

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES QUATRINE,

Plaintiff-Appellant,

v

CITY OF STERLING HEIGHTS AND STERLING
HEIGHTS POLICE DEPARTMENT,

Defendants,

and

JAMES SELEWSKI,

Defendant-Appellee.

UNPUBLISHED

November 30, 2001

No. 225287

Macomb Circuit Court

LC No. 1998-003932-NO

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

MEMORANDUM.

Plaintiff appeals from the circuit court's order granting summary disposition of his complaint against defendant James Selewski.¹ Plaintiff also argues that the circuit court erred by ordering that he post a \$5,000 bond pursuant to MCR 2.403(N). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court properly granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). Plaintiff's claims against defendant required proof that defendant brought the controlled substances charges against him without probable cause to believe that plaintiff committed those crimes. *Matthews v BCBSM*, 456 Mich 365, 378; 572 NW2d 603 (1998); *Blase v Appicelli*, 195 Mich App 174, 177-178; 489 NW2d 129 (1992). Where the facts are not in dispute, "want of probable cause is a question of law to be determined by the court." *Matthews*,

¹ Defendants City of Sterling Heights and Sterling Heights Police Department were dismissed by stipulation and are not parties to this appeal. For the purpose of this opinion, the term "defendant" refers solely to James Selewski.

* Circuit judge, sitting on the Court of Appeals by assignment.

456 Mich 381. The undisputed facts showed that defendant had probable cause to pursue the drug charges against plaintiff. Defendant was presented with a situation where plaintiff was found in possession of both Valium and Ritalin with no apparent valid prescription for either controlled substance. Indeed, the Ritalin pills were in a prescription bottle for a completely different medication, suggesting the intent to deceive others regarding the contents. Under these circumstances a fair-minded person of average intelligence would believe that plaintiff committed the felony of possessing two different controlled substances.

Since the circuit court properly dismissed plaintiff's claims against defendant, whether that court erred by requiring that plaintiff post a bond under MCR 2.403(N) presents a moot issue. *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336(1989), lv den 433 Mich 900 (1989).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker