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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

Appellate Case No. 2023-000155
Circuit Court Case No. 2023-CP-04-00203

Robert Stro Snipes.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT VETCOR OF SPARTANBURG, LLC

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STATEMENT OF CASE

This Appeal arises out of an action filed by Appellant against Respondents due to the arrest of Appellant by Respondent City of Belton for the ill treatment of his cat Skye. Appellant was arrested following an investigation by City of Belton Animal Control following a report made by staff of Spartanburg Animal Clinic¹. Appellant was arrested pursuant to a warrant signed by Judge Dennis Bannister, Jr., which stated probable cause existed to believe Appellant violated S.C. Code Ann. § 47-01-0040(B) (1976). (Respondent City of Belton’s Ex. B to Motion for Summary Judgment). S.C. Code §41-1-40(B) prescribes punishment for a person who “...inflicts excessive or repeated unnecessary pain or suffering upon an animal or by omission or commission causes these acts to be done...” As stated in the warrant, the date of the Appellant’s offense was October 15, 2020, the day he refused “to follow medical advice and adequate (sic) care for the animal” which caused the cat to suffer for “3 months.” (Belton Ex. B to MSJ.)

Prior to the Spartanburg Animal Clinic’s report to the City of Belton, Appellant’s cat Skye suffered from severely progressed dental and skin disease. Appellant testified he first noticed Skye suffering from dental abscesses in April 2020. (Deposition of Robert Snipes p.103). By October 15, 2020, Skye’s disease had deteriorated such that his condition was described by Dr. Ellege of Paw Prints Animal Hospital as severe with a “dull unkempt coat, hard swelling on right mandible, necrotic tissue in area of the canine tooth” and “two open draining wounds.” (VetCor Ex. B to Memo in Support of Motion for Summary Judgment). Three months later on January 29, 2021, when Appellant brought Skye to Spartanburg Animal Clinic, Skye was observed to be “emaciated, severely dehydrated, severe pallor, non-ambulatory, weak, and severely matted” with “two draining tracks in skin of left cheek overlying a large firm mass with mild hemorrhage and putrid-

¹ Spartanburg Animal Clinic is the trade name of Respondent VetCor of Spartanburg, LLC

smelling exudate” among other equally repulsive afflictions. (Respondent VetCor’s Ex E. Pg. 3 to Memo in Support of Motion for Summary Judgment). Skye’s weight was documented to be half of his healthy body weight – having decreased from 9.80 pounds, measured at a previous visit to Spartanburg Animal Clinic in 2017, to 4.90 pounds. (*Id.* Pg. 1). Photographs were taken that demonstrate Skye’s pathetic condition at the time of his death. (Respondent VetCor’s Ex. A to Memo in Support of Motion for Summary Judgment). Spartanburg Animal Clinic Staff recommended Appellant permit the euthanization of Skye due to his condition, and after a brief disagreement, Appellant consented to euthanization.

After Appellant left Spartanburg Animal Clinic, Amanda Harvey, the hospital manager for Spartanburg Animal Clinic, called City of Belton Police to request a welfare check on Mr. Snipes’ remaining cats. (Respondent City of Belton’s Exhibit B to Exhibit 1 of its Memorandum of Law. Incident Report # 21-0106). The next day, City of Belton Animal Control officer Doreen Howe called and questioned Ms. Harvey about Mr. Snipe’s cat Skye, at which point Mrs. Harvey provided a detailed description of Skye’s condition. (Respondent City of Belton’s Ex B to Ex 1. Pg. 5). According to Officer Howe, during the phone call she “was informed that Skye had suffered for many months before he was euthanized on January 29, 2021.” (Affidavit of Doreen Howe ¶2). Officer Howe’s investigation confirmed that Skye had suffered for several months and revealed that Appellant had refused to obtain treatment recommended by other vets on multiple occasions - most critically on October 15, 2020. (Affidavit of Doreen Howe ¶5-7).

Appellant’s Complaint was filed on January 31, 2023 and contained causes of action against Respondent VetCor of Spartanburg, LLC for negligence, false imprisonment, malicious prosecution, and defamation. Appellant was deposed on September 15, 2023. Respondent VetCor filed its Motion for Summary Judgment on September 21, 2023. A hearing was set for

Respondent's Motion for Summary Judgement on October 11, 2023. At the request of counsel for Appellant, Respondent consented to an order filed on October 9, 2023 that continued the hearing until the next docket. Appellant served Respondents with his first written discovery requests on October 10, 2023. Respondent VetCor produced its responses to these requests on November 7, 2023. On October 27, 2023, Appellant received notice that the Motion for Summary Judgement was set for a hearing on November 28, 2023. At no time did counsel for Appellant request, notice, or discuss the scheduling of the deposition of employees of Respondent VetCor of Spartanburg, LLC. Following the hearing, Respondent's Motion for Summary Judgement was granted by the Honorable R. Lawton McIntosh on December 8, 2023 on all causes of action. The Circuit Court's grant of Summary Judgement in favor of Respondent VetCor of Spartanburg, LLC on Appellant's False Arrest, False Imprisonment, and Malicious Prosecution was based both on the existence of probable cause and the separate ground that Respondent could not be held liable for merely alerting law enforcement to Appellant's supposed crime. Appellant filed his Motion to Reconsider pursuant to S.C.R.C.P. 59 on December 28, 2023. In that motion, Appellant challenged the Circuit Court's ruling on the existence of probable cause; however, he did not request reconsideration of the Circuit Court's ruling that the conduct of Respondent VetCor of Spartanburg, LLC's staff was not itself actionable under theories of False Arrest, False Imprisonment, and Malicious Prosecution.

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), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC; also *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). Once a moving party establishes the absence of a genuine issue of material fact, the opponent must present specific facts showing a genuine issue for trial. *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 558-59, 671 S.E.2d 79, 85 (Ct. App. 2008). Mere speculation or conjecture does not create a sufficient factual dispute. *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009). The opponent cannot simply rest on the allegations in the complaint to defeat a motion for summary judgment. *Gauld*, 380 S.C. at 559, 671 S.E.2d at 85. Further, a failure to establish an element of the cause of action "necessarily renders all other facts immaterial," and the moving party is entitled to summary judgment. *Baughman v. AT&T*, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991). "The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Boone v. Sunbelt Newspapers, Inc.* 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001) (Citing *Carolina Alliance for Fair Employment*, 337 S.C.476, at 485, 523 S.E.2d 795, at 800 (Ct. App. 1999)). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003).

ARGUMENT

I.

The Circuit Court did not err in Granting Summary Judgment in favor of Respondent VetCor of Spartanburg, LLC as to Appellant’s causes of action for False Arrest, False Imprisonment, and Malicious Prosecution because no issue of material fact exists as to the existence of probable cause for the arrest and prosecution of the Appellant.

A.

Appellant did not present to the trial court sufficient evidence to establish a genuine issue of material fact as to the lack of probable cause. Once Respondents presented overwhelming evidence of the existence of probable cause to believe that Appellant violated S.C. Code §41-1-40(B), Appellant was required to “present specific facts showing a genuine issue for trial.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 558-59, 671 S.E.2d 79, 85 (Ct. App. 2008). The facts mustered by Appellant are plainly insufficient.

Probable cause is a good faith belief that a person is guilty of a crime when the belief rests on such grounds as would induce an ordinary, prudent, and cautious person under the circumstances to believe likewise. *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 228, 317 S.E.2d 748, 754 (Ct.App.1984). To establish the existence of probable cause at the time of Appellant’s arrest, Respondents submitted photographs of Appellant’s cat Skye taken at the time of its death, Veterinarian records from multiple, separate vet clinics, and Appellant’s own testimony. The photographs of Skye show, in shocking detail, the wretched condition of the cat (Ex A. to VetCor’s Memo in support of Motion for Summary Judgment, and Ex A. to City of Belton’s Motion for Summary Judgement). Skye was “emaciated, severely dehydrated, severe pallor, non-ambulatory, weak, and severely matted” and had “two draining tracks in skin of left

cheek overlying a large firm mass with mild hemorrhage and putrid-smelling exudate.” (VetCor Ex E. Pg. 3 to VetCor’s Memo in Support of Motion for Summary Judgement). The October 15, 2020 records from Paw Prints Animal Hospital and the October 17, 2020 records from HealthPointe Veterinary Clinic demonstrate that Skye suffered in this condition for at least 3 months. (Exs. B and C to VetCor’s Memo in Support of Motion for Summary Judgement). Moreover, the records show that it was Appellant’s refusal to permit drastic surgery or euthanization as recommended by the veterinarians that caused Skye to suffer. (Id.) Prior to Appellant’s arrest, City of Belton investigating Officer Doreen Howe spoke with two vets who treated Skye and who described Appellant’s care for Skye as “a clear case of abuse” and “animal cruelty.” (Affidavit of Doreen Howe ¶5). As such, Respondents presented overwhelming evidence of the existence of probable cause.

Correspondingly, the evidence Appellant conjured in an effort to create a genuine issue of material fact as to the existence of probable cause is insufficient. Appellant’s evidence consists of his own, non-credible testimony; unpersuasive, undated photos of Skye that were not shown to the arresting officers prior to the arrest, and the procedural dismissal of the criminal charge at a preliminary hearing. When evaluating the existence of probable cause, the facts must be “regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be.” *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 477, 289 S.E.2d 414, 415 (1982). Consequently, the photos produced by Appellant should not be considered. Moreover, the later dismissal of Appellant’s charges at a procedural hearing is similarly irrelevant to the determination of probable cause. As a result, the only evidence Appellant properly presented to create a genuine issue of material fact is Appellant’s testimony that was overwhelmingly contradicted by other evidence in the record. Thus, the Circuit Court did

not err when it determined that probable cause existed and warranted the granting of Respondent's Motion for Summary Judgment Appellant's causes of action for False Arrest, False Imprisonment, and Malicious Prosecution.

B.

An additional ground to uphold the Circuit Court's grant of Summary Judgment in favor of Respondent VetCor of Spartanburg, LLC on Appellant's causes of action for False Arrest, False Imprisonment, and Malicious Prosecution is the Circuit Court's unchallenged ruling that Respondent's conduct was not actionable. The Circuit Court ruled that Appellant could not establish the necessary participation of VetCor employees in Appellant's arrest and prosecution sufficient to create a viable claim for False Imprisonment, False Arrest, or Malicious Prosecution because, "[w]here a person merely directs the attention of a police officer to what he supposes to be a [crime] ... and the officer, without other direction, arrests the offender on his own responsibility, the person who did nothing more than communicate the facts to the officer is not liable for causing the arrest". *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 528, 30 S.E.2d 307, 311 (1944).

The Circuit Court's ruling was based on the evidence showing that Respondent VetCor of Spartanburg, LLC employees merely reported concerns to law enforcement and did not otherwise direct or request the arrest or prosecution of Appellant. When Amanda Harvey called the City of Belton Police, she requested a welfare check. (Respondent City of Belton's Ex B to Ex 1 of Memo in Support of Motion for Summary Judgment). When contacted by animal control, she stated her concerns and described the condition of Skye on January 29, 2021, but there is no evidence indicating that she requested the arrest or prosecution of Mr. Snipes. (Respondent City of Belton's Ex B to Ex 1 to Memo in Support of Motion for Summary Judgment). Instead, the evidence

establishes that she merely requested an investigation. The investigation was independently performed, which further established the existence of probable cause, and lead to the independent decision of law enforcement to arrest Mr. Snipes. (Respondent City of Belton's Ex B to Ex 1 to Memo in Support of Motion for Summary Judgement).

Appellant did not challenge the Circuit's Ruling on this issue in his Motion to reconsider, nor did Appellant include it as an issue on appeal in his Initial Brief. As such, even if this Court finds that a genuine issue of material fact exists as to probable cause, the Circuit Court's grant of summary judgment in favor of Respondent VetCor of Spartanburg, LLC on Appellant's causes of action for False Arrest, False Imprisonment, and Malicious Prosecution should remain in place.

II.

The Circuit Court did not err in granting Summary Judgement in favor of Respondent, VetCor of Spartanburg, LLC, as to Appellant's cause of action for Defamation as no genuine issue of material fact exists as to the truthfulness of Respondent's alleged statements and as to whether said Respondent's statements were made with malice.

