

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-000723-MR

JOSHUA COLLINS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 12-CI-03880

CHRISTOPHER STARK AND  
COURTNEY FUGATE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND JONES, JUDGES.

DIXON, JUDGE: Joshua Collins appeals from a Fayette Circuit Court order granting summary judgment in favor of Christopher Stark and Courtney Fugate.

After reviewing the record on appeal, we affirm.

Collins, who is African American, married Stark's ex-wife, Barbara, in July 2011. During that time, Stark and his former spouse were involved in

acrimonious custody litigation involving their minor son. In August 2011, Stark filed a criminal complaint against Collins regarding an altercation that occurred during a time-sharing exchange. Stark's sworn criminal complaint stated, in part:

[I]n the parking lot of Church of the Savior during the weekly transfer of my child between my ex-wife and myself[,] [Collins] stood outside the car asking me to roll down the window. When I did he entered into a verbally abusive monologue. I was videoing the incident with my cellphone and told him so. This did not give him pause. My child was present in the car and he was aware of this. He is under directive from [child's GAL] not to appear at exchanges because of similar problems in the past. During his outburst he suddenly reached into my car, grabbed my cell phone and simultaneously hit me in the face as he withdrew it. He threatened to break it and bent it backward. It no longer functions properly. He eventually threw it at me and into my car. I drove away and as I did I tasted blood in my mouth. . . . The outside of my face was red but no bruise. He then followed us out of the parking lot making threatening gestures and driving recklessly back for a mile.

Fugate (Stark's girlfriend), who was in the vehicle during the incident, video-recorded the events and submitted an affidavit corroborating Stark's statement. A Jessamine District Court judge authorized a warrant for Collins's arrest on charges of fourth-degree assault and second-degree criminal mischief. After learning of the warrant, Collins turned himself in to the police and was released on bond shortly thereafter.

In December 2011, Collins filed a police report and complaint with the Lexington-Fayette Urban County Human Rights Commission, after his home

and vehicle were vandalized with racial slurs. The investigations conducted by the police and the HRC failed to identify the person responsible for the vandalism.

Stark's criminal case against Collins was ultimately set for a jury trial in April 2012; however, Stark failed to appear on the day of trial because his son was ill. At a subsequent show-cause hearing, the district court excused Stark's absence, but granted Collins's motion to dismiss the charges due to Stark's failure to appear at trial.

On August 24, 2012, Collins filed a complaint against Appellees in Fayette Circuit Court alleging (1) malicious prosecution, (2) fair housing discrimination under KRS 344.280(5), (3) intentional infliction of emotional distress, and (4) false imprisonment. After a period of discovery, the trial court considered motions for summary judgment filed by both parties. The court ultimately issued an opinion and order granting summary judgment in favor of Appellees on February 27, 2017.

To prevail on a motion for summary judgment, the movant must show "that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). "Only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor should the motion for summary judgment be granted." *Steelvest, Inc. v. Scansteel Service Center, Inc.*,

807 S.W.2d 476, 482 (Ky. 1991). “Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court’s decision and will review the issue *de novo*.” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

Collins first contends the court erred in granting summary judgment on his claim for malicious prosecution.

To establish a claim for malicious prosecution, Collins was required to show Stark initiated the criminal action with malice and without probable cause, the proceedings terminated in Collins’s favor, and he suffered damages as a result. *Martin v. O’Daniel*, 507 S.W.3d 1, 11-12 (Ky. 2016). The trial court focused its ruling on the third element, finding the dismissal of the criminal action due to Stark’s failure to appear did not constitute a termination of the proceedings in favor of Collins.

In *Alcorn v. Gordon*, 762 S.W.2d 809, 811-12 (Ky. App. 1988), this Court noted, “In Comment a to § 660 of Restatement (Second) of Torts, it is stated that ‘[p]roceedings are terminated in favor of the accused . . . only when their final disposition is such as to indicate the innocence of the accused.’” *Id.* Our Court further explained this principle, stating:

It is apparent ‘favorable’ termination does not occur merely because a party complained against has prevailed in an underlying action. While the fact he has prevailed is an ingredient of a favorable termination, such

termination must further reflect on his innocence of the alleged wrongful conduct. *If the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense it would support a subsequent action for malicious prosecution.*

*Id.* at 812, quoting *Lackner v. LaCroix*, 602 P.2d 393, 395 (Cal. 1979) (italics added). The *Alcorn* Court concluded that “dismissal of a suit for technical or procedural reasons that do not reflect on the merits of the case is not a favorable termination of the action[.]” *Id.* See also *Davidson v. Castner-Knott Dry Goods Co., Inc.*, 202 S.W.3d 597, 605 (Ky. App. 2006).

