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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-67

Filed: 6 October 2020

Moore County, No. 18 CVS 1004

CHARLES D. JOHNSON, Plaintiff,

v.

ROBERT M. FRIESEN, R. PALMER SUGG, ROBBINS MAY & RICH LLP, ROBERT P. DOWD, III and JONATHAN C. DOWD, Defendants.

Appeal by plaintiff from order entered 10 July 2019 by Judge Joseph N. Crosswhite in Moore County Superior Court. Heard in the Court of Appeals 8 September 2020.

J.C. White Law Group PLLC, by James C. White, for plaintiff-appellant.

Robbins May & Rich LLP, by R. Palmer Sugg and Robert M. Friesen, for defendants-appellees Robert M. Friesen, R. Palmer Sugg, and Robbins May & Rich LLP.

Manning Fulton & Skinner, P.A., by Judson A. Welborn, Natalie M. Rice, and Jessica B. Vickers, for defendants-appellees Robert P. Dowd, III, and Jonathan C. Dowd.

ZACHARY, Judge.

Plaintiff Charles D. Johnson appeals from the trial court's order granting Defendants' motions for summary judgment. After careful review, we affirm the trial court's order.

Background

This case arises from a dispute, which has twice previously reached this Court, over reformation of a deed of trust and the subsequent foreclosure proceeding regarding Plaintiff's property. We first describe the pertinent facts of the initial dispute.

I. The Initial Dispute

On 29 July 2008, Defendants Robert P. Dowd, III, and Jonathan C. Dowd ("the Dowd Defendants") loaned Plaintiff $150,000 pursuant to a promissory note secured by a deed of trust, which secured a lien on certain of Defendant's real property. *Dowd v. Johnson*, 235 N.C. App. 6, 7, 760 S.E.2d 79, 81 (2014). Defendants Robert M. Friesen, R. Palmer Sugg, and the law firm Robbins May & Rich LLP ("the Attorney Defendants") represented the Dowd Defendants.[1] The deed of trust, drafted by the Attorney Defendants, contained a description of a developed 1.44-acre tract that Plaintiff owned in Moore County, North Carolina.

[1] Because the Attorney Defendants represented the Dowd Defendants as counsel in all of the pertinent actions, for ease of reading we will refer to them collectively as "Defendants," except where distinction is appropriate.

In April 2009, Plaintiff agreed to sell the developed 1.44 acres to a third party. At Plaintiff's request, the Dowd Defendants and Defendant Friesen, in his capacity as the trustee under the deed of trust, executed a deed of release, which released the 1.44-acre parcel from the deed of trust. The deed of release contained the proviso that "this release shall apply only to so much of said lands as are herein expressly described, and that as to the remainder of said lands, said Deeds of Trust shall be and remain in full force and effect." On 29 April 2009, the deed of release was recorded in the Moore County Register of Deeds.

Plaintiff subsequently defaulted on the loan, and Defendants initiated foreclosure proceedings. *Id.* at 7, 760 S.E.2d at 81. Defendants then discovered that the description in the deed of trust identified the developed 1.44-acre tract that had been released from the deed of trust, rather than the entire 8.74-acre parcel of developed and undeveloped real property owned by Plaintiff in Moore County. *See id.* at 7 n.1, 760 S.E.2d at 81 n.1.

On 24 May 2010, Defendants filed two actions against Plaintiff, (1) seeking judgment against Plaintiff for the unpaid balance of the $150,000 loan (the "collection action"); and (2) seeking reformation of the deed of trust securing the promissory note, on the ground of mutual mistake in failing to identify the 8.74-acre parcel in the description contained in the deed of trust (the "reformation action"). *Id.* at 7, 760 S.E.2d at 81. A Cumberland County Sheriff's deputy attempted to serve copies of the

summonses and complaints on Plaintiff, but returned them unserved, indicating that Plaintiff had moved. *Id.* at 8, 760 S.E.2d at 81. Defendants later obtained Plaintiff's new address. On 29 October 2010, the clerk of superior court issued a second set of civil summonses, which listed Plaintiff's updated address. *Id.* However, nothing in the record of that case indicated that Defendants attempted to serve Plaintiff at that address. *Id.* at 8, 760 S.E.2d at 81-82. Defendants instead served Plaintiff by publication in *The Fayetteville Observer*. *Id.* at 8, 760 S.E.2d at 82. Plaintiff did not file a responsive pleading in either action. On 17 March 2011, Defendants obtained default judgments against Plaintiff in both the collection action and the reformation action. *Id.*

That same day, Defendants recorded a notice of re-recording of the original deed of trust, which recited "[t]hat, by mutual mistake, the Deed of Trust contained an incorrect legal description" and that "[t]he correct legal description should have been and by this re-recording hereby is changed to" a description including all 8.74 acres of the disputed parcel.

Defendants then resumed the foreclosure proceedings against Plaintiff. *Id.* On 18 July 2011, after a series of hearings, the trial court denied Plaintiff's motion for a continuance, authorized the foreclosure, and ordered the sale of the property, decisions which this Court affirmed on appeal. *In re Foreclosure of Johnson*, 221 N.C. App. 669, 729 S.E.2d 128, 2012 WL 2895562, at *1 (2012) (unpublished). On 21

August 2012, shortly after this Court's mandate issued in *In re Foreclosure of Johnson*, the Dowd Defendants purchased the unreleased remainder of the 8.74 acres at the foreclosure sale for $85,090.20, in the form of credit against the outstanding balance due on the $150,000 debt.

On 31 August 2012, Plaintiff moved, *inter alia*, to set aside the default judgments. *Dowd*, 235 N.C. App. at 8, 760 S.E.2d at 82. The trial court denied Plaintiff's motions. *Id.* On appeal, this Court reversed the trial court's order denying Plaintiff's motions, and vacated the underlying default judgments on the grounds that Plaintiff had not been properly served. *Id.* at 12, 760 S.E.2d at 84.

II. *The Present Dispute*

On 28 July 2017, Plaintiff filed his complaint in Mecklenburg County Superior Court, seeking damages for abuse of process against the Attorney Defendants, and for malicious prosecution against both the Dowd Defendants and the Attorney Defendants. On 5 October 2017, the Attorney Defendants filed a motion to transfer venue to Moore County Superior Court, a motion to dismiss, and an answer. On 13 October 2017, the Dowd Defendants similarly filed a motion to transfer venue to Moore County Superior Court, a motion to dismiss, and an answer.

On 4 June 2018, the Dowd Defendants moved for judgment on the pleadings, pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure. On 8 August 2018, the Dowd Defendants' motions for judgment on the pleadings and to transfer

venue came on for hearing in Mecklenburg County Superior Court, before the Honorable Yvonne Evans. In an order entered 13 August 2018, the trial court denied the Dowd Defendants' motion for judgment on the pleadings, but allowed their motion to transfer, and transferred the action to Moore County Superior Court.

On 21 May 2019, the Dowd Defendants moved for summary judgment, and on 29 May 2019, Plaintiff filed an affidavit in response. On 31 May 2019, the Attorney Defendants also moved for summary judgment, and on 7 June 2019, Plaintiff filed another affidavit in response. On 12 June 2019, Defendants' motions for summary judgment came on for hearing in Moore County Superior Court, before the Honorable Joseph N. Crosswhite. By order entered 10 July 2019, the trial court granted Defendants' motions for summary judgment, and dismissed Plaintiff's claims against Defendants. Plaintiff timely filed his notice of appeal.

Discussion

Plaintiff argues that the trial court erred in granting Defendants' motions for summary judgment. For the following reasons, we disagree.

I. *Standard of Review*

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of

law." *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (citation and internal quotation marks omitted).

II. Judgment on the Pleadings

Plaintiff first argues that the trial court erred in granting the Dowd Defendants' motion for summary judgment because, in so doing, it "improperly overruled [the] prior order denying the Dowd Defendants' motion for judgment on the pleadings." This argument lacks merit.

It is beyond cavil that "no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972) (citation omitted). However, this principle does not apply "when three conditions are met: (1) the subsequent order was rendered at a different stage of the proceeding, (2) the materials considered by the second judge were not the same, and (3) the first motion did not present the same question as that raised by the later motion." *Fox v. Johnson*, 243 N.C. App. 274, 282, 777 S.E.2d 314, 322 (2015) (citation and internal quotation marks omitted), *disc. review denied*, 368 N.C. 679, 781 S.E.2d 480 (2016). We address each of these conditions in turn.

