

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

WILLIAM D. SPENCE,)
) C.A. No. K11C-06-035 JTV
 Plaintiff,)
))
 v.)
))
STEPHANIE A. SPENCE,)
))
 Defendant.)

Submitted: January 27, 2012
Decided: April 20, 2012

William D. Spence, *Pro se.*

Stephanie A. Spence, *Pro se.*

Upon Consideration of Defendant's
Motion To Dismiss
GRANTED

VAUGHN, President Judge

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OPINION

The plaintiff, William Spence, has brought an action against his former wife, Stephanie Spence, for malicious prosecution, abuse of process, and intentional infliction of mental distress. They were married for a little over a year before separating and ultimately becoming divorced. The defendant has filed a Motion to Dismiss the complaint.

FACTS

In his complaint, the plaintiff alleges that the defendant committed acts of malicious prosecution, abuse of process, and intentional infliction of emotional distress which caused grave harm to him and his children. He alleges that the defendant made false statements to police and committed acts of perjury in multiple hearings. He alleges that the defendant falsely reported to police that the plaintiff was at her place of employment and that a marriage counselor/therapist told her the plaintiff was driving by her house, and, in essence stalking her. He alleges that these false statements were repeated in a petition for protection from abuse (PFA) filed in Family Court, and at the hearing on the petition. He further alleges that a police officer testifying in court said that the counselor/therapist had informed him that the allegation was a fabrication. He further alleges that the defendant testified under oath at the PFA hearing that she had never given the plaintiff her new residential address, email address, or phone number. These statements, he alleges, were all false. He alleges that the defendant's petition was denied and that the defendant was verbally admonished by the court.

The plaintiff next alleges in his complaint that the defendant filed a criminal harassment charge against him; that the basis for the charge was a phone message he

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left at her work concerning their taxes; that he was not under a no-contact order and therefore did nothing wrong in leaving the message; that his attorney confirmed that he did nothing wrong; that the message was necessary for the proper preparation of both of their tax returns; that the purpose of the message left early at that location was to avoid direct discussion and/or conflict and have irrefutable evidence that nothing improper occurred; that the defendant did not respond to the message but instead contacted the police; that the parties agreed to let the matter be dropped if the plaintiff's attorney was used as an intermediary; that the police agreed after listening to the recording and determining that it was not threatening; that he agreed not because he was legally required to do so but to avoid stress and further harassment by the defendant; and that despite all of this, the defendant violated her agreement with the police officer and the plaintiff and filed her criminal harassment charge two days later. The plaintiff further alleges that his attorney in the criminal proceeding reviewed all relevant information to determine whether the filing of the charge represented ongoing conduct by the defendant and determined that the defendant had been making false and frivolous filings in the form of 911 calls, PFA's, internal affairs complaints, and letters to the Mayor and chief of police for ten years; and that it was learned that she had threatened to file for protection from abuse against her father and step-mother in connection with contact with their grandchildren. The plaintiff further alleges that after his defense attorney presented all of this information to the prosecuting attorney, he was stunned to learn that the prosecutor was going to go forward with the prosecution; that the prosecutor said that the behaviors of the defendant were so clear that if he did not, she would harass him with his employer, the Attorney General, and it was easier to let it go forward and be thrown out by a

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judge. He further alleges that at the trial the defendant brought up the same series of information that she had falsely stated at the PFA hearing; that the defendant in essence attempted to re-perjure herself on the information/events she knew were false and had been admonished for at the PFA hearing; and that his attorney used the evidence that the plaintiff had previously used to overcome her perjury at the PFA hearing; and that upon hearing the evidence the court threw out the charge as the defendant didn't have a *prima facie* case.

The third proceeding upon which the plaintiff relies is an appeal to the Delaware Supreme Court from the decision of the Family Court in dividing marital assets. He alleges that the defendant made false statements to the Supreme Court in order to suborn justice and continue causing harm to the plaintiff.

In his complaint the plaintiff also briefly describes his interaction with Senator Ennis and Representative Ramone, the Family Law Commission upon which they sit, and the subcommittee on abuse of PFA's, of which Representative Ramone is chairman and Senator Ennis a member.

The damages the plaintiff seeks are court costs, attorneys fees, medical fees, prejudgment interest, post-judgment interest, lost wages and compensation for pain, suffering and mental anguish.

The defendant has responded to the complaint by filing this Motion to Dismiss in which she gives her side of the matters discussed in the complaint.

STANDARD OF REVIEW

When deciding a Motion to Dismiss for failure to state a claim upon which

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relief can be granted, a complaint is subjected to a broad test of sufficiency.¹ Dismissal is appropriate only if it is reasonably certain “that the plaintiff could not prove any set of facts that would entitle him to relief.”² The complaint will not be dismissed unless it clearly lacks factual or legal merit.³ When considering a motion to dismiss, the court will accept all well-pleaded allegations as true.⁴ A court, however, does not blindly accept as true all allegations of a complaint nor draw inferences from them in plaintiff’s favor unless they are reasonable inferences.⁵ In this context, “well-pleaded allegations include specific allegations of fact and conclusions supported by specific allegations of fact.”⁶

DISCUSSION

The first cause of action brought by plaintiff is malicious prosecution. A malicious prosecution claim is “viewed with disfavor by the Delaware courts, and, therefore, assessed with careful scrutiny.”⁷ There are five elements necessary to sustain a cause of action for malicious prosecution: 1) the institution of regular

¹ *C & J Paving, Inc. v. Hickory Commons, LLC*, 2006 WL 3898268, at *1 (Del. Super. Jan. 3, 2007).

² *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).

³ *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

⁴ *Spence*, 396 A.2d at 968.

⁵ *Alston v. Delaware State Univ.*, 2011 WL 1225465, at *3 (Del. Super. Mar. 31, 2011) (citing *White v. Panic*, 783 A.2d 543, 549 (Del. 2001)).

⁶ *White*, 783 A.2d at 549.

⁷ *Nix v. Sawyer*, 466 A.2d 407, 411 (Del. Super. 1983).

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judicial proceedings; 2) without probable cause; 3) with malice; 4) termination of the proceedings in the aggrieved party's favor; and 5) damages which were inflicted upon the aggrieved party by seizure of property or other special injury.⁸

The third element, malice, requires evidence that the action was taken by the defendant with a wrongful or improper motive or with wanton disregard of the rights of plaintiff.⁹ In *Read v. Carpenter* one of two defendants, sisters, initiated a criminal charge against the plaintiff by signing an Affidavit of Probable Cause and a Complaint and Summons/Warrant charging him with Trespassing with Intent to Peer or Peep into a Door or Window of Another.¹⁰ In essence the defendants charged that he was peering into their window. The charge was subsequently *nolle prossed*. The plaintiff then filed a malicious prosecution suit in which he alleged that the defendants initiated the criminal proceeding against him “with bad faith, malice, and ill-will.”¹¹ The court found that such an allegation was insufficient to sustain a claim for malicious prosecution. It reasoned that such an allegation gives the court no factual basis for concluding that “malice was even an ancillary motive” of the defendant.¹² It further reasoned that a bare allegation that the defendant instituted

⁸ *Id.* (quoting *Kaye v. Pantone, Inc.*, 395 A.2d 369 (Del. Ch. 1978)).

⁹ *Id.*

¹⁰ 1995 WL 945544, at *1 (Del. Super. June 8, 1995).

¹¹ In another count of the complaint alleging abuse of process, the plaintiff also alleged that the defendants knowingly and willfully made a false complaint to a police officer. *See id.* at *2.

¹² *Id.*

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“proceedings solely to intimidate and harass is insufficient” to plead malice.¹³ The addition of the incidental fact that the defendant felt indignation or resentment toward the plaintiff does not make the defendant liable.¹⁴

In this case, I similarly conclude that the plaintiff’s allegations are insufficient to allege malice. The plaintiff must plead facts showing a wrongful or improper motive or a wanton disregard of the rights of the plaintiff. Here no wrongful or improper motive or wanton disregard of the rights of the plaintiff is sufficiently pleaded. The plaintiff has not sufficiently pled that the defendant was not seeking a lawful remedy through the PFA procedure. While the complaint implicitly alleges that the criminal harassment complaint was filed without probable cause, it does not sufficiently allege that it was filed for a wrongful or improper motive or wanton disregard of the rights of the plaintiff. As mentioned, malicious prosecution is viewed with disfavor and assessed with special scrutiny.¹⁵

The plaintiff was the unsuccessful party in the appeal to the Supreme Court. Therefore, no action for malicious prosecution can lie for that proceeding.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ It also appears that the statute of limitations has run against the claim of malicious prosecution in connection with the PFA proceeding. The complaint in this case was filed two years to the day after the dismissal of the criminal harassment charges. The complaint alleges that the testimony which the defendant gave at the criminal harassment charges included the same allegedly false testimony she gave at the PFA hearing “only weeks earlier.” The statute of limitations for malicious prosecution is two years. *Pagano v. Hadley*, 553 F. Supp. 171 (D. Del. 1982). Therefore, it appears that the PFA proceeding was more than two years prior to the filing of the complaint. Since the exact date upon which dismissal of the PFA proceeding occurred is not in the record, however, I do not base my ruling on the motion on this grounds.

