

STATE OF MICHIGAN
COURT OF APPEALS

MEE SOOK RADZINSKI a/k/a SUE
RADZINSKI,

Plaintiff-Appellant,

v

JOHN DOE/JANE DOE as Personal
Representative of J. C., a Minor, NANCY LEE
CARLSON and ERIC STEVEN CARLSON,
jointly and severally,

Defendants-Appellees.

UNPUBLISHED
September 20, 2002

No. 233998
Oakland Circuit Court
LC No. 2000-025663-CZ

Before: O'Connell, P.J., and Griffin and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order of the Oakland circuit court granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

This civil action alleging malicious prosecution, conspiracy to commit malicious prosecution, abuse of process, intentional infliction of emotional distress and conspiracy to inflict emotional distress, has as its genesis an underlying criminal prosecution, in which plaintiff was charged with, tried and acquitted by a jury of fourth-degree criminal sexual conduct. The criminal case against plaintiff stemmed from charges that in September 1998 she sexually abused the fourteen-year-old daughter of present defendants Nancy Lee Carlson and Eric Steven Carlson. Following her acquittal, plaintiff instituted the present action against defendants. Defendants moved for summary disposition under MCR 2.116(C)(8) and (10), and following a hearing, the trial court granted defendants' motion with regard to all counts of plaintiff's complaint, concluding that plaintiff had failed to set forth a genuine issue of material fact as mandated by MCR 2.116(C)(10). Plaintiff now appeals.

We review a trial court's decision on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(C)(5), in the light most favorable to the party opposing the motion. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Summary disposition is appropriate if the affidavits or other documentary evidence show that there is no

genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

In an action for malicious prosecution, the plaintiff has the burden of proving (1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his action, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998); *Cox v Williams*, 233 Mich App 388, 391; 593 NW2d 173 (1999).

Plaintiff contends on appeal that she presented evidence showing that a genuine factual dispute existed with regard to all of the elements of the malicious prosecution claim. Concerning the first element, plaintiff acknowledges that in Michigan the ultimate decision to prosecute lies within the sole discretion of the prosecutor, *Matthews, supra* at 367; however, common law principles dictate that a person who supplies information to a prosecuting attorney is not himself a prosecutor unless he knows that the information he is supplying is false or unless he exerts improper influence on the prosecuting attorney. Plaintiff argues that in this case, defendants knowingly made false and inconsistent statements that resulted in her prosecution. Plaintiff further argues, as to the element of probable cause, that “probable cause derived through [defendants’] perjured testimony ceases to be probable cause at all,” and notes that the jury’s verdict of not guilty demonstrates that the proceeding terminated her favor. Finally, plaintiff maintains that the instant prosecution was motivated not by any traditional concepts of justice but rather by recrimination stemming from defendant Nancy Carlson’s termination of employment at the company where both plaintiff and her husband (who served in a management capacity) also worked. However, our review of the record indicates that plaintiff has failed to demonstrate a genuine issue of material fact regarding her claim of malicious prosecution.

The evidence shows that the prosecution in this case was initiated by the actions of a social worker from the Oakland County Psychological Clinic, who referred the matter to the Family Independence Agency, which in turn notified the Oakland County Sheriff’s Department. A detective in the sheriff’s department conducted an independent investigation and presented the gathered information to the Oakland prosecutor’s office, which ultimately authorized the issuance of a warrant on grounds that established probable cause to believe that plaintiff had committed criminal sexual conduct in the fourth degree. “[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.” *Matthews, supra* at 384. In the instant case, there is no evidence that the prosecution was initiated other than at the sole discretion of the prosecutor, based on an independent investigation. Plaintiff failed to present any evidence of inducement or pressure or an infringement on the prosecuting attorney’s authority in bringing or continuing the prosecution. As the trial court noted, plaintiff’s contention that her prosecution was motivated by defendants’ false information and for improper and malicious reasons are “just mere allegations that have no substance or merit.” We therefore conclude that the trial court did not err in granting summary disposition on plaintiff’s malicious prosecution claim and, in light of this conclusion, plaintiff’s conspiracy to commit malicious prosecution claim likewise fails as well. *Roche v Blair*, 305 Mich 608, 613-614; 9 NW2d 861 (1943); *Earp v Detroit*, 16 Mich App 271, 275; 167 NW2d 841 (1969).

Next, to recover under 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 that is improper in the regular prosecution of the proceeding. *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981); *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). A meritorious claim arises when a defendant has used a proper legal procedure for a purpose collateral to the intended use of that procedure. *Bonner, supra* at 472. The plaintiff must plead and prove “some corroborating act” demonstrating an ulterior purpose because a “bad motive alone will not establish an abuse of process.” *Id.*

Here, plaintiff alleged in her complaint that defendants provided false and inaccurate statements and allegations to the sheriff’s department and that defendants knew or should have known the information contained in their police reports and statements was false. Plaintiff has alleged that the ulterior motive of defendants was to cause vexation, embarrassment and damages to plaintiff’s professional and community reputations. However, no corroborating act supporting such alleged ulterior purposes has been demonstrated and, as the trial court noted, the documentary evidence submitted by plaintiff attempting to link defendant Nancy Carlson’s loss of employment with the present matter, in the form of e-mails and a contingency fee agreement, does not mention plaintiff “in any way, shape or form.” Plaintiff’s conclusory allegations are insufficient to withstand summary disposition under MCR 2.116(C)(10). Therefore, as in *Bonner*, the trial court properly dismissed plaintiff’s abuse of process claim.

Likewise, plaintiff has failed to present a genuine issue of material fact to support the tort of intentional infliction of emotional distress. In order to invoke the tort, plaintiff must establish (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999); *Haverbush v Powelson*, 217 Mich App 228; 551 NW2d 206 (1996). “Liability for the intentional infliction of emotional distress has been found only where the conduct complained of 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.” *Graham, supra* at 674. Defendants’ actions of reporting alleged instances of criminal sexual conduct at the direction of a treating psychologist/social worker, the Family Independence Agency, the sheriff’s department and the prosecutor’s office do not meet the standards set forth above, and plaintiff has otherwise failed to present any evidence of extreme and outrageous conduct sufficient to sustain her claim. *Graham, supra*. Consequently, the related conspiracy claim was also properly dismissed by the trial court. *Earp, supra*.

Affirmed.

/s/ Peter D. O’Connell
/s/ Richard Allen Griffin
/s/ Christopher M. Murray