen Cronin, the officer-in-charge of the underling criminal investigation against plaintiff, indicated that after reviewing defendants’ reports, he submitted his own summary of the reports to the prosecution. The record also shows that both the retrieved contraband and plaintiff’s blood tested positive for cocaine. Since there was competing evidence regarding whether defendants provided false

² We note, however, that the jury determined that plaintiff did not meet his burden of establishing the first element and, therefore, the jury did not consider the remaining elements.

statements in their reports and evidence showing that contraband was actually recovered from plaintiff, we cannot conclude that the jury's decision that defendants did not initiate or continue the prosecution of plaintiff was against the great weight of the evidence. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder