

IN THE COURT OF APPEALS OF IOWA

No. 8-066 / 07-0471
Filed February 27, 2008

DENNIS A. SCHNEIDER,
Plaintiff-Appellant,

vs.

DEBRA RODGERS,
n/k/a DEBRA RODGERS KNIGHT,
Defendant-Appellee.

Appeal from the Iowa District Court for Palo Alto County, Patrick M. Carr,
Judge.

Dennis Schneider appeals the district court's ruling dismissing his action
against his former wife, Debra Rodgers, for malicious prosecution and fraud.

AFFIRMED.

T.J. Braunschweig, Algona, for appellant.

Ned Stockdale, Estherville, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

HUITINK, P.J.

Dennis Schneider appeals the district court's ruling dismissing his action against his former wife, Debra Rodgers, for malicious prosecution and fraud. We affirm.

I. Background Facts and Prior Proceedings

Debra and Dennis's son, Doug, was born in January 1983. Doug struggled in school, so Dennis and Debra decided to have him repeat kindergarten. Even though Doug attended speech-language therapy, he still continued to have difficulties at school. Doug was eventually referred to the University of Iowa Child Development Clinic. Doug was diagnosed with developmental reading disorder (dyslexia), expressive language problems, and uneven cognitive development with low average verbal intellectual abilities and average performance intellectual abilities. This diagnosis led to specialized treatment for his learning disabilities. With daily assistance in the school resource room, Doug was able to progress through school in a traditional classroom.

In 1998 Debra and Dennis dissolved their marriage. A written stipulation awarded both parents joint legal custody, while Dennis was awarded physical care of Doug and his other sibling. The stipulation also stated that Debra would not pay child support because "Debra is relinquishing her claim for any spousal support and has made certain concessions in the property division part of this settlement to more than compensate Dennis for the child support he would be entitled to under the Iowa Child Support Guidelines."

In September 2000 Doug and Dennis got into an argument, and Doug moved out to live with Debra. Doug was a seventeen-year-old junior in high school when he moved in with his mother. Dennis agreed to the new living arrangement, but did not provide any financial assistance to Debra or Doug.

On March 16, 2001, Debra filed a petition to modify the dissolution decree. Debra requested physical care of Doug to mirror the current living arrangement and also requested temporary and permanent child support. Doug was eighteen-years-old when Debra filed the petition.

The matter did not proceed to a hearing until August 20, 2001. Dennis came to this hearing without an attorney. After it received brief testimony from Debra and Dennis, the court entered an order granting Debra temporary physical care and \$640 of monthly support pursuant to the Iowa child support guidelines. In doing so, the court made several factual findings: (1) Doug was eighteen years old and a senior in high school, (2) Debra earned approximately \$18,500 per year, and (3) Dennis's annual adjusted gross income was approximately \$60,500.

Shortly thereafter, Dennis acquired an attorney and filed an "Application for Hearing." In this application, Dennis argued the court erred in issuing an order regarding Doug's physical care because Doug was eighteen years old at the time the order was issued and therefore not subject to the jurisdiction of the court. Dennis also argued that the court erred in requiring him to pay temporary child support to Debra because it violated Iowa Code section 598.1(9) (2001).¹

¹ Section 598.1(9) identifies two specific exceptions where a parent's obligation to provide support may continue beyond the age of eighteen. The first exception is

While this application was pending, Dennis filed a motion for summary judgment asking the court to declare the modification “moot.” Debra responded with a cross-motion for summary judgment asking the court to conclude that Doug was eligible for child support. The fighting issue in these motions was whether Doug’s learning disability qualified as a “mental disability” under Iowa Code section 598.1(9) so as to make him dependent on his parents.

On January 23, 2002, a second district court judge entered an order on the pending “Application for Rehearing.” This judge determined that the aforementioned learning disability made Doug dependent on Debra and Dennis and made them legally responsible to provide him support until he graduated from high school. However, the judge went on to conclude that the previous judge erred when he utilized the child support guidelines to determine the amount of monthly support. Because there was insufficient information to determine Doug’s monthly living expenses, the judge was “unable to determine whether the guideline support amount determined by the court in its August 20, 2001 order was proper” and therefore “canceled and rescinded” the August 20, 2001 order.

On February 5, 2002, the first district court judge entered a ruling on the pending motions for summary judgment. This judge concluded, as did the judge

for a child who is between the ages of eighteen and nineteen years who is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.
Iowa Code § 598.1(9). The second exception is “for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.”
Id. Dennis argued that Doug did not satisfy either exception.

ruling on the “Application for Rehearing,” that Doug’s learning disability made him “dependent” for purposes of section 598.1(9).

On March 27, 2003, more than two years after the petition for modification had been filed, the case came before a third judge for trial. By this time, Doug had already graduated from high school, moved back into his father’s house, and started attending classes at a local community college. The judge ultimately dismissed the petition for modification, noting Doug “does not and never has had a mental disability.” The judge also denied all requests for attorney fees.

On July 14, 2003, Dennis filed the present action alleging Debra had perpetrated fraud when filing the petition for modification. He also alleged abuse of process and malicious prosecution. Debra counterclaimed for abuse of process and intentional infliction of emotional distress. Through various pretrial rulings, the court dismissed most of these claims and only preserved Dennis’s claims against Debra for malicious prosecution and fraud.

The matter was tried to the court on August 15, 2006. The main thrust of Dennis’s claims was that Debra intentionally misled the court and tried to prolong the proceedings by claiming Doug had a mental disability, even though she really did not believe he was mentally disabled. After a full trial, the district court dismissed Dennis’s petition. In doing so, the court stated

The position taken by Debra in seeking temporary child support and in resisting Dennis’s motion to vacate the temporary child support order, and in resisting Dennis’s motion for summary judgment and seeking her own, all appear to the Court to be well within the range of zealous advocacy.

The court determined Dennis did not prove his malicious prosecution claim because Debra had refuted his claim that there was no probable cause for her

pursuit of these claims. The court also determined Dennis did not prove his fraud claim because he failed to prove Debra knowingly made a material misrepresentation.

On appeal, Dennis claims the court erred in not finding that Debra committed fraud and malicious prosecution. He claims the court should have awarded him \$3200 for the temporary child support he paid to Debra, \$7393.56 for his attorney fees in defending Debra's modification action, and punitive damages. Debra refutes the claims, and also contends the appeal must be dismissed because Dennis did not file an application to certify the appeal.

II. Standard of Review

Our review in this case is for correction of errors at law. See *Royce v. Hoening*, 423 N.W.2d 198, 200 (Iowa 1988) ("In actions for malicious prosecution . . . our review is limited to correction of errors at law."); *Cornell v. Wunschel*, 408 N.W.2d 369, 374 (Iowa 1987) (reviewing a fraudulent misrepresentation claim for errors at law).

III. Merits

We will assume, *arguendo*, that Dennis was not required to file an application to certify this appeal.

A. Malicious Prosecution

The basis of an action for malicious prosecution consists of the wrongful initiation of an unsuccessful civil or criminal proceeding with malice and without probable cause.² *Sarvold v. Dodson*, 237 N.W.2d 447, 448 (Iowa 1976). "The

² Specifically, the elements of malicious prosecution are: (1) a previous prosecution; (2) instigation of that prosecution by the defendant; (3) termination of that prosecution by

remedy's primary purpose is to provide relief in those cases in which a plaintiff brings a meritless suit and has an improper motive for bringing it." *Wilson*, 464 N.W.2d at 259. Dennis claims the court erred when it determined Debra had probable cause for pursuing her modification claim. We disagree.

Probable cause for a civil action is defined as "knowledge of a state of facts which would lead a person of ordinary caution and prudence, acting conscientiously, impartially, reasonably, and without prejudice, to believe that the suit is justified." *Brown v. Monticello Bank*, 360 N.W.2d 81, 87 (Iowa 1984).

Debra instituted the present modification action because she believed that Doug's decision to move out of Dennis's home prior to the completion of high school constituted a substantial change in circumstances not contemplated in the original decree. These circumstances were not fleeting; Doug lived with Debra for six months before she filed the petition. Dennis had paid nothing for Doug's support during the preceding six months. While Doug was of "legal age" because he was eighteen years old, his learning disability had hampered his education so that he was only a junior in high school. Because he was in school during the day, he did not have a full-time job and relied on his parents for food, clothing, and shelter. For that reason, Debra claimed this learning disability was a mental disability that made him dependent on his parents for care. Specifically, she argued that this learning disability qualified for the statutory mental disability exception to the general rule that parents are no longer financially responsible for a child that has reached "legal" age. See Iowa Code §§ 598.1(6), (9).

acquittal or discharge of the plaintiff; (4) want of probable cause; (5) malice on the part of the defendant for bringing the prosecution; and (6) damage to the plaintiff. *Wilson v. Hayes*, 464 N.W.2d 250, 259 (Iowa 1990).

Because section 598.1(9) does not define a “mental disability” for purposes of making someone dependent on their parents for support, we find it was not unreasonable for Debra to make this argument in district court.³ Indeed, the rationale behind this argument was so persuasive that two separate judges agreed with Debra’s position and found that Doug’s learning disability made him dependent pursuant to section 598.1(9). The mere fact that a third judge ultimately rejected this argument and found Doug’s learning disability was not a mental disability does not mean she did not have probable cause to resort to a court to settle this dispute.⁴ See *Royce*, 423 N.W.2d at 201 (noting there was probable cause for a claim that survived summary judgment but was ultimately dismissed after a full trial). Because we find Debra had probable cause to seek a modification of the controlling decree, we conclude the district court properly dismissed Dennis’s claim for malicious prosecution.

B. Fraud

Dennis also claims Debra committed fraud because she misrepresented facts to the court and tried to mislead the court.

The elements for recovery in a fraud action are: (1) representation, (2) falsity, (3) materiality, (4) scienter, (5) intent, (6) justifiable reliance, and (7) resulting injury. *Smidt v. Porter*, 695 N.W.2d 9, 22 (Iowa 2005). The first, second, and third elements (representation, falsity, and materiality) are usually treated as one element and are referred to as fraudulent misrepresentation.

³ Our decision is limited to whether Debra had probable cause to file the petition for modification. We do not review whether the district court’s decision on the petition for modification was correct.

⁴ This same judge also denied Dennis’s request that Debra pay his attorney fees for having to defend against the petition for modification.

Arthur v. Brick, 565 N.W.2d 623, 625 (Iowa Ct. App. 1997). Dennis was required to prove these elements by a preponderance of the clear, satisfactory, and convincing evidence. *Smidt*, 695 N.W.2d at 22.

Dennis first claims Debra attempted to mislead the court at the August 21, 2001 hearing for temporary support because she did not inform the court that Doug was eighteen years of age. Dennis implies that Debra somehow tricked the court into awarding her temporary support even though Doug was eighteen years old.

We find this claim meritless. Debra listed Doug's birth date in her petition for modification and noted he was a junior in high school. Also, the court obviously knew that Doug was eighteen years old because it specifically included this fact in its order granting her temporary custody and support.

Dennis also claims that Debra made material misrepresentations of fact when she claimed that Doug's "mental disabilities" made him dependent on others for support, but refused to label her son as "mentally disabled." Our review of the record reveals that Dennis's attorney repeatedly tried to make Debra label her child as mentally disabled. Debra refused to do so. Instead, she steadfastly claimed that Doug's learning disability constituted a mental disability that made him dependent upon his parents because the learning disability put him in a unique position where he would not finish high school until months after he turned nineteen years old.

We find it reasonable that a mother would be willing to argue that her child's documented learning disability constitutes a form of mental disability, but would not be willing to simultaneously label her child as "mentally disabled." We

find nothing to conclude that any of Debra's statements or arguments throughout these proceedings constitute a material misrepresentation of fact. Likewise, we find no evidence to prove that she acted with the intent to deceive either Dennis or the court. Accordingly, we find Dennis failed to provide clear, satisfactory, and convincing evidence in support of his fraud claim.

IV. Conclusion

Having considered all issues raised on appeal, whether or not specifically addressed herein, we affirm the district court's conclusion that Dennis failed to prove his claims of fraud and malicious prosecution.

AFFIRMED.