

STATE OF MICHIGAN
COURT OF APPEALS

DAVID J. SCOTT,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS, RUO
MIKKELSEN and RUM WELLS,

Defendants-Appellees.

UNPUBLISHED

May 30, 2000

No. 219726

Muskegon Circuit Court

LC No. 98-038625-NO

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order that granted summary disposition to defendants on the basis that plaintiff's malicious prosecution claim was barred by governmental immunity. MCR 2.116(C)(7). We affirm.

Plaintiff, a state prison inmate, was issued a major misconduct ticket for disobeying a direct order. Following a disciplinary hearing, plaintiff was acquitted. He then filed this malicious prosecution claim against defendants, alleging that Resident Unit Officer Randall Mikkelsen lacked probable cause to believe he had committed the offense, and maliciously fabricated the misconduct allegations against him. Plaintiff further alleged that Resident Unit Manager Sharon Wells provided false statements with the intent to maliciously injure plaintiff.

The trial court granted defendants' motion for summary disposition on the ground of governmental immunity, ruling that there is no intentional tort exception to governmental immunity. We agree with plaintiff that the trial court's ruling is erroneous to the extent that it applied to the individual defendants. A governmental law enforcement employee is not immune from a malicious prosecution cause of action, even when acting within the scope of his or her authority, if the plaintiff alleges that the employee knowingly swore to false facts in a complaint, without which there would be no probable cause. *Payton v Detroit*, 211 Mich App 375; 536 NW2d 233 (1995). Accordingly, defendants Mikkelsen and Wells were not entitled to summary disposition on the ground of governmental immunity.

Notwithstanding the above, we conclude that the order granting summary disposition must be affirmed for failure to state a valid claim. In order to state a prima facie case of malicious prosecution, the plaintiff must prove: (1) prior proceedings terminated in favor of the present plaintiff, (2) absence of probable cause for those proceedings, (3) malice, and (4) a special injury that flows directly from the prior proceedings. *Payton, supra* at 394-395. The “special injury” element requires a plaintiff to allege damage in the nature of an interference with person or property. *Id.* at 35. “This restrictive rule allows a malicious prosecution action only where one of three types of injury has been sustained, namely, injury to fame, injury to person or liberty, or injury to property.” *Kauffman v Shefman*, 169 Mich App 829; 426 NW2d 819 (1988).

Here, assuming that a malicious prosecution claim can be predicated on a prison disciplinary hearing, see *Friedman v Dozorc*, 412 Mich 1, 41 n 33; 312 NW2d 585 (1981), plaintiff has failed to plead the requisite “special injury.” Plaintiff’s allegations in his first amended complaint that he “sustained severe emotional and mental pain and suffering from mortification, embarrassment, and humiliation and was injured in his reputation” are insufficient, as a matter of law, to satisfy the special injury element. A malicious prosecution plaintiff must suffer “some injury which would not necessarily occur in all suits prosecuted for similar causes of action.” *Barnard v Hartman*, 130 Mich App 692, 695; 344 NW2d 53 (1983). Ordinary claims of embarrassment or emotional distress are insufficient, as are claims of damaged reputation. *Id.*; *Kauffman, supra*. Any damage to plaintiff’s reputation in this case because of the misconduct ticket is similar to the damage that would ordinarily result when a ticket is given by a prison guard to a prisoner. *Barnard, supra* at 696.

Although defendants have not argued that plaintiff’s complaint should be dismissed for failure to plead special injury, this Court is not precluded from dismissing on this ground. See *Friedman, supra* at 57. Accordingly, we affirm the order granting summary disposition, albeit on the ground of failure to state a claim, MCR 2.116(C)(8).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra