

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
August 17, 2023 Session

<b>FILED</b> 09/07/2023 Clerk of the Appellate Courts
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**COLE BRYAN HOWELL, III v. UNITED RENTALS (NORTH AMERICA)  
INC., ET AL.**

**Appeal from the Circuit Court for Knox County  
No. 2-440-19 William T. Ailor, Judge**

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**No. E2023-00170-COA-R3-CV**

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The plaintiff appeals from the grant of summary judgment to the defendants in this action. The trial court dismissed the plaintiff’s claims for false arrest, false imprisonment, intentional infliction of emotional distress, and negligence as barred by the statute of limitations. The trial court also dismissed the plaintiff’s claim for malicious prosecution after finding the plaintiff could not establish that the defendants had initiated the issuance of a criminal warrant without probable cause and with malice. Discerning no error, we affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and KRISTI M. DAVIS, J., joined.

W. Tyler Chastain, Knoxville, Tennessee, for the appellant, Cole Bryan Howell, III.

Matthew Robert Zenner, Brentwood, Tennessee, for the appellees, United Rentals (North America), Inc. and John A. Miller.

**OPINION**

**I. BACKGROUND**

Plaintiff Cole Howell rented an air compressor from Defendant United Rentals (North America), Inc. (“United Rentals”) on October 1, 2014. Plaintiff rented from United Rentals’ Middlebrook Pike location in Knoxville, Tennessee. The manager of that location is Defendant John A. Miller (together with United Rentals, “Defendants”). A dispute later

arose between United Rentals and Plaintiff as to the amounts due and owing on Plaintiff's account. Plaintiff made the initial down payment on the air compressor but did not make any subsequent payments. Defendant Miller contacted the Knoxville police, explained his side of the dispute, and accused Plaintiff of theft of the air compressor. On October 26, 2015, a police officer swore to and signed an affidavit of complaint, which reads:

THE AFFIANT, AFTER FIRST BEING DULY SWORN ACCORDING TO LAW, STATES THAT A CRIMINAL OFFENSE HAS BEEN COMMITTED IN KNOX COUNTY, TENNESSEE, BY THE DEFENDANT. FURTHER, AFFIANT MAKES OATH THAT THE ESSENTIAL FACTS CONSTITUTING THE SAID OFFENSE ARE AS FOLLOWS:

THE DEFENDANT COMMITTED THE OFFENSE OF THEFT (\$10,000 - \$59,999.99), IN VIOLATION OF TCA SECTION 39-14-103. THIS INCIDENT OCCURRED ON OR ABOUT WEDNESDAY, OCTOBER 01, 2014 AT 15:00 AT 5417 NORTH MIDDLEBROOK PIKE, KNOXVILLE, KNOX COUNTY, TN. ON OCTOBER 1, 2014, THE DEFENDANT ENTERED INTO A RENTAL CONTRACT WITH UNITED RENTAL[S] TO RENT AN ATLAS COPCO BRAND DIESEL AIR COMPRESSOR. DEFENDANT PAID THE DOWN PAYMENT AT THAT TIME TO RENT THE PROPERTY UNTIL OCTOBER 29, 2014, BUT HAS NOT MADE ANY OF THE SCHEDULED PAYMENTS SINCE THEN. THE VICTIM HAS SPOKEN WITH THE DEFENDANT BY PHONE REQUESTING THE RETURN OF THE PROPERTY NUMEROUS TIMES BUT THE DEFENDANT HAS REFUSED. THE AIR COMPRESSOR IS NO LONGER LOCATED AT THE ADDRESS LISTED IN THE RENTAL AGREEMENT. THE VICTIM HAS SENT THE DEFENDANT A CERTIFIED LETTER REQUESTING RETURN OF THE PROPERTY AND HAS RECEIVED NO RESPONSE IN OVER THIRTY DAYS. THE DEFENDANT'S ACTIONS INDICATE AN INTENT TO DEPRIVE THE VICTIM OF PROPERTY AND ITS VALUE. THE AIR COMPRESSOR IS VALUED AT APPROXIMATELY \$15,622.20. A CITATION WAS NOT ISSUED BECAUSE [DEFENDANT NOT IN CUSTODY WHEN WARRANT ISSUED].

In a subsequent deposition, Plaintiff did not dispute the accuracy of the facts contained in the affidavit of complaint. Upon finding probable cause that Plaintiff committed theft in an amount constituting a Class C felony, a magistrate issued a warrant for Plaintiff's arrest. Neither Defendant told Plaintiff about the affidavit of complaint or

the arrest warrant. Plaintiff did not then know that there was an outstanding arrest warrant against him.

On February 25, 2016, Plaintiff and United Rentals executed a settlement agreement, titled “Release of All Claims,” which purported to release all claims concerning the air compressor by both parties, including any claims for monies owed and possession (the “Release”). As part of the agreement, Plaintiff paid United Rentals \$5,000, and he retained ownership of the air compressor. At the time the Release was executed, Plaintiff did not know about the arrest warrant.

On February 23, 2018, Plaintiff was pulled over in a traffic stop. The police officer arrested Plaintiff on the outstanding warrant and mentioned to Plaintiff that it originated from United Rentals. During the traffic stop, Plaintiff asked the police officer to call his attorney so the attorney could explain that his dispute with United Rentals had been settled. The officer did not do so. Plaintiff was taken into custody and released on bond the same day. On April 12, 2018, the prosecutor dismissed the criminal charge against Plaintiff due to the Release between Plaintiff and United Rentals.

On April 5, 2019, Plaintiff and his wife filed a complaint against Defendants in the Knox County Circuit Court asserting claims for: (1) false arrest; (2) false imprisonment; (3) intentional infliction of emotional distress; (4) negligence; and (5) malicious prosecution. Plaintiff and his wife voluntarily nonsuited their complaint on August 27, 2019.

On December 16, 2019, Plaintiff filed the complaint underlying this action in the Knox County Circuit Court. This complaint asserted the same five claims against the same two defendants, United Rentals and Miller. Plaintiff maintains that he refiled the complaint under the saving statute, Tennessee Code Annotated section 28-1-105. Defendants answered the complaint and later moved for summary judgment on all claims.

Following a hearing, and by order entered January 12, 2023, the trial court granted summary judgment to Defendants and dismissed all of Plaintiff’s claims with prejudice. Specifically, the trial court held that Plaintiff’s claims for false arrest, false imprisonment, intentional infliction of emotional distress, and negligence were barred by the one-year statute of limitations. With respect to Plaintiff’s claim for malicious prosecution, the trial court found that Plaintiff failed to establish that the arrest warrant was initiated without probable cause and with malice. Plaintiff appealed.

## II. ISSUES

Plaintiff raises two issues for review:

- A. Whether the trial court erred in granting summary judgment to Defendants by finding that the statute of limitations was not tolled by the discovery rule on all claims.
- B. Whether the trial court erred in granting Defendants summary judgment on the malicious prosecution claim because Defendants did not give Plaintiff notice of swearing out a criminal warrant and “fail[ed] to release the same before continuing a Release of Claims on a property dispute.”

## III. STANDARD OF REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04.

When a party moves for summary judgment but does not have the burden of proof at trial, the moving party must either submit evidence “affirmatively negating an essential element of the nonmoving party’s claim” or “demonstrating that the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the nonmoving party’s claim or defense.” *Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). Once the moving party has satisfied this requirement, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading.” *Id.* at 265 (quoting Tenn. R. Civ. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that “set forth specific facts showing that there is a genuine issue for trial.” Tenn. R. Civ. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, “summary judgment, if appropriate, shall be entered against the [nonmoving] party.” Tenn. R. Civ. P. 56.06.

In reviewing a summary judgment motion on appeal, “we are required to review the evidence in the light most favorable to the nonmoving party and to draw all reasonable inferences favoring the nonmoving party.” *Shaw v. Metro. Gov’t of Nashville & Davidson Cnty.*, 596 S.W.3d 726, 733 (Tenn. Ct. App. 2019) (citations and quotations omitted).

## IV. DISCUSSION

### A. Statute of Limitations

Plaintiff argues that the trial court erred in dismissing his claims for false arrest, false imprisonment, intentional infliction of emotional distress, and negligence as barred by the applicable one-year statute of limitations.<sup>1</sup>

Plaintiff filed his original complaint on April 5, 2019, voluntarily non-suited the case on August 27, 2019, and refiled the pending lawsuit on December 16, 2019. Plaintiff's second lawsuit was filed within one year of the first; however, Tennessee's saving statute, Tennessee Code Annotated section 28-1-105, only "saves" a claim if the original action was timely filed within the statute of limitations.<sup>2</sup>

The trial court held that Plaintiff's original complaint was filed more than one year after the accrual of his causes of action. Specifically, the trial court found that "Plaintiff knew all of the relevant facts as of his arrest on February 23, 2018, more than one year before he filed the original action on April 5, 2019." Plaintiff argues that the statute of limitations on each claim was tolled by the discovery rule and did not begin to run until the prosecutor dismissed the criminal charge against him on April 12, 2018.

