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Apr 08 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2024-000155

Robert Stro Snipes,
Appellant,

v.

City of Belton and VetCor of Spartanburg, LLC,
Respondents,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Did the Circuit Court err in granting Summary Judgment in favor of the Respondent, City of Belton, as to the Appellant's cause of action for Malicious Prosecution and in granting Summary Judgment in favor of the Respondent, VetCor of Spartanburg, LLC, as to the Appellant's causes of action for False Arrest, False Imprisonment, and Malicious Prosecution when a genuine issue of material fact exists as to the existence of probable cause for the arrest and prosecution of the Appellant?

II.

Did the Circuit Court err in granting Summary Judgment in favor of the Respondent, VetCor of Spartanburg, LLC, as to the Appellant's cause of action for Defamation when a genuine issue of material fact exists as to the truthfulness of said Respondent's statements and as to whether said Respondent's statements were made with malice?

III.

Did the Circuit Court err in granting Summary Judgment in favor of the Respondents as to all of the Appellant's causes of action when discovery has not been completed in this case?

STATEMENT OF THE CASE

The Appellant filed this action against the Respondents due to injuries he suffered in being defamed, arrested, prosecuted, and jailed for his desperate attempts to save the life of his beloved cat, Skye. The Appellant sought care for and attempted to rehabilitate Skye for months until finally taking the cat to Spartanburg Animal Clinic, a veterinary clinic owned by the Respondent, VetCor of Spartanburg, LLC, (hereinafter referred to as “Respondent VetCor”) on or about January 29, 2021. After examining the cat, staff members of the Respondent VetCor demanded that the Appellant allow them to euthanize his pet and threatened to have him arrested if he failed to consent to the same. (Deposition Transcript p. 179-180). The Appellant, therefore, allowed the Respondent VetCor to euthanize Skye. (Deposition Transcript p. 182, lines 23-25).

Despite the Appellant allowing Skye to be euthanized, agents of the Respondent VetCor made defamatory statements to agents of the Respondent, City of Belton (hereinafter referred to as “Respondent Belton”) and to Spartanburg County Animal Control. (Respondent Belton’s Memo in Support, Ex. A, p. 27). On or about February 5, 2021, law enforcement officers of the Respondent Belton arrested the Appellant and charged him with the felony of torturing, tormenting, needlessly mutilating, cruelly killing, or inflicting excessive or repeated unnecessary pain or suffering upon an animal in violation of S.C. Code Ann. § 47-01-40(B) (1976, as amended). The Appellant was publicly handcuffed outside of his home, placed in a police car, and jailed at the Anderson County Detention Center by the Respondent Belton. (Deposition Transcript p. 131). After serving approximately twelve (12) hours in jail and being released on his own recognizance, the Appellant was forced to hire counsel to defend against this charge. (Deposition Transcript p. 25).

A preliminary hearing was held on September 15, 2021, no officers or agents of the Respondent Belton or other prosecuting officers appeared at said hearing, and the charge was dismissed by the Anderson County Magistrate's Court for lack of probable cause. (Appellant's Memo in Opposition, Ex. A).

The Appellant filed the Summons and Complaint in this matter on January 31, 2023, alleging causes of action against both Respondents for negligence, false imprisonment, and malicious prosecution, and alleging causes of action against the Respondent VetCor for defamation. The Appellant also initially alleged state constitutional claims against the Respondent Belton, but said claims were dismissed pursuant to a Stipulation of Dismissal, filed April 4, 2023.

The Respondent VetCor filed a Motion for Summary Judgment as to all of the Appellant's causes of action on September 21, 2023, and the Respondent Belton filed a Motion for Summary Judgment as to all of the Appellant's causes of action on September 25, 2023. A hearing on the Respondents' Motions was held on November 28, 2023. The Court granted said Motions and issued an Order Granting VetCor of Spartanburg LLC's Motion for Summary and an Order Granting Summary Judgment in Favor of the Defendant City of Belton of the Honorable R. Lawton McIntosh, both of which were filed on December 18, 2023. The Appellant received written notice of entry of said orders on December 18, 2023.

The Appellant filed a Motion to Reconsider, Alter, or Amend as to each of the above-referenced orders on December 28, 2023. The Court then issued an Order denying said Motion to Reconsider, Alter, or Amend of the Honorable R. Lawton McIntosh, filed January 3, 2024. The Appellant received written notice of the entry of said Order on January 3, 2024. The Appellant subsequently filed and served the Notice of Appeal in this matter on January 22, 2024.

STANDARD OF REVIEW

When reviewing a grant of Summary judgment, an appellate court applies the same standard as the trial court pursuant to Rule 56(c), SCRCP. *Flemming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is proper when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-330, 673 S.E.2d 801, 802 (2009) citing *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

ARGUMENT

I.

The Circuit Court erred in granting Summary Judgment in favor of the Respondent, City of Belton, as to the Appellant’s cause of action for Malicious Prosecution and in granting Summary Judgment in favor of the Respondent, VetCor of Spartanburg, LLC, as to the Appellant’s causes of action for False Arrest, False Imprisonment, and Malicious Prosecution because a genuine issue of material fact exists as to the existence of probable cause for the arrest and prosecution of the Appellant.

An essential element of the Appellant’s claim against the Respondent Belton for Malicious Prosecution and claims against the Respondent VetCor for False Arrest, False Imprisonment, and Malicious Prosecution. Indeed, the basis for each of the Circuit Court’s Orders granting summary judgment to the Respondents is that probable cause did exist for the Appellant to be arrested and prosecuted on the felony charge of torturing, tormenting, needlessly mutilating, cruelly killing, or inflicting excessive or repeated unnecessary pain or suffering upon an animal in violation of S.C. Code Ann. § 47-01-40(B) (1976, as amended). The Appellant respectfully disagrees with this finding and asserts that he has presented evidence that raises a genuine issue of material fact that probable cause did not exist for his arrest.

The existence of probable cause is a factual question that must be decided by a jury unless the Court finds, as a matter of law, that “the evidence yields only one conclusion.” *Pallares v. Seinar*, 407 S.C. 359, 367, 756 S.E.2d 128, 132 (2014). In this case, the Respondents argue that the photographs of the cat at issue and medical records constitute probable cause for the Appellant’s arrest, and the Appellant concedes that a reasonable jury could make this determination. However, the complete record in this case, viewed in light most favorable to the

Appellant, could also lead a reasonable jury to conclude that probable cause did not exist for the Appellant's arrest and prosecution for the above-referenced charge. In the Appellant's deposition he sets forth, in detail, the efforts he took to rehabilitate Skye for months prior to the cat being euthanized. (Deposition Transcript, p. 31-32, 44-45). Moreover, the Appellant has testified that the cat ate, walked around, jumped, and even slept in the bed with him at night in the months leading up to its euthanasia. (Deposition Transcript, p. 45-46). Additionally, the Appellant produced photographs corroborating his deposition testimony that the cat was eating and drinking right up until his euthanasia. (Memo in Opposition, Ex. B). This evidence could yield more than one conclusion; thus, the existence of probable cause in this case should be a question of fact to be decided by a jury.

The record in underlying criminal case against the Appellant and the actions of the Respondent Belton in regards to that case are also evidence that there was no probable cause for the Appellant to be charged or prosecuted. The charge at issue was dismissed at a preliminary hearing. The sole purpose of a preliminary hearing is for a Magistrate Court "to determine whether sufficient evidence exists to warrant the defendant's detention and trial." Rule 2(a), SCRCrimP. The Court may only dismiss a charge if it finds that probable cause does not exist; however, this does not preclude the State from later seeking an indictment for the same charge. Rule 2(c), SCRCrimP. The Magistrate Court's dismissal of the charge in this case is a finding that probable cause did not exist. Furthermore, neither the State, the Respondent Belton, nor any other party has indicted or otherwise sought to reinstate this charge, or any other charges, against the Respondent. (Memo in Opposition). This ruling by the Magistrate Court along and lack of subsequent action by the Respondent Belton constitutes evidence upon which a reasonable jury could find that no probable cause existed for the arrest and prosecution of this charge.

II.

The Circuit Court erred in granting Summary Judgment in favor of the Respondent, VetCor of Spartanburg, LLC, as to the Appellant's cause of action for Defamation when a genuine issue of material fact exists as to the truthfulness of said Respondent's statements and as to whether said Respondent's statements were made with malice.

The Circuit Court granted Summary Judgment in favor of the Respondent VetCor on the Appellant's cause of action for Defamation because it found that the statements made by its agent, Amanda Harvey, regarding the Appellant were true and privileged. However, the Respondent VetCor has presented no deposition testimony or affidavits from Ms. Harvey to support this finding. The only item in the record that describes Ms. Harvey's communications to the Respondent Belton is the incident report attached to the Affidavit of Dorren Howe is attached, as Exhibit A, to the Respondent Belton's Memorandum in Support of Summary Judgment. The incident report indicates that Amanda Harvey told Dorren Howe, agent of the Respondent Belton, that the cat at issue was "very sick" and that the Appellant "was not cooperating with the doctor because he did not want the animal euthanized." (Respondent Belton's Memo in Support, Ex. A, p. 27). In fact, the Appellant had agreed to allow the cat euthanized and the animal had been euthanized prior to Amanda Harvey making this report. Further, the incident report contains no indication that Amanda Harvey ever told agents of the City of Belton that the cat had been euthanized. Based on this incident report, a jury could reasonably find that Amanda Harvey's statements were not truthful.

The Appellant concedes that the statements of the Respondent VetCor were protected by a qualified privilege; thus, in order to prevail on his Defamation claim, the Appellant must prove that said Respondent acted with common law malice. *Swinton Creek Nursery v. Edisto Farm*

Credit, ACA, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). Regardless, there is evidence in this case that would support a reasonable jury finding that were made with malice.

A statement is made with common law malice when a party makes it with “ill will” or makes it “recklessly or wantonly.” *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 466, 629 S.E.2d 653, 675 (S.C. 2006). When Amanda Harvey made her report to the Respondent Belton, she knew that the Appellant had agreed to have the cat euthanized and that the Respondent VetCor had euthanized the cat. Despite this knowledge, it appears from the above-referenced incident report, which is the only record of her statements in evidence, that she reported that the Appellant “was not cooperating with the doctor because he did not want the animal euthanized,” and she failed to report that the cat had, in fact, been euthanized. (Respondent Belton’s Memo in Support, Ex. A, p. 27). A reasonable jury could find that Amanda Harvey made these deliberate misrepresentations to law enforcement with ill will towards the Appellant or made the statements recklessly or wantonly.

III.

The Circuit Court erred in granting Summary Judgment in favor of the Respondents as to all of the Appellant’s causes of action when discovery has not been completed in this case.

Summary Judgment should not have been granted in favor of the Respondents because discovery has not been completed in this case. Summary judgment is a “drastic remedy” that “must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321-322, 548 S.E.2d 854, 857 (2001) citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). The Appellant has been deposed in this matter. However, prior to the filing of the Respondents’

Motions for Summary Judgment, the Appellant was not able to depose agents of either Respondent. The Appellant is informed and reasonably believes that these depositions would lead to additional evidence that would support his claims.

CONCLUSION

The Appellant has presented evidence upon which a reasonable jury could find that probable cause did not exist for his arrest and prosecution for the felony charge of cruelty to animals. Therefore, a genuine issue of material fact exists as to the Appellant's cause of action for Malicious Prosecution against the Respondent Belton and causes of action for False Arrest, False Imprisonment, and Malicious Prosecution against the Respondent VetCor. Consequently, the Respondents are not entitled to judgment as a matter of law on the same. Furthermore, the Appellant has presented evidence upon which a reasonable jury could find that the Respondent VetCor made defamatory, false statements against the Appellant with common law malice. Thus, a genuine issue of material fact exists as to the Appellant's cause of action for Defamation against the Respondent VetCor, and said Respondent is not entitled to judgment as a matter of law on the same. Finally, summary judgment is not appropriate at this stage in this case because discovery is not complete. For these reasons, the Appellant would respectfully request that the Circuit Court's Orders granting summary judgment in favor of the Respondents be reversed.

April 9, 2024

s/ G. Lee Cole, Jr.

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