

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

DAVID J. BUCHANAN, : C.A. No. S08C-08-006 THG
Plaintiff, :
v. :
WILLIAM WALLACE, :
DELAWARE STATE POLICE, :
DAVID J. RICHARDS, :
BARBARA H. RICHARDS, :
Defendants. :

ORDER OF DISMISSAL UPON REVIEW OF COMPLAINT

DATE SUBMITTED: October 19, 2009

DATE DECIDED: December 29, 2009

David J. Buchanan, SBI# 002, Sussex Correctional Institution, P.O. Box 500 MSB-A,
Georgetown, DE 19947

Graves, J.

David J. Buchanan (“Buchanan”) has filed a complaint against Delaware State Police Corporal William Wallace (“Wallace”), David J. Richards (“Richards”) and Barbara H. Richards (“Barbara”). This Court previously entered a stay in this matter pending the outcome of criminal proceedings against Buchanan. *Buchanan v. Wallace*, Del. Super., C.A. No. S08C-08-006, Graves, J. (Sept. 18, 2008) (ORDER) (“*Buchanan I*”). The Court stated therein that once the criminal proceedings were finally resolved, it would examine the complaint pursuant to 10 *Del. C.* § 8803. *Id.* at 8-9. The judgment in the criminal proceedings is final. *Buchanan v. State*, 981 A.2d 1098 (Del. 2009). Thus, I review the complaint at this time.¹

As this Court noted in *Buchanan I*, Buchanan’s version of the facts as set forth in his complaint, as amended, differ from the actual facts. Although, normally, the Court would view the allegations as true, it will not in the case at hand. There are two reasons for this. First, Buchanan historically has distorted facts, procedures and events. *Buchanan v. Gay*, 2006 WL 2709401, *2 (Del. Super. Sept. 21, 2006), *rearg. den.*, (Del. Super. Oct. 13, 2006), *aff’d*, 929 A.2d 783, 2007 WL 1454884 (Del. May 17, 2007) (TABLE); *Buchanan v. Gay*, 2008 WL 902936, *2 (Del Super. March 10, 2008). Second, the facts and procedural history clearly are established in previous cases of which this Court takes judicial notice.² Although much of the

¹Buchanan filed a document dated October 2, 2009, wherein he attempts to correct factual findings of the decision in *Buchanan I*. Such a filing is not procedurally authorized.

²The facts are taken from the following decisions, which are listed in chronological order, from oldest to most recent: *Buchanan v. Buchanan*, 2006 WL 1921993 (Del. Super. July 7, 2006); *Buchanan v. Gay*, 2006 WL 2709401 (Del. Super. Sept. 21, 2006), *rearg. den.* (Del. Super. Oct. 13, 2006), *aff’d*, 929 A.2d 783, 2007 WL 1454884 (Del. May 17, 2007) (TABLE); *Bennett v. Bennett*, 2007 WL 2231067 (Del. Aug. 6, 2007); *In re Buchanan*, 937 A.2d 139, 2007 WL 3361328 (Del. Nov. 14, 2007) (TABLE); *Buchanan v. Gay*, 2008 WL 902936 (Del. Super. March 10, 2008); *Bell v. Bell*, 950 A.2d 658, 2008 WL 2151531 (Del. May 23, 2008) (TABLE); *In re Buchanan*, 957 A.2d 1, 2008 WL 4057923 (Del. Sept. 2, 2008) (TABLE); *Buchanan v.*

information contained herein is repetitious of that set forth in *Buchanan I*, I include it for ease of reference.

Divorce proceedings commenced between Buchanan and Barbara. On or about March 18, 2003, Barbara filed a petition with Family Court to list and sell the parties' real estate. This real estate consisted of the marital home located at 34806 Hudson Road, Laurel, Delaware ("marital home") and farm property. Buchanan and Barbara were divorced in 2003.

On July 28, 2004, the mortgage holder on the marital home filed a foreclosure action due to nonpayment of the mortgage. On August 24, 2004, Buchanan filed a petition in bankruptcy under Chapter 13. The next series of legal proceedings are described by the Supreme Court in *Bennett v. Bennett*, 2007 WL 2231067, *1 (Del. Aug. 6, 2007):

In May 2005, the bankruptcy judge entered an order lifting the automatic stay as to Wife's Family Court claims and directed Wife to return to the Bankruptcy Court once the Family Court issued its "advisory" property division order in order to request the Bankruptcy Court to distribute "any property ordered distributed by the Family Court." On April 4, 2006, the Family Court issued its opinion on the parties' property claims. Among other things, the Family Court directed that the former marital home and the farm property be listed for sale. Wife moved the Bankruptcy Court for an order effectuating the Family Court's property distribution order. Ultimately, on November 21, 2006, the Bankruptcy Court dismissed Husband's case with prejudice. Thereafter, on February 5, 2007, the Family Court entered its order evicting Husband from the property that it previously had ordered be sold.

Richards, 959 A.2d 27, 2008 WL 4490747 (Del. Oct. 7, 2008) (TABLE); *Richards v. Buchanan*, 2009 WL 2424647 (Del. Fam. Ct. April 8, 2009); and *Buchanan v. State*, 981 A.2d 1098 (Del. 2009). I also obtain undisputed facts from the documents which have been filed in this matter as well as in the pending criminal case of *State v. Buchanan*, Def. ID# 0801031784. Finally, I take some facts regarding certain personal property from a transcript of a hearing in Family Court on March 13, 2008, addressing Barbara's application for a protection from abuse ("PFA") order. A copy of this transcript has been made a part of the record in this civil proceeding. Buchanan has filed it in the criminal action in connection with a motion seeking the return of property pursuant to Superior Court Criminal Rule 41(e).

The April 4, 2006, Family Court order dealt with child support, personal property, the marital home, the farm property, attorneys' fees and costs. Buchanan did not appeal this order. The February 5, 2007, Family Court order evicted Buchanan from the marital home and the farm property and ordered possession thereof to Barbara so that she might arrange the sale of the properties. In its August 6, 2007, order, the Supreme Court affirmed the Family Court's February 5, 2007, eviction order.

Buchanan refused to leave the properties. Family Court issued a criminal contempt order on October 24, 2007, authorizing the Delaware State Police to physically remove Buchanan from the home, barring Buchanan from the property, and directing the execution of a contract of sale of the marital home and farm property.

Buchanan then filed a bankruptcy petition on behalf of his business, Buchanan Farms, Inc. As a result, Family Court stayed the eviction and contempt orders. On December 26, 2007, the Bankruptcy Court notified Family Court that it had dismissed Buchanan Farms, Inc.'s bankruptcy petition.

Upon receiving this dismissal notice from the Bankruptcy Court, Family Court ordered, on January 3, 2008, that stays of its October 24, 2007, orders barring Buchanan from the property, authorizing the police to remove Buchanan from the home, and directing the execution of the contract of sale were lifted and those orders could be carried out with full force and effect.³

Thus, as of January 3, 2008, Buchanan was excluded from the marital home and farm property in order to allow Barbara the opportunity to safely prepare the home and farm for sale.

³The Supreme Court dismissed Buchanan's appeal of this January 3, 2008, order because Buchanan failed to file an opening brief. *Bell v. Bell*, 950 A.2d 658, 2008 WL 2151531 (Del. May 23, 2008).

Barbara, not Buchanan, had possession of the properties.

As of January 3, 2008, a Court in the District of Columbia wanted Buchanan for criminal charges where Barbara was the victim. Corporal Wallace arrested Buchanan on the fugitive warrant on January 3, 2008. Buchanan posted bond on those charges.

On January 4, 2008, Barbara, Richards and some members of the Delaware State Police went to the marital home so that Barbara could begin preparing it for sale.⁴ Barbara and Richards located 13 loaded guns on the property. Barbara and Richards took those for safekeeping. Barbara intended to clean everything out so the properties could be sold and she commenced the clean up. She threw away the obvious trash; the other items she collected and planned to put somewhere so that Buchanan could claim them. Barbara and Richards collected a computer and hard-drive and a spear-gun. They took the passport belonging to Barbara and Buchanan's daughter and gave it to the daughter. Barbara returned Buchanan's wallet and personal identification to him by giving it to court personnel in Washington, D.C. Later, after Buchanan's arrest on January 26, 2008, the police located another loaded weapon on the property and took that. Barbara gave the livestock, which she jointly owned, to someone because there was no one at the property to care for the livestock. Barbara intended for the personal property ultimately to be dealt with by the Family Court.

On January 8, 2008, Corporal Wallace served Buchanan with a copy of the order lifting the stay and explained the order to him, telling him if he returned to the property, he would face criminal charges. Corporal Wallace accompanied Buchanan to the property while Buchanan retrieved his belongings.

⁴The information contained in this paragraph appears in the transcript of March 13, 2008, proceedings in the Family Court addressing Barbara's petition seeking a PFA. *See n.2, supra.*

On January 26, 2008, Corporal Wallace found Buchanan on the Hudson Road property. He and other officers arrested Buchanan on the following charges: burglary in the second degree; criminal mischief under \$1000; resisting arrest; criminal contempt by disobedience or resistance to a mandate of a court. *State v. Buchanan*, Del. Super., Def. ID# 0801031784.⁵

Immediately thereafter, on January 29, 2008, Buchanan filed with the Family Court a Protection from Abuse petition, labeled "Petition for Protection from Abuse and Emergency Petition for Writ of *De Ejectione Firmae* Providing Assignment of Property Pursuant to 10 Del.

⁵The affidavit of probable cause alleges in pertinent part as follows:

On 012608 at approx. 0900 hours I responded to [34806] Hudson Rd., Laurel to assist undercover units with an ongoing domestic situation. Prior to arrival Cpl. Wallace conducted a briefing with all officers involved and stated that D (Buchanan, David J. WM) was evicted from the above residence in compliance with the 102407 Sussex Family court order, after being arrested at this residence as an out of state fugitive on 010308. D-Buchanan was provided assistance with retrieving his property from the residence and was advised that he was no longer allowed on the property at 34806 Hudson Rd., Laurel and was advised that if he returned to said property he would be in violation of the Family Court Order and would face criminal charges being filed against him. Since his arrest Cpl. Wallace has been in contact with D-Buchanan on numerous occasions (as recently as 012508) advising him that he was not allowed at the residence and that if he were found there he would be arrested on criminal charges. On today's [sic] date units responded to the residence in order to assist V ... with making sure the residence was vacant and that D-Buchanan was not on the property. Upon arrival of the first unit (Tpr. Gallagher) found the white Ford F-250 in the driveway and smoke coming from the chimney, indicating that someone was inside the residence. The white Ford pickup is registered to D-Buchanan. D-Buchanan has made threats in the past and on 012508 Troop 5 units (Cpl. Allen) received third party information from a neighbor that D-Buchanan stated he would "blow it all up" if someone attempted to remove him from the property. Upon arrival Cpl. Wallace made contact via cell phone with D-Buchanan, advising that he was in the area and observed his truck in the driveway and requested that he come to the end of the [sic] driveway and talk to him. D-Buchanan denied being on the property and stated that he was in Lincoln in a separate vehicle also owned by him.... Several minutes later Tpr. Gallagher observed D-Buchanan exit the residence and walk toward the wooded area. Troopers responded into the driveway and commanded D-Buchanan to stop and return to the residence, at which point he turned and looked back, seeing the Troopers and began to run in the same direction, away from the Troopers entering the wooded area. Troopers and K9-50 with Partner (Aron) gave chase and were able to apprehend D-Buchanan without incident in an adjacent field. A second interview conducted with the owners of the property revealed a fully loaded 20 gauge shot gun hidden behind a full sheet of drywall next to the basement entry door. A jacket was also found hanging on the sheet of drywall with all of the pockets loaded with ammunition for the shot gun. Tpr. Gallagher also that he was advised by V... that D-Buchanan broke the door knob off the basement door and replaced it with a new door knob, thus giving him a key to get into the residence.

C. § 921(4).” He sought relief from Corporal Wallace. By order dated February 1, 2008, the Family Court dismissed this petition, ruling it had no jurisdiction over Corporal Wallace.

On February 6, 2008, Buchanan sought to subpoena Corporal Wallace in a Family Court proceeding. Buchanan sought information pertaining to his arrests on January 3, 2008, and January 26, 2008.

On February 15, 2008, Buchanan commenced this pending civil litigation by filing in the Court of Chancery a “Petition for Writ of *De Ejectione Firmae* and Verified Complaint for Injunctive Relief.” The parties named were William A. Wallace, the Delaware State Police, and Richards. The complaint alleges that, on January 4, 2008, Richards, with the assistance of Corporal Wallace “gained unauthorized access to the office of Buchanan Farms, Inc. located on the property owned and deeded to David J. Buchanan, at 34806 Hudson Road, Laurel, Delaware...”; Richards removed items of Buchanan’s personal property from the premises; and the defendants entered Buchanan’s locked personal vehicle and removed items of Buchanan’s personal property. The complaint further alleges that on January 26, 2008, the date of plaintiff’s arrest in the pending criminal matter, Richards, with the assistance of the Delaware State Police, removed firearms, property, and valuable livestock from the property. He asserts Richards conspired with Corporal Wallace to unlawfully ouster Buchanan from the property. Buchanan sought injunctive relief preventing further trespass on the property, declaratory relief, and the return of his property.

Meanwhile, litigation involving Buchanan continued in Family Court. On March 7, 2008, Family Court granted Barbara an *ex parte* temporary protection from abuse order (“PFA”), and this order prohibited Buchanan from possessing firearms, contacting Barbara, or entering the

Hudson Road property (again). Buchanan was served with the PFA on March 10, 2008. On March 13, 2008, a hearing was held on the temporary PFA, and Family Court issued a permanent PFA order containing the same prohibitions as were set forth in the temporary PFA. Specifically, that order prevented Buchanan from possessing any firearms. Buchanan was served with a copy of the permanent PFA at the end of the hearing.

On that same date, March 13, 2008, Buchanan was stopped on his way from the hearing for driving while his license was suspended or revoked. A search of the vehicle produced two pistols and ammunition for those weapons. He was arrested on the following charges: possessing, purchasing, owning or controlling a firearm or ammunition by a person prohibited subject to Family Court PFA order (3 counts); carrying a concealed deadly weapon (2 counts); criminal contempt of a domestic violence protective order; and driving while suspended or revoked.

State v. Buchanan, Del. Super., Def. ID# 0803017116.

On March 24, 2008, the Grand Jury indicted Buchanan on combined charges from the January 26, 2008, arrest and the March 13, 2008, arrest. Specifically, the indicted charges were: burglary in the third degree (which was an amended charge from that of burglary in the second degree on January 26, 2008); possession of a firearm during the commission of the felony of burglary in the third degree (an added charge from the January 26, 2008 events); criminal contempt (on January 26, 2008); resisting arrest (on January 26, 2008); criminal mischief (on January 26, 2008); carrying a concealed deadly weapon (2 counts from March 13, 2008); and possession of a deadly weapon by a person prohibited (2 counts of a firearm and 1 count of ammunition from March 13, 2008).

In March, 2008, Buchanan was found guilty of two charges in Washington, D.C.: first

degree identity theft by fraud or impersonation for using Barbara's personal information to obtain monies and contempt for contacting Barbara by sending e-mails, text messages and placing telephone calls to her in violation of an order issued by a District of Columbia Superior Court Judge or Magistrate.

In a letter dated April 1, 2008, filed with the Court of Chancery in the pending civil case, Buchanan asked the Chancery Court to issue an injunction regarding malicious prosecution by the Department of Justice.

The Chancery Court reviewed Buchanan's pleadings and concluded that to the extent he has stated claims, they are for replevin or for the torts of trespass or conversion. The Court also noted that Buchanan seeks tort damages against the State of Delaware under 42 U.S.C. § 1983. It further ruled that the equitable relief Buchanan sought was not available to him. Thus, the Chancery Court dismissed the case, without prejudice, for lack of jurisdiction.

Buchanan then transferred the action to this court. In a document filed with this court, which appears to amend the original complaint filed with Chancery Court, Buchanan includes Barbara as a defendant. In this pleading, he asserts that his arrests were beyond the authority and jurisdiction of the State Police and Richards. He alleges that Richards coordinated his arrest on January 3, 2008. He also asserts that all of the defendants, including Barbara, took his personal property. He alleges the arrests and seizures of his property resulted in his wrongful ejection from the property. He asserts his constitutional rights have been violated. He maintains he suffered malicious prosecution, tort, false arrest, deprivation of rights, and emotional harm.

To recap, Buchanan makes the following allegations in the combined original complaint and amended complaint. He complains of trespass against Wallace and Richards for going onto

his property on January 4, 2008, and January 26, 2008, with the intent to remove property. He asserts that they “obtained automobile keys from the office of Buchanan Farms, Inc. [and] entered [Buchanan’s] locked personal vehicle with the intent of aggravated trespass [and] theft, and removed [personal property]....” He seeks a writ of ejectment. He asserts the following occurred: a tort, trespass, wrongful arrest, seizure without a warrant, defamation by State and Federal actors, all with collusion of Barbara. He maintains relief is available under 42 U.S.C. §§1983 and 1985. He further asserts the defendants’ actions in ejecting him from his property “and other associated acts” were wanton, negligent, willful and malicious. He maintains the Delaware State Police and Richards violated the 4th and 14th Amendments in that they exceeded their jurisdiction and authority by arresting Buchanan then removing property from his possession and then they failed to offer a post-deprivation remedy and disposed of such property without providing receipt, payment or replacement.

Buchanan filed a multitude of motions and pleadings with this Court in the criminal case which interweaved the pending civil case with the criminal case. *State v. Buchanan*, Def. ID# 0801031784, Docket Entries 20, 21, 26, 27, 29, 33, 36, 41, 43. Buchanan attempted to obtain, in the criminal filings, discovery related to his civil case. *Id.*, Docket Entry 20. Buchanan asserted that his bond was increased in retaliation for him filing this civil suit. *Id.*, Docket Entry 33. He also maintained that the State, in filing these criminal charges, was attempting to evict him from his property. *Id.*, Undocketed document which was filed with the Supreme Court and captioned “Answer to `Answer and Motion to Dismiss’”. He argued the civil and criminal matters should be combined. *Id.*, Docket Entry 33. Despite the fact he was arrested on the first set of charges before he filed his civil suit, he argued the State was estopped from pursuing the criminal matters

because it was pursuing the criminal matters to preclude him from obtaining recovery in the civil case. *Id.*, Docket Entries 20, 26, 29, 43. Finally, he argued that trial counsel in the criminal matter was ineffective because he cannot represent him in the civil suit. *Id.*, Docket Entries 27, 33, 36, 41.

Even though he had not obtained service over any of the defendants, Buchanan sought discovery in the civil matter and in the criminal matter, something which is prohibited. Also, it was clear from the filings that Buchanan was seeking to harass the arresting officer, Barbara and Richards and that he was attempting to control the outcome of the criminal proceedings through this civil proceeding. Consequently, I ruled that this civil action would be stayed until there was a final resolution of the matters in *State v. Buchanan*, Def. ID# 080103174. *Buchanan I* at 8-9.

After a jury trial in the criminal proceedings, Buchanan was found guilty of the following charges: burglary in the third degree; criminal contempt, resisting arrest, carrying a concealed deadly weapon (2 counts), and possession of a deadly weapon by a person prohibited (2 counts of a firearm and 1 count of ammunition). The jury found him not guilty on the charges of possession of a firearm during the commission of the felony of burglary in the third degree and criminal mischief.

Buchanan appealed. On appeal, the Supreme Court affirmed all of the judgments but for the burglary in the third degree conviction. *Buchanan v. State*, 981 A.2d 1098 (Del. 2009). The charge of burglary in the third degree (entering a building on his marital home property) was based upon violating the PFA. The Supreme Court ruled as follows:

A violation of an order of protection prohibiting entering into a premise squares with the elements of Criminal Contempt (violation of the Order itself) or Criminal Trespass (related to the Order's prohibition). If Buchanan had intended to commit

an additional crime upon entry, then that might establish Burglary. But, violating a court order, without more, cannot provide the predicate offense for Burglary, because no evidence suggests that at the time Buchanan entered unlawfully, he intended to commit an additional crime while occupying his own property. Therefore, we **REVERSE** the Third Degree Burglary conviction. [Footnote and citations omitted.]

Id. at 1103.

The criminal matter is final.

The sale of the two pieces of property occurred on July 15, 2008. *Richards v. Buchanan*, 2009 WL 2424647 (Del. Fam. Ct. April 8, 2009). The Family Court entered an order on April 8, 2009, regarding the distribution of funds received from the sale of the two pieces of property. *Id.*

As noted earlier, Buchanan has an extensive history of filing frivolous and malicious litigation against parties who have been involved in his divorce proceedings and the proceedings ancillary thereto. *Buchanan v. Gay*, 2006 WL 2709401, *2 (Del. Super. Sept. 21, 2006), *rearg. den.*, (Del. Super. Oct. 13, 2006), *aff'd*, 929 A.2d 783, 2007 WL 1454884 (Del. May 17, 2007) (TABLE); *Buchanan v. Gay*, 2008 WL 902936, *2 (Del Super. March 10, 2008). In the latter case, Buchanan also filed frivolous claims against his bankruptcy attorney and his ex-wife's attorney. Additionally, he sought to obtain relief from Family Court decisions by filing legally meritless actions in the Supreme Court, *In re Buchanan*, 937 A.2d 139, 2007 WL 3361328 (Del. Nov. 14, 2007); Chancery Court, *Buchanan v. Buchanan*, Del. Ch., No. 2190, Chandler, C. (May 31, 2006); and Superior Court, *Buchanan v. Buchanan*, 1006 WL 1921993 (Del. Super. July 7, 2006). He sought to prevent the Family Court orders from going into effect by filing at least three bankruptcy proceedings, the latest in 2009. Because he filed so many pleadings in the Family Court, most of which Family Court deemed "constituted a form of harassment," the Family Court had to enter an Order of Limitation which "defined the nature of petitions and allegations that the

Family Court would not accept.” *Richards v. Buchanan*, 2009 WL 2424647, *5 (Del. Fam. Ct. April 8, 2009). Buchanan’s relentlessly litigated the Family Court matters in the Supreme Court. That court noted in an order denying Buchanan’s request for a writ of mandamus that Buchanan had filed at least eight separate actions in the Supreme Court “over the past several months, all of which stem from his dissatisfaction with the Family Court’s disposition of his and his former wife’s marital property.” *In re Buchanan*, 957 A.2d 1, 2008 WL 4057923, *1 (Del. Sept. 2, 2008). The Court went on to find his repetitive and excessive filings to constitute an abuse of process. *Id.*

The current suit is no different from Buchanan’s other frivolous and malicious proceedings. He filed it in an attempt to delay the criminal proceedings against him, to prevent the Family Court orders from being effected, and to harass the parties involved in the criminal prosecution and the Family Court matters. Thus, I dismiss this complaint on the ground that it is a malicious proceeding.

Alternatively, Buchanan has failed to state a claim upon which relief can be granted.

I set forth the claims below and address them.

Buchanan makes a claim of trespass against Wallace and Richards. Three elements must be established for a claim in trespass: “(1) the plaintiff must have lawful possession of the land; (2) the defendant must have entered on the plaintiff’s land without consent or privilege; and (3) the plaintiff must show damages.” *Williams v. Manning*, 2009 WL 960670, *8 (Del. Super. March 13, 2009). Buchanan did not have lawful possession of the land as of January 3, 2008, and Wallace and Richards were on the property thereafter with the permission of Barbara. This claim fails.

Buchanan seeks a writ of ejectment. He is not entitled to that relief because the property has been sold and he no longer has any ownership interest in the property.

He asserts the defendants' actions in ejecting him from his property "and other associated acts" were wanton, negligent, willful and malicious. Buchanan had been ejected pursuant to valid orders of the Family Court. There is no basis for this claim. He argues that property was seized without a court order or warrant and the seizure resulted in ejectment of Buchanan and his business from his property without due process, notice or cause. This allegation is factually meritless. Buchanan previously had been ejected from the marital home and the farm property pursuant to a valid court order. He has no claim against any of the defendants based on his assertions of unlawful ouster.

He argues defamation by State and Federal actors. Buchanan is required to plead five elements to state a defamation claim:

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 communications' defamatory character; and 5) injury.

Read v. Carpenter, 1995 WL 945544, *2 (Del. Super. June 8, 1995), *rearg. den.*, 1995 WL 945548 (Del. Super. June 23, 1995), *aff'd. of den. of rearg.*, 670 A.2d 1340 (Del. 1995).

Buchanan has not pled any elements. Thus, this claim is dismissed for failure to state a claim upon which relief may be granted.

Buchanan asserts he was arrested without a warrant and thus, his arrests were false. A false arrest is an unlawful arrest. *Schaffer v. Davis*, 1990 WL 81892, *2 (Del. Super. June 12, 1990). The facts clearly have established his arrests were valid. Buchanan was arrested on January 3, 2008, on an outstanding fugitive warrant. Thus, there was a warrant for his arrest in

this situation. His arrest on January 26, 2008, occurred when the police officers caught Buchanan in the act of violating a Family Court order. His final arrest on March 13, 2008, also occurred when the arresting officer caught Buchanan in the act of committing crimes. The police were statutorily authorized to arrest Buchanan in these situations without a warrant. 11 *Del. C.* § 1904.⁶ Buchanan has no factual basis to assert a claim of unlawful or false arrest.

