2015 IL App (2d) 140065-U
No. 2-14-0065
Order filed March 20, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

EDDA BOWLDS, Plaintiff-Appellant, v. CARLOS VICIEGO; ELIAZAR VICIEGO; and CARLOS VECAJO, Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 12-L-88 Honorable Diane E. Winter, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendant summary judgment on plaintiff's complaint for malicious prosecution: plaintiff merely speculated that the *nolle prosequi* of the prosecution was entered for reasons indicating her innocence and thus constituted a termination in her favor, and plaintiff provided no evidence that defendant, a private person, initiated the prosecution or took a sufficiently active role in it.

¶ 2 Plaintiff, Edda Bowlds, sued defendants, Carlos Viciego (Carlos), Eliazar Viciego (Carlos's son), and Carlos Vecajo for malicious prosecution. Vecajo and Carlos were later dismissed voluntarily. The trial court granted Eliazar summary judgment (735 ILC 5/2-1005(c) (West 2012)). Plaintiff appeals *pro se*. We affirm.

¶ 3 Plaintiff's complaint alleged as follows. At all pertinent times, plaintiff resided at 2940 20th Place in North Chicago. Carlos and Eliazar (defendants) lived immediately west at 2950 20th Place. On or about May 18, 2007, defendants received a permit from the City of North Chicago (City) to erect a wooden fence along the northern portion of the eastern lot line, which they share with plaintiff. That day, defendants started building the fence. They continued for about two months, digging trenches and post holes on plaintiff's property and filling them in. During this time, plaintiff asked defendants not to disturb her property or to damage the chain-link fence that was on her side of the property line. Defendants complied partially, but a portion of their fence ended up on plaintiff's side of the line, and the fence post at the southern end was placed well east of the line. In spring 2008, plaintiff saw that defendants had placed a pile of logs and some fence sections against her fence. On or about May 15, 2008, she complained to the City; the log pile was removed, but the fence sections remained in position.

¶ 4 The complaint alleged further that, on or about May 22, 2008, plaintiff again told the City about the encroaching fence. The City's building department advised defendants to move the southernmost fencepost eight inches west. During and after summer 2008, defendants moved the southern end of their fence four inches farther east, encroaching a foot onto plaintiff's property, and placed a log pile onto her property south of their fence. Despite plaintiff's requests, defendants refused to remove the encroaching fence. On or about October 31, 2008, plaintiff moved the logs onto defendants' property. Defendants called the police; plaintiff told the police that defendants' items would be leaving her property and that the encroaching fence would be next. One of defendants told the police, in plaintiff's presence, " 'She will never cut down the fence, my dogs won't let her.' "

¶ 5 The complaint alleged further that, on November 7, 2008, plaintiff used a chainsaw to detach the four linear feet of the wooden fence that encroached the farthest onto her property. Defendants were present in their yard at the time and moved their two unleashed dogs away from the gap in the fence on their side of the property line. Later that day, defendants told the police about plaintiff's acts, and the State brought a criminal action against her.

¶ 6 The complaint alleged further that, on or about August 4, 2009, plaintiff sued Carlos for improperly placing the fence and damaging her property. On February 10, 2010, when plaintiff answered ready in the criminal case, the State, without consulting her, got the case nol-prossed. On May 12, 2010, plaintiff settled the civil case. By January 12, 2011, defendants had removed all of their construction from her property.

¶ 7 Plaintiff's complaint alleged that defendants had instituted or continued the criminal action against her; that they had done so maliciously, without probable cause; and that the criminal case had ended in her favor. Plaintiff sought damages for the cost of defending the criminal case and for mental anguish and damage to her reputation.

¶ 8 Vecajo was dismissed voluntarily as a defendant, based on misnomer. Carlos filed for bankruptcy and was also dismissed. Eliazar then moved for summary judgment. He argued as follows. In an action for malicious prosecution, the plaintiff must plead and prove that the defendant instituted and prosecuted a judicial proceeding without probable cause and maliciously; that the prior proceeding was terminated in the plaintiff's favor; and that the plaintiff suffered special injury beyond that common to most lawsuits. See *Keefe v. Aluminum Co. of America*, 166 Ill. App. 3d 316, 317 (1988).[1] Here, Eliazar saw plaintiff damaging his

[1] The argument on injury was erroneous. If the claim of malicious prosecution is based on the institution of criminal proceedings, no special injury is needed. *Voga v. Nelson*, 115 Ill.

fence with a chainsaw and endangering his dogs, and he called the police in order to make her stop. He did not intend to get the police to arrest her. Moreover, the criminal proceeding was started by the State's Attorney's office, not by defendants. Thomas Quist, a City building-department officer, had previously assured defendants that the wooden fence was on their side of the property line. Plaintiff could not prove that Eliazar had acted maliciously or without probable cause, given plaintiff's irregular and dangerous actions. Further, the *nolle prosequi* did not end the criminal case in plaintiff's favor, because there was no evidence that the State acted for reasons indicating her innocence. Finally, plaintiff had suffered no special damages.

¶ 9 Eliazar's motion alleged the following facts. In May 2007, defendants obtained a City permit to build the fence. Based on Quist's representations, they believed that the fence was on their side of the property line. Sometime before November 7, 2008, plaintiff complained to the building department that the fence was on her side of the line. Quist told her that the fence was not on her side of the line. Nonetheless, he advised defendants to move their fence eight inches west, so as to remove any doubt in plaintiff's mind. Before November 7, 2008, defendants moved their fence eight inches farther onto their property. On June 20, 2008, Quist determined that the fence was not on plaintiff's property, and he said so to plaintiff and defendants.

¶ 10 The statement of facts alleged further that, on November 7, 2008, Eliazar called the police because plaintiff was using a chainsaw to cut portions of defendants' fence. Officers Laura Yost and a male officer, Baran, arrived at defendants' home. Yost spoke to the parties. Yost observed that defendants were concerned throughout for their dogs' safety. They never asked to have plaintiff arrested. Plaintiff told Yost that she had cut down part of the fence and

---

App. 3d 679, 682 (1983). The error does not affect the resolution of this appeal.

that she would cut down more after the officers left. Yost spoke with Quist, who was in the area. Quist inspected and concluded that defendants' fence was in the same position as it had been on June 20, 2008. Based on her investigation, Yost arrested plaintiff for criminal damage to property and disturbing the peace. After speaking to the State's Attorney's office, Yost obtained a charge of felony criminal damage to property. On February 10, 2010, the case was nol-prossed; no reasons were stated in the trial court's written order or in any court minutes.

¶ 11 Eliazar's summary-judgment motion attached several exhibits. The first consisted of a copy of the permit application that defendants filed on May 2, 2007, and a copy of the permit, dated May 18, 2007, that the City issued to defendants. The second was Eliazar's deposition.

¶ 12 In his deposition, Eliazar testified as follows. Defendants' fence ran from the back of their property to slightly past (in the words of plaintiff's attorney) "the corner of [plaintiff's] chain link fence." Eliazar believed that the wooden fence did not intrude onto plaintiff's property, because Quist had told defendants that "everything was okay." Eliazar had no reason to doubt Quist's representations, so he believed that it would be a waste of money for defendants to get their own survey. Before November 7, 2008, Quist had requested that defendants move their fence away from the property line. Quist believed that the fence "was good," but he wanted defendants to move it "a little bit more so [defendants] can stop the complaints and everything."

¶ 13 Eliazar testified that, on November 7, 2008, he called the police because he feared danger to defendants and their dogs: plaintiff was cutting the fence, and there was no telling what she might do next. Plaintiff had cut a small portion of the fence once before, near her chain-link fence. Eliazar could not remember whether, before November 7, 2008, defendants had talked to her about the location of their fence.

¶ 14 Eliazar testified that, on November 7, 2008, the dogs approached the fence where plaintiff was cutting, but they remained on defendants' property. After cutting a portion of the fence, plaintiff turned off the chainsaw and walked toward the back of the fence. When Yost and Baran arrived, Eliazar told Yost what had happened, and Yost then spoke to plaintiff. Eliazar never asked the police to arrest plaintiff and he never saw or heard Carlos make any such request. Eliazar primarily wanted the officers to keep things under control and ensure defendants' safety. However, shortly after speaking to plaintiff, the officers arrested her.

¶ 15 Eliazar's motion next attached excerpts from the deposition of Quist, who testified as follows. Early in June 2008, he responded to plaintiff's complaint about the fence. This was the first time that he spoke to Eliazar about the matter. Based on his investigation, defendants were not violating any codes. From what Quist saw at the time, their fence did not cross over onto plaintiff's property. Even so, defendants said that they would move the fence eight inches west. Asked in his deposition whether this was "just to be safe," Quist answered, "Correct." He did not see defendants as conceding in any way that the fence was over the property line. On June 20, 2008, he returned and concluded again that the fence was not violating any codes and that it was no farther east or west than it had been earlier in June. "From what [he] could determine," it was not on plaintiff's property. He told defendants and plaintiff his conclusions.

