[Cite as *Slye v. London Police Dept.*, 2010-Ohio-2824.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

MADISON COUNTY

AMY J. SLYE,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-12-027
	:	O P I N I O N 6/21/2010
- vs -	:	
CITY OF LONDON POLICE DEPARTMENT, et al.,	:	
	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS
Case No. CV20080246

Blue & Blue, LLC, Douglas J. Blue, 471 East Broad Street, Suite 1100, Columbus, Ohio 43215, for plaintiff-appellant

Zahid H. Siddiqi, London City Law Director, 102 South Main Street, P.O. Box 724, London, Ohio 43140, for defendants-appellees, London Police Dept., Sgt. David Litchfield, Officer Joe Cox and Monte White

Jackman & Jackman, David H. Jackman, 60 South Main Street, P.O. Box 29, London, Ohio 43140, for defendant-appellee, David K. Jackman

RINGLAND, J.

{¶1} Plaintiff-appellant, Amy J. Slye, appeals the decision of the Madison County Court of Common Pleas granting the motions for attorneys fees and expenses of defendants-appellees, the city of London Police Department, Sergeant David Litchfield,

Officer Joe Cox, and Monte White, the city's law director, (collectively, "the city"), and defendant-appellee, David K. Jackman, as a sanction for frivolous conduct.

{¶2} This action arises out of a criminal prosecution for the attempted theft of a dog. On July 2, 2007, Slye was driving down Mound Street in London with her teenage daughter and two friends in search of her teenage son, who had run away from home. According to Slye, she came upon a "very sickly" and "very skinny" dog in the gravel along the side of the street. The dog had no collar or tags and Slye was concerned for its safety. She stopped the car and asked her daughter to get out and retrieve the dog. Slye stated that she intended to take the dog to a local shelter, as she had done multiple times in the past upon coming across stray animals.

{¶3} As Slye continued down the street she noticed a "healthy looking" dog running down the driveway of a home towards the street. Similarly fearing for its safety, Slye instructed her daughter to get out of the car and "shoo" the dog back up the driveway. According to Slye, as her daughter was attempting to waive the dog away, Jackman appeared in the driveway.

{¶4} Jackman claimed that just minutes before, he had returned home from work to let his two Chihuahuas outside. According to Jackman, one Chihuahua was 19 years old and "completely blind and nearly immobile." He characterized his other Chihuahua as young and healthy. Jackman stated that he was watching his dogs in the front yard through his kitchen window, but was distracted by a telephone call and lost sight of them.

{¶5} Jackman went outside to locate the dogs and observed Slye's daughter in his driveway. Jackman claimed that she was trying to call his younger dog towards her. Although the subsequent exchange was disputed at trial, it is undisputed that Jackman asked where the "other" dog was. Slye and her daughter claimed that the two dogs

were so different in appearance that they did not immediately connect the dog in their car with the one in the driveway as both belonging to Jackman. They indicated to Jackman that they did not know where the other dog was, and continued in their search for Slye's son.

{¶6} Jackman called his neighbor, Sergeant David Litchfield of the London Police Department, and reported the license plate number of Slye's vehicle. Jackman believed that Slye was in possession of his older dog and told Litchfield that it had been stolen. Litchfield was at the police station preparing for an undercover operation and was about to run the plate number provided by Jackman when Officer Joe Cox radioed into dispatch and reported a dispute at a nearby residence. Cox indicated that there was a car at the scene and the license plate number he provided matched the plate number of the vehicle Slye was driving. Litchfield instructed Cox to keep the car at the scene until he arrived.

{¶7} The record indicates that Slye had driven to a nearby home where she thought she might find her son. Slye called the London police after an altercation occurred between the owner of the home and one of the passengers in her vehicle. Both Cox and Litchfield arrived on the scene and Litchfield confronted Slye about the dog. Initially believing that Litchfield was the owner because he was dressed in plainclothes, Slye gave him the dog before continuing her search for her son with Officer Cox.

{¶8} Litchfield returned the dog to Jackman, who indicated that he wanted to file a criminal complaint against Slye. She was subsequently charged with attempted theft, and a bench trial was held on October 23, 2007 in the Madison County Municipal

Court.[1] Following the close of Slye's case-in-chief, the trial court dismissed the case, concluding that the state failed to prove beyond a reasonable doubt that Slye acted with the intent to deprive Jackman of his dog.

{¶9} Subsequently, on April 15, 2008, Slye filed a two-count complaint against Jackman and the city. Slye alleged generally that the city had maliciously prosecuted her, and that Jackman had defamed her by "making and publishing false and defamatory statements about her with regard to the theft of his dog." In response to Slye's complaint, on June 12, 2008, Jackman filed a motion to strike, dismiss, and for a more definite statement.

{¶10} On June 20, 2008, Slye filed a memorandum in opposition to Jackman's motion, and requested leave to file an amended complaint. In her amended complaint, Slye alleged that Jackman defamed her by reporting to law enforcement officers that his dog had been stolen, and in making the following remarks in his written statement provided to police: "I believe that the mother should go to jail and then to hell for screwing up her kids' lives. I believe that the kids should go to [juvenile detention] and foster care. Keep the kids away [illegible] * * *." Slye claimed that as a result of Jackman's statements, she suffered injury to her reputation, was exposed to public ridicule and lost her job in September 2007 when a background check by her new employer revealed the pending criminal charge.

{¶11} Subsequently, on August 28, 2008, the city moved for summary judgment, arguing that each of the city defendants was entitled to statutory immunity from Slye's claim.

{¶12} On January 14, 2009, Jackman filed a supplemental memorandum in

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1. It appears that during the course of the trial, the state dismissed the attempted theft charge and the case proceeded under the charge of complicity to commit a theft offense.

support of his June 12 motion. Jackman argued that Slye's deposition on July 2, 2008 yielded no evidence to support her claim, and that Jackman's statements to police were protected by the doctrine of absolute privilege. In its January 29, 2009 entry, the trial court indicated that it would treat Jackman's motion to dismiss as one for summary judgment and allowed Jackman and Slye to submit additional pleadings in support of their respective positions. The record indicates that Slye failed to file a responsive pleading.

{¶13} In its March 13, 2009 decision, the trial court granted summary judgment in favor of the city and Jackman.[2] The court found that the city defendants were immune from Slye's malicious prosecution claim. With regard to Slye's defamation claim against Jackman, the court found that Jackman's statements to the police were protected by absolute privilege, and that Slye failed to demonstrate that she was damaged by Jackman's remarks, as her claim arose "by her own statement, not from the police report submitted by [Jackman], but due to the fact of pending charges against her, a matter of public record."

{¶14} Subsequently, on April 8, 2009, the city moved for an award of attorney fees and expenses, asserting that Slye's claim constituted frivolous conduct under R.C. 2323.51. Two days later, on April 10, Jackman filed a similar motion seeking sanctions against Slye's attorney under Civ.R. 11, and an award of attorney fees and expenses pursuant to R.C. 2323.51.

{¶15} Following hearings on the matter in June and August 2009, in its November 10, 2009 entry, the trial court found Slye's claims against the city and

2. The court also determined that the London Police Department was not sui juris, and therefore not a proper party to Slye's suit. Although the court noted that the city of London was the real party in interest, pursuant to Civ.R. 17 and this court's decision in *Wynn v. Butler County Sheriff's Dept.* (Mar. 22, 1999), Butler App. No. CA98-08-175, the trial court nonetheless considered the merits of Slye's malicious prosecution claim against the police department.

Jackman to be frivolous under R.C. 2323.51. The court found that her claims were not warranted under current law, and that after Slye's July 2, 2008 deposition, she "knew or should have known that her claims were unsupported or unsupportable legally or factually." As a result, the court found that Jackman was entitled to an award of $3,456 in attorney fees and expenses he incurred after July 2, and that the city was also entitled to an award of $1,715.68 in expenses and attorney fees it incurred after that date.[3]

{¶16} Slye appealed the trial court's November 10, 2009 decision, raising one assignment of error for our review:

{¶17} "THAT THE TRIAL COURT ERRED WHEN IT AWARDED ATTORNEYS' FEES TO DEFENDANTS/APPELLEES DAVID K. JACKMAN AND THE CITY OF LONDON, FINDING THAT PLAINTIFF/APPELLANT AMY SLYE'S CLAIMS WERE UNSUPPORTED OR UN[SUPPORTABLE] LEGALLY OR FACTUALLY, THAT HER FILINGS WERE FRIVOLOUS AND THAT DEFENDANTS/APPELLEES WERE ADVERS[E]LY AFFECTED BY HER FILINGS [sic]."

{¶18} In her sole assignment of error, Slye challenges the trial court's determination that her claims against Jackman and the city constituted frivolous conduct. Slye has not contested the amount of attorney fees and expenses awarded in connection with the court's findings.

{¶19} R.C. 2323.51(B)(1) provides, in part, that a trial court may award court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with a civil action to a party adversely affected by frivolous conduct. "Conduct" is defined under R.C. 2323.51(a) as "[t]he filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading,

3. Although the trial court did not specifically address the merits of Jackman's Civ.R. 11 argument, it appears that the court implicitly considered the claim by imposing the sanction award against both Slye and

motion, or other paper in a civil action, * * * or the taking of any other action in connection with a civil action[.]"

{¶20} R.C. 2323.51(A)(2)(a) defines "frivolous conduct" to include any of the following:

{¶21} "(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

{¶22} "(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

{¶23} "(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

{¶24} "(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief."

{¶25} In this case, the trial court determined that Slye's conduct was frivolous under R.C. 2323.51(A)(2)(a)(ii) and (iii). Appellate review of a trial court's decision as to what constitutes frivolous conduct involves mixed questions of law and fact. *Lucchesi v. Fischer,* Clermont App. No. CA2008-03-023, 2008-Ohio-5935, ¶4. A court's factual determinations are accorded a degree of deference, and will not be disturbed on appeal if there is competent, credible evidence in the record to support them. *In re K.A.G.-M.*, Warren App. No. CA2009-04-040, 2009-Ohio-6239, ¶17, citing *Jackson v. Bellomy,* Franklin App. No. 01AP-1397, 2002-Ohio-6495, ¶39, ¶45. However, legal questions,

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her trial counsel.

such as a whether a party's conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, requires a de novo review. *Ferron v. Video Professor, Inc.*, Delaware App. No. 08-CAE-09-0055, 2009-Ohio-3133, ¶44. When an inquiry is purely a question of law, an appellate court need not defer to the judgment of the trial court. *Wiltberger v. Davis* (1996), 110 Ohio App.3d 46, 51-52.

Malicious Prosecution Claim

{¶26} Slye initially contends that the trial court erred in determining that her malicious prosecution claim against the city was not warranted under existing law and lacked evidentiary support because the city defendants were entitled to statutory immunity. "Whether a claim is warranted under existing law is an objective consideration." *Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, ¶30. The test is whether "no reasonable attorney would have brought the action in light of the existing law." Id.

{¶27} At the outset, we note that at the June 2009 hearing on the defendants' respective motions for fees and expenses, the city argued that after filing for summary judgment in August 2008, Slye filed a motion for an extension of time to conduct additional discovery pursuant to Civ.R. 56(F). In her request, Slye argued that she could not "present facts essential to justify opposition to [the city's motion] without the benefit of further discovery." Although Slye argued that she needed additional time to depose other witnesses, as the city pointed out, the record indicates that she failed to complete any additional discovery before filing her response to the city's motion in December 2008. In addition, in an August 12, 2008 letter from the city's attorney, Slye was put on notice that her claims were being viewed as frivolous as a result of the city's claimed statutory immunity.

{¶28} In order to establish a claim for malicious prosecution, a plaintiff must prove: 1) malice in initiating or continuing the prosecution; 2) lack of probable cause; and 3) termination of the prosecution in favor of the accused. *Frazier v. Clinton Cty. Sheriff's Office*, Clinton App. No. CA2008-04-015, 2008-Ohio-6064, ¶14. In her amended complaint, Slye averred generally that the city, "jointly and severally, maliciously prosecuted [Slye] in that they maliciously initiated and continued the prosecution of [Slye] for attempted theft pursuant to [R.C. 2923.02]; they lacked probable cause to institute said proceedings; and the prosecution was terminated in favor of [Slye]."

{¶29} With regard to her claim against the police department, it is well-established that a police department is a political subdivision as defined in R.C. 2744.01(F), and the determination of whether it is immune from tort liability involves a three-tiered analysis. *Griffits v. Village of Newburgh Hts.*, Cuyahoga App. No. 91428, 2009-Ohio-493, ¶8; *Carter v. Cleveland*, 83 Ohio St.3d 24, 28, 1998-Ohio-421. First, R.C. 2744.02(A)(1) sets forth the general rule that a political subdivision is "not liable for damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." *Griffits* at ¶9. Second, R.C. 2744.02(B) lists five exceptions to the immunity granted to political subdivisions under R.C. 2744.02(A)(1). *Ryll v. Columbus Fireworks Display Co., Inc.*, 95 Ohio St.3d 467, 470, 2002-Ohio-2584. Third, in the event that a political subdivision is subject to liability under R.C. 2744.02(B), further defenses and immunities are available to it pursuant R.C. 2744.03(A). See *Griffits* at ¶18.

{¶30} In applying the stated exceptions in R.C. 2744.02(B), the only relevant exception that could apply to this case is R.C. 2744.02(B)(5), which provides:

{¶31} "* * * [A] political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term 'shall' in a provision pertaining to a political subdivision."

{¶32} In order for this section to apply, however, Slye must have been able to point to a statute that expressly imposes liability on political subdivisions for actions similar to those at issue in the instant case. Courts have held that because R.C. 2744.02(B) does not include a specific exception for intentional torts, political subdivisions are immune from intentional tort claims. See *Griffits*, 2009-Ohio-493 at ¶26. Moreover, there is "no section of the Revised Code that expressly imposes liability upon a public agency for * * * malicious prosecution * * *." Id. See, also, *Frazier*, 2008-Ohio-6064 at ¶32. Based on the foregoing well-established legal principles, we conclude that Slye's pursuit of a malicious prosecution claim against the police department was not warranted by existing law pursuant to R.C. 2323.51(A)(2)(a)(ii). We further find that pursuant to R.C. 2323.51(A)(2)(a)(iii), the trial court properly determined that her claim lacked evidentiary support.

{¶33} With respect to Slye's claims against Officer Cox and Sergeant Litchfield, R.C. 2744.03(A)(6) provides for qualified immunity to employees of political subdivisions unless one of the following applies: "(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; (c) Civil liability is expressly imposed upon the employee by a section of the Revised Code * * *." In this case, because the Revised Code does not expressly impose liability on police officers for malicious prosecution, and because Slye has not asserted that Cox and Litchfield acted outside the scope of their official responsibilities, Slye would have to show that their investigation was done with malicious purpose, in bad faith, or in a wanton or reckless manner.

{¶34} Slye argues generally that there was evidence to support her assertion that Litchfield and Cox acted maliciously and in bad faith because the attempted theft charge was brought against the better judgment of law enforcement. She contends that because Jackman and Litchfield are neighbors, Litchfield ignored her statement that she thought the dog was a stray, and instead believed Jackman’s claim that the dog had been stolen. She also appears to argue that the requisite malicious purpose and bad faith is demonstrated by Cox’s failure to interview her after the incident.

{¶35} Despite Slye’s contentions on appeal, based on the law and the record before this court, it is apparent that she failed to properly investigate her allegations prior to filing her claim. In her deposition, Slye testified that she had no personal knowledge of what steps, if any, Sergeant Litchfield took from the date of the alleged theft of Jackman's dog through the date she was served with a summons on the criminal complaint. With regard to Officer Cox, Slye testified similarly that she had no personal knowledge of his investigatory efforts, other than in providing her with a voluntary statement form. Slye also indicated that there was no reason to believe that Officer Cox was harboring any ill will towards her.

{¶36} In his affidavit in support of summary judgment, Officer Cox stated that he was the investigating officer in the case and had collected written statements from Slye,

Jackman, Slye's daughter, and two other witnesses, and had also prepared an incident report. After his investigation was complete, Cox turned the information over to the city law director, Monte White. Cox averred that White instructed him to file charges against Slye for attempted theft, and that he did so only after being instructed to by White. In Sergeant Litchfield's supporting affidavit, he averred that he had requested Officer Cox to obtain statements from Jackman and any witnesses, but that he "did not do anything further in connection with the case" until he testified at the criminal trial. In light of the foregoing, we find that Slye's malicious prosecution claim against Litchfield and Cox was not warranted under existing law, and the trial court did not err in determining that it lacked evidentiary support.

{¶37} We similarly find that Slye's claim against City Law Director Monte White was unwarranted by existing law and not supported by the evidence pursuant to R.C. 2323.51(A)(2)(a)(ii) and (iii). It is well-established that the qualified immunity enjoyed by White under R.C. 2744.03(A)(6) as an employee of a political subdivision is in addition to common law immunity granted to him as a city director of law. *Barstow v. Waller*, Hocking App. No. 04CA5, 2004-Ohio-5746, ¶24. Specifically, R.C. 2744.03(A)(7) provides: "The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision * * * is entitled to any defense or immunity available at common law or established by the Revised Code."

{¶38} As city law director, White is considered a "quasi-judicial" officer who is entitled to absolute immunity when his actions are "intimately associated with the judicial phase of the criminal process." *Barstow* at ¶25. White's absolute immunity would be reduced to qualified immunity only in the event that Slye could demonstrate that he was engaged in "investigative and administrative functions" in connection with her case. Id.

{¶39} Slye did not allege, and there is no evidence in the record to suggest, that White did anything other than make the official determination to file criminal charges and prosecute the case in municipal court. In her deposition, Slye testified that she "[did not] know specifics" when asked whether she knew what, if anything, White did outside of the courtroom in connection with her case. In both his deposition and affidavit in support of summary judgment, White testified that he made the sole determination to file charges against Slye based upon the investigatory materials Officer Cox had provided to him.

{¶40} In addition to the fact that the city defendants were entitled to statutory immunity, we further find that Slye's malicious prosecution claim lacked evidentiary support and was unwarranted, as a matter of law, because probable cause existed to initiate the criminal charge against her. The "gist" of any action for malicious prosecution is lack of probable cause. *Frazier*, 2008-Ohio-6064 at ¶14. "If the plaintiff cannot show lack of probable cause, the claim for malicious prosecution fails as a matter of law." Id.

{¶41} Probable cause is defined as "a reasonably strong suspicion supported by facts and circumstances sufficiently strong in themselves to warrant a prudent person in believing an accused person had committed or was committing an offense." *State v. Ratcliff* (1994), 95 Ohio App.3d 199, 205. Whether the accused actually committed a crime is not pertinent to a probable cause determination. *Frazier* at ¶15.

{¶42} As previously discussed, in conducting his investigation into the matter, Officer Cox collected voluntary statements from Jackman, Slye, Slye's daughter, and two additional witnesses. In his statement, Jackson claimed that he had asked Slye and her daughter whether they saw another dog. He stated that both Slye and her daughter told him that there was "no other dog." In addition, Jackman's neighbor, James Seward,

claimed in his written statement that he observed the front passenger in Slye's car walk up into Jackman's driveway, pick up a dog, and place it in the car. Although in both her written statement and at trial Slye claimed that the dog was found down the street from Jackman's house, and that she believed it was a stray when she picked it up, the statements of Jackman and Seward were sufficient to establish probable cause to initiate the criminal charge.

{¶43} As a result of the foregoing, we find that Slye's pursuit of the malicious prosecution claim against the city constituted frivolous conduct pursuant to R.C. 2323.51(A)(2)(a).

Defamation Claim

{¶44} Slye also contends that the trial court erred in determining that her defamation claim against Jackman was frivolous.

{¶45} A defamation claim consists of the following elements: "(1) a false and defamatory statement; (2) about the plaintiff; (3) published to a third party without privilege; (4) with fault or negligence by the defendant; (5) that was either defamatory per se or caused special harm to the plaintiff." *Coyne v. Stapleton*, Clermont App. No. 2006-10-080, 2007-Ohio-6170, fn. 2, quoting *Rosenbaum v. Chronicle Telegram,* Lorain App. Nos. 01 CA0079896, 01 CA007908, 2002-Ohio-7319, ¶24. On appeal, Slye argues that her defamation claim was centered on Jackman's voluntary statement provided to police, in which he wrote, in part, that he believed "the mother should go to jail and then to hell for screwing up her kids lives * * *."

{¶46} In its decision finding that Slye's claim was frivolous, the trial court determined that Jackman's written statement was protected by absolute privilege pursuant to the Ohio Supreme Court's decision in *M.J. DiCorpo, Inc. v. Sweeney*, 69 Ohio St.3d 497, 1994-Ohio-316. In *DiCorpo*, the supreme court determined that an

affidavit, statement or other information provided to a prosecuting attorney reporting the actual or possible commission of a crime is entitled to absolute privilege against civil liability if the statement made bears some "reasonable relation" to the activity reported. Id. at 507. In this case, the trial court determined that the "gist" of Jackman's statement was that Slye committed or attempted to commit a theft. The court also found that "[Jackman's] opinion that [Slye] should go to jail or hell and her children to juvenile detention or foster care have reference and relation to the underlying theft or attempted theft. They appear to be statements related to punishment and opinion. They bear a very substantial resemblance to victims' impact statements we encourage and see in a majority of our criminal cases."

{¶47} However, our research has revealed that other courts have questioned the applicability of the doctrine of absolute privilege to statements made to police officers. In *Scott v. Patterson*, Cuyahoga App. No. 81872, 2003-Ohio-3353, the Eighth Appellate District determined that a statement made to the police is not the same as a statement made to a prosecuting attorney, as one made to police triggers an investigation of an alleged crime, and therefore does not constitute a "judicial proceeding" contemplated by the holding in *DiCorpo*. See, also, *Olsen v Wynn*, Ashtabula App. No. 95-A-0078, 1997 WL 286181 (trial court erred in holding that statements made to law enforcement personnel were protected by absolute privilege). Therefore, we cannot say, as a matter of law, that at the time Slye asserted her defamation claim against Jackman, it was legally groundless.

{¶48} Nevertheless, the record indicates that even after allowing a reasonable opportunity for further investigation of her allegations, it became readily apparent that Slye's claim lacked evidentiary support. In her deposition, Slye testified as follows:

{¶49} "Q. Now, you have alleged in your complaint that [Jackman] has been

guilty of, I think, basically, slander as well as defamation of your character. So would you please tell me what he has done that makes you bring these charges?

{¶50} "Well, the way that I see it, I took them almost a month from the time it happened till I was subpoenaed to figure out what they were going to charge me with. That's one.

{¶51} "Secondly, in his police statement, the last line of his police statement is, I think Amy Slye should go to jail and then go to hell for what she's teaching her children; and again shows malice. I lost a sixteen-dollar-an-hour job. I'm now working at McDonald's for eight, because he ruined a career.

{¶52} "And everybody I've ever talked to just is jaw-dropped at the audacity of bringing charges against me for trying to rescue a dog."

{¶53} However, Slye further testified that her offer of employment was rescinded in September 2007 on the basis of the criminal charge itself, a matter of public record. There is no evidence to indicate that she lost her job as a direct result of Jackman's statement to the police. In addition, when asked if there were other writings made by Jackman that impinged on her character, Slye testified, "not that I know of. I don't know."

{¶54} As the trial court noted in its decision granting Jackman's motion for fees and expenses, following her July 2008 deposition, Slye was quickly apprised of the lack of evidentiary support for her allegations. Nevertheless, she continued to prosecute her claim, forcing Jackman to incur legal fees and expenses in filing a motion for summary judgment. As a result, we find no error in the trial court's determination that there was no evidence to support the allegations in her complaint, and that her conduct was frivolous pursuant to R.C. 2323.51(a)(2)(a)(iii).

{¶55} Based on the foregoing, Slye's sole assignment of error is overruled.

{¶56} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.