A. Stage of the Proceedings

Plaintiff concedes that summary judgment "was rendered at a different stage of the proceeding" than was the order on the Rule 12(c) motion, and that the first condition was therefore satisfied. We agree.

A motion for judgment on the pleadings is properly propounded "at a different stage of the proceeding" than is a motion for summary judgment. *Smithwick v. Crutchfield*, 87 N.C. App. 374, 376, 361 S.E.2d 111, 113 (1987). In perpending a Rule 12(c) motion for judgment on the pleadings, a trial court "is to consider only the pleadings and any attached exhibits, which become part of the pleadings. No evidence is to be heard, and the trial judge is not to consider statements of fact in the briefs of the parties or the testimony of allegations by the parties in different proceedings." *Minor v. Minor*, 70 N.C. App. 76, 78, 318 S.E.2d 865, 867 (citations omitted), *disc. review denied*, 312 N.C. 495, 322 S.E.2d 558 (1984). By contrast, while a motion decided under Rule 12(c) "is decided on the pleadings alone, . . . the court may receive and consider various kinds of evidence" when evaluating a motion for summary judgment. *Kessing v. Nat'l Mortg. Corp.*, 278 N.C. 523, 533, 180 S.E.2d 823, 829 (1971) (citations omitted); *see also* N.C. Gen. Stat. § 1A-1, Rule 56(c) (2019). "Evidence which may be considered under Rule 56 includes . . . affidavits, and any other material which would be admissible in evidence or of which judicial notice may properly be taken. Oral testimony may also be received by reason of Rule 43(e)." *Kessing*, 278 N.C. at 533, 180 S.E.2d at 829 (citations omitted).

Thus, there is no dispute that the first of the *Fox* conditions was satisfied.

B. Materials Considered

Plaintiff maintains that "[t]he Dowd Defendants asked the trial court to base its summary judgment decision solely on the contents of the pleadings" and "offered no new evidence, instead asking [Judge Crosswhite] to look at the exact same material Judge Evans had reviewed [on the Rule 12(c) motion] and come to a different conclusion." This assertion is specious.

Our review of the record and transcript of the hearing on Defendants' motions for summary judgment indicates that the trial court received and considered other evidence in addition to the pleadings and exhibits attached thereto. The trial court notes in its order granting summary judgment that it "carefully consider[ed] Defendants' Motions for Summary Judgment, the materials presented, the affidavits submitted, and the arguments of counsel." At the hearing, Defendants produced, *inter alia*, deeds of trust that had been executed by Plaintiff prior to 2008, each of which purportedly[2] pledged the entire 8.74-acre property as collateral for other loans prior to 2008. The trial court also had before it the two affidavits filed by Plaintiff in response to the Dowd Defendants' and the Attorney Defendants' motions for

[2] Plaintiff asserts that we "cannot look at these referenced deeds of trust as [we conduct our] *de novo* review because they are not in evidence." While it is true that the deeds of trust were not admitted into evidence, it is beside the point; our purpose in referencing these deeds of trust is not to verify or endorse their contents, but rather to note that the trial court received and considered them in ruling on Defendants' motions for summary judgment.

summary judgment. In contrast, Judge Evans based her decision on the Dowd Defendants' Rule 12(c) motion solely on the allegations of the pleadings.

We conclude that the materials considered by Judge Crosswhite regarding Defendants' motions for summary judgment were not the same as those considered by Judge Evans regarding the Dowd Defendants' Rule 12(c) motion. The second *Fox* condition was thus satisfied.

C. <u>Question Presented</u>

Plaintiff similarly asserts that the Dowd Defendants' motion for judgment on the pleadings and Defendants' motions for summary judgment asked both trial court judges "to consider the *exact same legal issue*[.]" Plaintiff argues:

> Judge Evans' order found that the Plaintiff had established all of the elements of his claim for malicious prosecution, and so the only way the Dowd Defendants could have possibly met their burden was by presenting additional evidence. They did not do that, but instead asked Judge Crosswhite to overrule Judge Evans and come to a different legal conclusion based on identical material. Judge Evans' order found that allegations of the Complaint, and the exhibits thereto, establish that Plaintiff *has* stated a claim for malicious prosecution against the Dowd Defendants as a matter of law. Judge Crosswhite's order found that allegations of the Complaint, and the exhibits thereto, establish that Plaintiff *has not* stated a claim for malicious prosecution against the Dowd Defendants as a matter of law.

As we have already discussed, Plaintiff is incorrect in asserting that each judge considered "identical material." To begin, the legal standard for a motion for judgment on the pleadings and a motion for summary judgment are not the same.

> [B]ecause a motion for judgment on the pleadings does not present the same question as that raised by a later motion for summary judgment, denial of a previous motion for judgment on the pleadings made under N.C. Gen. Stat. § 1A-1, Rule 12(c) . . . does not preclude the trial court from granting a subsequent motion for summary judgment.

Rhue v. Pace, 165 N.C. App. 423, 426, 598 S.E.2d 662, 665 (2004) (citation and internal quotation marks omitted); *accord Wilkerson v. Norfolk S. Ry. Co.*, 151 N.C. App. 332, 338, 566 S.E.2d 104, 108 (2002) (holding that a "second judge had the authority to hear and decide [a defendant's] motion for summary judgment" after a prior judge denied in part that defendant's motions to dismiss under Rule 12(b)(6) and for judgment on the pleadings under Rule 12(c)).

Nevertheless, this Court has recognized that a trial court judge hearing a motion for summary judgment may be "presented the opportunity to rule on the very same legal question" as another judge in the case who had heard an earlier Rule 12 motion. *Adkins v. Stanly Cty. Bd. of Educ.*, 203 N.C. App. 642, 648, 692 S.E.2d 470, 474 (2010). In *Adkins*, both motions raised the legal issue of whether a plaintiff's prior complaint "touched on a matter of public concern." *Id.* "Thus, [the second judge]'s order was not merely an order granting summary judgment applying a different standard of review as would be appropriate under *Rhue*; rather, [the second judge]'s order overruled [the first judge]'s ruling." *Id.* at 651, 692 S.E.2d at 475.

Here, Plaintiff has not established that either judge considered a legal issue other than the applicable standards for a motion for judgment on the pleadings and

a motion for summary judgment, which are clearly different. Accordingly, Plaintiff has not shown that Judge Crosswhite overruled Judge Evans' ruling on "the very same legal question." *Id.* at 648, 692 S.E.2d at 474. Rather, this was "merely an order granting summary judgment applying a different standard of review as would be appropriate under *Rhue*[.]" *Id.* at 651, 692 S.E.2d at 475.

Thus, the Dowd Defendants' motion for judgment on the pleadings and Defendants' motions for summary judgment did not task both trial court judges with consideration of the very same legal question, and the third *Fox* condition was satisfied.

D. *Summary*

In that each of the three conditions listed in *Fox* has been satisfied, Plaintiff's argument is unavailing. By granting the Dowd Defendants' summary judgment motion, the trial court did not overrule the prior order denying the Dowd Defendants' motion for judgment on the pleadings.

III. *Summary Judgment*

Plaintiff next argues that the trial court erred in granting Defendants' motions for summary judgment on his claims for abuse of process and malicious prosecution. Both of Plaintiff's claims ultimately stem from the reformation action filed against Plaintiff by the Dowd Defendants, who were represented by the Attorney Defendants. Plaintiff maintains that the reformation action constituted wrongful litigation, and

that he was damaged by Defendants' pursuit of that action, which enabled the Dowd Defendants to foreclose on Plaintiff's property.

> Protection against wrongful litigation is afforded by a cause of action for either abuse of process or malicious prosecution. The legal theories underlying the two actions parallel one another to a substantial degree, and often the facts of a case would support a claim under either theory. The distinction between an action for malicious prosecution and one for abuse of process is that malicious prosecution is based upon malice in causing the process to issue, while abuse of process lies for its improper use after it has been issued.

Chidnese v. Chidnese, 210 N.C. App. 299, 304, 708 S.E.2d 725, 731 (2011) (citations and internal quotation marks omitted).

A. Claim First Raised on Appeal

On appeal, Plaintiff argues that the Dowd Defendants and the Attorney Defendants are liable for abuse of process and malicious prosecution. However, Plaintiff first raises this claim against the Dowd Defendants on appeal.

It is manifest that the abuse of process claim was not asserted against the Dowd Defendants in the trial division. In his original complaint, Plaintiff specifically labeled his claim for abuse of process as applying "[a]gainst Defendants Friesen, Sugg and Robbins May and Rich LLP," while he labeled his claim for malicious prosecution as applying to "[a]ll Defendants." In addition, Plaintiff's prayer for relief seeks no damages from the Dowd Defendants.

Moreover, the Dowd Defendants received no notice of this claim. The Dowd Defendants responded to the allegations of each paragraph of Plaintiff's claim for abuse of process by stating, "[t]he allegations of this paragraph are not directed toward the Dowd Defendants, and thus no response is required." The Dowd Defendants moved for summary judgment only on the malicious prosecution claim, as it was the sole claim Plaintiff pursued against them.

In addition, at the hearing on Defendants' motions for summary judgment, the trial court asked counsel for the Dowd Defendants to clarify whether Plaintiff alleged abuse of process against the Dowd Defendants. Counsel for the Dowd Defendants explained that Plaintiff's complaint specifically limited the abuse of process claim to the Attorney Defendants, which the trial court confirmed.

Plaintiff's response that the Dowd Defendants "should have been on notice that the claim extended to them" because the Attorney Defendants acted as their agents is inapt. Indeed, as Plaintiff's complaint explicitly charged "[a]ll Defendants" with malicious prosecution but only the Attorney Defendants with abuse of process, the complaint put the Dowd Defendants on notice that the abuse of process claim did *not* pertain to them.

With respect to Plaintiff's abuse of process claim against the Dowd Defendants,

> [w]e find nothing in the record which would indicate that this theory of liability was asserted in the complaint or in the trial court. . . . We are therefore left to assume, then,

> that [P]laintiff is asking us to pass on th[is] theor[y] of liability for the first time on appeal. This we cannot do.

Henderson v. LeBauer, 101 N.C. App. 255, 263-64, 399 S.E.2d 142, 147, *disc. review denied*, 328 N.C. 731, 404 S.E.2d 868 (1991). Accordingly, we limit our consideration of Plaintiff's claim of abuse of process as pursued solely against the Attorney Defendants.

B. Abuse of Process

The tort of abuse of process contemplates a perversion of legal process to achieve some ancillary purpose.

> Abuse of process is the misapplication of civil or criminal process to accomplish some purpose not warranted or commanded by the process. Two elements must be proved to find abuse of process: (1) that the defendant had an ulterior motive to achieve a collateral purpose not within the normal scope of the process used, and (2) that the defendant committed some act that is a malicious misuse or misapplication of that process *after issuance* to accomplish some purpose not warranted or commanded by the writ.

Pinewood Homes, Inc. v. Harris, 184 N.C. App. 597, 602, 646 S.E.2d 826, 831 (2007) (citations and internal quotation marks omitted).

Plaintiff asserts that "[t]his case is complex, and there is a string of abuses that demonstrate Defendants' ulterior motive." The string of abuses that Plaintiff claims evince an ulterior motive began with the attempts to serve him "at various addresses they knew were invalid and then by publication," enabling Defendants to avoid serving Plaintiff and then to obtain a default judgment for reformation against him,

which "allowed [Defendants] to obtain the now-invalidated order of foreclosure." Plaintiff further contends that Defendants' "failure to make any attempt to undo their [subsequent transfer of the property], to rescind their now incorrect Reformed Deed of Trust, or to have the foreclosure set aside is evidence from which a finder of fact could determine that there was an ulterior purpose."

Nevertheless, the Attorney Defendants correctly assert that "[t]hey did not seek to effectuate a purpose outside the scope of legal process." The Attorney Defendants based the reformation action upon the mutual mistake of the Dowd Defendants and Plaintiff, which resulted in the deed of trust identifying 1.44 acres of Plaintiff's Moore County property, rather than 8.74 acres as the parties intended. The purpose of the reformation action was to reform the deed of trust to reflect the parties' intentions, which is a proper objective. *See Nationstar Mortg., LLC v. Dean*, 261 N.C. App. 375, 381, 820 S.E.2d 854, 859 (2018) ("Reformation is a well-established equitable remedy used to reframe written instruments where, through mutual mistake or the unilateral mistake of one party induced by the fraud of the other, the written instrument fails to embody the parties' actual, original agreement." (citation omitted)). The Attorney Defendants further note that the reformation action was filed in lieu of proceeding with the foreclosure action, in order to address the alleged mutual mistake prior to the foreclosure.