The Circuit Court's grant of Summary Judgment in favor of Respondent VetCor on Appellant's cause of action for Defamation was proper because Plaintiff submitted no credible evidence that Respondent made any allegedly untrue statements. Similarly, Appellant has presented insufficient evidence of malice. During Appellant's deposition, he testified that the only known false statement made by a VetCor employee to law enforcement was Amanda Harvey's statement that it was "impossible" Sky "was active the night before, eating and the cat actually slept on his chest." (Deposition of Robert Snipes 186-188). However, in his Memo in Opposition in the trial court and his Initial Brief, Appellant has limited his argument to the alleged

untruthfulness of Amanda Harvey's statement that Appellant "was not cooperating with the doctor because he did want the animal euthanized."

Appellant asserts that because Doreen Howe's report does not mention the euthanization of Skye, Ms. Harvey did not disclose it, and her statement falsely implied that Appellant once again refused to euthanize Skye (as he did on October 15, 2020 and October 17, 2020). Alone, this reading of the report requires a substantial leap of inference to reach Appellant's conclusion that a material fact was omitted. But more importantly, Appellant's interpretation is directly refuted by Doreen Howe's affidavit. According to Officer Howe, she "was informed that Skye had suffered for many months before he was euthanized on January 29, 2021." (Affidavit of Doreen Howe ¶2). Thus, Doreen Howe was informed that Appellant ultimately consented to the euthanization of Skye. Consequently, Appellant's assertion that Respondent's staff misrepresented Appellant's euthanization of Skye is refuted by the record.

Additionally, Appellant has presented insufficient evidence of malice to create a genuine issue of material fact. In his brief, Appellant's argument as to malice is based on the assertion that Amanda Harvey knowingly made the false representation that Appellant did not permit the euthanization of Skye on January 29, 2021. However, as shown above the allegedly false representation was not made. Moreover, Appellant is unable to point to any evidence beyond the statement itself that the statement was made with malice, while there is evidence that the statement was made without malice. As indicated by the labeling on the initial police report, the purpose of Amanda Harvey's initial call to the City of Belton was to request a "welfare check" for the other cats owned by Appellant. (Belton's Ex 1 Pg. 35. to Memo in Support of Motion for Summary Judgment). Appellant even understood that the purpose of animal control's initial visit was to perform a "wellness check" on his animals. (Deposition of Robert Snipes Pg. 196-197). Moreover,

for the reasons discussed above that demonstrate probable cause and the truth of the statements made, the reporting of mere facts to law enforcement is not actionable merely because the facts reported do in fact constitute a crime. Consequently, the Circuit Court did not err in granting Summary Judgement on Appellant's defamation claim.

III.

The Circuit Court did not err in granting Summary Judgement in favor of the Respondents as to all of Appellant's causes of action due to any incompleteness of discovery.

Appellant has not presented sufficient evidence that Summary Judgement was premature. When evaluating whether a grant of Summary Judgement is premature due to the incompleteness of discovery, the Court is to consider whether the non-moving party has been dilatory in seeking additional discovery, and whether they have demonstrated the likelihood that further discovery would uncover additional, relevant evidence. See *Covil Corporation by and through Protopapas v. Pennsylvania National Mutual Casualty Insurance Company*, 436 S.C. 85, 92, 870 S.E.2d 191, 196 (Ct. App. 2022). Appellant has not made a sufficient showing that additional discovery would uncover additional relevant evidence. Critically, Appellant did not attempt to comply with Rule 56(f) SCRCF by submitting an affidavit outlining the need for additional discovery prior to the hearing on the Motions for Summary Judgement. Respondents consented to a continuance when the hearing was first scheduled in October, 2023, and Appellant did not request a second continuance prior to the hearing.

Moreover, Appellant claims that the depositions of Respondent's agents are necessary prior to grant of Summary Judgment, but Appellant never noticed or requested the depositions of any agents of Respondent. The case was filed on January 31, 2023, and Motions for Summary Judgment were argued on November 28, 2023. Appellant is unable to produce any evidence that

he attempted to take or schedule depositions of Respondents' agents. Consequently, Appellant was dilatory in seeking discovery such that the grant of Summary Judgement was not premature.

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PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Respondent VetCor of Spartanburg, LLC, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Initial Brief of Respondent VetCor of Spartanburg, LLC

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