IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

NICHOLAS DEMANULE DANIELS,

Appellant,

v.

OFFICER RYAN TERRANOVA, et al.,

Respondents.

DOCKET NUMBER WD82785

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: August 18, 2020

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Kevin M.J. Crane, Judge

JUDGES

Division Four: Mitchell, P.J., and Newton and Gabbert, JJ. CONCURRING.

ATTORNEYS

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Brad C. Letterman, Jefferson City, MO, Attorney for Respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

NICHOLAS DEMANULE DANIELS, Appellant,
v.
OFFICER RYAN TERRANOVA, et al., Respondents.

WD82785 **Boone County**

Before Division Four Judges: Karen King Mitchell, Presiding Judge, and Thomas H. Newton and Anthony Rex Gabbert, Judges

Nicholas Daniels appeals the award of summary judgment to Columbia Police Officers Ryan Terranova, Patrick Corcoran, and Clint Sinclair and former Columbia Police Sergeant Candy Cornman (collectively, the Officers) on Daniels's claim of malicious prosecution stemming from an underlying criminal prosecution for trespassing, assault of a law enforcement officer, and resisting arrest. On appeal, Daniels raises seven points, arguing that the motion court erred in granting summary judgment because (1) an earlier suit was commenced against Daniels in that criminal charges were filed against him; (2) there are genuine issues of material fact as to whether the Officers instigated the prosecution; (3) the case terminated in Daniels's favor in that the prosecuting attorney dismissed the case by *nolle prosequi*, intended to abandon the case, and did not refile charges against Daniels before the statute of limitations expired; (4) there are genuine issues of material fact demonstrating that the Officers lacked probable cause to instigate the prosecution against Daniels for any criminal charges; (5) collateral estoppel does not bar Daniels from presenting evidence of lack of probable cause; (6) there are genuine issues of material fact regarding the Officers' malice; and (7) there are genuine issues of material fact regarding Daniels's damages. Because the motion court properly granted summary judgment as to Daniels's claim of malicious prosecution arising from the charge of resisting arrest and as to all of his claims against Sergeant Cornman, we affirm in part. But, because we find genuine issues of material fact as to (1) probable cause to prosecute Daniels for trespass and assault of a law enforcement officer and (2) whether the prosecutor abandoned the case, we reverse the grant of summary judgment as to Daniels's claims of malicious prosecution for trespass and assault of a law enforcement officer against the remaining Officers and remand the case for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Division Four holds:

1. As the non-moving party, Daniels was required to file a response setting forth each of the Officers' factual statements and admitting or denying the truth thereof, which he

did; he was not required to file a legal memorandum explaining the legal or factual reasons why summary judgment should be denied in order to preserve issues for appeal.

2. An appellate court's review of a motion for summary judgment is *de novo.* Where the motion court does not explain why it granted summary judgment, we presume the court acted according to grounds provided in the motion, but we can affirm the grant of summary judgment on any appropriate theory supported by the record.

3. The party moving for summary judgment bears the burden of establishing there are no genuine issues of material fact and it is entitled to judgment as a matter of law.

4. A defendant movant is entitled to summary judgment if he demonstrates facts negating any element of the claimant's prima facia case.

5. Once the movant shows that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law, the burden shifts to the non-movant who must demonstrate by means provided in Rule 74.04 that there is a genuine issue for trial.

6. To prevail on his claim for malicious prosecution, Daniels must prove: (1) the commencement or prosecution of proceedings against [him]; (2) its legal causation or instigation by [the Officers]; (3) its termination in [Daniels's] favor; (4) the absence of probable cause for such proceedings; (5) the presence of malice therein; and (6) damages by reason thereof. Missouri law does not favor malicious prosecution actions, so courts require strict compliance with the requisite elements.

7. On appeal, we address only those grounds for summary judgment raised by the Officers in their motion: (1) the prosecution did not terminate in Daniels's favor; (2) the Officers had probable cause to initiate the prosecution; and (3) as to Sergeant Cornman only, she did not instigate the prosecution.

8. There are genuine issues of material fact as to whether Daniels's criminal prosecution terminated in his favor.

9. In the context of malicious prosecution, an underlying action is deemed terminated when: (1) a final judgment is entered on the merits; (2) the action is dismissed by the court with prejudice*;* or (3) the action is abandoned.

10. Here, where there was no final judgment on the merits of the criminal prosecution and the court did not dismiss the prosecution with prejudice, the question is whether the uncontroverted facts entitle the Officers to judgment as a matter of law because the prosecution was not abandoned.

11. For purposes of determining when a malicious prosecution claim accrues, entry of a *nolle prosequi* in a criminal prosecution does not result in termination, unless there is an accompanying intent by the prosecutor to finally abandon the prosecution.

12. In determining the intent of the prosecutor to abandon a prosecution, we consider reasonable inferences from surrounding circumstances.

13. While not determinative, the running of the statute of limitations following the entry of a *nolle prosequi* is a factor that may be considered in determining whether the prosecutor intended to abandon the prosecution.

14. The key issue is the prosecutor's intent, which is a fact issue. Here, the parties dispute whether the prosecution intended to abandon Daniels's prosecution, and there is testimony to support both interpretations.

15. There are genuine issues of material fact as to whether probable cause existed to initiate Daniels's prosecution for trespass and assault of a law enforcement officer.

16. Collateral estoppel precludes the same parties (or those in privity with them) from relitigating an issue that was previously adjudicated; a court's decision about an issue of fact or law that is necessary to the court's judgment may preclude relitigation of that issue in a different cause of action involving a party to the first case.

17. Before a prior adjudication can be given preclusive effect, (1) the issue decided in the prior action must be identical to the issue in the later action; (2) the prior action must have resulted in a judgment on the merits; (3) the party against whom estoppel is asserted must have been a party or in privity with a party to the prior action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior action.

18. We give preclusive effect to certain facts previously determined by the federal district court in a case arising from the same underlying criminal prosecution because (1) the facts are identical to those presented in the current case; (2) the federal case resulted in a judgment on the merits; (3) Daniels was a party in the federal action; and (4) Daniels had a full and fair opportunity to litigate these issues in the prior case.

19. Probable cause to prosecute is reasonable cause and may be defined as the existence of such a state of facts as would warrant an ordinarily cautious and prudent person in the belief that the accused was guilty of the offense charged. The test as to whether or not probable cause for instituting a criminal prosecution existed applies to the facts and circumstances as they were at the time the prosecution began.

20. For purposes of this case, a person commits the crime of resisting arrest if, knowing that a law enforcement officer is making an arrest, the person uses physical force or violence to prevent the officer from effecting the arrest.

21. The facts found by the federal district court and given preclusive effect in the present case would warrant an ordinarily cautious and prudent person in the belief that Daniels was guilty of resisting arrest. Thus, there was probable cause at the time the prosecution commenced to find that Daniels committed the offense of resisting arrest.

22. But a finding of probable cause to prosecute Daniels on one of the three charges filed—here resisting arrest—does not preclude his malicious prosecution claim on the other two charges—trespass and assault of a law enforcement officer.

23. We adopt the charge-specific approach to the probable cause element of a malicious prosecution claim premised on an underlying criminal proceeding involving multiple, unrelated charges arising from the same incident or set of facts. However, our adoption of this approach does not mean that in every instance where there is probable cause with respect to some but not all offenses charged, the defendants will be liable for malicious prosecution. For liability to exist, all elements of malicious prosecution must be present, specific to the offense which is the subject of the malicious prosecution claim.

24. For purposes of this case, a person commits the crime of trespass in the first degree if he knowingly remains unlawfully in a building, but a person does not commit trespass by remaining in a building he lawfully accessed unless notice against trespass is actually communicated to him.

25. It is unclear from the record whether there was reasonable cause to believe that notice of trespass was actually communicated to Daniels. Thus, there are genuine issues of material fact as to whether the Officers had probable cause to initiate prosecution against Daniels for trespass, and the Officers are not entitled to summary judgment on that issue.

26. For purposes of this case, a person commits the crime of assault of a law enforcement officer in the third degree if the person knowingly causes physical, nonconsensual contact with a law enforcement officer.

27. Here, where the Officers only provided evidence that Officer Sinclair "perceived" he was punched by Daniels, no evidence supporting that perception was offered, and the perception is acknowledged to be false, we cannot conclude that the Officers met their burden to show that an ordinarily cautious and prudent person would believe that Daniels was guilty of assaulting a police officer. Because the Officers failed to demonstrate probable cause to believe Daniels punched Officer Sinclair, they are not entitled to summary judgment on the issue of probable cause to prosecute Daniels for assault of a law enforcement officer.

28. There are no genuine issues of material fact as to whether Sergeant Cornman instigated the criminal prosecution against Daniels, and Sergeant Cornman is entitled to judgment as a matter of law.

29. To be liable for malicious prosecution, a law enforcement officer must be the proximate and efficient cause of putting the prosecution in motion. The claimant must prove that the officer took some affirmative act in connection with the prosecution; mere passive knowledge of or acquiescence in the acts of another is not sufficient.

30. Sergeant Cornman's primary involvement with Daniels was to perform a use-of-force investigation and generate a written report, which was forwarded to the prosecutor's office as part of the police records of the incident. On the record, there is no genuine issue of material fact regarding the extent of her participation in the criminal prosecution and, as a matter of law, she was not the proximate and efficient cause of the prosecution.

Opinion by: Karen King Mitchell, Presiding Judge August 18, 2020

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.