IN THE COURT OF APPEALS OF IOWA

No. 8-933 / 08-0587
Filed March 26, 2009

MARTIN SCHNOOR,
Plaintiff-Appellant,

vs.

ROBERT DESKIN and
COUNTY OF WARREN,
Defendants-Appellees.

Appeal from the Iowa District Court for Warren County, Peter A. Keller, Judge.

Martin Schnoor appeals from the district court's ruling granting summary judgment in favor of defendant Robert Deskin. **AFFIRMED.**

Jeffrey M. Lipman of Lipman Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mark Hunacek and John Lundquist, Assistant Attorneys General, for appellees.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

I. Background Facts and Proceedings

In March 2004, Iowa State Trooper Robert Deskin conducted a traffic stop on Martin Schnoor and issued him a speeding ticket. Schnoor decided to contest the ticket and to represent himself. A friend, Craig Smith, advised him to subpoena information about the trooper's radar logs and to serve the subpoena on Trooper Deskin personally. On June 11, 2004, Schnoor called Deskin and informed him that he needed to serve Deskin personally with a subpoena. Deskin refused to arrange to meet Schnoor and told him to file the subpoena at the highway patrol post.

The next day, Schnoor found Deskin's address in the phone book and went to Deskin's home to serve the subpoena. Deskin was not home, but his spouse came to the door. Mrs. Deskin told Schnoor she did not want to take the papers and asked him to leave. Schnoor returned to his car and called Craig Smith for advice. Smith told Schnoor he might be able to leave the subpoena with Mrs. Deskin. Schnoor went back to the front door and asked Mrs. Deskin to accept the papers. She told Schnoor to leave and said he was harassing her and trespassing. Schnoor left.

Deskin notified his sergeant of this encounter. The sergeant called Schnoor and suggested that he could arrange with the sergeant's supervisor to serve the papers at the post on the following Monday. On Monday, however, the supervisor was not available, and Schnoor was unable to arrange to have the papers personally served.

Schnoor's friend, Craig Smith, offered to serve the subpoena for Schnoor. Schnoor drove Smith to Deskin's residence and waited in his vehicle while Smith attempted to serve the subpoena. Deskin was irate and refused to accept the subpoena.[1] Smith returned to Schnoor's vehicle.

The next day, Deskin reported Schnoor's conduct to the Warren County Attorney's office and demanded that Assistant County Attorney Jane Orlanes file charges against Schnoor. After consulting with County Attorney Gary Kendell, Orlanes filed a complaint and affidavit charging Schnoor with third-degree harassment and trespass stating:

> The defendant has called and approached the home of Trooper Deskin on several occasions after being told the proper procedure for service of a subpoena and in doing so has intimidated, annoyed, harassed and/or alarmed Trooper Deskin and his family, even after being specifically told not to, further the defendant has entered and or remained on Trooper Deskin's property several times.

District Associate Judge Richard Clogg determined that probable cause existed to issue an arrest warrant. Schnoor surrendered himself and was arrested. He pled not guilty and a Warren County jury acquitted him after trial.

Schnoor then brought an action against Deskin asserting a claim under 42 U.S.C. § 1983.[2] On November 27, 2006, Deskin filed a motion for summary judgment on the § 1983 claim. The court denied the motion, finding disputed

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[1] Needless to say, we do not condone Deskin's inappropriate reaction to service of process.

[2] Schnoor also brought actions against Warren County and Deputy Michael Morrison as well as claims for false imprisonment and malicious prosecution. The claims against the County and Deputy Morrison were dismissed on summary judgment based upon the county's immunity. Schnoor dismissed the claims against Deskin for false imprisonment and malicious prosecution after Deskin moved to dismiss alleging Schnoor's failure to first file a state tort claim.

facts on the issues of whether Deskin acted under color of law, whether Deskin acted maliciously, and whether Deskin acted on advice of the county attorney.

