**[Cite as *Alagha v. Cameron*, 2009-Ohio-4886.]**

# IN THE COURT OF APPEALS
# FIRST APPELLATE DISTRICT OF OHIO
# HAMILTON COUNTY, OHIO

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| MOHAMMED ALAGHA, | : | APPEAL NO. C-081208<br>TRIAL NO. A-0601303 |
| Plaintiff-Appellant, | : | |
| | | *D E C I S I O N.* |
| vs. | : | |
| MICHELLE CAMERON | : | |
| and | : | |
| CITY OF CINCINNATI, | | |
| Defendants-Appellees. | | |

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 18, 2009

*Katzman Logan Halper & Siegel* and *Steven D. Halper*, for Plaintiff-Appellant,

*Hardin, Lazarus, Lewis & Marks, LLC, Donald A. Hardin,* and *Kimberly A. Rutowski*, for Defendant-Appellee Michele Cameron,

*Peter J. Stackpole*, Assistant Cincinnati City Solicitor, for Defendant-Appellee City of Cincinnati.

Please note: This case has been removed from the accelerated calendar.

**DINKELACKER, Judge.**

**{¶1}** Plaintiff-appellant, Mohammed Alagha, filed a complaint against defendants-appellees, Michelle Cameron, a Cincinnati police officer, and the city of Cincinnati. The complaint alleged, among other things, malicious prosecution. The trial court granted summary judgment in favor of Officer Cameron and the city. Alagha has filed a timely appeal from that judgment.

**{¶2}** The record contains no evidence at all that Officer Cameron acted maliciously or recklessly or that she engaged in improper behavior of any kind. We think it a travesty that she has been subject to the time and expense of a lawsuit, particularly in her individual capacity, for simply doing her job and, in our view, doing it well. We find no merit in Alagha's assignment of error, and we affirm the trial court's judgment.

### *I. Facts and Procedure*

**{¶3}** The record shows that Officer Cameron was dispatched to 5797 Willowcove Drive on a report of domestic violence. The complainant, Brandi Buell-Alagha, lived there with her parents. She told Officer Cameron that Alagha, her estranged husband, had violated a civil protection order.

**{¶4}** Mrs. Alagha showed Officer Cameron a copy of the order. It required Alagha to stay over 500 feet away from his estranged wife and not to initiate any contact with her "by telephone, fax, e-mail, voice mail, delivery service, writings, or communications by any other means in person or through another person." Mrs. Alagha also told Officer Cameron that she had informed Alagha about the order. Apparently, though, it was never served on him.

**{¶5}** Mrs. Alagha told Officer Cameron that Alagha had left a note on her car at her place of employment and that he had sent her several emails. She showed Officer Cameron copies of the note and the emails, which were related to the activities of the Alagha children.

**{¶6}** Officer Cameron then called the Hamilton County Sheriff's Office Central Warrant Unit to verify that the protection order was valid. After confirming that it was valid, the officer signed a complaint against Alagha for violating a protection order under R.C. 2919.27 based on the information she had obtained from Mrs. Alagha. The officer signed the complaint because Mrs. Alagha could not go to the office of the clerk of courts in downtown Cincinnati.

**{¶7}** After the complaint was filed, Officer Cameron obtained a written victim statement signed by Mrs. Alagha. It stated, "My estranged husband, Mohammed Alagha, left a note on my car on 2/16/05 and also emailed me on 2/16/05. This is in direct violation of my civil protection order. The protection order was granted 2/14/05. I verbally told my husband of the protection order on 2/14/05, when he came to my residence and entered uninvited. On 2/18/05 he emailed me again and called my home 2/22/05."

**{¶8}** Alagha was subsequently arrested based on the complaint filed by Officer Cameron. He called Mrs. Alagha from the police station, and she called the police to report another violation of the protection order based on that phone call. Following a trial, Alagha was acquitted of the charges in the complaint filed by Officer Cameron.

### *II. Malicious Prosecution*

**{¶9}** Alagha's sole assignment of error relates only to his malicious-prosecution claim, not to any other claim in his complaint. He contends that the trial

court erred in granting summary judgment in favor of Officer Cameron on that claim. He argues that material issues of fact existed as to whether the officer had probable cause to sign the complaint against him. This assignment of error is not well taken.

**{¶10}** To sustain an action for malicious prosecution, the plaintiff must prove the following by a preponderance of the evidence: (1) malice in instituting or continuing a prosecution; (2) lack of probable cause; (3) termination of the prosecution in favor of the accused; and (4) seizure of the accused's person or property.[1] The Ohio Supreme Court has defined "malice" in this context as "an improper purpose, or any purpose other than the legitimate interest of bringing an offender to justice."[2]

**{¶11}** An inference of malice arises from the institution and continuation of a prosecution without probable cause.[3] A determination of whether probable cause existed requires an inquiry into the facts and circumstances that were actually known or should have been known at the time the prosecution was instituted.[4] Probable cause exists when the facts and circumstances would warrant a cautious individual in believing that the person accused is guilty of a criminal offense.[5] Although the existence of probable cause is often an issue of fact, the trial court may determine the issue as a matter of law when the evidence in the record allows for only one reasonable conclusion.[6]

**{¶12}** Further, the legislature has "articulated the traditional standards of probable cause to arrest" and applied them to the offense of violating a protection

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[1] *Robb v. Chagrin Lagoons Yacht Club, Inc.*, 75 Ohio St.3d 264, 1996-Ohio-189, 662 N.E.2d 9, syllabus; *Clauder v. Holbrook* (Jan. 28, 2000), 1st Dist. No. C-990145.
[2] *Criss v. Springfield Twp.* (1990), 56 Ohio St.3d 82, 85, 564 N.E.2d 440; *Evans v. Smith* (1994), 97 Ohio App.3d 59, 68, 646 N.E.2d 217.
[3] *Crosset v. Marquette*, 1st Dist. Nos. C-060148 and C-060180, 2007-Ohio-550, ¶13; *Evans*, supra, at 69.
[4] *Crosset*, supra, at ¶13; *McFinley v. Bethesda Oak Hosp.* (1992), 79 Ohio App.3d 613, 616-617, 607 N.E.2d 936.
[5] *Crosset*, supra, at ¶13; *Norwell v. Cincinnati* (1999), 133 Ohio App.3d 790, 810, 729 N.E.2d 1223.
[6] *McFinley*, supra, at 617.

order.[7] R.C. 2935.03(B)(1) specifically states that "[w]hen there is reasonable ground to believe that * * * the offense of violating a protection order under 2919.27 * * * has been committed" within a peace officer's jurisdiction, the officer "may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation." If the officer has reasonable grounds to believe that the offense has been committed, the preferred course of action is an arrest.[8]

**{¶13}** R.C. 2935.03(B)(3)(a) goes on to state that a peace officer "has reasonable grounds to believe that * * * the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense" if (1) the complainant executes a written statement alleging that a person has committed the offense against the complainant; or (2) the peace officer, based on that officer's own knowledge or observation, including any reasonably trustworthy information given to the officer by the alleged victim or any witness, concludes that "there are reasonable grounds to believe" that the offense has been committed and "reasonable cause to believe that the person in question is guilty of committing the offense."

**{¶14}** In this case, Officer Cameron spoke with Mrs. Alagha, the alleged victim, who told her that Alagha had violated the protection order by emailing her and leaving a note on her car. Officer Cameron saw the protection order, the emails, and the note. She verified that the protection order was valid. Consequently, she had probable cause to believe that Alagha had committed the offense of violating a protection order as provided in R.C. 2935.03(B)(3)(a)(ii).

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[7] See *White v. Roch*, 9th Dist. No. 22239, 2005-Ohio-1127, ¶15; *State v. Lampe*, 1st Dist. No. C-020708, 2003-Ohio-3059, ¶14.
[8] R.C. 2935.03(B)(3)(b); *Felton v. Felton*, 79 Ohio St.3d 34, 39, 1997-Ohio-302, 679 N.E.2d 672.

**{¶15}** Further, Mrs. Alagha executed a written statement, as described in R.C. 2935.03(B)(3)(a)(i), alleging that Alagha had violated the protection order. Even though Mrs. Alagha did not execute the statement until after Officer Cameron had filed the complaint, that omission did not change the fact that Officer Cameron had probable cause to believe that Alagha had violated the protection order.

**{¶16}** Alagha argues that Officer Cameron never attempted to determine if the protection order had been served on him, never attempted to contact him to see if he knew about the protection order, never attempted to determine whether the parties were involved in divorce proceedings, and never attempted to contact either party's legal counsel. We do not believe that the law requires the police to go to these lengths. Under R.C. 2935.03(B)(3), Cameron had probable cause after talking to Mrs. Alagha. The officer verified that the order was valid by calling the Central Warrant Unit, where the order was indexed as R.C. 2903.214(F)(2) required. But the Central Warrant Unit did not determine whether a protection order had been served on a particular individual.

**{¶17}** Further, proof of service of the order is not essential in every case to obtain a conviction for violating a protection order under R.C. 2919.27.[9] Therefore, Officer Cameron did not have to verify that the order was served on Alagha to have probable cause to believe that he had committed the offense.

**{¶18}** We find no issues of material fact. Construing the evidence most strongly in Alagha's favor, we hold that reasonable minds can come to but one conclusion–that Officer Cameron had probable cause to file the complaint against Alagha and that she did not act maliciously. Officer Cameron and the city were entitled

[9] *State v. Rutherford*, 2nd Dist. No. 08CA11, 2009-Ohio-2071, ¶28; *State v. Bunch* (Jan. 17, 2001), 9th Dist. No. 20059.

to judgment as a matter of law. Consequently, the trial court did not err in granting summary judgment in their favor on Alagha's claim for malicious prosecution.[10]

### *III. Sovereign Immunity*

**{¶19}** We also hold that Officer Cameron was entitled to judgment as a matter of law due to sovereign immunity. R.C. 2744.03(A)(6) creates a presumption of immunity for employees of a political subdivision in connection with their performance of governmental or proprietary functions.[11] An employee is immune from liability unless "the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner[.]"[12]

**{¶20}** This court has defined malice as "the willful and intentional design to do injury."[13] Bad faith means more than bad judgment or negligence. It implies "a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking in the nature of fraud. It also embraces actual intent to mislead or deceive another."[14]

**{¶21}** Wanton misconduct is the failure to exercise any care whatsoever. "Mere negligence is not converted into wanton misconduct unless the evidence establishes a predisposition to perversity on the part of a tortfeasor."[15] That perversity requires the actor to be conscious that his conduct will, in all likelihood, cause an injury.[16] Recklessness is a perverse disregard of a known risk. It requires something

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[10] *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267; *Greene v. Whiteside*, 181 Ohio App.3d 253, 2009-Ohio-741, 908 N.E.2d 975, ¶23; *Stinespring v. Natorp Garden Stores* (1998), 127 Ohio App.3d 213, 215, 711 N.E.2d 1104.
[11] *Scott v. Longworth*, 180 Ohio App.3d 73, 2008-Ohio-6508, 904 N.E.2d 557, ¶10; *Lambert v. Hartmann*, 178 Ohio App.3d 403, 2008-Ohio-4905, 898 N.E.2d 67, ¶12, discretionary appeal allowed sub nom. *Lambert v. Clancy*, 120 Ohio St.3d 1524, 2009-Ohio-614, 901 N.E.2d 244.
[12] R.C. 2744.03(A)(6)(b).
[13] *Wooten v. Vogele*, 147 Ohio App.3d 216, 2001-Ohio-7096, 769 N.E.2d 889, ¶19.
[14] Id., quoting *Garrison v. Bobbitt* (1999), 134 Ohio App.3d 373, 384, 731 N.E.2d 216.
[15] *Fabrey v. McDonald Police Dept.*, 70 Ohio St.3d 351, 356, 1994-Ohio-368, 639 N.E.2d 31; *Wooten*, supra, at ¶19.
[16] *Fabrey*, supra, at 356; *Wooten*, supra, at ¶19.

more than mere negligence. The actor must be conscious that his or her conduct will in all probability result in injury.[17]

**{¶22}** The question whether an employee acted wantonly or recklessly is generally a question of fact for the jury. But where the record does not contain evidence that the employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner, a trial court may properly grant summary judgment in favor of the employee.[18]

**{¶23}** The record in this case contains no evidence showing that Officer Cameron's conduct rose to the level of perversity necessary to overcome the presumption of immunity. She had not had any prior contact with either party in this case. She was simply doing her job. She followed the appropriate procedures and conformed to the requirements of the law. Consequently, she was entitled to immunity.

**{¶24}** Our review of the record shows that reasonable minds can come to but one conclusion–that Officer Cameron was entitled to immunity. She and the city were entitled to judgment as a matter of law, and the trial court did not err in granting summary judgment in their favor on Alagha's malicious-prosecution claim.[19] Consequently, we overrule Alagha's assignment of error and affirm the trial court's judgment.

Judgment affirmed.

**HENDON, P.J.,** and **SUNDERMANN, J.,** concur.

*Please Note:*

The court has recorded its own entry this date.

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[17] *O'Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, 889 N.E.2d 505, paragraph three of the syllabus; *Scott*, supra, at ¶12.
[18] *Fabrey*, supra, at 356; *Scott*, supra, at ¶13; *Wooten*, supra, at ¶18.
[19] See *Temple*, supra, at 327; *Greene*, supra, at ¶23; *Stinespring*, supra, at 215.