IN THE COURT OF APPEALS OF IOWA

No. 3-845 / 13-0417
Filed November 6, 2013

MAXINE GAIL VEATCH,
Plaintiff-Appellant,

vs.

CITY OF WAVERLY and
JASON LEONARD, Individually
And In His Official Capacity,
Defendants-Appellees.

Appeal from the Iowa District Court for Bremer County, DeDra Schroeder, Judge.

Plaintiff appeals the district court's ruling granting summary judgment to defendants. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

John J. Hines and Laura L. Folkerts of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellant.

Beth E. Hansen of Swisher & Cohrt, P.L.C., Waterloo, for appellees.

Heard by Vaitheswaran, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

Maxine Veatch appeals the district court's ruling granting summary judgment on all counts to defendants, the City of Waverly and Officer Jason Leonard. Veatch's petition alleged various counts but she has limited her appeal to counts alleging false imprisonment, negligence, and malicious prosecution. On appeal, Veatch contends the court erred when it determined the Eighth Circuit's finding of probable cause had preclusive effect on her state-law claims. Veatch also contends, contrary to the district court's ruling, she can recover punitive damages against Officer Leonard. Finally, the City and Officer Leonard contend if any causes of action do survive their motion, they are entitled to immunity. Veatch asks that we reverse the ruling of the district court and remand for further proceedings. Upon review, we affirm in part, reverse in part, and remand.

I. Background Facts and Proceedings.

We adopt the Eighth Circuit's recitation of facts as our own:

> On September 27, 2006, Veatch . . . visited [her mother] Bell at Woodland Terrace. During this visit, Janice Whiteside, a Bartels nurse, observed Veatch shove Bell into her wheelchair. At the direction of her supervisor, Whiteside submitted a written report of the incident to Brianna Brunner, the Director of Nursing for Bartels. After reviewing the report the following day, Brunner informed Debra Schroeder, the President and Chief Executive Officer of Bartels, and directed two Bartels nurses to examine Bell for possible injuries. The nurses discovered bruising on Bell's knee and forearms. Brunner also contacted the Waverly Police Department, relaying the substance of Whiteside's report to Officer Thomas Luebbers. Based on this conversation, Luebbers prepared a report and described the incident to Leonard, who was sent to investigate further. Leonard reported to Bartels and discussed the incident with Brunner, Schroeder, and two additional staff members, but he did not meet with Bell or Whiteside.

> The next day, Leonard contacted Veatch and asked her to come to the Waverly Law Center to discuss the alleged incident. The two met, and Leonard described the allegation to Veatch. During the meeting, Veatch informed Leonard that she would like to have an attorney present. At that point, Leonard left the room to retrieve and complete a complaint form. When he returned, Leonard placed Veatch under arrest for assault. Veatch was placed in the Bremer County Jail, where she remained overnight. A magistrate judge later determined that Leonard had probable cause to make the arrest and then released Veatch on her own recognizance. The State of Iowa charged Veatch with simple misdemeanor assault in violation of Iowa Code §§ 708.1 and 708.2(6), and after a trial, a jury returned a verdict of not guilty.

Veatch v. Bartels Lutheran Home, 627 F.3d 1254, 1256 (8th Cir. 2010).

In June 2008, after the conclusion of the criminal trial, Veatch filed a civil action in the Northern District of Iowa against the City and Officer Leonard. The complaint included multiple claims, including a section 1983 federal claim.[1] The City and Officer Leonard filed a motion for summary judgment that was granted on October 9, 2009. In its ruling, the federal district court declined to exercise supplemental jurisdiction over the state-law claims. Veatch filed a petition in state court, reasserting the state-law claims. She also appealed the district court's decision regarding her federal claim to the Eighth Circuit Court of Appeals.

While awaiting judgment from the Eighth Circuit, the City and Leonard filed a motion for summary judgment with the state district court. Veatch then filed a motion to stay proceedings in the state court. In it, she stated, "One issue in the Eighth Circuit appeal is whether Officer Leonard had probable cause to arrest Veatch without a warrant. Whether Officer Leonard had probable cause to arrest

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[1] A 1983 action is a cause of action for damages and injunctive relief permitted under 42 U.S.C. § 1983.

Veatch is either an element of proof or a defense to Veatch's state court claims against the City of Waverly and Jason Leonard. Pursuant to the doctrine of issue preclusion, the Eighth Circuit Court of Appeals ruling will have preclusive effect in state court." The motion was granted.

The Eighth Circuit affirmed the ruling of the federal district court in 2010. In doing so the court found, "In this case, the information that Leonard received during the course of his investigation established probable cause." Following the ruling by the Eighth Circuit, the City and Leonard filed an application to lift the stay and order a hearing on their pending motion for summary judgment. The court granted the motion and scheduled a hearing for May 6, 2011.

Following the hearing, the state district court denied the City and Officer Leonard's motion for summary judgment. They then filed an application for interlocutory appeal which was also denied.

The case was assigned to a new judicial officer following the retirement of Judge McKinley, the district court judge previously assigned to the case. The City and Officer Leonard then filed a new motion for summary judgment on the same grounds they had previously asserted. The district court granted the motion in its entirety and dismissed all of Veatch's claims. She appeals.

II. Standard of Review.

We review summary judgment rulings for correction of errors at law. *Crippen v. Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). If the record shows no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate and we will affirm. *See id*.

In determining whether summary judgment is warranted, we view the entire record in the light most favorable to the nonmoving party. *Id*.

Likewise, to the extent our review involves the interpretation of statutory provisions, our review is for correction of errors at law. *Jones v. State Farm Mut. Auto. Ins. Co.*, 760 N.W.2d 186, 188 (Iowa 2008).

III. Discussion.

A. Issue Preclusion.

On appeal, Veatch contends the district court erroneously concluded the parties are precluded from re-litigating whether Officer Leonard had probable cause to arrest Veatch. "Issue preclusion, or direct or collateral estoppel, means simply that when an issue has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *City of Johnston v. Christenson*, 718 N.W.2d 290, 297 (Iowa 2006) (internal quotations omitted). In order for the prior determination to have preclusive effect, four elements must be met: (1) the issue concluded must be identical, (2) the issue must have been raised and litigated in the prior action, (3) the issue must have been material and relevant to the disposition in the prior action, and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. *Id*. at 297–98. Here, Veatch contends the City and Officer Leonard failed to prove the first and third elements.

Veatch's contention the first and third elements were not proven is premised upon the fact that one of the circumstances delineated in Iowa Code

section 804.7 (2007), in addition to probable cause, must also be present for a warrantless arrest under Iowa law. Detention is lawful when the arresting officer has a warrant or otherwise acts pursuant to Iowa Code section 804.7. Section 804.7 provides, in part:

> A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:
>
> (1) For a public offense committed or attempted in the peace officer's presence.
>
> (2) Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.
>
> (3) Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.[2]

We agree neither the federal district court nor the Eighth Circuit determined the applicability of section 804.7 to these facts. The Eighth Circuit was called upon to determine whether Officer Leonard had probable cause to arrest Veatch. *See Veatch*, 627 F.3d at 1257–58. In her original claim, Veatch asserted the City and Officer Leonard violated her Fourth Amendment rights when arresting her. *Id*. at 1256–57. The district court determined Officer Leonard had probable cause at the time of the arrest, and thus Veatch's Fourth Amendment rights were not violated. *Id*. at 1257. Veatch then appealed the district court's decision. *Id*. The Eighth Circuit affirmed the district court, again finding Leonard had probable cause at the time of the arrest. *Id*. at 1257 ("In this case, the information that Leonard received during the course of his investigation established probable cause."). Because of the court's determination, it granted

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[2] The expression "reasonable ground" is equivalent to traditional "probable cause." *Children v. Burton*, 331 N.W.2d 673, 679 (Iowa 1983).

the City and Officer Leonard's motion for summary judgment. *Id*. at 1256–57. Finally, the determination was necessary and essential to the court's decision to grant summary judgment. *See id*. ("The court also granted the City's motion for summary judgment on the § 1983 claim, holding that Leonard did not commit a constitutional violation. The court reasoned that because Leonard had probable cause to arrest Veatch, he did not violate the Fourth Amendment.").

To the extent Veatch's claims require proof the officer lacked probable cause to arrest, issue preclusion precludes the parties from re-litigating the issue. However, the existence of probable cause to arrest does not necessarily equate to authority to arrest without a warrant under section 804.7.

B. Substantive Claims.

We next address each of Veatch's substantive claims.[3] Veatch contends even if Officer Leonard had probable cause to arrest her, the existence of

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[3]The City also argues Veatch is judicially estopped from arguing any of her state claims survive the finding of probable cause because she previously took the position the Eighth Circuit's probable cause determination would have preclusive effect on those claims. As observed by our supreme court, "[J]udicial estoppel is a commonsense doctrine that prohibits a party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding." *Tyson Foods, Inc. v. Hedlund*, 740 N.W.2d 192, 196 (Iowa 2007). Its purpose is "to protect the integrity of the judicial process" and is applicable to administrative proceedings as well as court proceedings. *See id*. Judicial estoppel is only applicable when the party's inconsistent position was "judicially accepted" in the prior action. *See id*. Judicial acceptance means that the "previous, inconsistent assertion was material to the holding in the first proceeding." *Id*. at 197. Without judicial acceptance, the doctrine is unnecessary as there is "no risk of inconsistent, misleading results." *See id*. at 196.

We do not believe judicial estoppel applies in this case. In her motion to stay proceedings in the state court during pendency of her federal claims, Veatch did state, "One issue in the Eighth Circuit appeal is whether Officer Leonard had probable cause to arrest Veatch without a warrant. Whether Officer Leonard had probable cause to arrest Veatch is either an element of proof or a defense to Veatch's state court claims against the City of Waverly and Jason Leonard. Pursuant to the doctrine of issue preclusion, the

probable cause is not a complete defense to her state-law claims. She further contends material facts are still in dispute and thus summary judgment was not appropriate. *See Alliant Energy-Interstate Power and Light Co. v. Duckett*, 732 N.W.2d 869, 874 (Iowa 2007) ("Summary judgment is appropriate only when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law."). Veatch was ultimately acquitted of her assault charge. However, our supreme court has concluded an acquittal does not provide any presumption or prima facie showing of a lack of probable cause for the arrest. *Carter v. MacMillan Oil Co., Inc.*, 355 N.W.2d 52, 57 (Iowa 1984).

1. False Imprisonment.

The district court granted summary judgment for the City and Officer Leonard on Veatch's claim for false imprisonment. In reaching its conclusion, the district court explained:

> For false imprisonment to exist, two elements must be proven: (a) Detention against an individual's will; and (b) The unlawfulness of the detention.
>
> Iowa Code section 804.7 authorizes an arrest without a warrant where a public offense has in fact been committed and the officer has reasonable grounds to believe the person to be arrested committed it. Reasonable grounds for arrest has been determined by the federal court, and therefore, an essential element of false

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Eighth Circuit Court of Appeals ruling will have preclusive effect in state court." We believe Veatch's statement did not stand for the proposition the Eighth Circuit's ruling was determinative of each of her state claims in entirety, but rather recognized the rule of issue preclusion as we have discussed it. The motion also stated, "Therefore, the outcome of the Eighth Circuit appeal will largely impact the state court rulings." Even if her statement could be read to stand for the proposition the Eighth Circuit's ruling was determinative on her claims in entirety, there is no evidence the court accepted the statement as a material part of its holding as is required for judicial estoppel to apply. The court's order granting the stay simply stated that the "Motion to Stay is hereby granted." Thus, we decide her arguments for each substantive claim on the merits.

> imprisonment cannot be shown by these plaintiffs, and Count I, false imprisonment cause of action, cannot survive.

We agree with the district court that to sustain a claim for false imprisonment, one must show (1) detention or restraint against one's will, and (2) unlawfulness of the detention or restraint. *Kraft v. Bettendorf*, 359 N.W.2d 466, 469 (Iowa 1984). "Once a plaintiff shows a warrantless arrest, the burden of proof shifts to the defendant to show justification for the arrest." *Children v. Burton*, 331 N.W.2d 673, 679 (Iowa 1983); *see also Fox v. McCurnin*, 218 N.W. 499, 502 (Iowa 1928) (concluding imprisonment without a warrant establishes prima facie evidence and then the officer must justify his actions). Probable cause is not an element of this cause of action but it does have relevance to the second element.

a. Is Probable Cause Alone Sufficient for a Warrantless Arrest for a Public Offense?

Veatch contends the detention or restraint was unlawful not because of lack of probable cause, but because it was in violation of section 804.7(2). Veatch was arrested without a warrant for a simple misdemeanor not committed or attempted in the presence of Officer Leonard. A simple misdemeanor is a public offense but not an indictable offense.[4] Veatch argues that section 804.7(2) has two prongs and requires: (1) a public offense had in fact been committed and (2) the peace officer had reasonable grounds to believe the person to be arrested had committed it. Thus, Veatch argues that probable

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[4] *See* Iowa Code § 701.2 (defining a public offense as conduct "prohibited by statute" which "is punishable by fine or imprisonment"); *see also* Iowa Code § 801.4(8) (defining an indictable offense as any offense other than a simple misdemeanor).

cause is not sufficient alone to support the arrest. Veatch contends there is a genuine issue of material fact whether the offense was "in fact" committed.

There is some authority for Veatch's argument as one court addressed section 804.7(2) in relation to a criminal charge of vagrancy:

> [I]t appears that vagrancy is not an indictable public offense in Iowa. In this light, a lawful arrest for vagrancy in Iowa requires more than the minimum federal standard, "probable cause," and "reasonable belief," but also that vagrancy be *in fact* committed. In other words, in order to arrest a person for vagrancy in Iowa, a reasonable belief on the part of the arresting officer that the person is a vagrant is insufficient. He must in fact be a vagrant or the arrest was unlawful.

Ricehill v. Brewer, 338 F. Supp. 1311, 1314 (S.D. Iowa 1971) (citations omitted).

In response, the City and Leonard rely upon *State v. Adams*, 554 N.W.2d 686 (Iowa 1996), as support that probable cause is sufficient to support a warrantless arrest for a simple misdemeanor pursuant to section 804.7(2).

We believe there is some validity to both arguments. We first address the *Adams* case.

Adams was arrested and charged with theft in the fifth degree for shoplifting.[5] *Adams*, 554 N.W.2d at 690. The supreme court recited, but did not directly address, the language in section 804.7(2) requiring the offense to "in fact" be committed. *Id*. We do not believe *Adams* can be read as broadly as the City and Leonard contend. To interpret *Adams* as the City and Leonard suggest would eliminate the need for the distinction the legislature has made between indictable public offenses in section 804.7(3) and simple misdemeanors in sections 804.7(1) and (2).

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[5] Theft in the fifth degree is a simple misdemeanor. *See* Iowa Code § 714.2(5).

Moreover, our supreme court has noted the distinction between the authority to arrest for a felony and the authority to arrest for a simple misdemeanor has existed since common law. *Young v. Des Moines*, 262 N.W.2d 612, 616–20 (Iowa 1978) *overruled on other grounds by Parks v. City of Marshalltown*, 440 N.W.2d 377, 379 (Iowa 2000). "At common law a peace officer could make a warrantless arrest if he had reasonable suspicion a felony had been or was being committed by the person to be arrested. An officer's authority to make warrantless misdemeanor arrests was limited, however, to offenses involving breach of the peace committed in his presence." *Id.* at 616.[6] In *Young*, the court concluded that if a public offense was being committed in the officer's presence as determined by his sensory perceptions *and* he had probable cause, the officer may immediately apprehend the offender pursuant to Iowa Code section 755.4(1), the predecessor statute to section 804.7(1). *Id*. at 616–20.

The distinction between arrests for simple misdemeanors and arrests for felonies remains embodied in section 804.7, but the legislature has now categorized the offenses by distinguishing between "public offenses" and "indictable offenses." *See* Iowa Code §§ 804.7(1)–(3).

Subsequent to its decision in *Adams*, our supreme court was faced with an issue concerning a private citizen's right to arrest another. *Rife v. D.T. Corner, Inc.,* 641 N.W.2d 761, 764 (Iowa 2002). The court recognized in *Rife*

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[6] As noted in *State v. Pals*, 805 N.W.2d 767, 775 (Iowa 2011), there remains a division among courts whether an officer may make a traffic stop on the basis of a completed misdemeanor.

that the legislature had created "categories" of arrest distinguishing between public offenses and more serious offenses. *Id*. at 769. The court explained, "A citizen may make an arrest for any public offense if the offense is 'committed or attempted in the [citizen's] presence.'" *Id*. (citing Iowa Code § 804.9(1)). However, if the public offense is a felony, "a less stringent standard is imposed." *Rife*, 641 N.W.2d at 769. If the offense constitutes a felony and the felony has been committed, "the citizen must only possess reasonable grounds to believe the person to be arrested committed the felony." *Id*.; *see also* Iowa Code § 804.9(2). The court also observed that citizens, like police officers, may not make a warrantless arrest based upon "mere knowledge of the commission of a misdemeanor offense" but rather must have detected the commission of the offense through one or more of their senses. *Rife*, 641 N.W.2d at 769. Accordingly, to simply conclude, as the district court did, the detention was lawful because there were reasonable grounds or probable cause for Veatch's arrest does not take into consideration the distinction our legislature has created by sections 804.7(1),(2), and (3).

We agree with Veatch that section 804.7(2) involves two prongs or imposes two requirements to authorize a warrantless arrest for a public offense. Notwithstanding, the issue of whether probable cause alone is sufficient is not answered by the existence of the two requirements.

To resolve this issue, we find solace in the principles espoused in *Young* and *Rife*. In *Young*, our supreme court was called upon to statutorily interpret section 804.7(1). The court concluded the requirement that the public offense be

committed or attempted in the officer's presence remains subject to a probable cause test, but the proof necessary may not be from the complaint of others. *Young*, 262 N.W.2d at 618. Rather, the proof of probable cause must be based upon facts from the officer's sensory perceptions. *Id.* For example, to arrest for simple misdemeanor criminal mischief, the officer has to see the broken window, not just be told the window was broken. Such a conclusion is also consistent with *Rife*, which required a citizen to have knowledge gained from his or her personal senses to arrest an individual for a public offense. 641 N.W.2d at 769.

We accordingly conclude section 804.7(2), similar to sections 804.7(1) and 804.9(1), requires the officer to have more than mere knowledge gained from others. It does not require proof of conviction and the offense need not occur in the officer's presence, but there must be no genuine issue of material fact that the offense was committed. *See Young*, 262 N.W.2d at 615. Because of the historical distinction between the treatment of felonies and misdemeanors and in reliance upon the principles established in *Young*, a lack of genuine issue of material fact may be shown by: (1) the officer having probable cause that a public offense has in fact been committed by reliance on something more than third party reports and (2) the officer having "reasonable grounds for believing the person to be arrested committed it. *See* Iowa Code § 804.7(2).

b. Greater or Lesser Standard.

The parties also dispute whether there is a greater standard or lesser standard to apply in the interplay between section 804.7 and liability for false imprisonment. The City and Leonard claim there is a lesser standard of probable

cause and cite *Children v. Burton*, 331 N.W.2d 673, 680 (Iowa 1983). Veatch claims more than probable cause is necessary to meet the requirements of section 804.7 because of the two-prong requirement. The resolution of this issue relates to the distinction between the requirements imposed upon the officer by section 804.7(2), as previously discussed, and the affirmative defense pled by the City and Leonard.

The City and Leonard's contention that a lesser standard of probable cause is applicable to these facts pertains to the merits of their affirmative defense rather than the lawfulness of the detention. *See Burton*, 331 N.W.2d at 680. If Veatch was unlawfully detained or restrained in violation of section 804.7(2), but the affirmative defense of good faith is proven, Veatch is not entitled to recovery. *See id*.

Our supreme court has recognized the affirmative defense, stating, "If the officer acts in good faith and with reasonable belief that a crime has been committed and the person arrested committed it, his actions are justified and liability does not attach." *Id*.; *see also* Iowa Civil Jury Instructions 2800.3 ("Defendant must prove both of the following propositions: (1) The defendant believed in good faith that the person who was arrested had committed a crime; (2) The defendant's belief was reasonable. . . . If the defendant has proved both of these propositions, the plaintiff cannot recover and your verdict will be for the defendant."). The first proposition is a subjective test and the second proposition is an objective test. *Burton*, 331 N.W.2d at 680–81 ("Thus, the officer must

allege and prove not only that he believed, in good faith, that his conduct was lawful, but also that his belief was reasonable.").[7]

In explaining the affirmative defense, our supreme court stated, "In dealing with civil damage actions for false arrest, courts apply a probable cause standard less demanding than the constitutional probable cause standard in criminal cases." *Id*. The rationale relates to the distinction between civil and criminal cases.[8]

c. Application of Section 804.7(2) and the Affirmative Defense.

Under these facts we are unable to conclude the City and Leonard should be granted summary judgment based upon Veatch's arrest for a public offense. A genuine issue of material fact exists whether a public offense had "in fact been committed." *See* Iowa Code § 804.7(2). At best, the evidence reflects that Officer Leonard had probable cause to believe the public offense of assault had occurred, only based upon the complaints of others. Leonard's deposition testimony supports this conclusion.

In reaching our conclusion, we have not addressed the affirmative defense of justification that Leonard acted in good faith and had a reasonable belief in

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[7]Other jurisdictions refer to the defense as "qualified immunity." *See Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). In *Harlow*, the United States Supreme Court eliminated the subjective good faith test to a purely objective test. The court also stated that qualified immunity defense should fail if "a reasonably competent public official should know the law governing his conduct." *Id*. at 818–19.

[8]The reasons for the distinction between criminal and civil cases is to protect both the law enforcement officers from liability and society, by preventing the officer from "fail[ing] to act for fear of guessing wrong" in a stressful environment which requires on-the-spot evaluations. *Hill v. Rowland*, 474 F.2d 1374, 1378 (4th Cir. 1973).

arresting Veatch. Upon our reading of the district court's ruling, it did not address it and we do not intimate how it should rule.

d. Application of Section 804.7(3).

The City and Officer Leonard also argue summary judgment was proper regarding Veatch's false imprisonment claim because, even if section 804.7(2) does not apply, the detention was lawful under section 804.7(3) as the officer had probable cause that Veatch had committed dependent adult abuse, an aggravated misdemeanor.[9] They argue the section is applicable even though Veatch was not arrested for an indictable public offense. *See* Iowa Code § 804.7(3) ("A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant: Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it."); *see also Lawyer v. Council Bluffs*, 361 F.3d 1099, 1106 (8th Cir. 2004) (concluding in a 1983 action, "[t]he arrest was lawful . . . if there was probable cause to believe [the defendant] had violated any applicable statute, even one not contemplated by the officers at the moment of arrest.").

We agree section 804.7(3) requires the officer in question to have "*reasonable ground for believing* that an indictable public offense has been committed." (Emphasis added). It does not require the arrestee to be formerly

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[9] More specifically, the City and Officer Leonard contend Leonard had probable cause to believe Veatch committed dependent adult abuse under Iowa Code section 235B.20(6) which states, "A caretaker who recklessly commits dependent adult abuse on a person in violation of this chapter is guilty of an aggravated misdemeanor if the reckless dependent adult abuse results in physical injury."

charged with an indictable public offense. *See* Iowa Code § 804.7(3). Clearly an officer may have probable cause to file a greater charge but may choose to only file a charge of a simple misdemeanor.

This issue was not decided by the district court. *See State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002) ("Generally, we will only review an issue raised on appeal if it was first presented to and ruled on by the district court. . . . If a party fails to timely apprise the district court of an issue, the matter is deemed unpreserved for our review."). Notwithstanding, our supreme court has upheld "a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court." *Martinek v. Belmond-Klemme Cmty. Sch. Dist.,* 772 N.W.2d 758, 762 (Iowa 2009). Here, the City and Leonard urged the application of section 804.7(3) to these facts on the basis of the offense dependent adult abuse and we will consider it.

Upon our review we decline to extend our state law to include offenses not contemplated by the officer. To do so would permit a law enforcement officer or his or her attorney to play Monday morning quarterback to justify the arrest. One authority cited with approval by our supreme court stated:

> The existence of 'probable cause,' justifying an arrest without a warrant, is determined by factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. It is a pragmatic question to be determined in each case in the light of the particular circumstances and the particular offense involved.
>
> Probable cause does not depend on the actual state of the case in point of fact, as it may turn out upon legal investigation, but on knowledge of facts and circumstances that would be sufficient to induce a reasonable belief in the truth of the accusation. *It depends on the facts known, at the time of the arrest, to the person by whom the arrest is made, from which it follows that an arrest*

> *cannot be justified by what a subsequent search discloses.* On the other hand, if probable cause existed at the time of the arrest, the fact that investigation proves the person arrested to be innocent does not make the arrest unjustifiable.
>
> In determining probable cause, all the information in the officer's possession, fair inferences therefrom, and observations made by him, are generally pertinent; and facts may be taken into consideration that would not be admissible on the issue of guilt.

Burton, 331 N.W.2d at 680 (citing 5 Am. Jur.2d *Arrest* § 48 at 740-41 (1962) (emphasis added)). Thus, we believe the officer must have reasonable grounds for believing the offense has been committed and these reasonable grounds and the officer's belief should exist at the time of the arrest. A subsequent acquittal does not negate probable cause, nor should a newly discovered crime justify the arrest after-the-fact. *See Carter*, 355 N.W.2d at 57.

Here Officer Leonard's belief at the time of the arrest, including all fair inferences, was that Veatch had committed an alleged assault, not dependent adult abuse. Accordingly we decline to extend authority to a law enforcement officer to justify his or her arrest of an individual for offenses not within the officer's contemplation either at the time of the arrest, or where time is of the essence, within a limited, but reasonable amount of time after the arrest to file the charges.

2. Malicious Prosecution.

Veatch contends the Eighth's Circuit finding of probable cause does not defeat her claim for malicious prosecution. To sustain a claim for malicious prosecution, one must prove six elements: (1) previous prosecution, (2) investigation of that prosecution by the defendant, (3) termination of that prosecution by acquittal or discharge of the plaintiff, (4) want of probable cause,

(5) malice on the part of the defendant for bringing the prosecution, and (6) damage to the plaintiff. *Whalen v. Connelly*, 621 N.W.2d 681, 687–88 (Iowa 2000). Because Officer Leonard is a public official, Veatch bore the burden of proving actual malice. *Vander Linden v. Crews*, 231 N.W.2d 904, 906 (Iowa 1975) ("The element of actual malice essential to an action for malicious prosecution involving a defendant who is a public official cannot simply be inferred from a lack of probable cause, but must be the subject of an affirmative showing defendant's instigation of criminal proceedings against plaintiff was primarily inspired by ill-will, hatred, or other wrongful motives.")

The Eighth Circuit's determination Officer Leonard had probable cause at the time he arrested Veatch is sufficient to defeat her claim for malicious prosecution. Veatch claims, "The want of probable cause for malicious prosecution . . . is different than that of the Fourth Amendment." However, she does not offer any authority to support this argument other than the reliance upon section 804.7.[10] Because Veatch is unable to prove one of the necessary elements of malicious prosecution, namely want of probable cause, summary judgment by the district court was proper.

3. Negligence.

Veatch also contends the Eighth Circuit's finding of probable cause does not defeat her claim for negligence against the City and Officer Leonard.

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[10] Veatch does not cite a single authority to support any part of her argument that summary judgment was inappropriate on her claim for malicious prosecution. Moreover, as we have noted, in regard to civil damage claims for false arrest, "courts apply a probable cause standard less demanding than the constitutional probable cause standard in criminal cases." *Burton*, 331 N.W.2d at 680. (Citations omitted).

