

STATE OF MICHIGAN  
COURT OF APPEALS

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KONSTANTINOS R. SKARVELAKIS and  
SHARON SKARVELAKIS,

UNPUBLISHED  
February 12, 1999

Plaintiffs/Counter-defendants/  
Appellees,

v

No. 199800  
Wayne Circuit Court  
LC No. 96-626644 NO

AUTO CLUB GROUP INSURANCE COMPANY  
and DARLENE L. PETROSKY,

Defendants/Counter-plaintiffs/  
Appellants.

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Before: Griffin, P.J., and Gage and R. J. Danhof\*, JJ.

PER CURIAM.

Defendants appeal by leave granted from the circuit court order denying their motion for summary disposition of plaintiffs'<sup>1</sup> malicious prosecution and intentional infliction of emotional distress claims. We reverse.

During the pendency of this appeal, the Michigan Supreme Court decided *Matthews v Blue Cross and Blue Shield of Mich*, 456 Mich 365; 572 NW2d 603 (1998), which we find to be dispositive of the matter before us. Plaintiffs have failed to establish a genuine issue of material fact regarding the existence of a prima facie case of malicious prosecution. First, we find as a matter of law that plaintiffs cannot show that defendants initiated or maintained the criminal prosecution against plaintiff. "[I]n Michigan, the prosecutor's exercise of his independent discretion in initiating and maintaining a prosecution is a complete defense to an action for malicious prosecution." *Id.* at 385. When a private person gives information, which that person believes in good faith to be true, to a law enforcement official of another's alleged criminal conduct, and the official acts within his discretion to initiate and maintain a criminal proceeding, the informant cannot be held liable for malicious prosecution. *Id.* at 385, citing 3 Restatement Torts, 2d, § 653, comment g, p 409. Here, with Auto Club's permission, defendant's investigator turned over his complete investigation file to the state police. The

\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

state police then conducted some independent investigation, including contacting and interviewing Rex Mourtos, the part-owner of a restaurant in which plaintiff was also a part-owner and where surveillance videotapes had revealed plaintiff working as a cook, despite plaintiff's claim that he was totally disabled and Mourtos' claim that plaintiff only did occasional paperwork. Also during this investigation, defendant Petrosky informed the state police investigator of the results of the civil trial. Ultimately, the prosecutor exercised his exclusive discretion to charge plaintiff with commission of a criminal offense. Thus, given that plaintiff has not presented any evidence that defendants believed the information they had turned over to the police was false, we conclude, as a matter of law, that defendants did not initiate or maintain the criminal prosecution against plaintiff.

Second, we find that defendants had probable cause to believe that a crime had been committed. At the time Auto Club authorized the release of the investigative materials to the state police, it knew that plaintiff had admitted to being unable to work since the date of the accident. Yet defendants obtained surveillance videos showing plaintiff engaged in food preparation and service at a restaurant. In addition, Auto Club's accident reconstructionist concluded that the damage to plaintiff's car could not have been caused in the manner in which plaintiff described to the police and in his Auto Club claim forms. And, finally, the jury in the civil matter had returned a verdict in favor of the insurers, expressly finding in a special verdict form that plaintiff had not been involved in a motor vehicle accident on March 22, 1992, and that plaintiff wrongfully claimed that he was involved in such an accident. Based upon this information, it was reasonable to conclude that plaintiff had engaged in misrepresentation in order to obtain no-fault benefits. Thus, assuming arguendo that there was evidence that defendants initiated or maintained the criminal prosecution, plaintiffs failed to demonstrate that defendants acted in the absence of probable cause. *Matthews, supra* at 389.

Accordingly, because plaintiffs are unable to establish an issue of material fact regarding the existence of a prima facie case of malicious prosecution, we reverse and remand to the trial court for entry of an order granting summary disposition to defendants under MCR 2.116(C)(10).

Defendants next argue that the trial court erred in failing to dismiss plaintiffs' intentional infliction of emotional distress claim. We agree. The conduct of defendants, as alleged by plaintiffs, cannot as a matter of law support a claim for intentional infliction of emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594; 374 NW2d 905 (1985). Defendants' conduct was not so extreme in degree as to go beyond all possible bounds of decency. Indeed, there is nothing in the record to support a finding that defendants did anything more than insist upon their legal rights in a permissible way. *Id.* at 602-603. Because plaintiffs' claim of intentional infliction of emotional distress fails, as a matter of law, summary disposition was erroneously denied.

Reversed and remanded to the circuit court for entry of an order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Robert J. Danhof

<sup>1</sup> Sharon Skarvelakis' claims are derivative in nature; thus, in this opinion, "plaintiff" will refer to Konstantinos R. Skarvelakis, only, unless otherwise indicated.