

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Michael Coleman,

Plaintiff,

v.

Village of Evergreen Park, an Illinois municipal
corporation, Officer Kiari Morgan, Star No. 103,
an individual, Officer Jared Camer, Star No.
unknown, an individual, Detective Anthony
Signorelli, Star No. unknown, an individual,

Defendants.

No. 15 L 9189

MEMORANDUM OPINION AND ORDER

Malicious prosecution requires the pleading and proof of, among other things, malice, probable cause, and the termination of a prosecution indicating the plaintiff's innocence. Here, the plaintiff failed even to allege any facts as to the existence of malice, while the evidentiary record fails to support the other two elements. For those reasons, the defendants' motion to dismiss must be granted.

Facts

At approximately 9:00 p.m. on February 6, 2011, an Evergreen Park police department dispatcher issued the description of a vehicle that had been involved in a hit-and-run accident and its license plate number. Soon after the dispatch, Evergreen Park police officer Kiari Morgan stopped a vehicle driven by Michael Coleman near 3700 West 95th Street in Evergreen Park. Then officer, now Detective, Anthony Signorelli arrived to assist with the traffic stop.

The defendants ticketed Coleman with multiple traffic violations, including leaving the scene of an accident. The State's

Attorney charged Coleman with various offenses, and the matter proceeded to trial on four counts: (1) fleeing and eluding; (2) resisting a peace officer; (3) driving under the influence of alcohol; and (4) leaving the scene of an accident.¹ The state prosecuted the case during an April 30, 2012 bench trial at which witnesses provided the following testimony.²

At approximately 9:00 or 9:30 p.m. on February 6, 2011, Signorelli heard a radio dispatch identifying a black Pontiac with a license-plate number that had been involved in a hit-and-run collision. Signorelli drove to the accident location to take a statement from Mary Parker, whose car had been struck in the collision. Signorelli then heard Morgan state over the radio that he had stopped a car matching the Pontiac's description and with a license plate number nearly identical to the one previously provided by the dispatcher. Signorelli then drove to where Morgan had stopped the Pontiac.

In the meantime, Morgan had stopped a black Pontiac because it had changed lanes without signaling and because it fit the dispatcher's description and license plate number of the car involved in the hit-and-run accident. Officer Jared Camer soon arrived in a separate car to assist. Morgan spoke with the driver, Coleman, who admitted to having been involved in an accident, but stated that another car had sideswiped his car. According to Morgan, Coleman then shifted the car from park into drive and began to pull away at a very slow speed. Morgan tried to reach inside the car to turn off the ignition, but Morgan failed to stop. Morgan then took out his gun and told Coleman to stop. Coleman did so after driving 10 to 20 feet. During that time, Camer had shattered the passenger-side window.

After Coleman stopped the car, Morgan told Coleman to get out, but he failed to comply. Morgan then forcibly removed Coleman and put him on the ground in a prone position. Morgan placed Coleman's

¹ The state struck two additional charges: (1) failing to signal a lane change; and (2) failure to reduce speed to avoid an accident.

² *People v. Coleman*, 11 MC5 662.

left arm in a handcuff, but he was purposefully lying on his right hand and refused to present it. After Morgan and Camer pulled out Coleman's right arm from underneath him, Morgan was able to handcuff it. Coleman then walked with assistance to one of the police vehicles. By this point, Signorelli had also arrived at the scene.

Morgan drove Coleman to the police station, where he needed assistance getting out of the car. Signorelli saw Coleman at the police station and noticed that his eyes were bloodshot and glassy. His speech was slurred, and he was using quite a bit of profanity. Signorelli said that Coleman's breath had a strong odor of alcohol.

Based on this evidence,³ the court found Coleman not guilty on the counts of resisting a police officer and driving under the influence. The court did, however, find Coleman guilty of leaving the scene of an accident and fleeing or eluding the police. The court sentenced Coleman to one year of supervision and imposed a \$100.00 fine for each of the two guilty counts, plus costs.

Coleman appealed his conviction for leaving the scene of an accident. He did not, however, appeal his conviction for fleeing or eluding the police. In a December 12, 2013 unpublished order, the appellate court rejected Coleman's argument that the State's evidence was insufficient pursuant to the *corpus delicti* rule to establish his guilt beyond a reasonable doubt.⁴ Yet the court also found that the trial judge had improperly relied on hearsay evidence, specifically Signorelli's testimony as to his conversations with Parker, who had failed to appear and to testify at the trial. On that basis, the appellate court reversed and remanded for a new trial.

On remand, the State prepared for a retrial. Parker, however, as the complaining witness, continued her refusal to cooperate. As a result, on September 10, 2014, the State entered a motion *nolle prosequi* on the count of leaving the scene of an accident.

