

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

PAUL SEKSCINSKI,	:	
	:	C.A. No: 05C-05-004 RBY
Plaintiff,	:	
	:	
v.	:	
	:	
CORPORAL ANTHONY HARRIS,	:	
WILMINGTON POLICE	:	
DEPARTMENT, CITY OF	:	
WILMINGTON AND PEG ARCHER,:	:	
	:	
Defendants.	:	

**Submitted: October 21, 2005
Decided: January 18, 2006**

Benjamin A. Schwartz, Esq., Schwartz & Schwartz, Dover, Delaware, Attorney for Plaintiff.

Andrea J. Faraone, Esq., Wilmington, Delaware, Attorney for Defendants Cpl. Harris, the City of Wilmington and the Wilmington Police Department.

Laura F. Browning, Esq., Grady & Hampton, Dover, Delaware, Attorney for Defendant Archer.

OPINION

**Upon Consideration of Defendants'
Motion to Dismiss**

GRANTED

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OPINION

Plaintiff, Paul Sekscinski (“Plaintiff”), filed a Complaint on May 3, 2005 against Defendants, Peg Archer, Wilmington Police Corporal Anthony Harris, the Wilmington Police Department and the City of Wilmington, claiming negligent infliction of emotional distress, false imprisonment, malicious prosecution, negligent supervision, and civil rights violations. Plaintiff’s claims are based on his arrest on November 14, 2003 for aggravated harassment. Defendant, Peg Archer, counterclaimed against Plaintiff for intentional infliction of emotional distress and invasion of privacy.

All of the Defendants in this case have filed Motions to Dismiss the Complaint. Defendants, Harris, the Wilmington Police Department, and the City of Wilmington, alternatively move for summary judgment or for a transfers of venue.

STATEMENT OF FACTS

Plaintiff and Defendant Archer were previously involved in a relationship, and lived together for eight years. During that time, Plaintiff believed that he discovered that Archer was having an affair with a married man, Jerry Dougherty. As a result, Plaintiff and Archer ended their relationship. Following the break-up, Plaintiff accessed Archer’s computer, and printed explicit emails that Archer and Dougherty had exchanged. Plaintiff added his own notations on some of the email print-outs, made copies, and distributed them to Archer’s friends. Although Archer informed Plaintiff that she did not want any further contact with him, Plaintiff made repeated

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telephone calls to Archer. Plaintiff also appeared at Archer's home and place of employment in an attempt to discuss their relationship. Plaintiff also wrote Archer several notes, and left notes for Archer's co-workers about their relationship. Ultimately, Archer contacted Wilmington Police about Plaintiff's course of conduct, asserting that she feared for her safety.

Cpl. Harris of the Wilmington Police Department responded to Archer's complaint. Based on his interview of Archer and Plaintiff's letters and notes, Cpl. Harris obtained an arrest warrant for Plaintiff. Plaintiff was arrested for aggravated harassment, but the case against him was ultimately dismissed.

STANDARD OF REVIEW

In determining a Motion to Dismiss for Failure to State a Claim under Del. Super. Ct. Civ. R. 12(b)(6), this Court "must assume all well-pleaded facts in the complaint to be true."¹ As such, "[a] complaint will not be dismissed unless plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."² A complaint may be dismissed if "it is clearly without merit, which may be a matter of law or fact."³

DISCUSSION

¹ *Read v. Carpenter*, 1995 WL 945544, at *1 (citation omitted).

² *Id.*

³ *Id.*

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I. Defendant Peg Archer.

A. Malicious Prosecution.

The Complaint makes one claim, malicious prosecution, against Archer. In order to bring an action for malicious prosecution, this Court has recognized six (6) elements, each of which necessarily must be established in order to pursue a claim.⁴

- (1) There must have been a prior institution or continuation of some regular judicial proceedings against the plaintiff in this action for malicious prosecution.
- (2) Such former proceedings must have been by, or at the instance of the defendant in this action for malicious prosecution.
- (3) The former proceedings must have terminated in favor of the defendant therein, the plaintiff in the action for malicious prosecution.
- (4) There must have been malice in instituting the former proceedings.
- (5) There must have been want of probable cause for the

⁴ *Stidham v. Diamond State Brewery*, 21 A.2d 283, 284 (Del. Super. 1941).

