

STATE OF MICHIGAN  
COURT OF APPEALS

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GLENN SPENCER, D.D.S., and SPENCER &  
ARMSTRONG, P.C.,

UNPUBLISHED  
June 3, 2004

Plaintiffs-Appellants,

V

JOHANNA H. ARMSTRONG, JACQUELINE  
ILES, CARL ARMSTRONG, JOHANNA H.  
ARMSTRONG, P.C., and JASON J.  
ARMSTRONG,

No. 245419  
Oakland Circuit Court  
LC No. 02-037804-CK

Defendants-Appellees.

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Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from a circuit court order denying their motion for leave to file a second amended complaint. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed this suit alleging numerous causes of action including a claim for abuse of process. The trial court dismissed the abuse of process claim on defendants' motion, finding that plaintiffs had failed to state a claim upon which relief could be granted. The court subsequently denied plaintiffs' motion for leave to amend, finding that the complaint would be futile.

If the court grants a motion under MCR 2.116(C)(8), it "shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence before the court shows that the amendment would not be justified." MCR 2.116(I)(5). After the time for amendment as of right has expired, a party may amend a pleading only by leave of the court or upon consent of the adverse party. The court shall freely grant leave when justice so requires. MCR 2.118(A)(2). Leave to amend may be denied where the proposed amendment would be futile. *Amburgey v Sauder*, 238 Mich App 228, 246-247; 605 NW2d 84 (1999). The trial court's ruling on a motion to amend pleadings is reviewed for an abuse of discretion. *Doyle v Hutzel Hosp*, 241 Mich App 206, 211-212; 615 NW2d 759 (2000).

An action for abuse of process "lies for the improper use of the process after it has been issued, not for maliciously causing it to issue. To restate the proposition, the tort concerns the willful use of a valid process to obtain a result the law did not intend." *Rowbotham v DAIIE*, 69

Mich App 142, 146; 244 NW2d 389 (1976) (citations omitted). The gravamen of the tort “is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process . . . for any purpose other than that which it was designed to accomplish.” *Moore v Michigan Nat’l Bank*, 368 Mich 71, 75; 117 NW2d 105 (1962), quoting 3 Restatement Torts, § 682. The tort generally consists of “some form of extortion,” whereby the process is used “to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it.” 3 Restatement Torts, 2d, § 682, p 475.

To recover for abuse of process, “a plaintiff must plead and prove (1) an ulterior purpose, and (2) an act in the use of process that is improper in the regular prosecution of the proceeding.” *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). “[T]he ulterior purpose alleged must be more than harassment, defamation, exposure to excessive litigation costs, or even coercion to discontinue business.” *Early Detection Ctr, PC v New York Life Ins Co*, 157 Mich App 618, 629-630; 403 NW2d 830 (1986). The defendant’s “improper ulterior purpose must be demonstrated by a corroborating act; the mere harboring of bad motives on the part of the actor without any manifestation of those motives will not suffice to establish an abuse of process.” *Vallance v Brewbaker*, 161 Mich App 642, 646; 411 NW2d 808 (1987).

Plaintiffs have alleged that defendants Jason Armstrong and Jacqueline Iles instituted various lawsuits and administrative proceedings. The defendants sought damages in their lawsuits. Iles sought back wages in one administrative proceeding, an investigation of Spencer’s hiring practices in another, and reported an alleged criminal act to the police. In each matter, the complainant used the process for its proper purpose. The alleged “irregular acts” do not corroborate the alleged collateral purpose (i.e., driving Spencer out of business) for the various legal proceedings. Instead, they indicate that defendants attempted to achieve the objective of each proceeding through unlawful means, e.g., stealing and falsifying documents in an attempt to prevail in the lawsuits, filing a false police report so Spencer would be investigated, etc. “[P]rocedural irregularities do not constitute a basis for . . . abuse of process, which is concerned with the proper use of procedure for illegitimate aims.” *Vallance, supra*, 161 Mich App at 647. While Spencer believes defendants’ ultimate purpose is to drive him out of business, their bad motive alone is insufficient absent an overt act demonstrating the same, *id.* at 646, and defendants’ attempt to capitalize on Spencer’s lack of fortitude is not sufficient. *Young, supra*, 133 Mich App at 681. Plaintiffs did not allege an act showing that defendants attempted to extort something from plaintiffs separate and apart from the relief sought in the various legal proceedings. See, e.g., *Meehan v Michigan Bell Telephone Co*, 174 Mich App 538; 436 NW2d 711 (1989) (offer to drop existing criminal charges to coerce the plaintiff to name his source and institution of additional charges thereafter); *Three Lakes Ass’n v Whiting*, 75 Mich App 564; 255 NW2d 686 (1977) (offer to dismiss action without receiving damages if the plaintiff would drop all opposition, proper and improper, to a building project). Therefore, the proposed amendment did not state a claim for relief and the trial court did not abuse its discretion in denying the motion for leave to amend.

Affirmed.

/s/ Jane E. Markey  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter