

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RS, as Next Friend of ES, a Minor,  
Plaintiff/Counter-Defendant,

UNPUBLISHED  
April 26, 2012

v

JOSEPH S. AJLOUNY,

No. 301199  
Oakland Circuit Court  
LC No. 2009-103379-CZ

Defendant/Counter-Plaintiff/Cross-  
Plaintiff-Appellant,

and

ALI BAJRAMI,

Defendant/Cross-Defendant-  
Appellee.

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Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant/counter-plaintiff/cross-plaintiff, Joseph Ajlouny, appeals as of right the trial court's order granting summary disposition to defendant/cross-defendant, Ali Bajrami, regarding Ajlouny's cross-claims of malicious prosecution, intentional infliction of emotional distress, conspiracy, and conversion. On appeal, Ajlouny argues that the trial court improperly granted Bajrami's motion for summary disposition because Bajrami presented no supporting documentary evidence in support of his motion and there were genuine issues of material fact. We affirm in part and reverse in part.

**I. FACTS**

This case arises out of the sexual intercourse that occurred between 48-year-old Ajlouny and 14-year-old ES in August 2007. According to Bajrami, one evening, Ajlouny asked him to contact young females so that Ajlouny could have sex. In order to force Bajrami's compliance, Ajlouny reminded Bajrami of the favors that Ajlouny had done for Bajrami's family, and Ajlouny threatened to tell Bajrami's mother that Bajrami was using Ajlouny's house "for hooking up with girls." Thus, Bajrami called ES. Ajlouny, however, claimed that he allowed ES to come to his house only as a favor to Bajrami.

Bajrami contacted ES and asked her to “hang out,” and she agreed. Bajrami claimed that he told ES that they would be hanging out with his friend who was around the age of 40, referring to Ajlouny. However, ES claimed that when Ajlouny and Bajrami came to pick her up from her house, she initially thought that Ajlouny was Bajrami’s father. It was not until after they arrived at Bajrami’s home that Bajrami told ES that Ajlouny was not his father. ES claimed that she felt uncomfortable and asked Bajrami if she could leave, but Bajrami told her to stay. ES admitted that no one was physically preventing her from leaving, but she said that she was a trusting person and believed Bajrami when he told her that it was safe to stay.

ES testified that she somehow ended up alone in a bedroom with Ajlouny. Ajlouny asked her to perform oral sex on him, but she refused. ES testified that Ajlouny then forcefully took off her clothes while pushing her onto the bed. Ajlouny began kissing ES while lying on top of her. Ajlouny told ES he wanted to have sex with her; ES refused, asked to go home, and began calling out for Bajrami. Ajlouny admitted that he had sexual intercourse with ES, but he stated that it was consensual. Also, according to Ajlouny, Bajrami had told him that ES was 16 years old. ES did not tell anyone what happened until October 2007, when the incident was revealed to police investigators in the context of an unrelated investigation.<sup>1</sup>

As a result of his conduct with ES, Ajlouny was charged with two counts of first-degree criminal sexual conduct,<sup>2</sup> one count of accosting a child for immoral purposes,<sup>3</sup> and one count of contributing to the delinquency of a minor.<sup>4</sup> Ajlouny’s judgment of sentence reveals that he pleaded guilty to one count of third-degree criminal sexual conduct.<sup>5</sup> The trial court sentenced Ajlouny to serve 51 months to 15 years in prison.

Ajlouny claimed that shortly after his initial arrest and release from jail on bond, he realized that items had been stolen from his house, including a laptop, an air soft pistol, several bottles of alcohol, and a cell phone. ES denied that she stole anything from Ajlouny’s house. Indeed, ES testified that “the stuff [Ajlouny] reported stolen were all things that either” ES or Bajrami had told the police they had seen in Ajlouny’s house in order to corroborate their story that they had been inside of Ajlouny’s house.

On August 25, 2009, ES’s father, plaintiff RS, filed a complaint, naming Ajlouny and Bajrami as defendants. RS asserted claims of assault and battery, false imprisonment, intentional infliction of emotional distress, concert of action, and civil conspiracy.<sup>6</sup> Ajlouny asserted cross-

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<sup>1</sup> It is unclear from the evidence provided how exactly the police were informed about the events of August 2007.

<sup>2</sup> MCL 750.520b(1)(d).

<sup>3</sup> MCL 750.145a.

<sup>4</sup> MCL 750.145.

<sup>5</sup> MCL 750.520d(1)(a).

<sup>6</sup> The trial court later entered a stipulated order dismissing RS’s complaint against Bajrami. Also, the trial court later approved a case evaluation award between RS and Ajlouny.

claims against Bajrami and counterclaims against RS, which were malicious prosecution, intentional infliction of emotional distress, and conspiracy to maliciously prosecute and intentionally inflict emotional distress. Ajlouny also asserted a claim of conversion against Bajrami only, claiming that Bajrami stole the laptop, DVD player, air pistol, cell phone, and alcohol. Ajlouny argued that the sexual intercourse between him and ES was consensual and that ES and Bajrami maliciously conspired to accuse Ajlouny of providing drugs and alcohol and raping ES in order to avoid focus on ES's and Bajrami's bad behavior. Ajlouny argued that, because of ES's and Bajrami's lies, Ajlouny was falsely charged. Ajlouny said that his reputation was injured, he suffered emotional distress, he incurred additional fees and costs in defending against additional criminal charges, and he was subject to increased pretrial and bond conditions.

Bajrami moved for summary disposition of Ajlouny's cross-claims under MCR 2.116(C)(10). Bajrami argued that, despite extensive discovery, Ajlouny failed to present any evidence in support of his claims and no genuine issue of material fact existed. Bajrami claimed that Ajlouny failed to present any evidence of Bajrami's maliciousness, concert of action or conspiracy, extreme or outrageous conduct, the alleged theft, or that Bajrami was the cause of Ajlouny's alleged damages or special injury.

Ajlouny responded, arguing that the sexual intercourse between him and ES was consensual and that ES, who he claimed was promiscuous, was "not a victim in any sense of the word." Ajlouny also attached two paragraphs of Bajrami's statement to the police, in which Bajrami admitted that he lied to people at school about pimping ES out and charging people to have sex with her. Ajlouny argued that Bajrami continually provided the police with inconsistent information, eventually leading the police to correctly dismiss Ajlouny's first-degree criminal sexual conduct charges. Ajlouny attached an instant message conversation between ES and Bajrami, arguing that it was proof that ES and Bajrami planned to lie maliciously to the police. Ajlouny also attached an affidavit and diary page of Lorraine Karbel, a neighbor living across the street from Ajlouny, who stated that she saw Bajrami enter Ajlouny's house in October 2007, and exit with a green plastic bag that appeared to contain items.

Bajrami replied, arguing that Ajlouny continued to "spin a tale of fantasy." Bajrami claimed that he did not initiate any prosecution, Ajlouny voluntarily pleaded guilty to third-degree criminal sexual conduct, Ajlouny failed to produce Karbel's alleged diary page during discovery, and even Ajlouny admitted that Karbel was mentally disabled.

At a hearing on the motion, Ajlouny argued that Bajrami and ES fabricated the entire story of forcible rape and that Karbel's affidavit was sufficient proof of Bajrami's conversion. Bajrami argued that he never initiated prosecution against Ajlouny, there was no evidence that Bajrami had the intent to injure Ajlouny, there was no extreme or outrageous conduct, and Ajlouny only accused Bajrami of stealing those particular items because those were the exact items that ES identified for the police. The trial court entered an order granting summary disposition to Bajrami, stating that Ajlouny failed to submit sufficient evidence establishing a genuine issue of material fact.