Plaintiff has not forecast any evidence that the Attorney Defendants' "motive [was] to achieve a collateral purpose *not within the normal scope* of the process used." *Pinewood Homes*, 184 N.C. App. at 602, 646 S.E.2d at 831 (emphasis added). Plaintiff has narrated its string of alleged abuses, but brings only unsupported allegations of malicious intent against the Attorney Defendants. "It is well settled that an allegation, without any supporting facts, is insufficient to withstand summary judgment. Put simply, a party cannot prevail against a motion for summary judgment by relying on conclusory allegations, unsupported by facts." *King v. N.C. Dep't of Transp.*, 121 N.C. App. 706, 708, 468 S.E.2d 486, 489 (citations and internal quotation marks omitted), *disc. review denied*, 343 N.C. 751, 473 S.E.2d 617 (1996).

As Plaintiff did not forecast evidence demonstrating specific facts in support of his conclusory allegations of the Attorney Defendants' malicious intent, the trial court did not err in granting the Attorney Defendants' motion for summary judgment on the abuse of process claim.

C. Malicious Prosecution

"To establish malicious prosecution, a plaintiff must show that the defendant (1) initiated or participated in the earlier proceeding, (2) did so maliciously, (3) without probable cause, and (4) the earlier proceeding ended in favor of the plaintiff." *Turner v. Thomas*, 369 N.C. 419, 425, 794 S.E.2d 439, 444 (2016). "Where the claim is one for malicious prosecution, probable cause has been properly defined as the

existence of such facts and circumstances, known to the defendant at the *time*, as would induce a reasonable man *to commence* a prosecution." *Id.* (citation and internal quotation marks omitted). "It is well settled that legal malice may be inferred from a lack of probable cause." *Williams v. Kuppenheimer Mfg. Co.*, 105 N.C. App. 198, 203, 412 S.E.2d 897, 901 (1992).

There is no dispute here that Defendants initiated the earlier proceeding, but Defendants maintain that Plaintiff did not offer evidence of the remaining elements. More specifically, Plaintiff failed to forecast evidence that the reformation action was instituted with malice and without probable cause.

To begin, Plaintiff "insists that the Original Deed of Trust was correct, and that he never intended to secure the 8.74 Acre Parcel with a deed of trust to the Dowds." Defendants disagree, again contending that the reformation action was instituted to correct a mutual mistake in the legal description of the property in the deed of trust. However, that dispute alone is not sufficient to raise a genuine issue as to whether Defendants had probable cause to commence the underlying reformation action where Defendants put forth a proper purpose for doing so. Plaintiff offers no evidence that Defendants' basis for commencing the reformation action was unreasonable or improper.

Plaintiff further asserts that:

> a jury could conclude that the Dowd Defendants deliberately launched their Reformation Action with the

> intent of never notifying [Plaintiff] of its existence and obtaining a default judgment against him. In that case, a jury could find that the entire action was an effort to take [Plaintiff's] land. The Dowd Defendants['] acts (or more accurately their failure to act) after the court's *Dowd v. Johnson* decision strongly reinforce this.

Plaintiff again has presented only "conclusory allegations, unsupported by facts" regarding malicious intent and lack of probable cause. *King*, 121 N.C. App. at 708, 468 S.E.2d at 489 (citation omitted).

Viewed in the light most favorable to him, Plaintiff has not forecast evidence demonstrating specific facts in support of his conclusory allegations of Defendants' lack of probable cause and legal malice in the prosecution of the reformation action. In that malicious intent and lack of probable cause are two essential elements of a claim for malicious prosecution, *see Turner*, 369 N.C. at 425, 794 S.E.2d at 444, the trial court did not err in granting Defendants' motions for summary judgment on this claim.

Conclusion

For the reasons stated herein, we hold that the trial court did not err by granting summary judgment in favor of Defendants. Accordingly, we affirm.

AFFIRMED.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).