The video record in the district court case indicates Stark appeared at the show-cause hearing on June 5, 2012, and the court accepted that his previous absence was because of a sick child. Collins opined he had a valid defense to the charges, while the Commonwealth advised the court it had video evidence to support its case. Collins then moved the court to dismiss the case due to Stark’s failure to appear at trial. The district court granted the motion to dismiss; however, the court specifically stated the Commonwealth believed it had a case and that the dismissal was based on Collins’s procedural motion rather than a lack of sufficient evidence. Although Collins opines the dismissal was favorable to him, we are simply not persuaded the resolution “reflect[ed] on his innocence of the alleged wrongful conduct.” *Alcorn*, 762 S.W.2d at 812. After careful review, we agree with the circuit court’s determination that the criminal matter was dismissed on a

procedural basis - not upon the merits indicating Collins's innocence; consequently, summary judgment on Collins's malicious prosecution claim was proper.

Collins also asserts the court erred by granting summary judgment on his claim of false imprisonment, contending Stark filed the criminal complaint intending for Collins to be arrested.

“To sustain a recovery for the tort of false imprisonment, a complainant must establish that he was detained and that the detention was unlawful.” *Wal-Mart Stores, Inc. v. Mitchell*, 877 S.W.2d 616, 617 (Ky. App. 1994). “[W]here there is a valid or apparently valid power to arrest, the remedy is by an action for malicious prosecution. The want of lawful authority is an essential element in an action for false imprisonment.” *Smith v. Stokes*, 54 S.W.3d 565, 567 (Ky. App. 2001).

Here, the record reflects Collins reported to the police station and turned himself in upon learning a warrant had been issued for his arrest. On appeal, Collins has not contested the validity of the arrest warrant, or the legal authority of the law enforcement officers who arrested him. As no disputed issues of fact existed regarding the lawfulness of Collins's arrest, we conclude the court properly granted summary judgment on his false imprisonment claim.

Collins next contends summary judgment was improper on his housing discrimination claim because Appellees conspired to intimidate, threaten, and interfere with his right to use and enjoy his home, in violation of KRS 344.280(5).

The Kentucky Civil Rights Act, codified in KRS Chapter 344, *et. seq.*, provides for the execution of federal civil rights legislation, including the Fair Housing Act, in Kentucky. KRS 344.020(1)(a). Appellant's KCRA claim is based on KRS 344.280(5) which makes it unlawful for two or more persons to conspire to "coerce, intimidate, threaten, or interfere" with an individual's exercise or enjoyment of his right to inhabit his home because of his race. Since the KCRA is based upon federal law, our courts interpret the Act in accordance with federal precedent. *Howard Baer, Inc. v. Schave*, 127 S.W.3d 589, 592 (Ky. 2003).

To establish a *prima facie* case of conspiracy to violate his fair housing rights, Collins must show that:

(1) [h]e is a protected individual under the FHA, (2) [h]e was engaged in the exercise or enjoyment of [his] fair housing rights, (3) the defendants coerced, threatened, intimidated, or interfered with the plaintiff on account of [his] protected activity under the FHA, and (4) the defendants were motivated by an intent to discriminate.

*Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009). "Interference is more than a quarrel among neighbors or an isolated act of discrimination, but rather is a pattern of harassment, invidiously motivated." *Id.*

In his appellate brief, Collins notably did not address or even mention the evidence necessary to establish a *prima facie* case of conspiracy to violate his right to fair housing. Collins's argument on this issue focuses solely on his belief Appellees vandalized his home and vehicle with racial slurs. "The party opposing summary judgment cannot rely on their own claims or arguments without significant evidence in order to prevent a summary judgment." *Blackstone Mining Co. v. Travelers Ins. Co.*, 351 S.W.3d 193, 201 (Ky. 2010). Appellees denied vandalizing Collins's home, and Collins was unable to present any affirmative evidence demonstrating the Appellees were responsible for the vandalism. It is well-settled that "speculation and supposition are insufficient to justify a submission of a case to the jury, and that the question should be taken from the jury when the evidence is so unsatisfactory as to require a resort to surmise and speculation." *O'Bryan v. Cave*, 202 S.W.3d 585, 588 (Ky. 2006). After careful review, we conclude summary judgment was properly granted.

Finally, Collins asserts he presented a viable claim for intentional infliction of emotional distress (IIED), opining Appellees caused him to be arrested and speculating Appellees vandalized his home.

The four criteria to establish an IIED claim are: (1) the wrongdoer's conduct must be intentional or reckless, (2) the conduct must be outrageous and intolerable, (3) there must be a causal connection between the conduct and the



emotional distress, and (4) the emotional distress must have been severe. *Wilson v. Lowe's Home Center*, 75 S.W.3d 229, 238 (Ky. App. 2001), *superseded on other grounds by statute, as stated in Owen v. University of Kentucky*, 486 S.W.3d 266 (Ky. 2016). In his brief, Collins failed to identify any affirmative evidence supporting the elements required to prove an IIED claim or otherwise demonstrate that a material issue of fact exists upon these elements. We conclude the court did not err by summarily dismissing Collins's IIED claim.

For the reasons stated herein, the order of Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

Edward E. Dove  
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