Third District Court of Appeal

State of Florida

Opinion filed November 27, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-0447
Lower Tribunal No. 14-25513

Lourdes Alvarez-Mena and Darren Todd Mena,
Appellants,

vs.

Miami-Dade County, and Detective Miguel Garcia, and Detective Evelyn Guas,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Antonio Marin, Judge.

Philip D. Parrish, P.A., and Philip D. Parrish, for appellants.

Abigail Price-Williams, Miami-Dade County Attorney, and Rachel C.G. Walters, Assistant County Attorney, for appellees.

Before SALTER, and LINDSEY, JJ., and LEBAN, Senior Judge.

LINDSEY, J.

Darren Mena and Lourdes Alvarez-Mena appeal a final summary judgment entered in favor of Miami-Dade County and Detectives Evelyn Guas and Miguel Garcia. Based on the record facts, which we view in a light most favorable to the Menas, we find the County and the Detectives entitled to final summary judgment as a matter of law with respect to Darren's false arrest and malicious prosecution claims because there was probable cause for his arrest. But because we find there are questions of fact as to the probable cause for Lourdes's arrest, we reverse the summary judgment on her claims for false arrest and malicious prosecution. Moreover, we affirm the judgment with respect to the Menas' negligent reporting claim. Finally, as to the Menas' battery claim, we also reverse because there are genuine issues of material fact.

I. BACKGROUND

On August 20, 2012, Darren Mena and Lourdes Alvarez-Mena, arrived at PreTech Academy in Miami, along with two of their children, to pick up their youngest child after his first day of preschool. A sequence of unfortunate events, the consequences of which were undoubtedly not envisioned by the Menas when they woke up that morning, resulted in their being involved in an altercation with Detectives Miguel Garcia and Evelyn Guas.

There are wildly varying versions of what transpired, but the following are uncontested record facts. While Darren waited in the car, Lourdes went into the

school to pick up their child. Detectives Garcia and Guas were also in the school parking lot that day in an unmarked vehicle and wearing civilian clothing. Someone behind the Detectives honked a horn, and the Detectives moved their vehicle and circled the parking lot. Darren was parked in a designated accessible parking space for persons with disabilities when Detective Garcia approached and asked to see his disabled parking permit and driver's license.[1] Detective Garcia then asked Darren why he had honked his horn. The parties dispute exactly what transpired during this exchange, but Darren admitted that his vehicle, a Ford Expedition, was equipped with a "really loud" air horn, "one of those horns that you put on the 18-wheelers." Darren also admitted that he honked his horn while Detective Garcia was talking to him, and that Garcia "got shaken up by the sound of my horn . . . ."

Following a heated exchange, Detective Garcia removed Darren from the vehicle and placed him under arrest. As this was going on, Lourdes exited the preschool and saw her husband being removed from his vehicle. According to Lourdes:

> I'm trying to ask this gentleman [Garcia], that's pulling [Darren] out of the car, what he's doing and why he's doing that, and while I'm asking him [Guas] accuses me of hitting her partner. Which is what she said "You just hit

[1] "A law enforcement officer or a parking enforcement specialist has the right to demand to be shown the person's disabled parking permit and driver license or state identification card when investigating the possibility of a violation of this section." § 316.1955(1)(d), Fla. Stat. (2019).

> my partner, I'm arresting you too", and she threw me against the van was the first thing she did; the van was parked next to our vehicle.

Ultimately, both Darren and Lourdes were arrested and charged with battery on a law enforcement officer, resisting an officer with violence, disruption of a school function, and breach of the peace. Upon the State's dismissal of the charges, the instant lawsuit followed.[2]

In the operative amended complaint, the Menas alleged claims for malicious prosecution against Detectives Garcia and Guas and claims, vicariously, against the County for false arrest, battery, and negligent reporting of a crime based on Valladares v. Bank of America, 197 So. 3d 1 (Fla. 2016). The County and the Detectives moved for summary judgment on the basis that there was probable cause to arrest the Menas. As such, they argued, the Menas' claims necessarily fail as a matter of law. In opposition, the Menas, relying heavily on the testimony of Leslie Castro, the school security guard, contended that genuine issues of material fact precluded summary judgment. After conducting an evidentiary hearing, the trial court agreed with the County and the Detectives, finding probable cause for the Menas' arrests. This appeal followed.

[2] In the criminal context, when the State declines to prosecute, it dismisses the charges by way of a nolle prosse. Nolle prosse is an abbreviated version of *nolle prosequi*, a Latin phrase which means to abandon a suit or prosecution. See *Nolle Prosequi*, Black's Law Dictionary (11th ed. 2019).

II. STANDARD OF REVIEW

We review a trial court's ruling on a motion for summary judgment de novo. Cascar, LLC v. City of Coral Gables, 274 So. 3d 1231, 1233 (Fla. 3d DCA 2019) (citing Volusia City v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)).

> Summary judgment is proper only where the moving party shows conclusively that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. When the nonmoving party has alleged affirmative defenses, the moving party must conclusively refute the factual bases for the defenses or establish that they are legally insufficient. "The burden of proving the existence of genuine issues of material fact does not shift to the opposing party until the moving party has met its burden of proof."

Johnson v. Deutsche Bank Nat'l Trust Co. Americas, 248 So. 3d 1205, 1207-08 (Fla. 2d DCA 2018) (quoting Coral Wood Page, Inc. v. GRE Coral Wood, LP, 71 So. 3d 251, 253 (Fla. 2d DCA 2011)).

III. ANALYSIS

On appeal, the Detectives and the County contend there are no genuine issues of material fact as to there being probable cause for the Menas' arrests; therefore, the trial court's entry of summary judgment in favor of the Detectives and the County should be affirmed. We agree summary judgment was appropriate as to Darren's malicious prosecution and false arrest claims because, based on the undisputed facts, there was probable cause to arrest him. However, we disagree that summary judgment was appropriate as to Lourdes's malicious prosecution and false arrest

claims. We also agree that summary judgment was proper as to the Menas' claim for negligent reporting of a crime. With respect to the Menas' battery claim, we reverse the final summary judgment because there are genuine issues of material fact.

A. Malicious Prosecution and False Arrest

A malicious prosecution action requires the plaintiff to prove, among other elements, the absence of probable cause. See Miami-Dade County v. Asad, 78 So. 3d 660, 664 (Fla. 3d DCA 2012) ("The law in Florida is well settled that a malicious prosecution action requires the plaintiff to prove **all** of the following six elements: (1) a criminal or civil judicial proceeding was commenced against the plaintiff; (2) the proceeding was instigated by the defendant in the malicious prosecution action; (3) the proceeding ended in the plaintiff's favor; (4) the proceeding was instigated with malice; (5) **the defendant lacked probable cause**; and (6) the plaintiff was damaged." (second emphasis added) (citing Kalt v. Dollar Rent–A–Car, 422 So.2d 1031, 1032 (Fla. 3d DCA 1982))). Similarly, it is well settled that the existence of probable cause is a defense to state law claims for false arrest. See id. at 669; Mailly v. Jenne, 867 So. 2d 1250, 1251 (Fla. 4th DCA 2004) ("Probable cause is an affirmative defense to a false arrest claim."). In short, the Menas' claims for malicious prosecution and false arrest live or die based on whether probable cause existed for their arrests.

Probable cause exists when "the totality of the facts and circumstances within an officer's knowledge sufficiently warrant a reasonable person to believe that, more likely than not a crime has been committed." State v. Blaylock, 76 So. 3d 13, 14 (Fla. 4th DCA 2011) (quoting League v. State, 778 So. 2d 1086, 1087 (Fla. 4th DCA 2001)). Moreover, probable cause is a "practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Maryland v. Pringle, 540 U.S. 366, 370 (2003) (citations and internal quotation marks omitted).[3]

Finally, when the facts material to a probable cause determination are undisputed, the court determines the existence of probable cause as a matter of law. City of Pensacola v. Owens, 369 So. 2d 328, 328 (Fla. 1979) ("Where the facts are

[3] As Justice Scalia, writing for the majority, explained in Ill. v. Rodriguez, 497 U.S. 177, 185-86 (1990):

> It is apparent that in order to satisfy the "reasonableness" requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable. As we put it in Brinegar v. United States, 338 U.S. 160, 176, 93 L. Ed. 1879, 69 S. Ct. 1302 (1949): "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability."

undisputed, as is the case here, the court must determine probable cause."); LeGrand v. Dean, 564 So. 2d 510, 512 (Fla. 5th DCA 1990).

Here, the undisputed facts established the existence of probable cause for Darren's arrest. It is undisputed that Darren honked his air horn in Detective Garcia's presence while in the preschool parking lot. Darren admitted that his "really loud" air horn was the same type that is found on "18-wheelers" and that when he honked, Detective Garcia was "shaken up" by the sound. This was sufficient to give rise to probable cause to arrest Darren for a violation of the Miami-Dade County noise ordinance.[4] See MIAMI-DADE CTY., FLA., CODE OF ORDINANCES § 21-28 (2019) ("It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise."); see also § 901.15, Fla. Stat. (2019) ("A law enforcement officer may arrest a person without a warrant when: (1) The person has committed a felony or

[4] The Menas argue that the plain language of the ordinance does not apply because the horn was sounded on private property and not on a public street. While it is true that the ordinance provides a list of specific acts that "are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this section," which includes the sounding of any horn "on any street or public place of the County, except as a danger warning[,]" this list is explicitly nonexclusive. MIAMI-DADE CTY., FLA., CODE OF ORDINANCES § 21-28 (2019) ("[T]his enumeration shall not be deemed to be exclusive . . . ."). Pursuant to the plain language of the statute, Darren's aftermarket air horn falls within the general prohibition of "any unreasonably loud, excessive, unnecessary or unusual noise." See id.

misdemeanor or violated a municipal or county ordinance in the presence of the officer.").

