

STATE OF MICHIGAN
COURT OF APPEALS

JAY A. BIELFIELD,

Plaintiff-Appellant/
Cross-Appellee,

v

STEVEN BLOOM,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED

June 13, 1997

No. 192788

Oakland Circuit Court

LC No. 94-473294-NZ

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

In this action for abuse of process, plaintiff appeals as of right the order of the trial court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Additionally, defendant has filed a cross-appeal in this matter, arguing that the trial court erred in failing to grant his motion for summary disposition on the additional grounds of MCR 2.116(C)(7) because res judicata barred the instant action, and further requesting us to assess sanctions against plaintiff for vexatious appeal. We affirm but refuse defendant's request for sanctions.

The facts are not greatly at issue on appeal. At the heart of this case is a bitter family feud about money. Briefly, the underlying dispute ensued when plaintiff's father, a wealthy Detroit-area businessman, lay in a coma during his final illness. While the rest of his family was at the hospital attending to plaintiff's father, plaintiff allegedly took the opportunity to forge his father's signature and obtain entry to his safety deposit box, remove approximately \$25,000 in municipal bonds, cash them, and deposit the proceeds into plaintiff's personal account. Additionally, plaintiff is alleged to have engaged in a course of significant self-dealing as to certain family business partnerships and the administration of his late father's estate. As a result of these alleged misdeeds and other disputes, the parties and other family members filed several lawsuits against each other.

In addition, defendant filed a request for investigation of plaintiff, an attorney, with the Attorney Grievance Commission (AGC). Defendant filed another complaint against plaintiff, also a real estate

agent, with the Department of Commerce's Bureau of Occupational and Professional Regulation. As a result, these administrative agencies instituted investigations of plaintiff.

One key lawsuit was settled in January 1993 pursuant to acceptance of a mediation evaluation. Like this case, that suit also involved plaintiff's claim that defendant had abused process. After that settlement, one other lawsuit initiated by defendant (a contract claim) remained pending.

On several occasions throughout 1993, defendant's attorney contacted plaintiff's lawyer and expressed his client's desire to drop his AGC and Department of Commerce complaints against plaintiff in return for plaintiff's agreement to settle the remaining lawsuit. Plaintiff refused. Defendant continued during the parties' face-to-face negotiations to offer to drop the administrative proceedings in exchange for a settlement. Plaintiff remained adamant in his refusal to settle.

In light of plaintiff's refusal to settle the remaining court case, defendant filed an amendment to his AGC complaint against plaintiff, alleging that plaintiff was attempting to "extort" money from defendant and his insurance carrier by filing a claim against him for emotional distress and abuse of process, based on defendant's alleged threats made during the settlement negotiations of 1993. Defendant also supplied the Department of Commerce with additional evidence of plaintiff's alleged misdeeds, which caused that agency to reopen its investigation of plaintiff.

Plaintiff's claim for abuse of process is predicated on defendant's attempt to use the administrative proceedings as leverage to force plaintiff to enter into a settlement and defendant's filing of further allegations with the AGC and the Department of Commerce once plaintiff refused to capitulate to his settlement offer. The trial court granted defendant's motion under MCR 2.116(C)(10) because plaintiff failed to submit evidence to establish that defendant misused the administrative proceedings in any way, thus failing to raise a triable issue of fact regarding defendant's liability for abuse of process. This appeal and cross-appeal followed.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition as to his claim for abuse of process, because he succeeded in establishing that defendant harbored an ulterior motive in filing grievances against him and that defendant engaged in an improper use of process to advance his ulterior motive.

MCR 2.116(C)(10) permits summary disposition when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." This Court considers the factual support for the claim, giving the benefit of any reasonable doubt to the nonmoving party to determine whether a record might be developed which might leave open an issue upon which reasonable minds could differ. *Jackhill Oil Co v Powell Production, Inc.*, 210 Mich App 114, 117; 532 NW2d 866 (1995). When deciding a motion for summary disposition, a court must consider the pleadings, depositions, affidavits, admissions and other documentary evidence available to it. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The grant of summary disposition pursuant to MCR 2.116(C)(10) is reviewed de novo. *Jackhill, supra*.

