

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001860-MR

MING WEN CHEN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 14-CI-006065

MICHAEL PAWUL

APPELLEE

AND

NO. 2016-CA-001861-MR

ZHI XIANG JIANG

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
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MICHAEL PAWUL

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, JOHNSON AND J. LAMBERT, JUDGES.

COMBS, JUDGE: This is a case in which the Appellants asserted various claims against a police officer premised on allegations arising from malicious prosecution. Ming Wen Chen and Zhi Xiang Jiang appeal from an order of the Jefferson Circuit Court that granted summary judgment to Louisville Metro Police Detective Michael Pawul. Following oral argument and a review of the parties' briefs, the circuit court concluded that there was no genuine issue as to any material fact and consequently that Detective Pawul was entitled to judgment as a matter of law in the civil action filed against him by Chen and Xiang. After our review, we affirm.

In May 2014, Chen and Jiang (husband and wife) owned and operated Golden Palace Buffet in Louisville; they owned and resided in a home on nearby Churchdown Lane. A police investigation of their allegedly illegal activities had commenced in early October 2013. Based upon information gathered during that investigation, Detective Pawul submitted an affidavit in support of a warrant to search the home, the restaurant, a passenger van, and the persons of both Chen and Jiang. Detective Pawul sought to collect evidence of human trafficking -- including forced labor practices and the promotion of prostitution in contravention of provisions of KRS¹ Chapter 529. After reviewing the information contained in Detective Pawul's affidavit, a district judge concluded that probable cause existed

¹ Kentucky Revised Statutes.

to support the issuance of the warrant. The warrant was issued and was duly executed.

During the search, a large amount of cash along with Chinese yen was recovered from a suitcase stored in a closet at the home on Churchdown Lane. Employees of the restaurant, who resided in extremely small rooms in the basement of the house, were interviewed. Following the interviews, Detective Pawul arrested Chen on charges of human trafficking. Jiang was issued a citation for her role in the activity.

Next, search warrants for the couple's bank accounts and cell phones were issued and executed. Wire transfers from China of approximately \$50,000.00 each were discovered and seized. No evidence of criminal activity was recovered from the cell phones. Chen's arrest was reported by local media. Chen and Jiang claimed that the negative publicity and seizure of assets forced them to close the restaurant.

A preliminary hearing was conducted on July 14, 2014, at which Detective Pawul testified about the investigation and the execution of the search warrants. The district court determined that there was no probable cause to believe that Chen had committed a felony. Chen was not prosecuted.

On November 24, 2014, Chen and Jiang filed a civil action against Detective Pawul seeking damages for malicious prosecution, defamation, trespass,

and conversion. Chen sought damages for wrongful arrest. By order of the Jefferson Circuit Court entered in April 2015, the plaintiffs' discovery efforts were stayed for a time since Chen and Jiang remained the subjects of an active federal criminal investigation based in New York.

In June 2016, after a period of discovery, Pawul moved for summary judgment. He asserted a defense of qualified official immunity. He also contended that no genuine issue of material fact existed and that he was entitled to judgment as a matter of law. In its order entered November 14, 2016, the circuit court rejected Detective Pawul's claim of immunity with respect to the malicious prosecution claim but concluded that he was nevertheless entitled to judgment as a matter of law with respect to each and every claim. Chen and Jiang appealed. Their separate appeals were consolidated by order of this court entered on June 8, 2017.

In their combined brief, Chen and Jiang argue that the circuit court erred by granting summary judgment with respect to each of the claims they asserted against Detective Pawul. On appeal, we must determine whether the trial court erred by concluding that there were no genuine issues of material fact and that Pawul was entitled to judgment as a matter of law. CR² 56.03.

² Kentucky Rules of Civil Procedure.

Whether summary judgment is appropriate is a legal question that involves no findings of fact. Consequently, we must review the trial court's grant of summary judgment *de novo*. *Coomer v. CSX Transp., Inc.*, 319 S.W.3d 366 (Ky. 2010). Summary judgment is proper where a party "has no evidence to support an essential element" of a claim. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 481 (Ky. 1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

First, Chen and Jiang argue that the circuit court erred by granting summary judgment with respect to Chen's claim for wrongful arrest. We disagree.