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The second cause of action brought by plaintiff is abuse of process. In regard to the claim for abuse of process, Prosser states that the essential elements of the tort are: 1) an ulterior purpose; and 2) a wilful act in the use of the process not proper in the regular conduct of the proceedings.¹⁶ In explaining these elements, Prosser notes that 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.¹⁷ Merely carrying out the process to its authorized conclusion, even though with bad intentions, does not result in liability.¹⁸ Some form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, must be shown.¹⁹

Abuse of process is concerned with a perversion of the process after it is issued. However, it is very similar to a claim for malicious prosecution in that both address the same wrong, abusive litigation; and it is only a matter of timing between the two.²⁰ As generally discussed above under malicious prosecution, I do not find that any of the filings made by defendant were filed for an ulterior purpose, or that an objective not legitimate in the use of process was the goal. In *Read*, the plaintiff alleged that defendants willfully and knowingly made false complaints to the police,

¹⁶ *Read*, 1995 WL 945544, at *2 (quoting Prosser, *Law of Torts* § 121 (4th Ed. 1971)).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Toll Bros., Inc. v. Gen. Acc. Ins. Co.*, 1999 WL 744426, at *5-6 (Del. Super. Aug. 4, 1999) *aff'd*, 765 A.2d 953 (Del. 2000) (citing *McGee v. Feege*, 535 A.2d 1020, 1023 (Pa. 1987)).

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but this court found that the allegation did not support a claim for abuse of process.²¹ The motion to dismiss that claim was granted because plaintiff failed to “allege 1) a willful and improper act in the use of process; 2) any form of coercion; and 3) a collateral advantage to defendants arising from said coercion.”²² I find that the same can be said here.

The third cause of action plaintiff brings is for intentional infliction of emotional distress. Delaware applies Restatement (Second) of Torts § 46 in defining the elements of intentional infliction of emotional distress as follows:

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.²³

“The intentional infliction of severe emotional distress may provide the legal predicate for an award of damages, even in the absence of accompanying bodily harm if such conduct is viewed as outrageous.”²⁴ “The tort does not exist to provide a cause of action against someone who exercises poor judgment. It exists to hold accountable someone who does something atrocious and intolerable.”²⁵

²¹ *Read*, 1995 WL 945544, at *5.

²² *Id.* at *6 (quoting *Nix*, 466 A.2d at 412).

²³ *Cooper v. Bd. of Educ. of Red Clay Consol. Sch. Dist.*, 2009 WL 2581239, at *3 (Del. Super. Aug. 20, 2009).

²⁴ *Cummings v. Pinder*, 574 A.2d 843, 845 (Del. 1990).

²⁵ *Farmer v. Wilson*, 1992 WL 331450, at *5 (Del. Super. Sept. 29, 1992).

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I find that the plaintiff has failed to sufficiently allege extreme and outrageous conduct as a matter of law. I also find that he has failed to sufficiently allege severe emotional distress. In *Beckett v. Trice* the plaintiff alleged that as a result of the defendants' actions, she lost trust, had her feelings hurt, was embarrassed, became a suspicious person, and became upset and had temporary sleeping and eating problems.²⁶ This court found there that plaintiff's alleged humiliation, embarrassment, and anxiety do not constitute extreme emotional distress.²⁷ Plaintiff here has not asserted any severe emotional distress whatsoever, except a generalization that the defendants actions "caused grave harm to plaintiff and his children."

For the foregoing reasons, the defendant's Motion to Dismiss the complaint is ***granted.***

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary
Order Distribution
File

²⁶ 1994 WL 710874, at *5 (Del. Super. Nov. 4, 1994) *aff'd*, 660 A.2d 393 (Del. 1995).

²⁷ *Id.*