

Circuit Court for Prince George's County
CAL15-20878

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2140

September Term, 2016

OLUWAKEMI ODUSAMI

v.

SANDY APUGO

Eyler, Deborah S.,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: December 18, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On August 24, 2015, Oluwakemi Odusami (hereinafter, “Appellant”) filed a complaint against Sandy Apugo (hereinafter, “Appellee”), asserting malicious prosecution, abuse of process, and malicious use of process, arising from petitions for a protective peace order and a statement of charges previously filed by Appellee in February 2015. Appellee was granted a temporary peace order against Appellant but ultimately, her petition for protective peace order was denied by the District Court of Prince George’s County. As a result of Appellant’s complaint, both parties filed Motions for Summary Judgment, with Appellant emphasizing that Appellee lacked probable cause to initiate actions against her. A hearing was held in the Circuit Court for Prince George’s County on the motions on December 12, 2016, where the court granted the Appellee’s Motion for Summary Judgment. Appellant timely filed this appeal and presents the following questions for our review:

1. Did the Circuit Court err by granting the Appellee’s Summary Judgment Motion on the grounds that the Appellee did not lack probable cause to institute criminal proceedings against the Appellant since the State believed that there was sufficient evidence to charge the Appellant?
2. Did the Circuit Court err by granting the Appellee’s Summary Judgment Motion for Abuse of Process on the grounds that the Appellee had probable cause to institute the multiple peace orders and criminal complaints against the Appellant because the Appellee had probable cause to file the suits in New Jersey?
3. Did the Circuit Court err in granting the Appellee’s Motion for Summary Judgment by ignoring the maxim *Fraud vitiates everything it touches*?”

For the reasons stated below, we answer these questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and Appellee were former friends and schoolmates. The two had a falling out, which precipitated a confrontational relationship. On August 17, 2014, Appellant's counsel, who is also her sister, sent text messages to Appellee after an argument between Appellant, Appellant's counsel, and Appellee at Ardmore Recreational Park in Prince George's County, Maryland. On February 15, 2015, Appellant and Appellee's sister, Erica Apugo, got into a physical altercation at Destiny Harvest Church in Windsor Mill, Maryland. Later that day, Appellant and Appellee engaged in several text messages and telephone calls after the physical altercation. On February 20, 2015, Appellee applied for a statement of criminal charges against Appellant, stating that Appellant continued to harass her and her family with threats even after telling Appellant to refrain from contacting her on August 17, 2014, when Appellant allegedly stated that she would kill and murder Appellee. Appellee further stated that Appellant called to brag about beating up Appellee's sister. Appellee wrote in the statement of charges that Appellant called her to tell her that she planned to also cyberbully her on social media with pictures of when Appellee cut her hair and was overweight. Appellee also wrote that Appellant stated that because Appellant was a lawyer, she knew more law and could outsmart any police officers. Appellant was formally charged for harassment that day.

On February 22, 2015, Appellee filed a petition for protective peace order asserting that Appellant stated Appellee would be her next target and therefore, Appellee filed to

have Appellant stay away from Towson University, Destiny Harvest Church, and her Maryland address in Upper Marlboro¹. On February 27, 2015, at a hearing for Appellee’s temporary peace order, the District Court of Maryland for Prince George’s County granted Appellee’s petition, ordering Appellant to stay away from Towson University, Destiny Harvest Church, and Appellee’s Maryland address. On March 10, 2015, Appellee failed to appear for her final peace order hearing. Consequently, the district court dismissed her petition for failure to appear. Appellee re-filed her petition the next day. The district court denied Appellee’s petition on March 20, 2015, finding that there was “no statutory basis for relief” because “petitioner could not meet required burden of proof.”

Trial regarding Appellee’s harassment charges against Appellant was held on June 12, 2015. The district court found Appellant not guilty of harassment. Appellant filed a complaint in the Circuit Court for Prince George’s County against Appellee on August 25, 2015, alleging abuse of process, malicious use of process, and malicious prosecution, and seeking damages in excess of \$75,000 plus attorney’s fees. Both parties filed motions for summary judgment. Finding that Appellant failed to establish that Appellee acted with malice and that Appellee had probable cause to file her cause of action at a hearing held on December 12, 2016, the court denied Appellant’s motion.

STANDARD OF REVIEW

¹ Appellee lives in Cherry Hill, New Jersey and attends school in Philadelphia, Pennsylvania.

“Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152 (2008). *See also* Md. Rule 2–501. The parameter for appellate review is determining “whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial...” *Laing*, 180 at 153 (internal citations omitted). Additionally, if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party. *Id.* “An appellate court ordinarily may uphold the grant of a summary judgment only on the grounds relied on by the trial court.” *Ashton v. Brown*, 339 Md. 70, 80 (1995).

DISCUSSION

I. Probable Cause

A. Parties’ Contentions

Appellant contends that the trial court’s finding that Appellee had probable cause to initiate criminal charges against Appellant, was solely based on the State’s decision to proceed with the criminal charges against her. Accordingly, Appellant contends that the trial court failed to recognize that Appellee lied to the State in order to get the State to prosecute the case to begin with, and therefore erred when it did not grant Appellant’s Motion for Summary Judgment on malicious prosecution.

Appellee argues that probable cause existed for her to initiate criminal charges against Appellant, and thus, the trial court did not err. Appellee maintains that she did not

act with malice, as evidenced by the call log and text messages depicting Appellant’s harassing actions, as well as Appellant’s own testimony that she called and texted Appellee. Appellee further asserts that her listing her permanent Upper Marlboro address on the documents was not a falsification, but an error common to the average layperson.

B. Analysis

Appellant contends that the trial court erred in denying her Motion for Summary Judgment because the court based its finding that Appellee had probable cause to apply for charges against Appellee on the State’s belief that there was sufficient evidence for the charges. Probable cause is defined as, “a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing that the accused is guilty.” *Exxon Corp. v. Kelly*, 281 Md. 689, 697 (1978) citing *Banks v. Montgomery Ward & Co.*, 212 Md. 31, 39 (1957).

In the present case, the court had the opportunity to examine the record, evidence, and testimony provided. At the hearing on Appellant’s criminal charges held on June 12, 2015, represented by a Rule 12B [sic] (currently Rule 19-217) Student, the State, presenting before the court, stated: “[Appellee] was harassed over the course of a few months from August 2014 to February 2015. [Appellee] was sent very threatening messages depicting very lewd behavior that the defendants were going to go forward with. [She] made threatening remarks to, to the victim and [she] also called her numerous times.” Appellee testified to receiving calls and texts from Appellant, wherein Appellant allegedly threatened to cyberbully Appellee and post photos of when Appellee was overweight and

cut her hair on social media back in August 17, 2014. Appellee testified that on that day, she told Appellant to stop messaging her. Appellee further testified on February 15, 2015, after a physical altercation between Appellant and Appellee's sister, Erica, Appellee received messages consisting of "harassment with cuss words, calling [her] names, phone calls and text messages."² Appellee testified that she received three phone calls from Appellant that night. She also testified that she was in Cherry Hill, New Jersey when she received the text messages from Appellee, not in Prince George's County. The State then stated "[y]our Honor, I guess we submit on these charges, [Appellee] was not located in Prince George's County in the State of Maryland." Appellant's then counsel moved that the court did not have jurisdiction over the case. The court found Appellant not guilty on the harassment charge.

Prior to Appellee's testimony at the hearing, the peace order, and statement of charges documents all listed Appellee's Maryland address: 10203 Brightfield Lane, Upper Marlboro, MD 20772. This was the crux of Appellant's argument. Appellant would like this Court to hold that Appellee committed fraud when she listed her Maryland address on

² The propriety of Appellant's counsel's representing Appellant is questionable. Appellant's counsel, Temitope Odusami, also was charged with harassment and telephone misuse against the Appellee and at the June 12, 2015 trial was represented by her own counsel. She faced a maximum of more than 90 days of imprisonment. Appellee testified that she received harassing messages from Appellant's counsel as well as approximately four phone calls from counsel on February 15, 2015. Appellee further testified that Appellant's counsel called cursing at her and threatened to physically harm her, making her feel scared, harassed, and terrified.

the documents because Appellee was living in New Jersey and physically in New Jersey when she received the phone calls and text messages. This Court will decline to make such a finding. Although Appellee lived in New Jersey and attended school in Philadelphia, Pennsylvania, her parents address, and her permanent address, was the Upper Marlboro address. Appellant knew that Appellee was affiliated with the Upper Marlboro address because the two had been friends for several years and schoolmates. Additionally, assuming *arguendo*, Appellant had never been to Appellee's parents' home in Upper Marlboro, Appellant sent her complaint and summons to the same Upper Marlboro address Appellant argues is not Appellee's address.

Notably, Appellant does not deny making threatening phone calls and sending messages to Appellee in her Motion for Summary Judgment. Appellant's chief arguments are that the trial court did not have jurisdiction over the case, and that charges should have never been filed against her, because Appellee was not in the State of Maryland when she received the threats, calls, and texts. Appellant's failure to deny the alleged conduct, in conjunction with the call log depicting repeated calls from Appellant to Appellee, and text messages attached to Appellant's interrogatories received by the court, is at the very least, indicative that there was misbehavior on the Appellant's part.

Accordingly, as it related to Appellee's statement of charges, the trial court found that:

It wasn't that she filed it without probable cause. It is that she oddly filed it in the wrong court...With regard to the finding that the defendant in this case acted without probable cause, I

find that as a matter of law that there is evidence that she did act with probable cause. . . . If it is just a matter that she filed in the wrong court, but there was still a basis for the reasonable grounds to file a cause of action, then I think that would be fatal to the plaintiff's case.

This Court finds that the trial court did not err and did not rely solely on the "State's belief." Although the State's belief was an indication that probable cause existed, the evidence speaks for itself. The State had what appeared to be harsh and threatening text messages from Appellant, and the Appellee's statement that she had previously asked Appellant to stop contacting her. Furthermore, MD Rule 2-607(c)(1) provides, "[a] commissioner shall receive applications and determine probable cause for the issuance of charging documents." *State v. Smith*, 305 Md. 489, 494-95 (1986). A "charging document means arrest warrant, summons to a defendant, *statement of charges*, citation, or criminal information." *Id.* at 495. (internal quotations omitted) (emphasis added). Appellee applied for a statement of charges which, based on the information provided, led the commissioner to then find probable cause for the issuance of a charging document against Appellant. The State, commissioner, and trial court were provided with ample evidence to find probable cause existed for Appellee's initiation of proceedings against Appellant.

Lastly, the trial court did not err when it denied Appellant's Motion for Summary Judgment for malicious prosecution.

The necessary elements of a case for malicious prosecution of a criminal charge are . . . (a) a criminal proceeding instituted or continued by the defendant against the plaintiff, (b) termination of the proceeding in favor of the accused, (c) absence of probable cause for the proceeding, and (d) "malice", or a

primary purpose in instituting the proceeding other than that of bringing an offender to justice.

Exxon Corp. v. Kelly, 281 Md. 689, 693 (1978).

The trial court correctly found that Appellant could not satisfy all of the elements necessary to maintain her malicious prosecution claim, namely, absence of probable cause and malice. A lack of probable cause may infer the existence of malice. *Id.* at 700. However, as previously discussed, probable cause was indeed present here. Concerning the malice element, “since malice and lack of probable cause must concur in order to maintain an action for malicious prosecution, the verdict cannot stand, whatever may be the conclusion as to probable cause, absent a showing of malice.” *Exxon*, 281 Md. 689, 699 (1978) (internal citation omitted). Malice in a malicious prosecution action is not necessarily the same as hatred or committing an action out of spite. Rather, it means that a “party is actuated by improper and indirect motives.” *Id.* at 700 (internal citations omitted). The facts in the present case are not in dispute. The reasons for which Appellee initiated proceedings against Appellant were reasonable and supported by probable cause. The trial court properly found that Appellant could not satisfy the element of malice.

II. Abuse of Process

A. Parties’ Contentions

Appellant asserts that the trial court should not have denied her abuse of process claim against Appellee because Appellee abused process when she lied by putting her permanent Maryland address to file peace orders and initiate proceedings against her.

Appellant further argues that Appellee’s actions were malicious because her location in Cherry Hill, New Jersey never placed her in imminent serious bodily harm.

Appellee argues that abuse of process requires that she had an ulterior motive for filing charges and peace orders against Appellant, which she did not. Appellee contends that she did not state that she was neither a student at Towson University nor a member of Destiny Harvest church as alleged by Appellant. Appellee maintains that she listed her Upper Marlboro address on the documents because that is her permanent address. Lastly, Appellee argues that per the statute on filing petitions, proof of imminent serious bodily harm is not a requirement.

B. Analysis

The trial court did not err when it granted Appellee’s Motion for Summary Judgment for abuse of process on the grounds that appellee had probable cause to file actions against appellant in New Jersey. “The tort of abuse of process occurs when a party has wilfully [sic] misused criminal or civil process after it has issued in order to obtain a result not contemplated by law.” *Keys v. Chrysler Credit Corp*, 303 Md. 397, 411 (1985) (internal citations omitted).

A tort action for abuse of process, on the one hand, and the tort actions for malicious prosecution and malicious use of process, on the other hand, are essentially different and independent actions. An action for abuse of process differs from actions for malicious prosecution and malicious use of process in that abuse of process is concerned with the improper use of criminal or civil process in a manner not contemplated by law after it has been issued, without the necessity of showing lack of probable cause or termination of the proceeding in favor of

the plaintiff, while actions for malicious prosecution and malicious use of process are concerned with maliciously causing criminal or civil process to issue for its ostensible purpose, but without probable cause.

Id.

Essentially, abuse of process occurs when a party uses a civil or a criminal action in a way contrary to why it was intended. The elements of an abuse of process claim require that: first, there be an ulterior purpose; and second, a willful act in the use of that process which is improper in the regular conduct of the proceeding. *Id.* at 511. “Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” *Keys*, 303 Md. at 511 citing W. Prosser, HANDBOOK OF THE LAW OF TORTS at 857 (4th ed. 1971). “Damages must also result from the defendant's perverted use of process.” *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29, 38 (1997). “A cause of action for civil abuse of process in Maryland requires that the plaintiff establish that an arrest of the person or a seizure of property of the plaintiff resulted from the abuse of process.”³ *Id.* at 46.

The trial court did not deny Appellant’s Motion for summary judgment solely on the basis that probable cause existed for Appellee to file against Appellant in New Jersey.

³ Appellant also cites *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29 (1997) when arguing her claim of malicious use of process against Appellee. Malicious use of process also requires that the plaintiff suffer damages such as an arrest or seizure of property—neither of which Appellant faced. [Appellant’s Br. at 13.]

At the hearing on the Motion for Summary Judgment, Appellant could not substantiate a claim that Appellee had an ulterior purpose for initiating actions against Appellant. The Maryland statute on peace orders petitions provides in pertinent part that:

(a)(1) A petitioner may seek relief under this subtitle by filing with the court, or with a commissioner under the circumstances specified in § 3-1503.1(a) of this subtitle, a petition that alleges the commission of any of the following acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition:

- (i) An act that causes serious bodily harm;
- (ii) An act that places the petitioner in fear of imminent serious bodily harm;
- (iii) Assault in any degree;
- (iv) Rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;
- (v) False imprisonment;
- (vi) Harassment under § 3-803 of the Criminal Law Article;
- (vii) Stalking under § 3-802 of the Criminal Law Article;
- (viii) Trespass under Title 6, Subtitle 4 of the Criminal Law Article;
- (ix) Malicious destruction of property under § 6-301 of the Criminal Law Article;
- (x) Misuse of telephone facilities and equipment under § 3-804 of the Criminal Law Article;
- (xi) Misuse of electronic communication or interactive computer service under § 3-805 of the Criminal Law Article;

MD CTS & JUD PRO § 3-1503.

Appellee's charge against Appellant was for harassment. Appellant's chief argument was that Appellee lied about her residence. Appellant did not deny that Appellee initiated these actions to stop Appellant from contacting her. Appellant admits that she called Appellee and that she sent text messages to Appellee. Such admissions are sufficient to establish that Appellee had proper motive for filing peace orders and a statement of

charges against Appellant. Such admissions also support a finding that Appellee acted pursuant to MD. COURTS & JUDICIAL PROCEEDINGS § 3-1503.

Moreover, Appellant failed to show that she suffered damages such as arrest or seizure of property as a result of Appellee’s alleged abuse of process, which the trial court correctly found. The trial court stated:

With regard to abuse of process, abuse of process takes place when a person willfully uses criminal or civil proceedings against another person for a purpose different from the proceedings’ intended purpose and cause damages by arrest of the person or seizure of the person’s property or causes other damages as defined by the Court’s instructions. So plaintiff, we know that the first two damages elements aren’t present, the arrest or the seizure of property. What are the other damages that you would be claiming?”

In Appellant’s brief, she asserts that her damages were as follows: “Appellant took time off from work to attend the court proceedings, and suffered damages to her reputation as a lawyer. In addition, Appellant incurred the transportation costs to the court, and was repeatedly humiliated when the Sheriffs serving the interim peace order on several occasions disturbed the plaintiff’s peace and quiet.” Such damages are insufficient to satisfy the damages element for an abuse of process claim. Appellant failed to meet the requirements of an abuse of process claim and made no showing that Appellee abused process.

Briefly addressing Appellant’s contention that serious bodily harm is required to file a petition against another, it is not. Section 3-1503 lists “an act that places the petitioner

in fear of imminent serious bodily harm” as *one* of several ways one can apply for a peace order petition, not the only way. We find that the trial court committed no error.

III. Fraud

A. Parties’ Contentions

Appellant contends that Appellee lied “under oath about her residence on four court documents” and therefore, “committed a fraud against the court.” Appellant further asserts that Appellee’s alleged fraud led to the court’s issuance of peace orders against Appellant, jeopardizing Appellant’s reputation, freedom, and livelihood.

B. Analysis

Appellant requests that this Court find fraud on the part of the Appellee. For the following reason, this court declines to find that Appellee committed fraud. In *Maryland Environmental Trust v. Gaynor*, 370 Md. 89, 97 (2002), the Maryland Court of Appeals wrote:

In order to recover in a tort action for fraud or deceit, a plaintiff must show, by clear and convincing evidence:

- (1) that the defendant made a false representation to the plaintiff,
- (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth,
- (3) that the misrepresentation was made for the purpose of defrauding the plaintiff,
- (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and
- (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.

(Internal citations and quotations omitted).

Each element must be met to substantiate a claim for fraud. Additionally, “[a] defendant may be liable for fraud or deceit only if he knows that his representation is false, or is recklessly indifferent in the sense that he knows that he lacks knowledge as to its truth or falsity. Moreover, in order to recover for fraud, the misrepresentation must be made with the deliberate intent to deceive.” *Sass v. Andrew*, 152 Md.App. 406, 430 (2003) (internal citations and quotations omitted).

Appellant maintains that Appellee acted fraudulently when she listed her permanent Maryland address on her peace order petitions and statement of charges. In order for this court to find fraud, we would need to find that Appellee made a false misrepresentation. We decline to conclude that Appellee did. Appellee listed her permanent Maryland address on the documents, not merely any random Maryland address to tie her to the state. Appellant was aware that this was Appellee’s parents’ home that she returned to when away from her school address. Though Appellee listed the Maryland address on the petitions, at the hearing on the charges against Appellant, she testified that she was in Cherry Hill, New Jersey when she received phone calls and text messages from Appellant. This Court agrees with the trial court that as a layperson, and not an attorney, Appellee merely did what laypeople commonly do and filed in the wrong court. [Apx. 149.] Lastly, counsel for Appellee at the motions hearing stated that Appellee was told by police to file in Prince George’s County. [Apx. 137.] Appellee sought information on where to file, and though perhaps given the wrong advice, there is no evidence to support a finding that Appellee acted with deliberate intent to deceive. Thus, the trial court did not err.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**