In dismissing Plaintiff's claims as time-barred, the trial court relied on the Tennessee Supreme Court's formulation of the "discovery rule" in *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 459 (Tenn. 2012):

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<sup>1</sup> The parties agree that each of these claims is subject to a one-year statute of limitations. *See* Tenn. Code Ann. § 28-3-104(a)(1)(A).

<sup>2</sup> Tennessee Code Annotated section 28-1-105 provides, in relevant part:

(a) If the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding the plaintiff's right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or the plaintiff's representatives and privies, as the case may be, may, from time to time, commence a new action within one (1) year after the reversal or arrest. Actions originally commenced in general sessions court and subsequently recommenced pursuant to this section in circuit or chancery court shall not be subject to the monetary jurisdictional limit originally imposed in the general sessions court.

Tenn. Code Ann. § 28-1-105(a).

Under the current discovery rule, a cause of action accrues and the statute of limitations begins to run not only when the plaintiff has actual knowledge of a claim, but also when the plaintiff has actual knowledge of “facts sufficient to put a reasonable person on notice that he [or she] has suffered an injury as a result of wrongful conduct.” *Carvell v. Bottoms*, 900 S.W.2d 23, 29 (Tenn. 1995) (quoting *Roe v. Jefferson*, 875 S.W.2d 653, 657 (Tenn. 1994)). This latter circumstance is variously referred to as “constructive notice” or “inquiry notice.” Quoting the Iowa Supreme Court, we have explained that inquiry notice “charges a plaintiff with knowledge of those facts that a reasonable investigation would have disclosed. . . . [O]nce a plaintiff gains information sufficient to alert a reasonable person of the need to investigate ‘the injury,’ the limitation period begins to run.” *Sherrill v. Souder*, 325 S.W.3d at 593 n.7 (quoting *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 461 (Iowa 2008)); see also *Diamond v. Davis*, 680 A.2d 364, 372 (D.C. 1996) (defining inquiry notice as the “notice which a plaintiff would have possessed after due investigation”).

*Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 459 (Tenn. 2012) (internal footnotes omitted). “It is not required that the plaintiff actually know that the injury constitutes a breach of the appropriate legal standard in order to discover that he has a ‘right of action . . . .’” *Carvell*, 900 S.W.2d at 29 (quoting *Roe*, 875 S.W.2d at 658). Rather, “the plaintiff is deemed to have discovered the right of action if he is aware of facts sufficient to put a reasonable person on notice that he has suffered an injury as a result of wrongful conduct.” *Id.*

Here, the trial court found:

[O]n February 23, 2018[,] Plaintiff was arrested due to the outstanding criminal warrant, was taken into custody, and released. As Plaintiff testified in his deposition, he knew that the outstanding criminal warrant was initiated by United Rentals, he believed the arrest warrant involved issues that had been resolved with United Rentals, and even asked the police to contact his attorney to explain that it had been resolved. Thus, on February 23, 2018, Plaintiff had actual knowledge of the injury and the identity of the alleged wrongdoer, and therefore his statute of limitations began to run on that date.

We agree with the trial court’s conclusion that Plaintiff’s claims accrued at the time of his arrest on February 23, 2018. At that point, Plaintiff had actual knowledge of facts sufficient to put a reasonable person on notice that he had suffered an injury as a result of wrongful conduct. See *Redwing*, 363 S.W.3d at 459.

Plaintiff argues that his claims could not have accrued until after the criminal charge against him was ultimately dismissed in his favor on April 12, 2018. Plaintiff contends that until the charge was dismissed in his favor, he could not properly allege wrongful actions by Defendants in filing a criminal warrant. Plaintiff's argument, however, misapplies the discovery rule. Plaintiff need not "actually know that the injury constitutes a breach of a legal standard in order for the statute of limitations to commence." *Mills v. Booth*, 344 S.W.3d 922, 928–29 (Tenn. Ct. App. 2010). "It is sufficient that Plaintiff was aware of facts sufficient to put [him] on notice that [he] suffered an injury as a result of wrongful conduct." *Id.* (citing *Carvell*, 900 S.W.2d at 29); *see also Durham v. Est. of Losleben*, 624 S.W.3d 492, 503 (Tenn. Ct. App. 2020) ("[T]he fact that Appellant may not have been aware of the exact breach of a legal standard that caused the injuries . . . is simply not sufficient to toll the statute of limitations."). As stated in *Mills*, "[i]t is not necessary for a plaintiff to know each and every fact before a statute of limitations [begins] to run." *Mills*, 344 S.W.3d at 929. "[T]he discovery rule was not meant to allow a party to delay filing his claim until after he has completed the process of discovering all the factors that affect its merits." *Id.* (quoting *Burk v. RHA/Sullivan, Inc.*, 220 S.W.3d 896, 902 (Tenn. Ct. App. 2006)).

Here, at the time Plaintiff was arrested, he knew that the arrest warrant was initiated by United Rentals and believed that it involved issues that had been resolved by the parties' settlement agreement. He even asked the police to contact his attorney to explain that the issue had been resolved. Thus, Plaintiff had actual knowledge of the alleged injury and the identity of the alleged wrongdoer. Under these circumstances, we agree with the trial court that the statute of limitations on Plaintiff's claims began to run on the date of the arrest, February 23, 2018, and were not tolled, as Plaintiff suggests, until the ultimate dismissal of the arrest warrant. Accordingly, Plaintiff's original complaint asserting these claims, which was filed April 5, 2019, was filed outside of the applicable one-year statute of limitations. The pending lawsuit filed December 16, 2019, therefore, was not saved by the saving statute.

Plaintiff also argues that the doctrine of fraudulent concealment should toll the statute of limitations because "United Rentals did not take steps to timely advise [Plaintiff] of the filing of the Affidavit of Complaint for the issuance of the Arrest Warrant." Generally, "[u]nder the fraudulent concealment doctrine, the statute of limitations is tolled when the 'defendant has taken steps to prevent the plaintiff from discovering he [or she] was injured.'" *Redwing*, 363 S.W.3d at 462 (quoting *Fahrner v. SW Mfg., Inc.*, 48 S.W.3d 141, 146 (Tenn. 2001)). Plaintiff's argument, however, confuses the relevant timeline. As the trial court found, Plaintiff's injury occurred when he was arrested on February 23, 2018, which is the point at which the statute of limitations on his claims began to run. Actions or inactions by Defendants prior to that date had no effect on the statute of limitations. There is no proof nor allegation in the record that Defendants took any actions to prevent

Plaintiff from discovering his alleged injury after that date. Thus, we conclude that the doctrine of fraudulent concealment is inapplicable to the issue at hand.

In consideration of the foregoing, we conclude that the trial court properly dismissed Plaintiff's claims for false arrest, false imprisonment, intentional infliction of emotional distress, and negligence as barred by the applicable one-year statute of limitations.

## B. Malicious Prosecution

Plaintiff also argues that the trial court erred in dismissing his claim for malicious prosecution. The trial court granted Defendants' motion for summary judgment upon determining that Plaintiff failed to establish that the arrest warrant was initiated without probable cause and with malice. Plaintiff argues that there are genuine issues of material fact that preclude summary judgment. Upon our review of the record and relevant law, we agree with the trial court.

As recently explained by the Tennessee Supreme Court, “[m]alicious prosecution is a common law tort claim that allows a person who was a defendant in one case to sue an individual involved in the earlier proceeding for knowingly and maliciously pursuing the defendant for a false act or crime.” *Mynatt v. Nat’l Treasury Emps. Union Ch. 39*, 669 S.W.3d 741, 746 (Tenn. 2023) (citing Tenn. Prac. Civ. Proc. Forms § 8:211 (3d ed. 2001)). To establish a claim for malicious prosecution, a plaintiff must prove that (1) a prior suit or judicial proceeding was instituted without probable cause; (2) the defendant brought such prior action with malice; and (3) the prior action was terminated in the plaintiff's favor. *Id.*; see also *Roberts v. Fed. Exp. Corp.*, 842 S.W.2d 246, 247–48 (Tenn. 1992).

Regarding the first element of a malicious prosecution claim, probable cause is established when there are “such facts and circumstances sufficient to create in a reasonable mind the belief that the accused is guilty of the crime charged.” *Leland v. Louisville Ladder Grp., LLC*, No. M2006-02109-COA-R3-CV, 2007 WL 4440923, at \*4 (Tenn. Ct. App. Dec. 5, 2007) (quoting *Roberts*, 842 S.W.2d at 248). “Probable cause exists where the party who instituted the underlying legal proceedings had a reasonable belief in both the existence of facts supporting his or her claim and that those facts made out a legally valid claim.” *Coleman v. Lauderdale Cnty.*, No. W2011-00602-COA-R3-CV, 2012 WL 475606, at \*5 (Tenn. Ct. App. Feb. 15, 2012) (citing *Wright Med. Tech., Inc. v. Grisoni*, 135 S.W.3d 561, 581 (Tenn. Ct. App. 2001)). A plaintiff pursuing a claim of malicious prosecution “bears a heavy burden of proof in establishing the element of lack of probable cause.” *Id.* (internal quotations omitted). “Probable cause is determined from ‘an objective examination of the surrounding facts and circumstances’ at the time the underlying prosecution was initiated.” *Id.* (quoting *Roberts*, 842 S.W.2d at 248) (other citations omitted). Thus, “[i]n the context of an action for malicious prosecution, the question is not



whether the plaintiff was actually guilty of the crime alleged against him, but whether reasonable grounds existed for the defendant's belief that he was guilty." *Smith v. Kwik Fuel Ctr.*, No. E2005-00741-COA-R3-CV, 2006 WL 770469, at \*7 (Tenn. Ct. App. Mar. 27, 2006) (citing *Peoples Protective Life Ins. Co. v. Neuhoff*, 407 S.W.2d 190, 199 (Tenn. Ct. App. 1966)). Summary judgment is appropriate "[w]hen reasonable minds could not differ on the existence of probable cause." *Id.*

With respect to the element of malice:

Malice may be inferred from the absence of probable cause, or from want of reasonable grounds for prosecution as the circumstances appeared to the prosecutor or as they would have appeared to a person of ordinary circumspection and diligence. *Perry v. Sharber*, 803 S.W.2d 223, 225 (Tenn. Ct. App. 1990); *Peoples Protective Life Ins. Co. v. Neuhoff*, 56 Tenn. App. 346, 407 S.W.2d 190 (1966). Ill will or personal hatred need not be shown. *Kelley v. Tomlinson*, 46 S.W.3d 742, 746 (Tenn. Ct. App. 2000). Any improper motive is sufficient to constitute malice when malicious prosecution is charged. *Lawson v. Wilkinson*, 60 Tenn. App. 406, 447 S.W.2d 369 (Tenn. Ct. App. 1969).

*Brown v. Bushnell*, No. M2017-01124-COA-R3-CV, 2018 WL 2447049, at \*2 (Tenn. Ct. App. May 31, 2018).

In this case, the affidavit of complaint was based upon information provided by Defendant Miller to a Knoxville police officer. The affidavit indicated that Plaintiff had entered into a rental contract for an air compressor, paid the down payment, and then did not make any further scheduled payments. Plaintiff refused to return the air compressor despite numerous requests. The Defendants sent a certified letter to Plaintiff requesting return of the equipment but received no response. Based on the facts stated in the affidavit, a magistrate found probable cause to believe Plaintiff committed the felony theft offense charged. During his deposition, Plaintiff did not dispute the accuracy of any of the essential facts in the affidavit of complaint.

On appeal, Plaintiff argues that there are disputed issues of material fact that preclude summary judgment. For example, Plaintiff argues that "[t]his was a civil matter over the issue of the charging of the account" and that he "made numerous contacts with United Rentals about the overcharging on the account related to the [air compressor]." However, Plaintiff's arguments address whether he is actually guilty of the crime of theft, when the appropriate question is whether Defendant Miller had reasonable grounds to believe that Plaintiff was guilty at the time he initiated the affidavit of complaint. *See Smith*, 2006 WL 770469, at \*7. In light of Plaintiff's admission that the facts stated in the

affidavit of complaint are true, we agree with the trial court's conclusion that Plaintiff has put forth no evidence that the determination of probable cause was objectively unreasonable. Similarly, Plaintiff has not put forward any evidence demonstrating malice on behalf of Defendants at the time Defendant Miller initiated the affidavit of complaint.

Plaintiff also argues on appeal that there is a genuine issue of material fact as to whether he released his claim for malicious prosecution by signing the Release. However, given our conclusion that the evidence is insufficient to establish the elements of a malicious prosecution claim, this argument is pretermitted.

## V. CONCLUSION

For the foregoing reasons, we affirm the trial court's order entering summary judgment. The case is remanded for such further proceedings as may be necessary and consistent with this opinion. Costs of the appeal are taxed to the appellant, Cole Bryan Howell, III.

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JOHN W. McCLARTY, JUDGE