³ The record included an Evergreen Park police dash-cam video, which the defendants attached as an exhibit to their reply brief in this matter.

⁴ *People v. Coleman*, 2013 IL App (1st) 122266-U.

On September 8, 2015, Coleman filed his complaint in this action. Coleman alleges that his conviction resulted in the Secretary of State's decision on June 1, 2012 to disqualify Coleman for a commercial driving license. Coleman further alleges that because the conviction remained on his record erroneously until August 14, 2014, the Secretary of State would not rescind its disqualification until that date. By that time, Coleman alleges, he had lost his job as a truck driver and remained unemployed for nearly two years. Coleman further alleges that without a source of income, he was evicted from his home, fell into arrears on his child-support payments, and had his credit ruined.

Based on those allegations, Coleman's complaint raises three counts. Count 1 is for malicious prosecution and is directed against each of the defendants. The count alleges that: (1) "Morgan, Camer, and Signorelli instituted criminal charges against Mr. Coleman for leaving the scene of an accident;" (2) they "did not have probable cause to institute these charges;" (3) Coleman was "wrongfully convicted of these charges;" (4) "these charges were terminated in favor of Mr. Coleman;" and (5) he suffered damages including, "loss of employment, eviction from his home, support payments falling into arrears, and loss of good credit." Count 2 is directed against Evergreen Park under the theory of *respondeat superior* based on the claimed willful-and-wanton acts of Morgan, Camer, and Signorelli. Count 3 is directed against Evergreen Park for indemnification based, once again, on the claimed acts of the three officers.

On December 7, 2015, the defendants filed a motion to dismiss the complaint in its entirety. The motion is grounded on Code of Civil Procedure section 5/2-619. *See* 735 ILCS 5/2-619. The defendants present three arguments, that: (1) Coleman cannot fulfill the essential elements of a malicious prosecution claim; (2) collateral estoppel bars Coleman's claim; and (3) the Local Governmental and Governmental Employees Tort Immunity Act bars Coleman's *respondeat superior* and indemnification claims. Coleman responds that the facts of this case fulfill each element of his malicious prosecution claim, collateral estoppel does not bar his claim based on

the charge, conviction, reversal, and remand related to the leaving-the-scene-of-an-accident claim, and Evergreen Park cannot be dismissed based on the wrongful conduct of its employees.

Analysis

The defendants' motion is based on Code of Civil Procedure section 5/2-619. *See* 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion is to construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarowski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008). A court is not, however, to accept as true those conclusions unsupported by facts. *See Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).

One of the enumerated grounds for a section 2-619 motion to dismiss is that the claim is barred by affirmative matter that avoids the legal effect of or defeats the claim. *See* 735 ILCS 5/2-619(a)(9). For purposes of a section 2-619(a)(9) motion, "affirmative matter" is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *See Illinois Graphics*, 159 Ill. 2d at 485-86. While the statute requires that affirmative matter be supported by affidavit, some affirmative matter may be considered to be apparent on the face of the pleading. *See id.*

The affirmative matter on which the defendants rely is the record from Coleman's underlying criminal prosecution. That record, according to the defendants, establishes that Coleman cannot meet the elements necessary to establish a malicious prosecution claim. To establish malicious prosecution, Coleman must show that: (1) the defendants started or continued the criminal prosecution; (2) the proceeding terminated in Coleman's favor; (3) the defendants lacked

probable cause to proceed; (4) they acted with malice; and (5) the plaintiff suffered damages. *See Swick v. Liautaud*, 169 Ill. 2d 504, 512 (1996). The failure to establish any one of the five element bars recovery. *See Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 641 (1st Dist. 2002).

The high bar set by these pleading elements reflects the proposition that malicious prosecution is a disfavored cause of action. *See Cult Awareness Network v. Church of Scientology, Int'l*, 177 Ill. 2d 267, 286 (1997). The reason is that, "public policy encourages the exposure of crime and cooperation from people with knowledge about crime." *Aguirre v. City of Chicago*, 382 Ill. App. 3d 89, 96 (1st Dist. 2008). In other words, lowering the bar for civil litigation based on a failed criminal prosecution would discourage citizen participation in helping to reduce criminality.

As to the existence of the five elements in this case, the defendants have effectively shortened this court's analysis. First, the defendants concede that they initiated the criminal proceedings by filing charges against Coleman. Mtn. at 5. Second, their motion does not argue that Coleman did not suffer any damages. By elimination, then, the only disputed issues this court must address are the elements of favorable termination, probable cause, and malice.