Ajlouny moved for reconsideration, arguing that the trial court record was missing pages from his brief in response to Bajrami's motion for summary disposition, which prevented the

trial court from truly considering all of the evidence and arguments. Ajlouny also stated that Bajrami failed to attach any exhibits or evidence to his motion for summary disposition, and thus, Bajrami failed to meet his initial burden under MCR 2.116(C)(10). Hence, Ajlouny claimed that the trial court committed palpable error in granting summary disposition to Bajrami. Bajrami responded, arguing that since Ajlouny provided a paper copy of the brief to the court, the clerk's inadvertent failure to scan in all of the pages did not mean that the trial court failed to review all of the evidence. Bajrami also claimed that Ajlouny failed to illustrate palpable error, failed to present new evidence, and failed to present new arguments.

The trial court issued an opinion and order denying Ajlouny's motion for reconsideration. The trial court stated that Ajlouny presented the same issues ruled on during the summary disposition hearing, failed to demonstrate any palpable error, and failed to demonstrate that a different disposition would result from a correction of any error.

Ajlouny now appeals to this Court.<sup>7</sup>

## II. MOTION FOR SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

In presenting a motion for summary disposition pursuant to MCR 2.116(C)(10), the moving party must specifically identify the claims that have no genuine issue of material fact,<sup>8</sup> and support "its position by affidavits, depositions, admissions, or other documentary evidence."<sup>9</sup> This requirement is derived from MCR 2.116(G)(3)(b), which states that, "affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on subrule (C)(10)." The moving party's evidence must either "negate[] an essential element of the nonmoving party's claim" or illustrate "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim."<sup>10</sup> "Once this initial burden has been met, the burden shifts to the nonmoving party to establish the existence of a genuine issue of material fact for trial."<sup>11</sup> This Court reviews de novo a trial court's ruling on a motion for summary disposition.<sup>12</sup>

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<sup>7</sup> Pursuant to a stipulated order, this Court later dismissed RS from the appeal. *Shur v Ajlouny*, unpublished order of the Court of Appeals, entered June 3, 2011 (Docket No. 301199).

<sup>8</sup> *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

<sup>9</sup> *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>10</sup> *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), quoting *Celotex v Catrett*, 477 US 317, 331; 106 S Ct 2548; 91 L Ed 2d 265 (1986).

<sup>11</sup> *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009).

<sup>12</sup> *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 48; 742 NW2d 622 (2007).

## B. SUPPORT FOR MOTION

Ajlouny argues that the trial court erred in granting Bajrami summary disposition because he failed to meet his burden of supporting his motion with affidavits, depositions, admissions, or other documentary evidence. However, Ajlouny did not raise any arguments regarding Bajrami's lack of supporting evidence during the proceedings below. Thus, the issue of whether the trial court erred in granting summary disposition to Bajrami when he failed to provide documentary evidence is not preserved for this Court's review.<sup>13</sup> And, even reviewing Ajlouny's claim for plain error affecting substantial rights,<sup>14</sup> we find no such error given our conclusions discussed below.

## C. MALICIOUS PROSECUTION

"Malicious prosecution is a tort that 'runs counter to obvious policies of the law in favor of encouraging proceedings against those who are apparently guilty, and letting finished litigation remain undisturbed and unchallenged.'"<sup>15</sup> The elements of malicious prosecution are: (1) defendant initiated a criminal prosecution against plaintiff, (2) the criminal proceedings terminated in plaintiff's favor, (3) the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice.<sup>16</sup> An additional element is required in a civil claim of malicious prosecution, namely, that a plaintiff must also prove that he suffered a special injury.<sup>17</sup> The Michigan Supreme Court has recognized that due to the "balancing of interests involved, actions for malicious prosecution have historically been limited by restrictions that make them difficult to maintain."<sup>18</sup>

Generally, initiating or maintaining prosecution occurs when a person either induces, places pressure on, or infringes on the prosecutor's authority to bring or to continue the prosecution.<sup>19</sup> However, the exercise of a prosecutor's "independent discretion in initiating and maintaining a prosecution is a complete defense to an action for malicious prosecution."<sup>20</sup> This

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<sup>13</sup> *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005).

<sup>14</sup> *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

<sup>15</sup> *Matthews v Blue Cross and Blue Shield of Mich*, 456 Mich 365, 377; 572 NW2d 603 (1998), quoting Prosser & Keeton, Torts (5th ed.), § 119, p 876.

<sup>16</sup> *Matthews*, 456 Mich at 378; *Rivers v Ex-Cell-O Corp*, 100 Mich App 824, 832; 300 NW2d 420 (1980).

<sup>17</sup> *Friedman v Dozorc*, 412 Mich 1, 32; 312 NW2d 585 (1981).

<sup>18</sup> *Matthews*, 456 Mich at 378.

<sup>19</sup> *Id.* at 384.

<sup>20</sup> *Id.* at 383.

is true “unless the information furnished [to the prosecution] was known by the giver to be false and was the information on which the prosecutor acted.”<sup>21</sup>

There was no genuine issue of material fact regarding whether Bajrami “instituted or maintained the prosecution.”<sup>22</sup> In this case, while Ajlouny claims that Bajrami provided inconsistent and false evidence to the police, Ajlouny failed to actually present any evidence regarding Bajrami’s statements to the police. The only evidence that Ajlouny submitted in the lower court regarding information that Bajrami told the police was two short paragraphs of Bajrami’s statement where he admitted that he lied to people at school, telling other students that he was ES’s pimp. However, nowhere is there evidence that Bajrami actually lied to the police.

The mere fact that Ajlouny was charged with first-degree criminal sexual conduct is not proof that Bajrami lied to the police, since Ajlouny presented no evidence that it was Bajrami, rather than ES, who reported that force was used. Further, even assuming Bajrami provided false evidence to the police, Ajlouny presented no evidence that the prosecutor did not perform an independent investigation or was acting on the basis of Bajrami’s misinformation.<sup>23</sup> Thus, because Ajlouny was unable to establish a genuine issue of material fact regarding this essential element of his claim,<sup>24</sup> summary disposition was proper.

#### D. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

“To establish a prima facie claim of intentional infliction of emotional distress, the plaintiff must present evidence of (1) the defendant’s extreme and outrageous conduct, (2) the defendant’s intent or recklessness, (3) causation, and (4) the severe emotional distress of the plaintiff.”<sup>25</sup> Moreover, a plaintiff must show that defendant’s conduct is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.”<sup>26</sup> The test for whether a person’s conduct is extreme and outrageous is “whether recitation of the facts of the case to an average member of the community would arouse his resentment against the actor, and lead him

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<sup>21</sup> *Id.* at 383, 385 (emphasis omitted).

<sup>22</sup> *Id.* at 379.

<sup>23</sup> See *Matthews*, 456 Mich at 383, 385 (stating that a private person initiates prosecution only when that person furnishes to the prosecution information “known by the giver to be false and was the information on which the prosecutor acted.”).

<sup>24</sup> See *McCart v J Walter Thompson USA, Inc.*, 437 Mich 109, 122; 469 NW2d 284 (1991) (recognizing that when a party fails to prove that there is a genuine issue of material fact regarding an essential element of a claim, summary disposition is proper.)

<sup>25</sup> *Walsh v Taylor*, 263 Mich App 618, 634; 689 NW2d 506 (2004).

