

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANDY T. NICKERSON,

Plaintiff-Appellant,

v

AMOS NICKERSON,

Defendant-Appellee.

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UNPUBLISHED

July 12, 2002

No. 230593

Grand Traverse Circuit Court

LC No. 99-019834-NZ

Before: Hood, P.J., and Saad and E. M.Thomas\*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Andy Nickerson and defendant Amos Nickerson are brothers who have engaged in numerous feuds over the years. Amos contacted the sheriff's department and reported that Andy fired shots at him. Andy was charged with felonious assault, MCL 750.82, carrying a dangerous weapon with unlawful intent, MCL 750.226, and possession of a firearm during the commission of a felony, MCL 750.227b. The parties agreed that Andy would plead guilty of a misdemeanor of his choosing in return for dismissal of the felony charges. Andy pleaded guilty of the misdemeanor charge of failure to register a firearm, and the felony charges were dismissed.

Andy sued Amos for malicious prosecution. At a mediation hearing Andy informed the panel that he intended to move to amend his complaint to seek treble damages. He filed the motion the same day. The mediation panel recommended an award in favor of Andy in the amount of \$13,000. Andy accepted the evaluation. Subsequently, Andy withdrew the motion to amend the complaint. Amos moved to set aside the mediation evaluation on the ground that the mediation panel considered Andy's intent to seek treble damages when it evaluated the case. The trial court granted the motion.

Amos moved for summary disposition pursuant to MCR 2.116(C)(10). Amos argued that because Andy entered into a plea agreement and entered a plea to a misdemeanor charge, the criminal proceedings were not terminated in his favor, and he could not establish every element

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

of the tort of malicious prosecution. The trial court found this argument persuasive, and granted the motion for summary disposition.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The elements of the tort of malicious prosecution are: (1) that the defendant initiated a criminal prosecution against the plaintiff; (2) that the criminal proceedings terminated in the plaintiff's favor; (3) that the private person who initiated or maintained the prosecution lacked probable cause for his action; and (4) that the action was undertaken with malice or a purpose other than bringing the offender to justice. *Cox v Williams*, 233 Mich App 388, 391; 593 NW2d 173 (1999).

Andy argues that the trial court erred by granting the motion for summary disposition filed by Amos. He contends that he is entitled to go forward with his suit for malicious prosecution because he pleaded guilty of a misdemeanor that was added as a result of a plea agreement and that the agreement resulted in the dismissal of the original felony charges. We disagree and affirm. In Michigan, the general rule is that if termination of a criminal prosecution results from compromise or settlement, or is brought about by an act of the accused as a courtesy or favor or by an act of the accused that prevents the litigation, the proceeding has not terminated in favor of the accused for purposes of an action for malicious prosecution. *Id.*, 394; see also *Blase v Appicelli*, 195 Mich App 174, 179-180; 489 NW2d 129 (1992).

It was undisputed that Andy pleaded guilty of a misdemeanor of his choosing. That conviction was not overturned on appeal. This case is distinguishable from *Labar v Crane*, 49 Mich 561; 14 NW 495 (1883), the primary authority on which Andy relies, on that basis. The criminal proceedings did not terminate in Andy's favor. The trial court correctly granted summary disposition on the ground that Andy could not establish all the elements of the tort of malicious prosecution.

Our conclusion that the trial court correctly granted summary disposition in favor of Amos renders Andy's argument regarding reinstatement of the mediation evaluation moot.

Affirmed.

/s/ Harold Hood  
/s/ Henry William Saad  
/s/ Edward M. Thomas