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institution of the former proceedings.

- (6) There must have been injury or damage resulting to the plaintiff from the former proceedings.⁵

Because the Court does not want to discourage the prosecution of alleged criminal actors, “[i]t is only when one person prosecutes another with malice and without probable cause that the law makes him liable for his actions.”⁶ Elements of both malice and probable cause are required.⁷ For the purpose of malicious prosecution, malice has been defined as an act “done with a wrongful or improper motive or with a wanton disregard of the rights of that person against whom the act is directed.”⁸ Actual spite, ill will or a grudge do not necessarily establish malice.⁹

Similarly, probable cause for this purpose has been defined as “a reasonable ground for suspicion or belief, supported by circumstances sufficiently strong in themselves as to warrant a reasonably cautious and prudent person in the belief that the person accused is guilty of the offense with which he is charged.”¹⁰ The fact that

⁵ *Id.*

⁶ *Id.* at 285.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

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the accused was ultimately acquitted of the underlying charges “has nothing to do with the question of want of probable cause.”¹¹ The existence of probable cause is determined at the time the underlying proceedings were commenced.¹²

In this case, Plaintiff has not provided any support that Archer’s criminal complaint was made with malice or without probable cause. Plaintiff has failed to establish that Archer had a wrongful or improper motive for initiating the criminal complaint. Indeed, in the face of continued, unwanted contacts by Plaintiff, Archer had little option, other than physically confronting Plaintiff (an undesirable circumstance), or calling the police, as she did.

Archer has provided support that she made the criminal complaint, because Plaintiff made repeated, unwanted contact with her, and she feared for her safety. For the same reason, Archer has established that she did have probable cause to institute the criminal complaint.

Plaintiff’s argument for lack of probable cause based on the police investigation and arrest warrant, which only specified two incidents of unwanted contact, is not persuasive. A warrant, fully alleging a crime (the crime of simple harassment) irrefutably existed. The arrest warrant and ensuing police investigation of the criminal matter have no bearing on Archer’s basis for calling the police and making the criminal complaint. Finally, the ultimate dismissal of the harassment charge is not indicative of a lack of probable cause.

¹¹ *Id.*

¹² *Id.*

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Defendant Archer's Motion to Dismiss is GRANTED.

II. Defendant Cpl. Anthony Harris

_____ A. Negligent Infliction of Emotional Distress.

_____ Count IV of Plaintiff's Complaint alleges that Harris breached his duty to refrain from the wrongful exercise of his authority in his official capacity as a police officer by falsely arresting Plaintiff. Plaintiff claims that this breach caused Plaintiff to suffer embarrassment in the community and emotional distress. Plaintiff's claim, however, cannot be maintained, because Harris is immune from liability pursuant to the Tort Claims Act.¹³ The Tort Claims Act provides immunity for all governmental entities and their employees with certain narrow exceptions provided in § 4012.¹⁴ None of those exceptions is applicable in the case at issue.

¹³ 10 Del.C. § 4011.

¹⁴ § 4012 provides that "[a] governmental entity shall be exposed to liability for its negligent acts or omissions causing property damage, bodily injury or death in the following instances:

(1) In its ownership, maintenance or use of any motor vehicle, special mobile equipment, trailer, aircraft or other machinery or equipment, whether mobile or stationary.

(2) In the construction, operation or maintenance of any public building or the appurtenances thereto, except as to historic sites or buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation.

(3) In the sudden and accidental discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines and toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water."

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Therefore, Plaintiff's claims of negligent infliction of emotional distress against Harris are DISMISSED.

III. Defendant Wilmington Police Department

Counts I and V of the Complaint alleges that the Wilmington Police Department is liable for negligently supervising Harris and for falsely imprisoning the Plaintiff. Plaintiff claims that the Wilmington Police Department negligently supervised Harris by allowing him to obtain a warrant without satisfying the basic elements of the offense of aggravated harassment. For the same reasons discussed above for Harris, the Wilmington Police Department is immune from liability.

The claims against the City for negligent supervision are DISMISSED.

The Torts Claim Act not only provides immunity from negligent acts of a government agency, but also grants immunity for the exercise of its discretionary functions.¹⁵ That immunity may be waived if an employee acts outside the scope of his employment or acts with wanton negligence or willful and malicious intent.¹⁶ Those acts must also result in property damage, bodily injury, or death.¹⁷ In this case, Plaintiff claims that the Wilmington Police Department is liable for false imprisonment, because Plaintiff was intentionally confined, and was not permitted to leave.