Buchanan claims malicious prosecution. 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**

⁶In 11 *Del. C.* § 1904, it is provided in pertinent part as follows:

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor:

- (1) In the officer's presence;
- (2) Out of the officer's presence and without the State, and if law enforcement officers of the state where the misdemeanor was committed request an arrest and the accused will not be apprehended unless immediately arrested;

- (4) Out of the officer's presence and within the State for any misdemeanor involving physical injury ...;
- (5) Out of the officer's presence and within the State for a violation of a protective order issued by Family Court or a court of any state, territory, or Indian nation in the United States....

(b) An arrest by a peace officer without a warrant for a felony, whether committed within or without the State, is lawful whenever:

- (1) The officer has reasonable ground to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed or
- (2) A felony has been committed by the person to be arrested although before making the arrest the officer had no reasonable ground to believe the person committed it.

therein, the plaintiff in this action for malicious prosecution.

(4) There must have been malice in instituting the former proceedings.

(5) There must have been want of probable cause for the institution of the former proceedings.

(6) There must have been injury or damage resulting to the plaintiff from the former proceedings. [Emphasis added.]

Stidham v. Diamond State Brewery, Inc., 21 A.2d 283, 284 (Del. Super. 1941). Buchanan has no claim for malicious prosecution because he was convicted on charges from each of his arrests. Since none of the proceedings terminated in his favor, he cannot establish a claim of malicious prosecution. This claim fails.

Buchanan claims the defendants deprived him of his access to the Court of Chancery by having him arrested. That assertion is factually and legally frivolous.

He asserts that defendants have failed to respond to subpoenas in other courts and the Department of Justice entered into Family Court proceedings as a third party. There is no remedy in this Court for defendants failing to respond to subpoenas in other courts. There is no remedy in this Court, either, for addressing the situation where the Department of Justice entered its appearance in Family Court when Buchanan illegally sought to bring Corporal Wallace before the Family Court in the domestic matters.

Although he conclusively claims he is entitled to relief under 42 U.S.C. §§1983 and 1985, Buchanan does not set forth any valid claims which entitle him to such relief.

Buchanan claims the defendants deprived him of his rights to the marital property. That claim is factually and legally frivolous.

Buchanan makes a multitude of assertions regarding the seizure of various pieces of property.

To the extent the Delaware State Police seized items when it arrested Buchanan, he may pursue the return of those items in the criminal proceeding pursuant to Superior Court Criminal Rule 41(e).⁷ Buchanan has filed a motion in the criminal matter which seeks the return of personal property. Some of this property is not property that was seized by the Delaware State Police. However, that is an issue which will be dealt with in the criminal matter. If he is entitled to lawful possession of any seized property, then it will be returned to him. If he is not entitled to it, then the return shall be denied.

Buchanan was well aware, from previous litigation, that he was required to litigate all aspects of the property division within the Family Court. *Buchanan v. Buchanan*, 2006 WL 1921993 (Del. Super. July 7, 2006). Family Court entered an order dated April 4, 2006, regarding the personal property. *Richards v. Buchanan*, 2009 WL 2424647 (Del. Fam. Ct. April 8, 2009). Family Court also entered other orders pertaining to Buchanan vacating the property so that it could be sold. Buchanan failed to cooperate. Thus, the Family Court entered an order of February 5, 2007, evicting and excluding Buchanan from the property and ordering possession of the property to Barbara to arrange the sale of it. On January 3, 2008, the order was reinstated. Barbara entered the property and began preparing it for sale. To the extent there was non-marital personal property which Barbara and her husband gathered, Buchanan had the right to petition the Family Court for its return. Family Court had jurisdiction over the property and Buchanan

⁷This rule provides:

(e) *Motion for return of property.* A person aggrieved by the deprivation of property seized by the police may move the court for the return of the property on the ground that such person is entitled to lawful possession of the property. The motion may be made in the county where criminal proceedings are pending for which the state is holding the property....

should have dealt with the personal property within the context of the Family Court matter. Instead, as he previously had done, he sought to muddle things and skirt the Family Court orders by bringing suit in this Court. This claim seeking the return of property is dismissed for lack of jurisdiction.

Buchanan has otherwise not made any valid claims.

Buchanan has abused the process of the courts in his relentless attempts to prevent the sale of marital property, to affect property division orders of the Family Court, and to prevent criminal prosecutions. This action was nothing more than another act of abusing the process of the court. The battle is over. The marital property has been sold. The criminal convictions have been obtained. Buchanan may not continue to harass his ex-wife, her husband, and the law enforcement officers with a civil suit. The complaint is dismissed with prejudice.

IT IS SO ORDERED.