When a police officer makes an arrest, there is no distinction between the torts of false arrest and false imprisonment; the legal analysis is the same. *See Lexington-Fayette Urban County Gov't v. Middleton*, 555 S.W.2d 613 (Ky. App. 1977). A law enforcement officer cannot be held liable for false imprisonment where he enjoys the privilege to detain an individual. *Dunn v. Felty*, 226 S.W.3d 68 (Ky. 2007). A police officer is statutorily authorized to conduct a warrantless arrest if he directly observes the suspect committing a felony or a misdemeanor or if he has probable cause to believe that the suspect has committed a felony. KRS 431.005.

Chen and Jiang argue that Detective Pawul lacked the requisite probable cause to make the arrest and that this contention was supported by the

ruling of the district court at the preliminary hearing conducted in July 2014. To reiterate, the district court determined at the preliminary hearing that there was not probable cause to believe that Chen had **committed** the charged offense; however, that determination does not operate to support Chen's contention that he was arrested without probable cause.

A finding of probable cause by the court at a preliminary hearing converts a police matter into a judicial proceeding. *See Commonwealth v. Carman*, 455 S.W.3d 916 (Ky. 2015). The finding at a preliminary hearing addresses whether there is sufficient cause to **prosecute**; it does not address whether a police officer had probable cause to make an arrest at the moment the arrest was undertaken. *See Commonwealth v. Wortman*, 929 S.W.2d 199, 200 (Ky. App. 1996).

Probable cause exists where "facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent person to conclude that the suspect has committed . . . a crime[.]" *Devenpeck v. Alford*, 543 U.S. 146 151, 125 S.Ct. 588, 160 L.Ed.2d 537 (2004) (citation omitted). In determining whether an arrest is supported by probable cause, we look to the totality of the circumstances. *United States v. Romero*, 452 F.3d 610 (6th Cir. 2006). Moreover, we must consider "the facts and circumstances known to the police 'at the moment the arrest was made' and at the moment the charges were brought, . . . not later,

when hindsight adds clarity to the issue.” *Martin v. Schutzman*, 426 F. App’x 384, 386 (6th Cir. 2011) (quoting *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964)). Finally, “[t]he prior knowledge required by an officer is not such as guarantees a conviction; it is such that makes it probable, by the use of any one or more of our five senses, that . . . the accused had committed or was in the act of committing a felony.” *Sampson v. Commonwealth*, 609 S.W.2d 355, 358-59 (Ky. 1980).

The question before us is whether at the moment of the arrest, the facts and circumstances within Detective Pawul’s knowledge and of which he had reasonably trustworthy information were sufficient to warrant a reasonable officer to believe that Chen had committed or was committing a crime. We are persuaded that the trial court properly concluded that Detective Pawul acted reasonably and appropriately in believing that probable cause existed at the time of the arrest. Indeed, a court had agreed with his supporting affidavit when it issued the warrant which Detective Pawul sought to support the search that culminated in the arrest.

Human trafficking refers to the criminal activity of subjecting one or more persons to forced labor or commercial sexual activity through the use of force, fraud, or coercion. KRS 529.010. It is undisputed that at the time of Chen’s arrest, Detective Pawul had information indicating that the “employees” of Chen and Jiang were living in an atypical -- if not substandard -- situation in the

basement at 2108 Churchdown Lane; that they did not pay rent or receive mail; that the “employees” were transported in a vehicle outfitted with wooden benches directly to the restaurant where their movements were closely monitored and severely restricted; that Chen had offered to “loan out” female “employees” on an overnight basis; that the “employees” did not speak English well (if at all); that they did not have social security numbers; that they did not know exactly where they resided in Louisville; that female “employees” were required to work in the restaurant 72 – 84 hours per week without wages and that they were subjected to verbal and psychological abuse; and that the “employees” did not know the names of Chen and Jiang.