¹⁵ § 4011(b)(3).

¹⁶ § 4011(c).

¹⁷ *Id.*

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The authority of the Wilmington Police Department to arrest individuals is inherent in its function as the public safety arm of the City and is discretionary. For that reason, the Wilmington Police Department is not liable for false imprisonment, because Plaintiff has not alleged any wilful, wanton or malicious reason for arresting Plaintiff. Nor has Plaintiff claimed that he has suffered any property damage, bodily injury or death. Plaintiff has baldly asserted that his arrest has caused him pain, suffering, emotional distress, embarrassment in the community, and difficulty maintaining employment. The Delaware Supreme Court has held that economic harm, including loss of employment, does not constitute property damage as provided in § 4011(c).¹⁸ Plaintiff has failed to make a claim for false imprisonment upon which relief can be grant.

Therefore, the claim for false imprisonment is DISMISSED.

IV. Civil Rights Violations

_____ Finally, Plaintiff alleges that Harris and the City of Wilmington violated his civil rights pursuant to 42 U.S.C. § 1983. Plaintiff claims that Harris violated his rights pursuant to the Fourth, Fifth, and Fourteenth Amendments, because the arrest warrant did not satisfy the elements of the charge of aggravated harassment. Similarly, Plaintiff claims that the City of Wilmington violated his civil rights, because the City failed to adequate monitor the inner workings of the Wilmington Police Department. Plaintiff maintains that the actions of Harris and the City were

¹⁸ *Dale v. Town of Elsmere*, 702 A.2d 1219 (Del. 1997).

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an abuse of official power and negligent and reckless to the extent that it “shocks the conscience.”

A. The City of Wilmington.

Section 1983 permits an individual to bring suit against a “person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia” or deprives that individual “of any rights, privileges, or immunities secured by the Constitution and laws.” Although the language of § 1983 seems to limit the remedy for acts of a “person,” the United Supreme Court has extended the application of § 1983 to municipalities and other local government units.¹⁹ On the other hand, municipalities will not be liable under § 1983 under a theory of *respondeat superior* “solely because it employs a tortfeasor.”²⁰ To sustain an action against a municipality, the plaintiff must “identify a municipal ‘policy’ or ‘custom’ that caused the injury.”²¹ In addition, the municipality must be a ‘moving force’ that caused the alleged injury through its deliberate conduct.²² “[A] plaintiff must show that the municipal action was taken with the requisite degree of culpability, and must demonstrate a direct causal link between the municipal action

¹⁹ *Monell v. Dept. of Social Services*, 436 U.S. 658, 690 (1978).

²⁰ *Bd. Of County Com’rs of Bryan County, Okl. V. Brown*, 520 U.S. 397, 403 (1997).

²¹ *Id.*

²² *Id.*

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and the deprivation of federal rights.”²³

In the present action, Plaintiff’s conclusory statement that the City of Wilmington violated his civil rights, allegedly because it negligently and recklessly monitored the inner workings of the Wilmington Police Department, is insufficient to establish a § 1983 claim. Plaintiff has failed to assert a claim that the City had a policy or custom that caused him to suffer a violation of his constitutional rights.

Moreover, Plaintiff’s § 1983 claim is deficient, because Plaintiff has not proffered any facts supporting a causal link between the City’s alleged negligent and reckless monitoring of the Wilmington Police Department to Plaintiff’s arrest for aggravated harassment.

For that reason, Plaintiff’s civil rights claims against the City of Wilmington are DISMISSED.

B. Cpl. Anthony Harris.

Plaintiff also asserts a civil rights claim against Defendant Harris for his alleged abuse of official power. Plaintiff claims that the arrest warrant for aggravated harassment did not satisfy the elements of the offense, because Harris’s Probable Cause Affidavit articulated only two instances of contact with Archer. Aggravated harassment is defined in the statute as more than 10 incidents disruptive contact.²⁴ Plaintiff does not dispute that there was sufficient probable cause to support an arrest

²³ *Id.*

²⁴ 11 Del.C. § 1312.

