

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL D. SKINNER,

Plaintiff-Appellant,

v

SPIRIT AIRLINES, INC., STEVE GOODWIN and
PAULA STANKICH,

Defendants-Appellees,

and

JANE DOE, WAYNE COUNTY SHERIFF,
COUNTY OF WAYNE, and WAYNE COUNTY
DIVISION OF AIRPORTS, AIRPORT POLICE,¹

Defendants.

UNPUBLISHED

December 10, 1999

No. 211014

Wayne Circuit Court

LC No. 96-643635 CZ

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition. We affirm.

Plaintiff was a passenger on a Spirit flight and was arrested following an accusation that he had molested his daughter during the flight. Defendant Paula Stankich was the flight attendant who observed the alleged molestation. She reported her findings to the pilot, defendant Steve Goodwin, and the authorities were alerted. Following an extensive investigation conducted by the FBI and local authorities, which investigation included two interrogations, a lie detector test and psychological evaluations, the United States District Attorney refused to prosecute plaintiff. Plaintiff filed suit against defendants, alleging, amongst other claims, malicious prosecution and negligence based on the failure to adequately investigate the situation before notifying the police. The trial court granted defendants' motion for summary disposition on these two claims.²

The trial court granted summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). Because it appears that the court went beyond the pleadings, this Court will review the issue pursuant to MCR 2.116(C)(10). Appellate review of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition relying upon MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.* A court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Id.* The party opposing the motion has the burden of showing that a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994). All inferences will be drawn in favor of the nonmovant. *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

Plaintiff first argues that the trial court erred in granting summary disposition as to his claim for malicious prosecution. We disagree. In order to prevail on a claim of malicious prosecution, the plaintiff must show:

(1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his action, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice. [*Cox v Williams*, 233 Mich App 388, 391; 593 NW2d 173 (1999).]

There was no prosecution. In the absence of this critical element, plaintiff cannot sustain this action. See Prosser & Keeton, *Torts* (5th ed), § 119, p 871, n 10, n 16. Even if assumed that the mere investigation which occurred could sustain an action for malicious prosecution, plaintiff nevertheless still fails to set forth a prima facie case. Though the investigation was extensive, and clearly resolved in plaintiff's favor, plaintiff has not shown that defendants lacked probable cause for the initial report to the authorities, and he completely fails to demonstrate that defendants acted with malice. Under the circumstances set forth, this cause of action is simply inapplicable.

Plaintiff next argues that the trial court erred in granting summary disposition as to its claims for negligence and negligent training and supervision of Spirit's employees. We again disagree. In order to establish negligence, a plaintiff must show that the defendant owed a duty to the plaintiff, that the defendant breached the duty, that the defendant's breach was a proximate cause of the plaintiff's injuries, and that the plaintiff suffered damages. *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). Whether a duty exists is a question of law for the court. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995).

Plaintiff makes much of the fact that Spirit, as a common carrier, owed plaintiff a higher duty of care and that part of this duty involved the obligation to investigate the facts before reporting suspected criminal activity. Essentially, plaintiff argues that Spirit should have considered the damage to plaintiff's reputation should false allegations surface. However, contrary to plaintiff's assertions, a heightened duty of care was owed, not to plaintiff, but to his minor daughter. This Court has held that in some relationships, such as between a common carrier and a passenger, a duty will be imposed to protect the

individual against third parties. *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). The rationale behind this rule is the fact that in certain circumstances, an individual entrusts himself to another and is not in the best position to protect himself because he has, essentially, relinquished control. Thus, a duty develops to provide that individual with a safe place. *Id.* It follows that under the circumstances of this case, any “special relationship” existing was between Spirit and plaintiff’s minor daughter. The law imposed upon Spirit the duty to protect her against the actions of third parties; in this case the alleged criminal acts of her father. Thus, Spirit’s duty entailed protecting the child as opposed to plaintiff.

In addition, plaintiff argues that Spirit was negligent in its training and supervision of its employees. Specifically, plaintiff takes issue with the fact that Stankich was only trained to use her common sense and there were no formal guidelines in place with regard to these situations. Plaintiff also believes that Goodwin, as captain of the flight, should have done more than rely upon the statements of a junior flight attendant. However, because plaintiff cannot demonstrate that either Stankich or Goodwin was negligent, it follows that Spirit could not have been negligent in training or supervising its employees. *Poe v Detroit*, 179 Mich App 564, 578; 446 NW2d 523 (1989). Summary disposition on these negligence claims was also appropriate.

Affirmed.

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Richard Allen Griffin

¹ Summary disposition was entered in favor of these defendants based on governmental immunity.

² Additional counts alleging false arrest and intentional infliction of emotional distress were voluntarily dismissed.