According to Pawul’s experience and training, these discoveries indicated and were consistent with the human trafficking economy. Thus, in view of the totality of the circumstances, a probability or (substantial chance) of criminal activity by Chen had been established at the time of his arrest as a matter of law. Consequently, his arrest was based upon probable cause and was entirely proper. The circuit court did not err by concluding that Detective Pawul was entitled to judgment with respect to this claim.

Next, Chen and Jiang contend that the circuit court erred by granting summary judgment with respect to their claims for malicious prosecution. We disagree.

For necessary public policy reasons, malicious prosecution actions are disfavored in the law. *Reid v. True*, 302 S.W.2d 846 (Ky. 1957). Consequently, the plaintiff in such an action bears the burden to demonstrate a clear showing of the lack of probable cause in order to institute a lawsuit. *Id.*

The element of lack of probable cause in a malicious prosecution action generally presents a mixed question of law and fact. *Craycroft v. Pippin*, 245 S.W.3d 804 (Ky. App. 2008). However, where the underlying facts are undisputed, the issue of the existence of probable cause becomes a pure question of law for the court to resolve. Because the trial court correctly concluded (based upon the undisputed evidence) that Detective Pawul had probable cause to charge Chen and Jiang with human trafficking, it did not err by concluding that they cannot make out a *prima facie* case for malicious prosecution against him. Consequently, the circuit court did not err by granting summary judgment with respect to this claim.

Chen and Jiang next contend that the circuit court erred by granting summary judgment with respect to their claims for conversion and trespass. Again, we are compelled to disagree.

An act which would otherwise be a trespass to real property or a conversion of personal property is shielded by privilege when the act is undertaken pursuant to a court order which is valid or fair on its face. *American*

States Ins. Co. v. Citizens Fidelity Bank & Tr. Co., 662 S.W.2d 851 (Ky. App. 1983). To be valid or fair on its face, the order must meet three requirements: (1) it must be regular in form, (2) it must be issued by a court having authority to issue the particular order and having jurisdiction over the property described in it, and (3) all proceedings required for its proper issuance must have duly taken place. *Id.* All of these criteria were properly met with respect to the search warrants pursuant to which Detective Pawul acted.

Detective Pawul established that he was entitled to judgment as a matter of law with respect to these claims. He demonstrated that property possessed by Chen and Jiang was subject to seizure through facially-valid warrants and that he was privileged by virtue of those warrants to come upon their real property to collect it. Other than his decision to pass the evidence along to federal authorities, there was no evidence presented to show that Detective Pawul took any action whatsoever to delay the return of the personal property to which Chen and Jiang were ultimately entitled. Because Detective Pawul conducted his duties pursuant to a facially-valid search warrant, Chen and Jiang could not overcome his privilege to be upon and to seize the disputed property. As a result, they are unable to prove the elements of their claims for conversion and trespass. The trial court did not err by concluding that there existed no genuine issue as to any material fact and that Detective Pawul was entitled to judgment as a matter of law.

Finally, Chen and Jiang contend that the trial court erred by granting summary judgment with respect to their claims for defamation since they “pleaded colorable claims.” We disagree with this assertion and the arguments that Chen and Jiang have made in support of their claims of error.

The trial court dismissed the defamation claims made against Detective Pawul after it concluded that the only defamatory statements attributed to him by Chen and Jiang were subject either to an absolute or to a qualified privilege. The court observed that there was absolutely no evidence in the record to indicate that the statements made by Detective Pawul in his affidavits in support of the search warrants were false. Nor was there any indication that Detective Pawul had drafted the affidavits for any reason other than a good-faith belief that his investigation provided probable cause to believe that Chen and Jiang were engaged in a scheme of human trafficking. Consequently, it concluded that Detective Pawul was entitled to judgment as a matter of law with respect to the claims for defamation.

Chen and Jiang acknowledge on appeal that Detective Pawul is shielded by qualified immunity with respect to the statements that he included in his affidavit for the search warrants. However, they argue that “his actions were patently undertaken in objective bad faith. . . .” They offered absolutely no evidence in support of that bare assertion. Consequently, Chen and Jiang cannot

meet their burden to show that Detective Pawul's statements were not made in good faith. Detective Pawul was entitled to judgment as a matter of law with respect to these claims.

We affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

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