Although the undisputed facts establish probable cause to arrest Darren, we are unable to conclude that the undisputed facts establish probable cause to arrest Lourdes. According to the record facts, which we must view in a light most favorable to the Menas, when Lourdes exited the preschool with her children, she saw Detective Garcia, whom she did not know and who was not in uniform, pulling her husband from his truck. Although Detective Guas's account differs significantly, she agreed that Lourdes "didn't know we were police officers because we were in plain clothes." According to Lourdes, as she was attempting to ask Detective Garcia why he was removing Darren from the truck, Detective Guas accused her of hitting Detective Garcia and arrested her. Both Lourdes and Castro, the school security guard, stated that Lourdes did not touch either officer. Based on these facts, we cannot conclude, as a matter of law, that there was probable cause to arrest Lourdes, and we therefore reverse the final summary judgment with respect to false arrest and malicious prosecution as to Lourdes.

B. Negligent Reporting of a Crime

The Menas allege the Detectives submitted false reports that were intended to result in a criminal prosecution, and they urge us to apply Valladares to uphold their claim for the tort of negligent reporting of criminal activity. See 197 So. 3d 1. In

Valladares, a bank teller triggered a silent alarm after she mistakenly believed a customer matched the description of a bank robber. Id. at 2. Although nothing suspicious occurred during the 15 to 20 minutes that elapsed while the customer attempted to cash a check, the teller failed to do anything to cancel the alarm. Id. at 3. The customer was subsequently injured when law enforcement officers stormed the bank and attempted to arrest him. Id. at 4. The Florida Supreme Court held that "negligence is a valid cause of action for injuries arising from mistaken reports *to law enforcement* when the conduct complained of demonstrates reckless, culpable conduct to the level of punitive damages." Id. at 14 (emphasis added).

As is clear from the holding in Valladares, a cause of action for negligent reporting may be available when mistaken reports are made *to law enforcement*. Here, however, the false reporting allegedly came from law enforcement itself. In other words, the Menas, without citation to authority, seek to extend Valladares to situations involving mistaken reports by law enforcement. We decline to do so.

We note that the Valladares Court was concerned with turning "a blind eye to those who cannot allege malicious prosecution, but nonetheless sustain injuries due to incorrect reports to police." Id. at 10-11. In the context of false reports made by law enforcement, however, there is no need for a cause of action for negligent reporting because such behavior potentially gives rise to a malicious prosecution claim. See Aulicino v. McBride, No. 6:16-cv-878-Orl-31TBS, 2017 WL 2986192,

at *2 (M.D. Fla. July 13, 2017) ("The tort of negligent reporting is intended to provide redress for injuries suffered due to incorrect reports of criminal activity that do not result in arrest or prosecution (and thereby potentially give rise to a malicious prosecution claim)." (citing Valladares, 197 So. 3d at 10-11)). Here, the alleged false reports gave rise to the Menas' prosecution, and, in fact, the Menas recognized that there was a potential cause of action for malicious prosecution. Because this situation falls outside the scope of Valladares, we affirm the trial court's entry of summary judgment in favor of the County as to the claim of negligent reporting.

C. Battery

Lastly, we address the Menas' battery claim. The Menas assert that even if there was probable cause for their arrest, the use of excessive force can present a question of fact for the jury. We agree. See City of Homestead v. Suarez, 591 So. 2d 1125, 1126 (Fla. 3d DCA 1992) ("[E]ven if the arrest was valid, this would not justify the arguably excessive force used by [a police officer] to effect the arrest—and, accordingly, . . . a jury question was presented on the assault and battery count . . . ."). Viewing the facts in a light most favorable to the Menas, as we must, we find that there are genuine issues of material fact as to whether excessive force was used during Darren's arrest. And because we have determined that there are genuine issues of material fact with respect to the existence of probable cause for Lourdes's arrest, we also reverse as to her battery claim.

IV. CONCLUSION

Because there are no genuine issue of material fact precluding summary judgment as to Darren's malicious prosecution and false arrest claims, we affirm, but we reverse and remand as to Lourdes's claims for malicious prosecution and false arrest. Moreover, we affirm the judgment as to the Menas' claim of negligent reporting because this cause of action is not available for alleged false reporting by law enforcement. Finally, viewing the evidence in the light most favorable to the Menas, we reverse the trial court's entry of judgment as to the battery claim and remand for further proceedings.

Affirmed in part; reversed and remanded in part.