To establish the tort of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding. *Friedman v Dozor*, 412 Mich 1, 30; 312 NW2d 585 (1981). Courts of this state have adopted the following language from 3 Restatement Torts, § 682, Comment a, p 464, as instructive on the abuse of process issue:

The gravamen of the misconduct for which the liability [for abuse of process] is imposed is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process, no matter how properly obtained, for any purpose other than that which it was designed to accomplish. Therefore, it is immaterial that the process was properly issued, that it was obtained in the course of proceedings which were brought with probable cause and for a proper purpose or even that the proceedings terminated in favor of the person instituting or initiating them. The subsequent misuse of the process, though properly obtained, constitutes the misconduct for which the liability is imposed [*Moore v Michigan Nat'l Bank*, 368 Mich 71, 75; 117 NW2d 105 (1962); *Meehan v Michigan Bell Telephone Co*, 174 Mich App 538, 569-570; 436 NW2d 711 (1989).]

Reviewing the evidence presented in conjunction with defendant's motion for summary disposition, we conclude that the trial court did not err in granting defendant's motion for summary disposition. As to the first element of abuse of process, we find that plaintiff submitted sufficient evidence to establish the existence of a triable issue of fact regarding whether defendant harbored an ulterior motive in filing grievances against plaintiff with the AGC and the Department of Commerce. See *Three Lakes Ass'n v Whiting*, 75 Mich App 564, 574; 255 NW2d 686 (1977). As plaintiff correctly states, both the AGC and the Department of Commerce are endowed with investigatory powers so that they may effectively protect the public, not resolve disputes between private litigants. See MCL 339.501 *et seq.*; MSA 18.425(501) *et seq.* (Department of Commerce investigations); *State Bar Grievance Admin'r v McWhorter (On Rehearing)*, 407 Mich 278, 287-288; 284 NW2d 472 (1979) (state bar grievance procedure). Here, documentary evidence clearly established that defendant filed complaints with these administrative bodies for the admitted purpose of forcing plaintiff to repay money he allegedly owed defendant, which was the subject of defendant's remaining court action.

Regardless of plaintiff's ability to establish a triable issue as to defendant's ulterior motive, plaintiff failed to establish a triable issue of fact concerning whether defendant actually misused the investigations once they were underway. As this Court has stated, liability for abuse of process will not be found where a party can establish only that the defendant maliciously caused process to issue. *Young v Motor City Apts Ltd*, 133 Mich App 671, 679; 350 NW2d 790 (1984). In the instant case, defendant's acts of filing complaints against plaintiff with various administrative agencies were largely analogous to maliciously causing process to issue.¹ *Spear v Pendill*, 164 Mich 620, 624; 130 NW 343 (1911). By complaining to the AGC and Department of Commerce, defendant merely caused these bodies to investigate plaintiff, and nothing more. There is no indication that defendant had any control over these investigations once they had begun or engaged in any improper conduct regarding the investigations. Cf *Meehan* (sufficient evidence presented to show that company controlled course of

criminal prosecution). Therefore, we find that the trial court did not err in granting defendant's motion for summary disposition.

In light of this conclusion, we find it unnecessary to reach the res judicata issue, an issue that the circuit court also did not reach.

Lastly, defendant urges us on cross-appeal to assess sanctions against plaintiff for a vexatious appeal. We decline. We are not persuaded that this appeal was vexatious. MCR 7.216(C)(1). Moreover, in the interests of justice we conclude that neither party should tax costs of this appeal. MCR 7.219(A).

Affirmed.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell

¹ The parties have not directly briefed whether an abuse of process claim can be based on administrative proceedings. Therefore, we are not deciding that issue.