Summary judgment was proper because there is no recognized tort of negligent investigation. *See Smith v. State*, 324 N.W.2d 299, 302 (Iowa 1982) ("[L]aw enforcement officers have no liability for mere negligence in the investigation of crime, we do not believe the legislature, in enacting the Iowa Tort Claims Act, intended to create a new and hitherto unrecognized tort."). The supreme court specifically discussed the scenario at hand in *Fitzpatrick v. State*, 439 N.W.2d 663, 667 (Iowa 1989) (citing *Hildenbrand v. Cox*, 369 N.W.2d 411, 415 (Iowa 1985)) ("[W]e do not recognize an independent tort for negligent investigation of crime by law enforcement officers. . . . The rule not only applies when the person allegedly harmed by a negligent investigation has been charged and arrested, but also when the allegedly negligent investigation results in no arrest."). Because Veatch asserts a claim for which no relief can be granted, the district court did not err by granting summary judgment on the negligence claim.

4. Statutory Immunity.

The City and Leonard also claim immunity from suit, as an affirmative defense, pursuant to Iowa Code section 670.4(10). Although there is no direct resolution of this issue in the district court's ruling, because the district court ruled upon each individual cause of action, a determination that the City and Leonard are not immune inheres in the ruling. If error is sufficiently preserved for our review, our supreme court has recently concluded that the Iowa Municipal Tort Claims Act, Iowa Code Chapter 670, does not bar claims for false arrest. *Thomas v. Gavin*, ___ N.W.2d ___, ___ 2013 WL 5583524, *1 (Iowa 2013).

Accordingly, the City and Leonard are not entitled to summary judgment on the basis of immunity under section 670.4(10).[11]

5. Punitive Damages.

Veatch acknowledged she could not maintain her claim for punitive damages against the City during the initial motion for summary judgment proceedings and that claim was dismissed. Her appeal only relates to the claim for punitive damages against Officer Leonard. Veatch maintains the Eighth Circuit's finding of probable cause does not defeat her claim for punitive damages against Officer Leonard.

Officer Leonard is only liable for punitive damages in the performance of his duty upon Veatch's successful showing of actual malice or willful, wanton, and reckless misconduct. *See* Iowa Code § 670.12. "Actual malice is characterized by such factors as personal spite, hatred, or ill will." *Kiesau v. Bantz*, 686 N.W.2d 164, 173 (Iowa 2004). The district court concluded in ruling upon the renewed motion for summary judgment, "It would be illogical to hold that an arrest could constitute reckless disregard for the rights of another where the arrest was made with probable cause or reasonable grounds as a matter of law."

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[11] Iowa Code section 670.4(10) provides:

> Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance or permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or regulation is valid, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice.

Viewing the evidence in the light most favorable to Veatch, we find summary judgment on this issue was proper. Officer Leonard only began his investigation after the nursing home contacted the police department to report of a misfeasance involving Veatch and her mother. Officer Leonard was then sent to the nursing home to investigate the claim. He spoke with four separate individuals. Only after his investigation resulted in probable cause for arrest did Officer Leonard ultimately meet with and arrest Veatch. The record does not indicate that Officer Leonard bore any personal spite, hatred, or ill will towards Veatch, nor were his actions willful, wanton or reckless. At most, Officer Leonard was mistaken of his authority as a law enforcement officer. In his deposition testimony, he stated he understood he could arrest an individual for a simple misdemeanor not occurring in his presence when he had probable cause. Clearly, his belief is not consistent with Iowa Code section 804.7(2) and is a mistake of law, but Veatch has not shown any willfulness, wantonness, or recklessness on behalf of Leonard. As stated by Iowa Rule of Civil Procedure 1.981(5):

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.

Summary judgment on this issue was proper.

IV. Conclusion.

Because we find summary judgment was proper regarding Veatch's claims for malicious prosecution, negligence, and punitive damages, we affirm the decision of the district court on those claims. Because we find there were genuine issues of material fact, the City and Officer Leonard were not entitled to judgment as a matter of law upon Veatch's claim of false imprisonment, we reverse and remand.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.