

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. CV-12-247  
TDW-CUM-3/8/2013

MICHAEL DOYLE,  
Plaintiff

v.

ORDER

NICK NAPPI, et al.,  
Defendants

STATE OF MAINE  
Cumberland ss. Clerk's Office

MAR 08 2013

RECEIVED

Before the court is a motion for summary judgment by defendants Nick Nappi and Brent Nappi.

Summary judgment should be granted if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. In considering a motion for summary judgment, the court is required to consider only the portions of the record referred to and the material facts set forth in the parties' Rule 56(h) statements. E.g., Johnson v. McNeil, 2002 ME 99 ¶ 8, 800 A.2d 702, 704. The facts must be considered in the light most favorable to the non-moving party. Id. Thus, for purposes of summary judgment, any factual disputes must be resolved against the movant. Nevertheless, when the facts offered by a party in opposition to summary judgment would not, if offered at trial, be sufficient to withstand a motion for judgment as a matter of law, summary judgment should be granted. Rodrigue v. Rodrigue, 1997 ME 99 ¶ 8, 694 A.2d 924, 926.

In this action plaintiff Michael Doyle is suing Nick Nappi, Brent Nappi, and Colleen Franke for malicious prosecution based on a criminal summons served on

Doyle for stalking Franke. Doyle's complaint alleges that the stalking summons was subsequently dismissed by the District Attorney.<sup>1</sup>

As against Nick and Brent Nappi, Doyle's claim is that Franke is "not smart enough" to come up with the idea of making a complaint about stalking on her own and that Franke was "coached " by Nick Nappi and/or Brent Nappi to make that complaint.

In support of their motion for summary judgment, Nick and Brent Nappi have stated under oath that they never instructed, forced, or insisted that Franke make a stalking complaint against Doyle and that as far as they know, Franke made a stalking complaint for her own reasons. See Nappi SMF ¶¶ 14-16. In his opposition to the motion for summary judgment, Doyle has not filed any opposing statement of material facts and the statements in the Nappis' SMF are therefore deemed admitted. M.R.Civ.P. 56(h)(4).

Doyle's opposition is based on the theory that the motion for summary judgment should not be based on affidavits and that the Nappis' credibility should be tested in court. Doyle has not offered any sworn affidavits or other evidence admissible on summary judgment to controvert the Nappis' affidavits. Moreover, all of the unsworn factual assertions in Doyle's opposition to summary judgment appear to relate to the protection from harassment proceeding as opposed to the stalking complaint.

On this record, Doyle has not controverted the Nappis' evidence that they did not instigate Franke's stalking complaint. The only basis for Doyle's claims against the

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<sup>1</sup> After the stalking summons was dismissed, Franke sought and obtained a protection from harassment order against Doyle. Doyle now argues that the protection order was obtained based on false testimony and that the order is currently under appeal. Although the subsequent protection from harassment case may be relevant to whether Ms. Franke had probable cause to initiate a complaint against Doyle, which is an issue in a malicious prosecution case, see Trask v. Devlin, 2002 ME 10 ¶ 11, 788 A.2d 179, Doyle's complaint in this action is based only on the stalking summons.

Nappis – his statements to the effect that Franke is “not smart enough” to have made a stalking complaint on her own – constitute invective and conjecture that is insufficient to demonstrate the existence of a genuine factual dispute for trial. See Holland v. Sebunya, 2000 ME 160 ¶ 16, 759 A.2d 205.

The entry shall be:

The motion for summary judgment by defendants Nick Nappi and Brent Nappi is granted, and the complaint is dismissed as against Nick Nappi and Brent Nappi. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: March 8, 2013

  
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Thomas D. Warren  
Justice, Superior Court

