

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001681-MR

TERRI REDWINE

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 98-CI-01240

CITY OF HOPKINSVILLE

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: STUMBO AND WINE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Terri Redwine appeals from a jury verdict in favor of the City of Hopkinsville (City) on her claim of false imprisonment. This is the second appeal in this case. The question before us is whether our prior reversal of the trial court's finding that probable cause existed for Redwine's arrest became the law of the case and precluded the reopening of that issue.

The facts underlying Redwine's claim were recounted by this Court in our previous opinion as follows:

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Appellant Redwine was the fiancé of Wendell Quarles. Mr. Quarles was the owner/operator of a Liquor Store and a night club. Redwine was not an owner or employee of either business. The record shows that Redwine had very limited contact with either business. The trial court entered summary judgment in favor of Appellee City of Hopkinsville on Redwine's claims of malicious prosecution, libel and slander. Redwine appeals.

Mr. Quarles was arrested one evening when Redwine was not with him. Upon learning of his arrest, Redwine approached the arresting officer to determine what was going on. She expressed concern that Quarles had the only keys to his operating businesses, and that he had no way to get his keys to his employees. The officer gave her Quarles' keys to the businesses and told her to go close them. The officer also gave her the keys to Quarles' automobile and told her to take it home. Redwine did as she was instructed. While Redwine was collecting the business cash deposits on behalf of Quarles, and closing the businesses, officers arrived to search the business premises. Redwine had already provided Quarles' family members with the key to the businesses. The family members were employees of the businesses, and knew how to close the businesses for the evening. When the police officers arrived on the scene, Mr. Quarles' brother and employee, Corey Quarles, had possession of the keys to the premises, and was closing the businesses. Corey Quarles provided Redwine with the keys and the night's deposits when he finished with the closure procedures.

Prior to the search of the business premises, all employees of the business were searched. Redwine was also searched. Examination of Redwine's person by the police officers revealed no illegal substances. After a search of the business premises, marijuana residue and rolling papers were located in a locked storage area. Redwine testified that this storage area was only accessed by Quarles and was used by him to store his belongings. Contrary to the City's claims, there is no evidence that Redwine had dominion and control over Quarles' locked drawer in the storage area.

Redwine was arrested by the investigating officers after the search. Redwine asserts that she was arrested because she

had the key to the premises at that time and was the only individual present. The business employees and Quarles' family members had left the scene by the time the search was completed. The City argues that Redwine was arrested because the officers had probable cause to believe that she was the owner of the illegal substances found on the premises. Redwine was charged with possession of marijuana and possession of drug paraphernalia in violation of KRS 218A.500(2) and KRS 218A.1422.

The local newspaper published news of Redwine's arrest on drug charges. As a result, Redwine was fired from her position at First City Bank. Shortly after the arrest, the charges against Redwine were dismissed. Redwine brought charges against the City of Hopkinsville for malicious prosecution and false imprisonment. The City moved for summary judgment, and the trial court granted summary judgment in its favor. Redwine appeals the grant of summary judgment to the City of Hopkinsville.

Redwine v. City of Hopkinsville, 2002-CA-000148-MR, (rendered July 3, 2003).

This Court reversed the summary judgment in favor of the City. We also reversed the trial court's finding that probable cause existed for Redwine's arrest. *Id.* at 2. Upon remand, further discovery was conducted and Redwine made her own motion for summary judgment on the basis that this Court found that no probable cause existed for her arrest. Redwine argued that the only issue for the jury was damages. The trial court denied her motion. A jury trial was held on Redwine's claims of false imprisonment and malicious prosecution. The trial court granted a motion for a directed verdict in favor of the City on the malicious prosecution claim. The jury found in favor of the City on the false imprisonment claim. This appeal followed.

Redwine argues that she was entitled to summary judgment on liability for her false imprisonment claim because this Court determined that no probable cause existed for her arrest.

In *Inman v. Inman*, 648 S.W.2d 847, 849 (Ky. 1982), the Supreme Court of Kentucky explained the law of the case doctrine as follows:

The law-of-the-case doctrine is a rule under which an appellate court, on a subsequent appeal, is bound by a prior decision on a former appeal in the same court and applies to the determination of questions of law and not questions of fact. “As the term ‘law of the case’ is most commonly used, and as used in the present discussion unless otherwise indicated, it designates the principle that if an appellate court has passed on a legal question and remanded the cause to the court below for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case. Thus, if, on a retrial after remand, there was no change in the issues or evidence, on a new appeal the questions are limited to whether the trial court properly construed and applied the mandate. The term ‘law of the case’ is also sometimes used more broadly to indicate the principle that a decision of the appellate court, unless properly set aside, is controlling at all subsequent stages of the litigation, which includes the rule that on remand the trial court must strictly follow the mandate of the appellate court.”

Redwine misconstrues the context of our previous opinion in this case regarding the issue of probable cause. The holding in the previous appeal was that summary judgment was premature. When reviewing motions for summary judgment, the evidence of record must be viewed in the light most favorable to the non-moving party. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) Our previous opinion did not state or conclusively determine that no probable cause existed

for Redwine's arrest. Rather, we simply found that the evidence viewed in the light most favorable to Redwine was sufficient to overcome the City's motion for summary judgment and reversed the trial court's finding on that basis. Therefore, we did not substitute an independent finding that no probable cause existed and, as such, there was no law of the case on that issue. Redwine was not entitled to summary judgment on the issue of liability for false imprisonment.

Redwine also raises additional issues in her reply brief that were not presented in her initial brief. After consideration of all the briefing in this appeal, we cannot conclude that these issues were responsive to the appellee's brief and we will not consider them. *Milby v. Mears*, 580 S.W.2d 724, 728 (Ky.App.1979).

Accordingly, the judgment of the Christian Circuit Court is affirmed.

WINE, JUDGE, CONCURS.

STUMBO, JUDGE, DISSENTS, AND FILES SEPARATE OPINION.

STUMBO, JUDGE: Respectfully, I must dissent from the opinion of the majority. I believe that a fair reading of the previous opinion of this Court is that, after setting forth the legal standard to be applied, this Court held that the trial court erred in holding that there was probable cause to arrest Redwine. The majority seizes upon a later statement in the opinion that “[i]n the absence of discovery on this matter, however, entry of summary judgment was premature.” When placed in context, it is clear that at that point in the opinion, the Court was discussing the lower court’s grant of summary judgment on Redwine’s slander and libel allegations. The Court notes that, at that stage in the proceeding, there had been no showing of improper communications between the

City of Hopkinsville and the newspaper that would support such claims. I would reverse the trial court and remand for a new trial.

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