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warrant for misdemeanor harassment.²⁵

Government officials or actors may also be subject to liability under § 1983, if the plaintiff can prove that (1) the alleged conduct was “committed by a person acting under the color of state law,” and (2) the plaintiff was deprived of a constitutional right as a result of that conduct.²⁶ Further, to maintain a § 1983 claim, the plaintiff must establish a “‘causal link’ between the official conduct and the alleged deprivation of a constitutional right.”²⁷ Unlike state employees,²⁸ other government actors are not shielded from liability for § 1983 claims. In addition, state laws, like the Torts Claim Act, also do not provide government actors with any additional protection from liability for a § 1983 claim”²⁹

In the present matter, Harris’s investigation of the allegations of harassment against Plaintiff was performed in his capacity as a police officer for the City of Wilmington. Plaintiff alleges that Harris violated his constitutional rights by not

²⁵ 11 Del.C. § 1311.

²⁶ *Reynolds v. State*, 1999 WL 1427760, at *12 (Del. Super.) (citing *Teat v. Neal*, Del. Super., C.A. No. 93C-12-206, Quillen, J. (Jan. 9, 1996) at 5, *app. dismiss.*, Del. Supr., No. 64, 1996, Berger, J. (March 12, 1996)(ORDER)).

²⁷ *Id.* (citing *Gunzl v. Spayd*, 1995 WL 160352, at *5 (Del. Super.)).

²⁸ *Davis v. Winslow*, 1994 WL 555315, at *2 (Del. Super.)(citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989))(holding that Delaware State Trooper, acting in an official capacity, was immune from § 1983 action).

²⁹ *Gunzl*, 1995 WL 160352, at *4 (citing *Martinez v. California*, 444 U.S. 277, 284 n. 8, *reh'g denied*, 445 U.S. 920 (1980); *Kirschling v. Lake Forest School District*, D.Del., 687 F.Supp. 927, 937 (1988)).

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investigating the matter sufficiently, and by submitting an Affidavit of Probable Cause without sufficient facts to support the issuance of an arrest warrant for aggravated harassment. When determining whether an individual was falsely arrested, the Court's focus, however, is not whether there was a violation of an individual's constitutional right against arrest without probable cause.³⁰ "[T]he court must determine 'whether it would be clear to a reasonable officer that his conduct was unlawful *in the situation he confronted*.'"³¹ Further, police officers investigating a crime may have " 'reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause,' and will not be held responsible in court for every act later found to be a constitutional mistake."³²

In *Ali*, the Third Circuit affirmed the decision of the trial court to dismiss plaintiff's claims that police violated his constitutional rights by arresting him without probable cause.³³ The Court held that the police officers were entitled to qualified immunity, because the police could have reasonably believed that the plaintiff committed the crime based on the circumstances.³⁴ In addition, courts have held that the chain of causation for a police officer's unlawful arrest is broken by the

³⁰ *Ali v. New Jersey State Police Department*, 120 Fed.Appx. 900, 902 (3rd Cir. 2005).

³¹ *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 202 (2001))(emphasis in original).

³² *Id.* (citing *Saucier*, 533 U.S. at 206).

³³ *Id.*

³⁴ *Id.*

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“intervening exercise of independent judgment.”³⁵ Magistrates that issue arrest warrants have been deemed intervening forces that will break the chain of causation.

In this case, the record is supported by evidence that Plaintiff did harass Archer. Even if Plaintiff did not commit more than 10 acts of harassment, it is clear that he could have been arrested for simple harassment. The fine distinction between whether Harris’s Probable Cause Affidavit had sufficient information to support a warrant for aggravated harassment as opposed to misdemeanor harassment does not raise the situation to a violation of Plaintiff’s constitutional rights. Harris’s investigation of the victim’s allegations, which were supported by documentation of harassment, made it reasonable for Harris to conclude that Plaintiff was harassing the victim. Harris’s reasonable belief that Plaintiff had committed aggravated harassment, despite his failure to articulate the statutory ten instances of harassment, does not rise to the level of a constitutional mistake.

For that reason, Plaintiff’s civil rights claims against Harris are DISMISSED.

/s/ Robert B. Young

Judge

RBV/sal

oc: Prothonotary

cc: Counsel

Opinion distribution

Notebook

³⁵ *Townes v. City of New York*, 176 F.3d 138, 147 (2nd Cir. 1999).