

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001850-MR

GLEN A. BOND

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT  
HONORABLE SAMUEL C. LONG, JUDGE  
ACTION NO. 01-CI-00388

RODNEY E. CARROLL

APPELLEE

OPINION

AFFIRMING

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BEFORE: PAISLEY AND TACKETT, JUDGES; AND HUDDLESTON, SENIOR  
JUDGE. <sup>1</sup>

PAISLEY, JUDGE. This is an appeal from a judgment entered by  
the Carter Circuit Court dismissing appellant Glen Bond's  
malicious prosecution action on the ground that it failed to  
state a claim upon which relief could be granted. For the  
reasons stated hereafter, we affirm.

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of  
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution  
and KRS 21.580.

Bond's son was arrested after a high speed chase which was originated by a state park ranger, appellee Rodney Carroll. Bond allegedly made several threatening or harassing phone calls to the home of Carroll, who subsequently filed two district court criminal complaints against Bond. After the original complaints were dismissed because they were not signed by the prosecuting attorney, new criminal complaints were filed. Ultimately, those complaints were dismissed pursuant to a pretrial diversion agreement whereby Bond agreed to stay away from Carroll. It is undisputed that although Bond wished to plead "not guilty," he neither objected to nor appealed from the pretrial diversion order. Further, he did not challenge the district court's authority to enter such an order.

Bond subsequently filed the underlying circuit court claim asserting that Carroll had maliciously prosecuted him. The circuit court dismissed the action for failure to state a claim, as the underlying criminal complaints were not dismissed in Bond's favor so as to cause him to be a prevailing party. The court then denied Bond's motion seeking additional findings of fact or, alternatively, seeking to alter, amend or vacate its order of dismissal. This appeal followed.

The termination of a criminal prosecution "in defendant's favor" is a necessary element of a malicious prosecution proceeding. Raine v. Drasin, Ky., 621 S.W.2d 895,

899 (1981); Broaddus v. Campbell, Ky. App., 911 S.W.2d 281, 283 (1995). The termination need not take a particular form.

Raine, 621 S.W.2d at 900. However,

it is settled that a dismissal by compromise of the accused is not a termination favorable to the accused. Restatement (Second) of Torts § 660(a) provides:

A termination of criminal proceedings in favor of the accused other than by acquittal is not a sufficient termination to meet the requirements of a cause of action for malicious prosecution if

(a) the charge is withdrawn or the prosecution abandoned pursuant to an agreement of compromise with the accused; . . . .

The reasoning for this rule is stated in Comment C to this section:

Although the accused by his acceptance of a compromise does not admit his guilt, the fact of compromise indicates that the question of his guilt or innocence is left open. Having bought peace the accused may not thereafter assert that the proceedings have terminated in his favor.

Broaddus, 911 S.W.2d at 284. Similarly, this court recently found as a matter of law that mediated proceedings did not terminate in one party's favor where "the settlement was clearly the product of a mutual agreement." Feinberg v. Townsend, Ky. App., 107 S.W.3d 910, 912 (2003).

Here, it is clear that the disposition of Bond's criminal case by means of pretrial diversion did not constitute

a determination of his guilt or innocence. Instead, the parties simply compromised and "bought peace." As the proceedings therefore cannot be said to have terminated in Bond's favor, he was not entitled to pursue a malicious prosecution claim. Hence, the trial court did not err by dismissing the action for failure to state a claim.

Further, there is no merit to Bond's claim that the circuit court erred by failing to make additional findings of fact. The record shows that after the circuit court dismissed the malicious prosecution claim, Bond filed a CR 52 motion requesting the court to make several findings of fact regarding the validity of the district court pretrial diversion proceedings which provided the grounds for dismissing the circuit court malicious prosecution claim. Alternatively, Bond requested the circuit court to set aside its order dismissing the malicious prosecution claim, asserting that the district court pretrial diversion proceedings did not satisfy applicable statutory requirements. Simply put, these collateral challenges to the district court proceedings were not proper when they were first raised in a subsequent circuit court proceeding rather than either during, or on appeal from, the district court proceedings. Hence, the circuit court did not err by denying Bond's postjudgment motion.

The court's order is affirmed.

ALL CONCUR.

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