The parties' disagreement on favorable termination focuses on whether Coleman's criminal charges are to be viewed individually or collectively. The defendants argue that Coleman cannot establish favorable termination since he failed to appeal his conviction for fleeing and alluding. In other words, the defendants' decision to file a motion to *nolle prosequi* the leaving-the-scene-of-an-accident claim is irrelevant since he was convicted of and failed to appeal the fleeing-and-eluding charge. Coleman, in contrast, implicitly concedes that the leaving-the-scene-of-an-accident claim is irrelevant, but argues that such a concession misses the point. To Coleman, the motion to *nolle prosequi* the leaving-the-scene-of-an-accident charge, individually, establishes favorable termination on that charge and satisfies the malicious-prosecution pleading element.

A proper analysis of the favorable termination element does not depend on what Coleman did or did not appeal or what the appellate court decided. Rather, the correct focus is on the factual circumstances that led to the motion to *nolle prosequi* the leaving-the-scene-of-an-accident charge. That analysis must begin with the Restatement (Second) of Torts and the Illinois Supreme Court's opinion in *Swick v. Liautaud*, 169 Ill. 2d 504 (1996). In *Swick*, the court addressed the issue of whether a motion *nolle prosequi* constitutes a favorable termination to a criminal proceeding for purposes of a subsequent malicious-prosecution claim. In a unanimous opinion, the court adopted Restatement (Second) section 674, which provides that a motion *nolle prosequi* may constitute a favorable termination unless the State abandoned the prosecution for a reason that does not indicate the accused's innocence. *Swick*, 169 Ill. 2d at 513. The court cautioned that it is not the type of disposition, but the surrounding circumstances, that determines whether the termination favors the accused. *Id.* at 513-14. As the Restatement provides:

Civil proceedings may be terminated in favor of the person against whom they are brought . . . by (1) the favorable adjudication of the claim by a competent tribunal, or (2) the withdrawal of the proceedings by the person bringing them, or (3) the dismissal of the proceedings because of his failure to prosecute them. A favorable adjudication may be by a judgment rendered by a court after trial, or upon demurrer or its equivalent. In either case the adjudication is a sufficient termination of the proceedings, unless an appeal is taken. . . .

Whether a withdrawal or an abandonment constitutes a final termination of the case in favor of the person against whom the proceedings are brought and whether the withdrawal is evidence of a lack of probable cause for their initiation, *depends upon the circumstances under which the proceedings are withdrawn.*

Restatement (Second) of Torts § 674, cmt. j (1977) (emphasis added).

The court in *Swick* found that the abandonment of proceedings is not indicative of innocence if a motion *nolle prosequi* resulted from the impossibility or impracticability of bringing the accused to trial, the institution of new criminal proceedings, or the accused's agreement or compromise with the State, misconduct aimed at preventing a trial, or request for or acceptance of mercy. *See id.* at 513, *citing* Restatement (Second) of Torts §§ 660 & 661 (1977). Significantly, the burden of proof to establish favorable termination remains with the plaintiff, *see id.*, *citing* Restatement (Second) of Torts § 672 (1977), lest, "every time criminal charges are nol-prossed a civil malicious prosecution action could result." *Id.*

In this case, Parker – an independent witness to the hit-and-run accident – failed to cooperate in the State's prosecution and re-trial of Coleman. The record indicates unequivocally that Parker's failure to cooperate in the re-trial led to the motion *nolle prosequi*. In a similar scenario, another court found that an independent witness's failure to cooperate did not constitute a favorable termination for the accused. *See Struthers v. City of New York*, 2013 U.S. Dist. LEXIS 76916 *14 & 42 (E.D. NY May 31, 2013) (dismissal of criminal charges because of non-cooperative independent witness not inconsistent with innocence, but neutral, i.e., carried no indicia of guilt or innocence). Indeed, the failure of an independent witness puts this case in a far different category than those in which courts found favorable termination either because the complaining officer refused to cooperate or testify, *see, e.g., Edwards v. Village of Park Forest*, 2009 U.S. Dist. LEXIS 73866 (N.D. Ill. Aug. 20, 2009); *Mahaffey v. Misner*, 2009 U.S. Dist. LEXIS 67718 (N.D. Ill. July 31, 2009); *Woods v. Clay*, 2005 U.S. Dist. LEXIS 343 (N.D. Ill. Jan. 10, 2005); *Petrovic v. City of Chicago*, 2008 U.S. Dist. LEXIS 85832 (N.D. Ill. Sept. 16, 2008), or the accused wanted to testify only for the case to be stricken on leave to reinstate, *see Velez v. Avis Rent a Car System, Inc.*, 308 Ill. App. 3d 923, 923-29 (1st Dist. 1999).

The particular circumstances in this case, based on the record provided, compel the conclusion that the motion to *nolle prosequi* resulting from Parker's failure to cooperate or testify is an entirely

neutral factor and does not indicate a favorable termination for Coleman. The record indicates that the state was ready to re-try Coleman for leaving the scene of an accident, but Parker stymied that attempt. Such a turn of events cannot establish favorable termination because it would invade prosecutorial discretion by effectively limiting charges to those offenses for which the State has unimpeachable, direct evidence. It may be legitimate to blame the State for prosecuting charges for which there exists no evidence, but the State cannot be blamed for failing to prosecute charges that cannot be proven based on circumstances beyond the State's control, such as an uncooperative independent witness.

The lack of a favorable termination in this case makes unnecessary the analysis of the other malicious prosecution elements. Such an exercise will, nonetheless, bolster this court's conclusion. As to assessing the existence of probable cause in a malicious prosecution case, courts are to focus on the facts the defendants knew at the time they swore out the criminal complaint, not at the time of arrest. *See Gauger v. Hendle*, 2011 IL App (2d) 100316, ¶ 115, *citing Porter v. City of Chicago*, 393 Ill. App. 3d 855, 868 (1st Dist. 2003). The defendants are, therefore, wrong by arguing that Coleman is collaterally estopped from bringing his malicious prosecution claim. Mtn. at 11-12. The facts establishing probable cause for the purpose of making a traffic stop are patently distinct from those supporting a criminal complaint; therefore, collateral estoppel cannot apply. *See Gauger*, at ¶ 115, *citing People v. Strauser*, 146 Ill. App. 3d 128,132 (1st Dist. 1986).

If the defendants are wrong for raising the collateral-estoppel defense despite the irrelevance of Coleman's conviction, Coleman is equally wrong for arguing that the defendants lacked probable cause based on the irrelevance of Parker's failure to testify at trial. Coleman errs by focusing on the absence of Parker's testimony at the trial rather than what the defendants knew at the time they swore out the charges. At that time, Signorelli had spoken with Parker. Indeed, Parker drove to the scene of the traffic stop and identified Coleman's black Pontiac as the one that had previously collided with her car and then failed to stop. That information alone is sufficient to

establish probable cause to bring charges against Coleman for leaving the scene of an accident. Whether the State failed to prove its case initially based on inadmissible hearsay or could ever prove its case at a retrial without such hearsay is temporally and substantively irrelevant because it has nothing to do with the defendants' knowledge at the time they brought charges. Similarly, the appellate court's reversal and remand for a new trial to exclude the inadmissible hearsay of Parker's statements is equally irrelevant for the same reasons.

Even if this court were to assume that the defendants misrepresented what Parker told them or wholly fabricated her statements, the result would be the same. Coleman does not contest that he and Parker collided, that she reported the incident to 9-1-1, or that a dispatcher put out a radio call based on the collision. Most important, Morgan testified at trial that he asked Coleman if he had been involved in an accident. Proceedings at 11. Morgan testified that Coleman told Morgan that Coleman's car had been sideswiped. *Id.* Coleman's attorney did not make a hearsay objection and that issue was not part of the appellate court's hearsay analysis of Parker's statements. In sum, the defendants had probable cause to charge Coleman with leaving the scene of an accident.

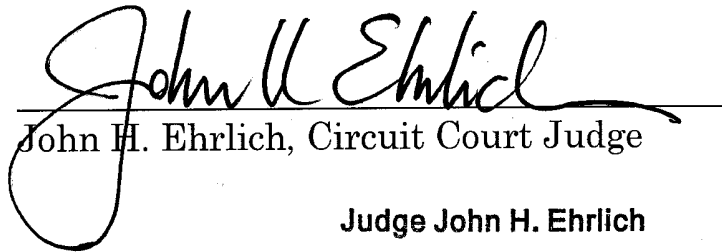
The final essential element to a malicious prosecution claim is malice. This element does not need to be addressed because Coleman chose not to allege a single fact in his complaint to support even an inference of malice. To permit Coleman the opportunity to amend his complaint to add allegations of malice would be futile since, as discussed above, he cannot meet two of the other essential elements of a malicious prosecution case.

Counts 2 and 3 of the complaint – *respondeat superior* and indemnification – fail because the malicious prosecution count fails. Tort Immunity Act section 2-109 immunizes Evergreen Park from liability since its employees are not liable. See 745 ILCS 10/2-109. Since there exists no individual or institutional liability, there is no need for indemnification.

CONCLUSION

For the reasons presented above:

1. The defendants' motion to dismiss is granted; and
2. This case is dismissed with prejudice.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075