

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001725-MR

DOROTHY ALEXANDER

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE SUSAN WESLEY MCCLURE, JUDGE  
CIVIL ACTION NO. 05-CI-00204

VICKI BOTELER

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Dorothy Alexander appeals from an order of the Hopkins Circuit Court granting a directed verdict in favor of Vicki Boteler. The trial court entered the order after finding that Alexander failed to prove malice and lack of probable cause, essential elements of her malicious prosecution claim against Boteler. Finding error, we reverse and remand.

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

Alexander and Boteler had been neighbors for several years and by all accounts had a strained relationship. On February 27, 2004, an officer of the Hopkins County Police department was dispatched to the Boteler residence. Upon his arrival, Boteler complained that Alexander, while driving by Boteler's home, attempted to run her over. After taking statements from both parties and an eyewitness, Alexander was arrested and charged with wanton endangerment. Alexander was tried and acquitted of the charge on June 30, 2004. Alexander subsequently brought a malicious prosecution action against Boteler, claiming her arrest and prosecution resulted from Boteler's allegedly false complaint. On July 26, 2006, a Hopkins County jury was empaneled to hear the malicious prosecution claim. At the close of Alexander's case-in-chief, Boteler moved for a directed verdict, which the trial court granted. This appeal followed.

Alexander alleges that the trial court erred when it granted Boteler's motion for a directed verdict. We agree.

In ruling on a motion for directed verdict, the trial court is under a duty to consider the evidence in the strongest possible light in favor of the nonmoving party and must give the nonmoving party every favorable and reasonable inference which can be drawn from the evidence. *Lovins v. Napier*, 814 S.W.2d 921 (Ky. 1991). The court is precluded from directing a verdict unless there is a complete absence of proof on a material issue in the case or if no disputed issue of fact exists on which reasonable men could differ. *Taylor v. Kennedy*, 700 S.W.2d 415, 416 (Ky.App. 1985).

Through the testimony of Alexander's husband, Tony, she demonstrated that Boteler had made a similarly unfounded claim in the past against Alexander. Additionally, the arresting officer testified that he would not have made the arrest but for Boteler's statement against Alexander. Finally, Alexander herself testified that she was driving normally as she passed Boteler that day and did not attempt to swerve or run over her and that, in fact, Boteler lunged towards her car.

When considering such evidence in the “strongest possible light” in favor of Alexander, a jury could reasonably conclude that she engaged in no conduct to warrant arrest. Moreover, such a view of the evidence tends to show that Boteler's conduct and statements were malicious, lacked probable cause, and were intended to result in Alexander's prosecution under false pretenses. Thus, we determine that Alexander was entitled to bring her claim for malicious prosecution before the jury.

Accordingly, the decision of the trial court in granting the directed verdict for Boteler on Alexander's claim for malicious prosecution is reversed, and the case is remanded to the trial court for further proceedings consistent with this opinion.

Because we reverse on other grounds, we need not consider Alexander's argument concerning the admissibility of an alleged 911 call. On remand, it is expected that the parties will observe the requisite rules of evidence regarding the authentication of such evidence. *See* KRE 901. Additionally, we need not consider Alexander's final argument that the trial judge should have recused herself from the trial because opposing

counsel allegedly made a campaign contribution to the judge shortly before she entered the directed verdict.

Accordingly, the judgment of the Hopkins Circuit Court is reversed and remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher B. Oglesby  
Madisonville, Kentucky

BRIEF FOR APPELLEE:

Stephen B. Lee  
Owensboro, Kentucky