

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND KENT COUNTY

Barbara P. Better,	:	C.A. No. 04-05-0053
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Janet May Mitchell,	:	
	:	
Defendant.	:	

Date Submitted: September 29, 2004

Date Decided: October 5, 2004

Upon Defendant's Motion to Dismiss

Plaintiff's Complaint is dismissed.

Barbara P. Better, One Governor Burton Court, Milford, Delaware 19963, Pro Se.

**Thomas D. Donovan, Esquire, 424 South State Street, Dover, Delaware 19901,
Attorney for Defendant.**

Trader, J.

In this civil action, plaintiff's complaint alleges a claim for malicious prosecution and a claim for slander. The plaintiff's complaint for malicious prosecution is dismissed because it fails to contain all of the elements necessary to sustain a cause of action for malicious prosecution. The plaintiff's complaint for slander must be dismissed because the complaint did not plead publication as an element of the defamation claim.

The Status of the Proceedings

On May 17, 2004 the plaintiff, Barbara P. Better, filed a complaint against Janet May Mitchell alleging a claim that appears to be founded on malicious prosecution and a claim for slander. The defendant filed a *pro se* answer on May 26, 2004. On September 1, 2004 a pretrial conference was held and the case was scheduled for trial. Thereafter, the defendant, through her attorney, filed a motion to dismiss the complaint or in the alternative a motion for summary judgment. At oral argument the plaintiff conceded that the criminal complaint was signed by the police officer and the magistrate issued an arrest warrant.

The Standard for Evaluating a Motion to Dismiss For Failure to State a Claim

In evaluating a motion to dismiss, I must assume all well pleaded facts in the complaint to be true. *Nix v. Sawyer*, Del. Supr., 466 A.2d 407, 410 (1983). A complaint will not be dismissed unless it is clearly without merit. *Diamond State Tel. Co. v. Univ of Delaware*, Del. Supr., 269 A.2d 52 (1970).

Plaintiff's Claim for Malicious Prosecution

The plaintiff in paragraph 3 alleges, “Defendant did willfully and maliciously file a complaint against Defendant [sic] for Harassment on August 20, 2003 at the Milford Police Department, Milford, Delaware 19963.” Paragraph 4 of the complaint alleges that “Defendant did willfully and maliciously cause Plaintiff to be arrested, fingerprinted and photographed at the Milford Police Department.” The above paragraphs are the only paragraphs that set forth any of the elements for a claim of malicious prosecution.

The Elements of Malicious Prosecution

The elements of malicious prosecution are set forth in *Stidham v. Diamond State Brewery*, Del. Super., 21 A.2d 283 (1941). The elements of such a claim are as follows: “(1) there must have been a prior institution or continuation of some regular judicial proceedings against the plaintiff in this action for malicious prosecution; (2) such former proceedings must have been by, or at the instance of the defendant in this action for malicious prosecution; (3) the former proceedings must have terminated in favor of the defendant therein, the plaintiff in the action for malicious prosecution; (4) there must have been malice in instituting the former proceedings; (5) there must have want of probable cause for the institution of the former proceedings; and (6) there must have been injury or damage resulting to the plaintiff from the former proceedings.”

Megenhardt

In *Megenhardt v. Nolan*, Del. Supr., Del. Supr., ___ A.2d ___, No. 216, 1990, Walsh, Jr. (Oct. 18, 1990), the Supreme Court upheld the trial court’s decision to grant a directed verdict for the defendant because it determined that three of the six elements for malicious prosecution claim were not met. First, the criminal proceeding was not

brought by or at the instance of the defendant. The defendant reported the crime to the police and the police conducted an independent investigation of the alleged crime.

Second, there was probable cause for the institution of a criminal proceeding because the magistrate issued a warrant for the plaintiff's arrest. Finally, there was no evidence of malice on the part of the plaintiff.

The Law as Applied to This Case

Megenhardt is indistinguishable from the case before me. In the case at bar, the police did an independent investigation based on information supplied by the defendant. Also in this case, a magistrate found probable cause and issued a warrant for plaintiff's arrest. The issuance of a warrant for plaintiff's arrest is *prima facie* evidence of probable cause. Since plaintiff's complaint fails to allege a lack of probable cause for the issuance of the harassment warrant and fails to allege that the defendant brought the harassment complaint, the claim for malicious prosecution must be dismissed.

The Claim for Slander

The plaintiff's theory of slander is contained only in paragraph 11 of the complaint. Paragraph 11 alleges that "Defendant did willfully and maliciously cause Plaintiff to be stared at, ostracized and despairing remarks made after Defendant accused Plaintiff of kidnapping Defendant, with a knife and a gun, at Defendant's place of employment."

The Law Relating to a Claim for Slander

The applicable case law is found in *Read v. Carpenter*, Del. Super., No. 95C-03-171, Quillen, J. (June 8, 1995) (Letter Op.). In *Read*, the court explains, "[a] study of the cases clearly indicates that the Courts of this State do not look with favor upon suits

for libel or slander.” The court further states that “the scope of liability for slander is not as great as that for libel, and *the pleading requirements for slander are more strict.*”

(Emphasis in original). The court establishes five elements that must be pled to form a claim for defamation, which incorporates both libel and slander. Those elements are:

“(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party’s understanding of the communication’s defamatory character; and (5) injury.” Additionally, special damages must be pled in a claim for slander.

However, slander *per se* is actionable without proof of special damages. There are four categories where special damages need not be proven. The four categories are statements which “(1) malign one in a trade, business or profession; (2) impute a crime; (3) imply one has a loathsome disease; and (4) impute unchastity to a woman.” In the case before me, the plaintiff alleges that the defendant accused her of committing a crime. Therefore, the plaintiff’s complaint alleges a claim of slander *per se*.

Conditional Privilege for Statements to Law Enforcement Officer

Statements to a law enforcement officer are privileged. In *Meades v. Wilmington Housing Authority*, Del. Super., No. Civ. A. 03C-05-013WCC, Carpenter, J. (July 30, 2004) (Mem. Op.), the court discussed alleged slander published to law enforcement personnel. “The Restatement (second) of Torts § 598 provides that there is a conditional privilege to rely upon information when the information affects a sufficient important public interest and the public interest requires communication of a defamatory matter to a public officer who is authorized to take action if the defamatory matter is true.”

Additionally, “the mere fact that no charges were brought, while beneficial to the Plaintiff, does not provide a basis to now claim defamation.”

The Law as Applied to the Plaintiff’s Complaint

The plaintiff alleges that the defendant accused the plaintiff of kidnapping the defendant with a knife and gun at defendant’s place of employment. The plaintiff does not specify to whom these statements were made. There is a reasonable inference that the defendant made these statements to the police officer when she reported the incident to the police. Under *Meades, supra*, these statements would be privileged because it is in the public interest for victims to report crimes to police officers. Since the plaintiff has failed to succinctly plead the five elements of a cause of action for defamation, her claim for slander must be dismissed.

Attorney’s Fees

As to the defendant’s claim for attorney’s fees, there is no statute or contract that would authorize payment of attorney’s fees. *Tandycrafts, Inc. v. Initio Partners*, Del. Supr., 562 A.2d 1162 (1989). Additionally, I am not persuaded the complaint was filed in bad faith. Therefore, I will not award the defendant attorney’s fees based on Civil Rule 11.

Based on the above conclusions of law, the plaintiff’s complaint is dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge