IN THE COURT OF APPEALS OF IOWA

No. 0-578 / 10-0102
Filed September 9, 2010

RONALD MCLAUGHLIN,
Petitioner-Appellant,

vs.

RUTHANNE RANSCHAU,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

Ronald McLaughlin appeals the district court's grant of summary judgment in favor of Ruthanne Ranschau. **AFFIRMED.**

Melissa A. Nine and Barry S. Kaplan of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant.

Christopher L. Bruns and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

TABOR, J.

Today we decide whether the district court properly granted Ruthanne Ranschau's motion for summary judgment against her estranged brother's claims for malicious prosecution, abuse of process, and defamation. Concluding there is no genuine dispute about any material fact and the facts require judgment for Ruthanne, we affirm the district court.

I. Factual and Procedural Background

A long-standing hostility exists between Ruthanne Ranschau and her older brother Ronald McLaughlin. Their "toxic" relationship hit a low point in June of 1999 when both siblings were attending a family brunch following a niece's wedding. Ruthanne recalls Ronald telling her she needed to apologize to the family and then striking her from behind, hitting her in the face, and kicking her after she fell to the ground. Ronald remembers the incident a little differently:

> . . . Ruthann was being her usual obnoxious self and bragging and carrying on the way she usually does and basically goading me, the way I took it, attempting to get me ticked off. . . . I got up, went through the doorway and around the corner, and she was waiting for me. . . . She grabbed me by the ears with her claws. . . . I threw her hands off and turned around and left. . . . The whole incident lasted about three seconds.

The next major encounter between the siblings—who were both in their sixties—took place almost seven years later. On April 1, 2006, Ronald's daughter Dianne invited her aunt Ruthanne, Ruthanne's daughter Theresa, and her grandmother to see the remodeling at her brother Vaughn's house in Waterloo, Iowa. Ronald showed up with Vaughn and a tense situation ensued. Ruthanne described her brother as "red in the face" and "progressing rather

swiftly" in the direction of the women. Dianne grabbed Ronald's suspenders telling him: "Dad, don't start anything." Ronald described the circumstances as follows: "It was like a bunch of hens in a henhouse. They were just all aflutter. 'Call 911, call 911.'" Ronald acknowledged his daughter asked him to stop and tried to restrain him, but he ignored her. Ronald said he kept moving forward because he wanted to stand next to his son Vaughn who was upset by the confrontation. Both parties agreed that the women hurried out the front door to their vehicle without having had any physical contact with Ronald.

Ruthann later called another brother—Richard McLaughlin—who was a deputy sheriff for Black Hawk County. She told him that Ronald had chased them out of Vaughn's house. Richard recommended that Ruthanne report the incident to the Waterloo police. She did so. All four women who were present at the house submitted statements to the police. On July 21, 2006, police arrested Ronald on a warrant for simple misdemeanor assault and harassment in the third degree. An assistant Black Hawk County attorney prosecuted the two simple misdemeanors; a jury acquitted Ronald on both counts.

On November 2, 2007, Ronald filed a petition alleging malicious prosecution, abuse of process, and defamation against his sister Ruthanne, his brother Richard, and the Black Hawk County Sheriff's Department. On May 4, 2009, the district court dismissed the actions against defendants Richard McLaughlin and the sheriff's department. Ronald is not challenging that dismissal in this appeal. On October 16, 2009, Ruthanne moved for summary judgment on all three causes of action included in Ronald's suit. On December

16, 2009, the district court granted summary judgment and dismissed the case. Ronald now appeals.

II. Standard of Review

We review actions for malicious prosecution and abuse of process for correction of errors at law. *Royce v. Hoening*, 423 N.W.2d 198, 200 (Iowa 1988).

> Because this case reaches us on summary judgment, our task is to determine whether any disputed issues of material fact exist which would render summary judgment inappropriate and, if not, whether the trial court correctly applied the law to the undisputed facts.

Id.

Ruthann, as the moving party, bears the burden to show the nonexistence of material facts and to prove she is entitled to judgment as a matter of law. *Knapp v. Simmons*, 345 N.W.2d 118, 121 (Iowa 1984). Ronald, as the party resisting a motion for summary judgment, "cannot rely on the mere assertions in his pleadings but must come forward with evidence to demonstrate that a genuine issue of fact is presented." *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). "The record on summary judgment includes the pleadings, depositions, affidavits, and exhibits presented." *Id.*

The role of summary judgment in defamation cases is unique and the court's role as gatekeeper is expanded. *See Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 300 (Iowa 1996). In deciding whether Ruthanne's summary judgment motion should have been granted, we must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case. *See Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987).

III. Malicious Prosecution

To establish his claim of malicious prosecution, Ronald faced the burden of proving six elements:

> (1) a previous prosecution, (2) instigation or procurement thereof by defendant, (3) termination of the prosecution by an acquittal or discharge of plaintiff, (4) want of probable cause, (5) malice in bringing the prosecution on the part of the defendant and (6) damage to plaintiff.

Sarvold v. Dodson, 237 N.W.2d 447, 448 (Iowa 1976).

In granting summary judgment, the district court determined that as a matter of law, Ronald was unable to prove the second, fourth, and fifth of these elements: that Ruthanne initiated the prosecution, that the prosecution went forward without probable cause, and that Ruthanne acted with malice in bringing the prosecution.

On the question of instigating the prosecution, the district court held: "[I]t is undisputed that the prosecution in this case was initiated by the Black Hawk County Attorney, not the defendant." Ronald does dispute this conclusion on appeal, arguing Ruthanne caused "false evidence" to be placed before the county attorney so Ronald would be arrested and prosecuted. The district court conveyed a valid point concerning the independent exercise of discretion by the public prosecutor. *See Lukecart v. Swift & Co.*, 256 Iowa 1268, 1281–82, 130 N.W.2d 716, 723–24 (1964) (holding that making an accusation does not constitute procurement if the institution of criminal charges is left to the uncontrolled choice of a third person). The assistant county attorney who tried the case swore in his affidavit that it was his decision to initiate and pursue the

criminal charges against Ronald McLaughlin and he was "not unduly influenced by anyone."

A helpful discussion of this element of malicious prosecution can be found in the comments to the Restatement Second of Torts:

> When a private person gives to a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable under the rule stated in this Section even though the information proves to be false and his belief was one that a reasonable man would not entertain. The exercise of the officer's discretion makes the initiation of the prosecution his own and protects from liability the person whose information or accusation has led the officer to initiate the proceedings.

Restatement (Second) of Torts § 653 cmt. g at 409 (1977).

But this comment also provides some support for Ronald's position:

> If, however, the information is known by the giver to be false, an intelligent exercise of the officer's discretion becomes impossible, and a prosecution based upon it is procured by the person giving the false information. In order to charge a private person with responsibility for the initiation of proceedings by a public official, it must therefore appear that his desire to have the proceedings initiated, expressed by direction, request or pressure of any kind, was the determining factor in the official's decision to commence the prosecution, or that the information furnished by him upon which the official acted was known to be false.

Id.

The problem with Ronald's argument is that he presented no evidence that the information Ruthanne provided to the police about the April 1, 2006 encounter was false. His mere assertion of falsity is insufficient to defend against the summary judgment motion. The prosecution obviously fell short of proving beyond a reasonable doubt that Ronald's actions met the legal definition of

assault or harassment. But that outcome does not show that Ruthanne knew she was giving a fictitious version of events to the authorities. Ruthanne's call to the police and her disclosure of what happened at Vaughn's house—which was corroborated by other witnesses including Ronald himself—does not support a finding of procurement of a malicious prosecution. Ronald's evidence failed to generate a jury question on this essential element.

Ruthanne also is entitled to judgment as a matter of law on the want-of-probable-cause element. The district court ruled against Ronald on this ground because his sister's "version of events was corroborated and supported by other witnesses." Ronald asserts on appeal that Ruthanne wrote out the affidavits and had the other witnesses sign them. His only support for this assertion is his own deposition testimony. The assistant county attorney stated in his 2009 affidavit that the evidence presented at the criminal trial was consistent with the information provided in the witness statements. He averred: "I believed in 2006, and I believe today, that there was probable cause to initiate and prosecute charges against Ronald McLaughlin." We agree with the district court that Ronald failed to generate a jury question on the want-of-probable-cause element.

On the element of malice, the district court decided: "[T]here is no evidence that [Ruthanne] had any improper motive to report her version of events to the proper authorities." "Malice means any wrongful act which has been willfully and purposely done to the injury of another." *Brown v. Monticello State Bank*, 360 N.W.2d 81, 87 (Iowa 1984). The act must be done with an improper purpose or motive. *Id*. When the defendant is not a public official, malice may

be inferred from the lack of probable cause. *See Vander Linden v. Crews*, 231 N.W.2d 904, 906 (Iowa 1975). Beyond reiterating the history of bad blood between him and his sister, Ronald does not offer any evidence that Ruthanne harbored an improper purpose for reporting the April 2006 incident. Because the record supports a finding of probable cause for the misdemeanor charges, no inference of malice is available. No disputed issue of material fact exists concerning Ruthanne's motive in reporting the incident.

Because the summary judgment record contains nothing from which a jury could reasonably infer that Ruthanne instigated the misdemeanor proceedings against Ronald without probable cause and with malice, we affirm the district court's dismissal of the malicious prosecution claim.

IV. Abuse of Process

Ronald's petition also alleged his sister committed an "abuse of process" tort. Abuse of process is "the use of legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it was not designed." *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 398 (Iowa 2001). "The essence of this tort is an improper purpose for using the legal process." *Fuller v. Local Union No. 106 of United Bhd. of Carpenters & Joiners*, 567 N.W.2d 419, 421 (Iowa 1997). "Normally the improper purpose sought is an attempt to secure from another some collateral advantage not properly includable in the process itself." *Id.* "This amounts to 'a form of extortion in which a lawfully used process is perverted to an unlawful use.'" *Id.* An abuse-of-process claim has three elements: (1) the use of a legal process; (2) in an improper or unauthorized

manner; (3) that causes the plaintiff to suffer damages as a result of that abuse. *Id.* at 421–22.

In granting summary judgment on this claim, the district court concluded Ruthanne "did not use any legal process at all" and did not use Ronald's prosecution "to extort or coerce a collateral advantage outside the legal process." Because the issue is dispositive, we focus our inquiry on the first ground articulated by the district court. Ruthanne's report to Waterloo police of possible criminal activity did not constitute "legal process" for purposes of an abuse-of-process claim. *Id.* at 422. Our supreme court reasoned that extreme cases of false or reckless reports to police might be actionable on another basis, but could not satisfy the "legal process" element of the abuse-of-process tort. *Id*. Because Ronald could not—as a matter of law—establish the first element of his abuse-of-process claim, we affirm the district court's grant of summary judgment on that basis.

V. Defamation

In the third and final cause of action raised in his petition, Ronald alleged his sister defamed him by making statements prompting the simple misdemeanor prosecution that were false, malicious, and injured his reputation. Because Ronald failed to identify specific defamatory statements made within two years of the filing of his petition and did not offer evidence of reputational harm, we find the district court properly granted summary judgment on this claim.

"The law of defamation includes the twin torts of libel and slander." *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006). Libel covers written

publication of defamatory matter, and slander refers to oral broadcast of such matter. *Id.* An action for defamation is based on the violation of an individual's right to be free from false attacks on their reputation and good name. *Id*. To prevail in his action for slander, Ronald must prove either that Ruthanne's statements were slanderous per se or that their publication caused actual harm to his reputation. *See Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994).

Our first task in deciding a defamation claim is to inspect the challenged statements to see if they are capable of bearing a defamatory meaning. *See Yates*, 721 N.W.2d at 771. Ronald's lack of specificity makes this a difficult task. In the trial court, neither his resistance to the motion for summary judgment nor his supporting affidavit pointed to precise statements of libel or slander. On appeal, Ronald contends: "Ruthanne described the incidents that occurred in 1991 and on April 1, 2006 much differently from Ronald." We cannot consider any 1991 statements because they predate the applicable two-year statute of limitations. *See* Iowa Code § 614.1(2) (2007). As for Ruthanne's description of the 2006 incident, Ronald directs us to her April 7, 2006 typed statement to police. He does not narrow down which statements in the two-page, single-spaced document he is challenging as defamatory. Such imprecise allegations are insufficient to prove an action for defamation.

Even if we were to overlook Ronald's imprecision, we still agree with the district court that Ronald comes up short in offering evidence of damage to his reputation. Ronald suggests in his brief that Ruthanne's statements constituted slander per se because she falsely accused him of a crime. Ruthanne counters

that she did not accuse her brother of an indictable crime, but "merely furnished factual information from her perspective to law enforcement authorities who decided to charge" Ronald with assault and harassment.[1] We find Ruthanne's argument more persuasive.

If an allegedly defamatory statement is substantially true, it is not slander per se. *See Hovey v. Iowa State Daily Publ'n Bd., Inc.*, 372 N.W.2d 253, 256 (Iowa 1985). Nothing in the summary judgment record demonstrates Ruthanne knowingly reported any false information to the police. In fact, in most respects, Ronald's own version of the encounter is consistent with his sister's report. Ruthanne did not use the terms "assault" or "harass" in her report to police. *Cf. Rees v. O'Malley*, 461 N.W.2d 833, 835 (Iowa 1990) (defamation defendant used word "extortion" in describing plaintiff's actions). She just described the confrontation with Ronald as she perceived it. The ultimate determination by the criminal jury that Ronald's conduct did not amount to an assault or harassment does not establish that the reported information was false.

Because Ruthanne's statements were not slander per se, Ronald carried the burden of proving actual damage to his reputation. *See Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 222 (Iowa 1998). The district court determined that Ronald offered no evidence that his reputation was "any different" before than it was after his sister's report to police. Ronald admitted nobody has expressed any negative feelings about him related to his arrest and prosecution. Ronald did

[1] Although these were simple misdemeanors and not indictable offenses, they did subject the accused to a potential jail sentence, and therefore could have been the basis for finding slander per se if the crimes had been falsely alleged. *See Amick v. Montross*, 206 Iowa 51, 57, 220 N.W. 51, 54 (1928).

say he "felt a certain standoffishness" from one of his neighbors since his arrest, but that isolated observation does not rise to the level of showing a damaged reputation. Because Ronald offered insufficient evidence to generate a jury question concerning reputational harm, we affirm the grant of summary judgment.

On the defamation claim, we find no dispute over the facts presented that might be material to the outcome of the case. We see no need for a trial on this matter.

VI. Conclusion.

Ruthanne did not commit a tort against Ronald when she reported their April 1, 2006 encounter to police. The assistant county attorney's decision to prosecute Ronald for two simple misdemeanors and the jury's decision to acquit him did not translate into a finding that Ruthanne provided false information. Ronald failed to offer sufficient evidence to generate a factual question for the jury on the malicious prosecution, abuse of process, or defamation claims. Ruthanne was entitled to judgment as a matter of law.

AFFIRMED.