

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001712-MR

TRISHA ANN WILLIAMS

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM EVANS LANE, JUDGE
ACTION NO. 10-CI-90269

RANDY CLINE AND KEITH MCCORMICK

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, STUMBO, AND VANMETER, JUDGES.

JONES, JUDGE: The Appellant, Trisha Ann Williams (“Williams”), appeals from the August 26, 2014, order of the Rowan Circuit Court dismissing her claims of negligence and malicious prosecution against Appellees, Randy Cline and Keith McCormick. After a careful review of the record and applicable law, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 1, 2010, Trisha Ann Williams filed suit in Rowan County Circuit Court for claims of abuse of process, negligence, and malicious prosecution against Assistant Rowan County Attorney, Keith McCormick, in his official and individual capacity and against Morehead Police Officer, Randy Cline, in his official and individual capacity. Williams alleged she was mistakenly arrested and charged with first degree trafficking in a controlled substance. Her claims were subsequently dismissed by the trial court by summary judgment orders entered January 14, 2011, and February 18, 2011.

Williams appealed the trial court's grant of summary judgment to this court as a matter of right. *See Williams v. Cline*, No. 2011-CA-000444, 2012 WL 1365964 (Ky. App. Apr. 20, 2012) (hereinafter referred to as "*Cline I*"). On appeal, Williams argued that her complaint alleged valid claims for abuse of process, malicious prosecution, and negligence; that her case was improperly dismissed at the pleadings stage before discovery was allowed to proceed; that dismissal agreements cannot be misused by prosecutors in a coercive matter; and that Cline and McCormick were not cloaked with immunity. A panel of this Court affirmed the trial court's dismissal of the abuse of process claim, but reversed the trial court on Williams's claims for malicious prosecution and negligence.

With respect to the malicious prosecution claim, the *Cline I* court determined that the dismissal Williams agreed to as part of the criminal action could potentially be a defense to her malicious prosecution claim, but only if: (1) the agreement was voluntary; (2) there was no evidence of prosecutorial

misconduct; and (3) enforcement of the agreement would not adversely affect relevant public interests. *Id.* (citing *Coughlen v. Coots*, 5 F.3d 970 (6th Cir. 1993)). It remanded the malicious prosecution claim to the trial court for an evidentiary hearing and findings related to these factors. It further instructed that on remand “if the court chooses not to allow the dismissal agreement as a defense based upon its findings, it shall only consider actions taken by Cline or McCormick during the period in which they were acting as investigators, as delineated in *McCollum v. Garrett*, 880 S.W.2d 530 (Ky. 1994).” *Cline I* at 11.

The *Cline I* court also agreed with Williams that the trial court prematurely dismissed her negligence claim. It instructed the trial court as follows:

In the present case, it is clear that McCormick and Cline’s actions were discretionary in nature (as the process of investigating a suspect and deciding whether to swear out a criminal complaint cannot be ministerial in nature) and were within the scope of their authority. Thus, the only remaining question is whether their actions were taken in good faith. We believe that there is an issue of material fact as to whether McCormick and Cline acted in good faith. Similar to *McCollum, supra*, the question here seems to be whether Cline and McCormick learned that Williams “was misidentified as the offender during the investigation and prior to prosecution, but nevertheless initiated the prosecution.” *McCollum*, 880 S.W.2d at 535.

Hence, we reverse and remand to the Rowan Circuit Court on the issues of negligence. On remand, the court shall consider whether Cline and McCormick acted in good faith. As part of this analysis, the court should consider whether the Commonwealth was in possession of audio/video recordings that were exculpatory yet knowingly proceeded against Williams anyway.

Cline I at 12.

On remand, the trial court held an evidentiary hearing on March 7, 2013. During the hearing the trial court received testimony from McCormick, Cline, and Steve Geurin, Williams's attorney during the criminal matter. Following the hearing, by order rendered March 19, 2013, the trial court concluded that the actions of both Cline and McCormick were in good faith and, as such, both were cloaked with immunity. Williams again appealed to this Court. *See Williams v. Cline*, No. 2013-CA-000648-MR, 2014 WL 1407261 (Ky. App. Apr. 11, 2014) (hereinafter referred to as "*Cline II*"). The *Cline II* court determined that the trial court did not follow the directions from the first appeal.

The *Cline II* court explained:

Malicious Prosecution Claim

In its March 19, 2013, judgment, the circuit court found that "the stipulation of probable cause was intelligent, knowledgeable, and voluntary." In the previous appeal (Appeal No.2011-CA-000444-MR), the Court of Appeals directed the circuit court to determine if the agreement with the stipulation of probable cause was valid by applying the three factors in *Coughlen*, 5 F.3d 970. However, on remand, the circuit court failed to analyze whether the agreement containing the stipulation of probable cause was valid by applying the three factors set forth in *Coughlen*, 5 F.3d 970. The circuit court's failure to do so constitutes reversible error. . . . Consequently, we vacate the circuit court's judgment as to the validity of the agreement with the stipulation of probable cause and remand for the circuit court to specifically address the three factors set forth in *Coughlen*, 5 F.3d 970, as previously mandated by our Court in Appeal No.2011-CA-000444-MR.

Negligence Claim

As to Williams' negligence claim, the circuit court was directed by the Court of Appeals (Appeal No.2011–CA–000444–MR) to determine whether McCormick and Cline acted in good faith so as to be entitled to qualified official immunity. In its March 19, 2013, judgment, the circuit court concluded that both McCormick and Cline acted in good faith and were entitled to qualified official immunity. For the reasons set forth below, we believe the circuit court committed an error of law. To determine whether an official acted in good faith for qualified immunity purposes, our Supreme Court has explained that good faith has both an objective component and a subjective component:

The objective element involves a presumptive knowledge of and respect for “basic, unquestioned constitutional rights.” *Wood v. Strickland*, 420 U.S. 308, 322, 95 S.Ct. 992, 1001, 43 L.Ed.2d 214 (1975). The subjective component refers to “permissible intentions.” *Ibid.* Characteristically, the Court has defined these elements by identifying the circumstances in which qualified immunity would not be available. Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official “knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury....” *Ibid.* (emphasis added). *Yanero v. Davis*, 65 S.W.3d 510, 523 (Ky.2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)).

As further elucidated, the Supreme Court explained:

Objectively, a court must ask whether the behavior demonstrates “a presumptive knowledge of and respect for basic, unquestioned constitutional rights.” *Id.* (quoting *Harlow*, 457 U.S. at 815). Subjectively, the court's inquiry is whether the official has behaved with “permissible intentions.” *Id.* (quoting *Harlow*, 457 U.S. at 815). *Bryant v. Pulaski County Det. Center*, 330 S.W.3d 461, 466 (Ky.2011).

Thus, to conclude that an official acted in good faith for qualified official immunity, the court must examine both the objective and subjective components of good faith. In its March 19, 2013, judgment, the circuit court failed to address both aspects of good faith (objective and subjective) as required by the Supreme Court in *Yanero*, 65 S.W.3d 510. A court must determine whether the official acted both objectively and subjectively in good faith in order to be entitled to qualified official immunity. Thus, we vacate and remand for the circuit court to specifically determine whether McCormick and Cline acted both objectively and subjectively in good faith. To assist the court in this regard, the circuit court is cited to *Yanero*, 65 S.W.3d 510, and its progeny.

Cline II at *2–3.

Finally, the *Cline II* court reiterated that on remand, the trial court must remember that “it is not trying this case as fact-finder under Kentucky Rules of Civil Procedure (CR) 52.01,” and therefore should not make findings of fact. *Id.* Rather, its role is confined to examining the evidence in light of CR 56 to determine whether material issues of fact exist and whether the movant is entitled to judgment as a matter of law. *Id.*

On remand, the trial court again granted summary judgment in favor of Cline and McCormick on both the malicious prosecution claim and the

negligence claim. This time, however, the trial court specifically addressed the *Coughlen* factors as well as both the objective and subjective components of good faith necessary to establish entitlement to qualified official immunity. This appeal followed.

II. ANALYSIS

On remand, following our directives in *Cline II*, the circuit court reviewed the evidence presented to it and determined that there were no genuine issues of material fact. Williams does not attack the circuit court's conclusion as to any particular issue. Rather, on appeal, Williams asserts that the trial court prematurely rushed this case along, preventing her from obtaining discovery to develop the facts necessary to prove her claims. She also argues that the circuit court failed to give proper credence to her verified complaint which she asserts creates material issues of disputed fact as to all the issues presented to the circuit court on remand.

Summary judgment serves to terminate litigation where “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). Summary judgment “is proper where the movant shows

that the adverse party could not prevail under any circumstances.” *Id.* (citing *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255 (Ky.1985)). “[T]he party opposing summary judgment ‘cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must present affirmative evidence in order to defeat a properly supported motion for summary judgment.’” *O'Bryan v. Cave*, 202 S.W.3d 585, 587 (Ky. 2006) (citing *Steelvest*, 807 S.W.2d at 481)).

“Although a defendant is permitted to move for a summary judgment at any time, this Court has cautioned trial courts not to take up these motions prematurely and to consider summary judgment motions ‘only after the opposing party has been given ample opportunity to complete discovery.’” *Blankenship v. Collier*, 302 S.W.3d 665, 668 (Ky. 2010) (quoting *Pendleton Bros. Vending, Inc. v. Commonwealth Fin. & Admin. Cabinet*, 758 S.W.2d 24, 29 (Ky. 1988)).

“Whether a summary judgment was prematurely granted must be determined within the context of the individual case.” *Suter v. Mazyck*, 226 S.W.3d 837, 842 (Ky. App. 2007).

Prior to the evidentiary hearing and the dismissal order now at issue, Williams filed both interrogatories and requests for production of documents which were answered by both Appellees. In addition to the interrogatory answers, Williams received Cline’s entire investigative file. At the evidentiary hearing, Williams was afforded the opportunity to call witnesses, present evidence, and cross-examine the Appellees. We cannot identify anywhere in the record where Williams was denied a right to present her own evidence at the hearing or to cross-

examine the witnesses called by the Appellees. Likewise, we cannot find anywhere in the record where Williams requested the trial court to allow her to take additional discovery. Having reviewed the record, we must conclude that Williams was provided with ample opportunity to develop affirmative evidence to defeat summary judgment, but failed to do so.

Based on the evidence in the record, including the testimony of Williams's own criminal defense counsel, the trial court concluded that there was no dispute that Williams entered into the dismissal agreement voluntarily. Citing the undisputed testimony by Cline and McCormick the trial court likewise concluded that there was no evidence to support any claim of prosecutorial misconduct. To the contrary, the evidence indicated that as soon as the issue of misidentification came to light, Williams was promptly informed and the parties worked toward a mutually agreeable resolution. The trial court also concluded that there was no evidence to support that enforcement of the agreement would adversely affect any relevant public interest. As such, the trial court concluded that Williams's dismissal agreement, wherein she admitted probable cause, barred her subsequent malicious prosecution claim. We can find no evidence of record that contradicts the trial court's conclusions.

We also cannot disagree with the trial court's conclusion that there was no issue of material fact with respect to the issue of whether the Appellees acted in good faith. The trial court noted that the evidence was undisputed that the first indication Cline had that any possible misidentification had occurred was the

night prior to the evidentiary hearing at which time he took prompt action to notify McCormick who in turn notified Williams's counsel. The court further noted that from an objective standpoint there was nothing in the record to directly or indirectly impute such knowledge to either Cline or McCormick prior to the discovery by Cline. The trial court also pointed out the absence of any evidence "of any history or motive or any other reason why either Defendant would be out to get the Plaintiff." In sum, the trial court concluded that the evidence of record pointed to only one conclusion: "[t]here was an honest mistake made that is understandable given the nature of the names and Plaintiff's initial responses and was not an intentional, wanton or reckless act of the Defendants that is intentional."

Once again, based on the evidence, we cannot disagree with the trial court's decision. There is no evidence to support Williams's contention that either Cline or McCormick acted in bad faith from either an objective or a subjective point of view.

III. CONCLUSION

As such, for the forgoing reasons, we affirm the order of the Rowan Circuit Court.

ALL CONCUR

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