

STATE OF MICHIGAN
COURT OF APPEALS

RANDY JAY ARCERI,

Plaintiff-Appellant,

v

CITY OF NOVI and ALAN AMOLSCH,

Defendants-Appellees.

UNPUBLISHED

December 1, 1998

No. 206421

Oakland Circuit Court

LC No. 96-530490 CZ

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals of right from the circuit court order granting the motion for summary disposition filed by defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff affixed an election banner to his vehicle. Amolsch, a code enforcement officer for the City, issued plaintiff a citation for violating § 28-11(b)(2) of the City's sign ordinance. Section 28-11(b)(2) prohibits the erection of banners "anything in this chapter to the contrary notwithstanding." Plaintiff challenged the citation in district court. He argued that because § 28-1 of the ordinance defined "sign" as "a name, identification, description, display, device, or illustration which is affixed to, or painted, or otherwise represented directly or indirectly upon a building, structure, or parcel of land . . .," and that because his vehicle was not a "building, structure, or parcel of land," the ordinance was inapplicable. The district court accepted plaintiff's argument and dismissed the citation.

Plaintiff filed this suit in circuit court alleging malicious prosecution and violation of various state constitutional rights. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that because § 28-11(b)(2) prohibited the erection of banners, issuance of the citation was proper and no violation of rights occurred. In response, plaintiff contended that in prior years the City had adopted a policy of not issuing citations for election signs and that during the 1993 election cycle the City had determined that such signs were legal. The trial court granted defendants' motion for summary disposition, finding that plaintiff had failed to set forth facts to support a finding of malice, that probable cause existed for issuing the citation, and that no violation of rights occurred.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). On appeal, plaintiff argues that the evidence showed that in 1993 the City determined that the display of political signs on vehicles was permissible, without reference to the size of the sign. Plaintiff posits that given this evidence, an issue of fact existed as to whether Amolsch had a good faith belief that probable cause existed to issue the citation. Further, plaintiff asserts that because Amolsch committed the tort of malicious prosecution while acting within the scope of his authority, the City is vicariously liable. See *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 625; 363 NW2d 641 (1984).

We affirm the trial court's decision. In order to succeed on a claim for malicious prosecution, a claimant must prove that the defendant initiated a criminal prosecution, that the criminal prosecution was terminated in his favor, that there was an absence of probable cause for the proceedings, and that the action was undertaken with malice or a purpose other than bringing the offender to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998). Section 28-11(b)(2) prohibits the erection of banners within the City. The evidence does not demonstrate that banners of the type that plaintiff placed on his vehicle could be erected without penalty. Plaintiff could not establish the absence of probable cause for initiation of the criminal proceedings, and thus could not state a claim for malicious prosecution. MCR 2.116(C)(8).

Finally, the trial court correctly found that because the claim of violation of constitutional rights was premised on the allegation that initiation of criminal proceedings constituted malicious prosecution, the finding that the prosecution was not malicious mandated a conclusion that plaintiff's constitutional rights were not violated.

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra