

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT ZLATKIN,

Plaintiff-Appellant,

v

LITA MASINI POPKE, WEISMAN TROGAN
YOUNG & SCHLOSS, P.C., REALTI FUNDING
CORPORATION and SILVANA HAILO,

Defendants-Appellees.

UNPUBLISHED
September 11, 2003

No. 240044
Oakland Circuit Court
LC No. 01-032946-NO

Before: O'Connell, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff Albert Zlatkin appeals as of right the order granting defendants' summary disposition motions. We affirm.

This Court reviews the grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A summary disposition motion under MCR 2.116(C)(10) asserts there is no genuine issue of material fact. *Maiden, supra* at 120. When an MCR 2.116(C)(10) summary disposition motion is made, the opposing party must set forth specific facts showing a genuine issue for trial. *Maiden, supra* at 121. Only substantively admissible evidence must be considered, and this evidence must be viewed in the light most favorable to the opposing party. *Id.* at 120; MCR 2.116(G)(6).

Plaintiff first argues that the trial court erred in determining that plaintiff failed to support the elements of malicious prosecution. We disagree.

To state a prima facie case of malicious prosecution, a plaintiff must prove:

1. Prior proceedings terminated in favor of the present plaintiff;
2. Absence of probable cause for those proceedings;
3. Malice, defined as a purpose other than that of securing the proper adjudication of the claim; and

4. A special injury that flows directly from the prior proceedings. [*Payton v City of Detroit*, 211 Mich App 375, 395; 536 NW2d 233 (1995), quoting *Young v Motor City Apartments Ltd*, 133 Mich App 671, 675; 350 NW2d 790 (1984).]

With respect to the first element, “[c]riminal proceedings are terminated in favor of the accused by (1) a discharge by a magistrate at a preliminary hearing, or (2) the refusal of a grand jury to indict, or (3) the formal abandonment of the proceedings by the public prosecutor, or (4) the quashing of an indictment or information, or (5) an acquittal, or (6) a final order in favor of the accused by a trial or appellate court.” *Cox v Williams*, 233 Mich App 388, 391-392; 593 NW2d 173 (1999), citing 2 Restatement Torts, 2d § 659. Generally, a proceeding is terminated in favor of a party when the final disposition suggests the party is innocent. *Cox, supra* at 392.

The trial court’s dismissal here does not indicate that plaintiff was innocent. It merely indicates that the trial court believed there was a better method to handle the matter, namely, to let the State Bar of Michigan investigate the allegations and determine the appropriate outcome. The trial court did not indicate any position on plaintiff’s conduct or his innocence. Therefore, the trial court properly determined that the earlier show cause proceeding did not terminate in plaintiff’s favor.

With respect to the second element, probable cause is defined as reasonable grounds for suspicion, supported by circumstances sufficiently strong to cause an ordinarily cautious person to believe that the accused person committed the act. *Matthews v Blue Cross and Blue Shield of Michigan*, 456 Mich 365, 387; 572 NW2d 603 (1998). In this case, sufficient probable cause existed to believe that plaintiff was engaged in the unauthorized practice of law. Plaintiff’s daughter filed an affidavit, in another case, detailing plaintiff’s activities, including that plaintiff had written affidavits and a brief. A disbarred or suspended lawyer should not have anything to do with the practice of law, including working as a paralegal, according to the State Bar of Michigan ethics opinion C-211. There was every indication that plaintiff was engaged in the unauthorized practice of law and defendants had a duty to report this activity to the trial court. Therefore, the trial court properly determined there was probable cause.

We turn next to the third element. Malice may be inferred from a lack of probable cause. *Flores v Dalman*, 199 Mich App 396, 405; 502 NW2d 725 (1993). In this case, ample probable cause existed. Importantly, there is also no indication that defendants intended to harass or injure plaintiff by bringing the claim to the trial court’s attention. See *Friedman v Dozorc*, 412 Mich 1, 55-56; 312 NW2d 585 (1981). MRPC 5.5(b) states, “A lawyer shall not . . . assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.” Further, ethics opinion C-239 from the State Bar of Michigan states that “an attorney has an ethical obligation to employ appropriate means to prevent unauthorized practice of law by nonlawyers.” Judges must also prevent the unauthorized practice of law, according to ethics opinion JI-26 from the State Bar of Michigan. Defendants were, therefore, under an ethical duty to report the unauthorized practice of law by bringing this information to the trial court’s attention. As such, the trial court properly determined that defendants did not act with malice.

The fourth element of a malicious prosecution claim is special injury. *Barnard v Hartman*, 130 Mich App 692, 693; 344 NW2d 53 (1983). “Special injury” must be some injury that “would not necessarily occur in all suits prosecuted for similar causes of action.” *Id.* at 695. A mere allegation that a person was “out to ruin” a party is not sufficient to satisfy the special injury requirement. *Young, supra* at 677-678. Plaintiff’s alleged injuries did not meet the special injury requirement. Interference with a person’s business and trade and the loss of reputation are not special injuries. *Id.* at 677. In addition, the other injuries that plaintiff alleged, such as inconvenience and fear, were no different than those injuries suffered by others in similar situations. See *Barnard, supra* at 693. Therefore, the trial court properly determined that plaintiff had not alleged special injuries. For the above stated reasons, upon a de novo review, we find that the trial court properly granted summary disposition on plaintiff’s malicious prosecution claim.

Plaintiff’s next issue on appeal is that the trial court improperly granted defendants’ motion for summary disposition regarding plaintiff’s claim of malicious abuse of process. We disagree.

To recover on a theory 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 proceedings.” *Friedman, supra* at 30. Importantly, “[t]he action lies for the improper use of the process after it had been issued, not for maliciously causing it to issue.” *Rowbotham v Detroit Automobile Inter-Ins Exchange*, 69 Mich App 142, 146; 244 NW2d 389 (1976). “To restate the proposition, the tort concerns the willful use of a valid process to obtain a result the law did not intend.” *Id.* The “improper ulterior purpose must be demonstrated by a corroborating act; the mere harboring of bad motives on the part of the actor without any manifestation of those motives will not suffice to establish an abuse of process.” *Vallance v Brewbaker*, 161 Mich App 642, 646; 411 NW2d 808 (1987).

While defendants Popke and Weisman Trogan Young & Schloss, P.C. represented the opponent of plaintiff’s daughter in a legal action, there was no indication that they misused the process once it was initiated. See *Rowbotham, supra* at 146. The public benefits when those not licensed to practice law are prevented from doing so. Beyond plaintiff’s allegations, there is insufficient evidence of an ulterior purpose and an improper use of process to support a malicious abuse of process claim. See *Friedman, supra* at 30. Consequently, upon a de novo review, we find that the trial court properly granted defendants’ summary disposition motion with regard to plaintiff’s malicious abuse of process claim.

Plaintiff’s final issue on appeal is that the trial court improperly granted summary disposition regarding defendants Realti Funding Corporation and Silvana Hailo. We disagree. Realti was the party involved in a lawsuit with plaintiff’s daughter, and Hailo was president of Realti. As discussed, the trial court properly granted summary disposition in favor of Popke and Weisman Trogan Young & Schloss, P.C. Because the underlying claims were dismissed, the trial court properly granted summary disposition in favor of Realti and Hailo. See *Maiden, supra*, 461 Mich at 120. Accordingly, we find, upon a de novo review, that the trial court properly granted summary disposition for Realti and Hailo because there was no merit to the underlying claims to support vicarious liability.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Brian K. Zahra