<sup>26</sup> *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003), quoting *Linebaugh v Sheraton Michigan Corp.*, 198 Mich App 335, 342; 497 NW2d 585 (1993).

to exclaim, ‘outrageous!’”<sup>27</sup> In reviewing a claim of intentional infliction of emotional distress, it is the trial court’s “duty to determine whether a defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery.”<sup>28</sup> “But where reasonable individuals may differ, it is for the jury to determine if the conduct was so extreme and outrageous as to permit recovery.”<sup>29</sup>

“The threshold for showing extreme and outrageous conduct is high,” and “[n]o cause of action will necessarily lie even where a defendant acts with tortious or even criminal intent.”<sup>30</sup> Instead, “liability is imposed only where ‘the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’”<sup>31</sup>

Ajlouny argues that it was extreme and outrageous for Bajrami to lie to the police about the use of force, that Bajrami’s lies were intentional, and that Bajrami’s lies resulted in Ajlouny’s severe emotional distress because more serious charges were brought against Ajlouny. Yet, as stated, Ajlouny presented no evidence regarding what Bajrami actually told the police regarding the element of force. Thus, Ajlouny failed to raise a genuine issue of material fact regarding an essential element of his claim, and summary disposition was proper.

#### E. CIVIL CONSPIRACY

“A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means.”<sup>32</sup> However, “a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate actionable tort.”<sup>33</sup> In other words, to maintain an action for conspiracy, a party must be able to prove the underlying tort.

Because Ajlouny’s claims of malicious prosecution or intentional infliction of emotional distress are without merit, his conspiracy claim fails as well. But, even assuming that Ajlouny had been able to establish a genuine issue of material fact regarding the malicious prosecution

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<sup>27</sup> *Lewis*, 258 Mich App at 196 (citations omitted).

<sup>28</sup> *Id.* at 197, citing *Doe v Mills*, 212 Mich App 73, 92; 536 NW2d 824 (1995).

<sup>29</sup> *Hayley v Allstate Ins Co*, 262 Mich App 571, 577; 686 NW2d 273 (2004).

<sup>30</sup> *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004).

<sup>31</sup> *Id.* at 481-482, quoting *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 603; 374 NW2d 905 (1985).

<sup>32</sup> *Advocacy Org for Patients & Providers v Auto Club Ins Ass’n*, 257 Mich App 365, 384; 670 NW2d 569 (2003), quoting *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992).

<sup>33</sup> *Advocacy Org*, 257 Mich App at 384, quoting *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

and intentional infliction of emotional distress claim, Ajlouny still did not raise a genuine issue of material fact regarding his conspiracy claim.

Ajlouny's evidence of this alleged conspiracy between Bajrami and ES is an instant message conversation. ES wrote, "i know i'm not supposed to talk to you either, but [Bajrami] i'm sorry for all of this and if you talk to detective hughes and tell him the shit then my families going to make sure you get much smaller charges." Bajrami responded, "thanks a lot and trust me you were rapped [sic] . . . [Ajlouny's] just fucking lying and he forced you." Despite Ajlouny's zealous reliance on this conversation, this does not seem to actually demonstrate that ES and Bajrami conspired to fabricate charges. ES's statement implies that if Bajrami were to cooperate with the police, then her family would help him receive lesser charges. Bajrami's response indicates that he believed ES was forcibly raped. Nowhere is there a discussion about agreeing to fabricate a story or agreeing to mislead the police about Ajlouny's actions. Thus, summary disposition on this claim was proper.

#### F. CONVERSION

Conversion is any "distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein."<sup>34</sup> "Conversion may occur when a party properly in possession of property uses it in an improper way, for an improper purpose, or by delivering it without authorization to a third party."<sup>35</sup>

Ajlouny claimed that Bajrami unlawfully stole his laptop, DVD player, air pistol, cell phone, and alcohol. Ajlouny provided his neighbor's affidavit and diary entry, evidencing her statement that she saw Bajrami enter Ajlouny's house and exit with a green plastic bag that appeared to contain items. Bajrami claimed that he did not steal any of these items, and he provided a portion of ES's testimony as proof that Ajlouny's claim was spurious because the items reported stolen were the exact items she identified for the police as proof of being in Ajlouny's home.

As illustrated, the evidence regarding whether Bajrami entered Ajlouny's house and exited with the stolen items is conflicting, and "if the evidence before [the trial court] is conflicting, summary disposition is improper."<sup>36</sup> Also, even assuming that the form of the neighbor's affidavit was flawed since it failed to meet the requirements of MCR 2.119, the Supreme Court has expressly stated that evidence supporting an MCR 2.116(C)(10) motion for summary disposition "need not be in admissible form . . . [b]ut must be admissible in content."<sup>37</sup>

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<sup>34</sup> *Dep't of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 13-14; 779 NW2d 237 (2010), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

<sup>35</sup> *Dep't of Agriculture*, 485 Mich at 14.

<sup>36</sup> *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).

<sup>37</sup> *Maiden*, 461 Mich at 124 n 6 (citations omitted).

Bajrami provides no argument that the actual content of the neighbor's affidavit, namely, her statements of seeing Bajrami enter and exit Ajlouny's house, was somehow inadmissible.

Moreover, it is true that the neighbor's affidavit did not state whether she knew what was in the bag Bajrami carried. However, Ajlouny testified that these particular items were in his house before he was arrested, the neighbor stated that she saw Bajrami enter Ajlouny's house and exit with a bag full of items, and there was a police report indicating that Ajlouny reported these items stolen to the police. While it may be true that this circumstantial evidence is not overwhelming, when giving "the benefit of the reasonable doubt" to Ajlouny,<sup>38</sup> there is at least question of fact regarding whether items were stolen and whether Bajrami was responsible.

Lastly, Bajrami argues that the neighbor was not credible because she was mentally handicapped and her diary entry was not produced during discovery. Yet, such a conclusion would still require the trial court to make a credibility decision, through a determination that the neighbor's statements were not credible but ES's were. "[W]here the truth of a material factual assertion of a moving party is contingent upon credibility, summary disposition should not be granted."<sup>39</sup> Thus, the trial court erred by granting summary disposition on this claim.

### III. MOTION FOR RECONSIDERATION

#### A. STANDARD OF REVIEW

Ajlouny argues that the trial court erred in failing to grant his motion for reconsideration. This Court reviews for an abuse of discretion a trial court's decision to grant a motion for reconsideration.<sup>40</sup> An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.<sup>41</sup>

#### B. ANALYSIS

Ajlouny filed a motion for reconsideration pursuant to MCR 2.119(F)(3), which states:

(3) [g]enerally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.<sup>[42]</sup>

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<sup>38</sup> *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

<sup>39</sup> *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005).

<sup>40</sup> *Kokx v Bylenga*, 241 Mich App 655, 658-659; 617 NW2d 368 (2000).

<sup>41</sup> *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

<sup>42</sup> MCR 2.119(F)(3).

Ajlouny argued in his motion for reconsideration that Bajrami failed to provide documentary support to justify granting summary disposition regarding malicious prosecution, intentional infliction of emotional distress, and civil conspiracy. As discussed above, summary disposition was proper regarding malicious prosecution, intentional infliction of emotional distress, and civil conspiracy. Thus, the trial court did not abuse its discretion by denying Ajlouny's motion for reconsideration regarding these three claims.

However, regarding the conversion claim, Ajlouny argued in his motion for reconsideration that there was at least a genuine issue of material fact, considering the neighbor's affidavit and diary page. This Court has also repeatedly stated that "if the evidence before [the trial court] is conflicting, summary disposition is improper."<sup>43</sup> Thus, the trial court's denial of Ajlouny's motion for reconsideration regarding the conversion claim was an abuse of discretion, as it was not within the range of reasonable and principled outcomes to affirm a summary disposition order that was based on impermissible credibility determinations.

We affirm in part, reverse in part, and remand for proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Kurtis T. Wilder  
/s/ Peter D. O'Connell  
/s/ William C. Whitbeck

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<sup>43</sup> *Lysogorski*, 256 Mich App at 299.