

STATE OF MICHIGAN
COURT OF APPEALS

GARY STOBBE and PEGGY STOBBE,

Plaintiffs-Appellants,

v

DAVID PARRINELLO,

Defendant-Appellee,

and

CITY OF LIVONIA,

Defendant.

UNPUBLISHED

November 24, 1998

No. 201237

Wayne Circuit Court

LC No. 96-610148 NO

Before: Griffin, P.J., and Gage and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiffs first argue that the trial court erred in granting defendant's motion for summary disposition with regard to plaintiffs' claims of false arrest, malicious prosecution, and intentional infliction of emotional distress. We disagree. We review a trial court's decision to grant summary disposition de novo. *Terry v Detroit*, 226 Mich App 418, 423; 573 NW2d 348 (1997). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, depositions, and other documentary evidence, give the benefit of any reasonable doubt to the nonmoving party, and draw any reasonable inferences in favor of that party. *Smith v Union Charter Twp (On Rehearing)*, 227 Mich App 358, 361-362; 575 NW2d 290 (1998).

Plaintiffs claimed the intentional torts of false arrest, malicious prosecution, and intentional infliction of emotional distress against Officer Parrinello. None of these intentional torts were

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

barred by governmental immunity before July 7, 1986. MCL 691.1407(3); MSA 3.996(107)(3); *Jones v Powell*, 227 Mich App 662, 672; 577 NW2d 130 (1998). Therefore, plaintiffs were free to assert their intentional tort claims of false arrest, malicious prosecution, and intentional infliction of emotional distress against Officer Parrinello. *Jones, supra* at 672.

A false arrest is an illegal or unjustified arrest, i.e., an arrest which was not based on probable cause. *Lewis v Farmer Jack Division, Inc*, 415 Mich 212, 218; 327 NW2d 893 (1982); *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). If the arrest is legal, there has not been a false arrest. *Tope, supra* at 105. Whether the plaintiff could actually have been convicted is irrelevant because actual innocence is not an element of false arrest. *Lewis, supra* at 218, n 1; *Brewer v Perrin*, 132 Mich App 520, 527; 349 NW2d 198 (1984). A complaining witness is immune from liability for false arrest where a valid complaint was issued. *Raudabaugh v Baley*, 133 Mich App 242, 248; 350 NW2d 242 (1983). However, this immunity does not extend to instances where the complaining witness does not act reasonably, i.e., when he knew or should have known that, were it not for his mistake, the arrest warrant would not have been issued. *Id.*

In order to state a prima facie case of malicious prosecution, the plaintiff must prove that: (1) the defendant has initiated a criminal prosecution against him; (2) the criminal proceedings terminated in his favor; (3) the defendant who instituted or maintained the prosecution lacked probable cause for his actions; and, (4) the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).

An officer who merely executes a warrant that is valid on its face is protected from liability. *Flores v Dalman*, 199 Mich App 396, 404; 502 NW2d 725 (1993). Failure to include all exculpatory facts is not adequate to sustain a suit for malicious prosecution. *Payton v Detroit*, 211 Mich App 375, 395; 536 NW2d 233 (1995). What is required is evidence that would give rise to the inference that the defendant knowingly included false facts in his affidavit, without which the prosecutor could not have concluded there was probable cause. *Matthews, supra* at 390; *Payton, supra* at 395; *King v Arbic*, 159 Mich App 452, 466; 406 NW2d 852 (1987).

It is undisputed that the proceedings against plaintiff were terminated in his favor when the district judge dismissed the charges against plaintiff after the preliminary examination. However, Officer Parrinello, the complaining witness, “*fully and fairly stated all of the material facts within his knowledge* to the prosecuting officer and acted upon his advice.” *Flores, supra* at 404-405, quoting *Smith v Tolan*, 158 Mich 89, 93; 122 NW 513 (1909) (emphasis in original). Therefore, probable cause was established. *Id.* at 405. Officer Parrinello participated in the investigation of plaintiffs’ case by taking photographs of the accident scene, gathering witness statements, and assisting in the measurement-taking process. It was the policy of the Livonia Police Department to submit all fatal crash investigations to the prosecutor’s office for its review and determination as to whether charges should be filed. Pursuant to that policy, Officer Parrinello typed up a warrant request which included all of the evidence that was gathered during the investigation and took it to the prosecutor’s office for review. When Officer Parrinello presented the request for warrant recommendation to the prosecutor, he also presented the entire investigation file, including the statements of plaintiff, Bernard Berger, Sean

Murphy, and James Martin. Officer Parrinello neither made recommendations nor did he give advice to the prosecutor as to what charges should be brought.

Accordingly, because Officer Parrinello as the prosecuting witness in good faith fully and fairly stated all of the material facts within his knowledge to the prosecutor and acted upon his advice, proof of probable cause was established. *Flones, supra* at 404-405. Since probable cause was established, summary disposition was appropriate as to plaintiffs' false arrest and malicious prosecution claims.

The trial court also properly dismissed plaintiffs' claim of intentional infliction of emotional distress. Liability for such a claim has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized society. *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). Officer Parrinello had a legal right to arrest plaintiff pursuant to a valid warrant. Consequently, Officer Parrinello cannot be held liable for insisting on his legal right in a permissible way, even though he may have been aware that such an insistence was certain to cause emotional distress. *Cebulski v Belleville*, 156 Mich App 190, 196; 401 NW2d 616 (1986). Furthermore, plaintiffs have offered no evidence which shows that, in effectuating plaintiff's legal arrest, it was Officer Parrinello's intent to cause plaintiff the requisite emotional distress. Accordingly, summary disposition was also properly granted with regard to plaintiffs' claim for intentional infliction of emotional distress.

Plaintiffs finally argue that the trial court erred in granting summary disposition because Officer Parrinello was grossly negligent and, therefore, not entitled to governmental immunity. We disagree.

As we have stated, probable cause was established by the fact that Officer Parrinello made full and fair disclosure to the prosecutor's office regarding all material facts within his knowledge. *Payton, supra* at 395. In addition, Officer Parrinello was acting within the scope of his authority by arresting someone he suspected of violating the law. *Id.* at 392; MCL 691.1407(2)(a); MSA 3.996(107)(2)(a). Officer Parrinello was also discharging a governmental function when he arrested plaintiff because "[t]here are few functions more clearly governmental in nature than the arrest, detention, and prosecution of persons suspected of having committed a crime and the decisions involved in determining which suspects should be prosecuted and which should be released." *Payton, supra* at 392; *Bell v Fox*, 206 Mich App 522, 525; 522 NW2d 869 (1994); MCL 691.1407(2)(b); MSA 3.996(107)(2)(b). Moreover, his conduct in arresting plaintiff was reasonable and did not constitute conduct "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). Because Officer Parrinello was acting within the scope of his authority while engaged in the discharge of a governmental function, and his actions did not amount to gross negligence, he was protected from liability by governmental immunity. *Bell, supra* at 525.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Robert J. Danhof