A year later, on November 21, 2007, Deskin filed a second motion for summary judgment. The district court found that Schnoor's arrest and detention were based upon a facially valid warrant, which established probable cause as a matter of law, and that Schnoor had not alleged deliberate falsehoods or reckless disregard for the truth by Deskin. Schnoor appeals, arguing the district court erred in granting Deskin's motion for summary judgment.

II. Standard of Review

We review the district court's decision on summary judgment for errors at law. *Stevens v. Iowa Newspapers, Inc*., 728 N.W.2d 823, 827 (Iowa 2007). Summary judgment is appropriate when the record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *In re Estate of Renwanz*, 561 N.W.2d 43, 44 (Iowa 1997). We review the evidence in the light most favorable to the nonmoving party. *Id*.

III. Section 1983

In order to prevail on his § 1983 claim, Schnoor must prove: (1) Deskin deprived him of a right secured by the constitution and laws of the United States; and (2) Deskin acted under color of state law. *Christenson v. Ramaeker*, 366 N.W.2d 905, 907 (Iowa 1985). The district court granted summary judgment on the first point, finding that Schnoor could not show that his rights were violated through false arrest and false imprisonment because he was detained under a facially valid arrest warrant. We agree.

Schnoor asserts that Deskin's unlawful actions occurred before the issuance of the warrant, and, therefore, Deskin cannot use the arrest warrant, which did not exist at the time of the actions at issue, to shield him from liability. This issue was addressed in *Christenson*, where the plaintiff alleged that a criminal investigator for the State "negligently failed to conduct an adequate investigation and was improperly motivated when he sought and obtained issuance of the warrant for his arrest." *Id.* at 906. Just as in Schnoor's case, the actions at issue occurred before the issuance of the arrest warrant. In *Christenson*, the Iowa Supreme Court affirmed summary judgment, finding that the plaintiff was properly arrested pursuant to a facially valid arrest warrant issued by a judge and that there was no evidence the defendant had intentionally or recklessly misstated facts.

Similarly, in *Kurtz v. City of Shrewsbury*, 245 F.3d 753 (8th Cir. 2001), a neighbor advised police of complaints regarding plaintiff's suspicious behavior. The plaintiff was subsequently arrested and alleged false arrest against the neighbor. *Kurtz*, 245 F.3d at 756. The United States Court of Appeals for the Eighth Circuit affirmed the district court's dismissal of plaintiff's claim because there was "probable cause to arrest and prosecute [plaintiff]." *Id.* at 758. Thus, Eighth Circuit case law establishes that a facially valid arrest warrant negates a § 1983 claim for false arrest or false imprisonment.

Schnoor asserts that Deskin should be liable for malicious prosecution because he initiated the proceedings. *See Bair v. Shoultz*, 233 Iowa 980, 983, 7 N.W.2d 904, 905 (1943) (holding that in determining whether a defendant is an instigator in a malicious prosecution case, "it is sufficient if his voluntary

participation in the prosecution starts the movement of the criminal machinery so that an arrest would probably follow"). The Eighth Circuit Court of Appeals held that a malicious prosecution claim does not establish a § 1983 cause of action because it does not allege a constitutional injury. *Kurtz*, 245 F.3d at 758. However, the majority of circuits have found that malicious prosecution may be actionable under § 1983 when "defendant's actions cause the plaintiff to be unreasonably 'seized' without probable cause, in violation of the Fourth Amendment." *Pitt v. D.C.*, 491 F.3d 494, 511 (D.C. Cir. 2007). However, as previously discussed, Judge Clogg signed the arrest warrant after determining that probable cause existed.

Schnoor does not claim that Deskin deliberately or recklessly included false information in his complaint to the county attorney. He does not provide any basis for the court to look behind the warrant in this case. *See Christenson*, 366 N.W.2d at 909. Accordingly, he does not present a claim that is actionable under § 1983.

AFFIRMED.