

STATE OF MICHIGAN
COURT OF APPEALS

GARY WAYNE FANNON,

Plaintiff-Appellant,

V

CALVIN RIX,

Defendant-Appellee.

UNPUBLISHED

May 18, 2004

No. 243884

Oakland Circuit Court

LC No. 2002-038972-NO

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

This civil action arises from plaintiff's arrest by defendant, a Walled Lake police officer. Plaintiff claims false arrest, false imprisonment, malicious prosecution, and violation of his constitutional rights pursuant to 42 USC 1983. Plaintiff appeals the trial court's judgment granting defendant's motion for summary disposition, and we affirm.

Plaintiff argues that defendant falsely arrested and falsely imprisoned him, and engaged in malicious prosecution, because defendant arrested plaintiff for fleeing and eluding a police officer, leaving the scene of an accident, a misdemeanor license plate violation, and several civil infractions despite being told that a friend of plaintiff's drove the truck, and that plaintiff was not even in the truck at the time. Plaintiff claims that his friend attempted to confess to defendant, but that defendant refused to believe the confession. Indeed, plaintiff's friend later confessed to the prosecutor who was assigned to the case that he, the friend, committed the crime, and the prosecutor ultimately dismissed the fleeing and eluding and leaving the scene of an accident charges against Fannon. Plaintiff pled guilty to the remaining misdemeanors, and admitted responsibility for the civil infractions.

Despite post-arrest events, the record here clearly demonstrates that, at the time of the arrest, defendant had probable cause to arrest plaintiff. Defendant saw the driver of plaintiff's pickup truck violate several traffic laws, and then speed away at the sight of defendant's lights and siren. Defendant then followed the truck into the parking lot of the apartment complex in which plaintiff resided, and saw the suspect run from the pickup truck directly in front of his squad car. Plaintiff owned the pickup truck, a K-9 unit tracked the suspect to plaintiff's apartment, and defendant recognized plaintiff as the person he had seen running from the pickup truck.

Plaintiff asserts that his arrest and prosecution were without probable cause in violation of the First, Fourth, and Fourteenth Amendments. However, our review of the record shows that defendant had probable cause to arrest plaintiff, and we hold, therefore, that the trial court properly granted summary disposition with respect to plaintiff's federal civil rights claim under 42 USC 1983.

Because there was probable cause to arrest plaintiff, his state law claims also must fail. To prevail on a claim of false arrest or false imprisonment, a plaintiff must show that the arrest lacked probable cause. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 17-19; 672 NW2d 351 (2003). A claim for malicious prosecution also requires a lack of probable cause. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).¹ Plaintiff submitted no admissible evidence to support a claim for false arrest, false imprisonment, or malicious prosecution. Therefore, summary disposition pursuant to MCR 2.116(C)(10) was appropriate.

Plaintiff also argues that the trial court erred by granting summary disposition before discovery was complete. Generally, summary disposition is premature if discovery on a disputed issue is incomplete. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). However, summary disposition is appropriate when there is no fair chance of uncovering factual support for the adverse party's position. *Id.* Summary disposition on plaintiff's claims were appropriate here because further discovery did not stand a reasonable chance of uncovering factual support for plaintiff's claim. Furthermore, defendant gave more than two months' notice of the hearing on his motion, and plaintiff took no action whatsoever to object to or adjourn the motion hearing.

Because we hold that summary disposition was properly granted, we decline to address plaintiff's remaining issues.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Karen M. Fort Hood

¹ Because we rule that defendant had probable cause to arrest plaintiff, we need not address the many other deficiencies in plaintiff's malicious prosecution claim.