¶ 16 Eliazar's motion attached the deposition of Yost, who testified as follows. On November 7, 2008, she spoke to the parties. Defendants were calm and did not suggest that plaintiff should be arrested. As best Yost could tell, they called the police so that plaintiff would stop cutting the fence and endangering the dogs. Plaintiff admitted to Yost that she had cut down a portion of the fence, and she told Yost that she would cut down more of it as soon as the officers left. Based on her investigation, Yost did not believe that defendants had lied to her or that their complaints had

been unfounded. She also believed that there was probable cause to arrest plaintiff, and she did so. After speaking with the State's Attorney's office, she obtained a charge of felony criminal damage to property.

¶ 17 Plaintiff filed a cross-motion for summary judgment. It alleged the following facts. Before and while defendants built their fence, she advised them at least 11 times that the digging area and the proposed location were encroaching onto her property. In May 2008, after visiting the area, Quist drafted a report stating that defendants had been told to move their fence eight inches west. Six months later, the fence remained unmoved; it was close to, and at some points, in contact with, plaintiff's fence. Defendants' own survey of 2005 showed that plaintiff's fence was approximately 0.75 feet east of the property line, proving that, where defendant's fence touched it, it was also on her property. On November 7, 2008, plaintiff removed the encroaching part of defendants' fence. Defendants' dogs approached her as she did so. Because of the encroachment onto her property, plaintiff was justified in cutting part of the fence. Nonetheless, defendants signed a criminal complaint against her for criminal damage to property. Later, the prosecution of plaintiff ended in a *nolle prosequi*.

¶ 18 Plaintiff's cross-motion argued as follows. First, under *Burghardt v. Remiyac*, 207 Ill. App. 3d 402, 405 (1991), the *nolle prosequi* terminated the criminal proceeding in her favor, satisfying one element of malicious prosecution. Second, as a matter of law, defendants lacked probable cause to sign the criminal complaint, because they had known then that their fence was encroaching on her property. Plaintiff had tendered defendants a survey that proved this fact, and the City had advised defendants that their fence encroached onto plaintiff's property. Malice, the next element, could be inferred from the lack of probable cause and the absence of any evidence to refute that inference. Further, the long history of disputes between the parties,

such as those over defendants' log piles, supported an inference of malice. Finally, plaintiff's arrest was *per se* special injury. Thus, she had proved every element of malicious prosecution.

¶ 19 Plaintiff filed an affidavit in support of her cross-motion for summary judgment. It stated as follows. Before and during defendants' construction of their fence, she told them approximately 11 times that it was encroaching onto her property. Both a survey that defendants had submitted to the City with their application and a 2007 survey that plaintiff had commissioned confirmed that her fence is 0.7 feet east of the property line. The company that erected the chain-link fence placed the north end of the fence on the west edge of her property, but the fence veered eastward farther down in order to avoid a tree. Defendants' fence often leaned into her fence and caused damage. They could have ascertained from their own survey that their fence encroached onto her property. Also, defendants' survey contained a plat prepared in 2005 showing that her chain-link fence was 0.75 feet east of the property line. On November 7, 2008, she cut only the four feet of the wooden fence that were on her property, going from where the chain-link fence "crossed from the common boundary in an easterly direction to where it terminated *** 0.75 feet east of the common property line."

¶ 20 Plaintiff's affidavit continued as follows. On May 22, 2008, she complained to the City about the wooden fence, and Quist noted that it was eight inches inside her property. The criminal case was dismissed on the State's initiative, and she had offered no restitution and had sought no clemency. In her civil case against Carlos, on May 12, 2010, Carlos paid for damage to her fence.

¶ 21 Plaintiff's affidavit stated further that a 2009 survey that defendants' attorney had ordered showed that plaintiff's chain-link fence is 0.72 feet east of the property line. The survey also showed that there was a wooden fence post 0.22 feet east of the property line. The fence ran

south another four feet, leaning against the chain-link fence. A 2009 survey that plaintiff commissioned showed that the wood fence post that was directly south of the portion of the fence that plaintiff had cut was 0.42 feet east of the property line. This post had been in the same position since at least late summer 2007.

¶ 22 Eliazar responded to plaintiff's cross-motion for summary judgment, alleging as follows. He denied that he had signed a warrant or complaint against plaintiff; instead, he had signed a citation, and the police department had issued the complaint. Yost had designated Eliazar as the "complainant" because he was the one who had called the police. Moreover, Eliazar signed the citation for criminal damage to property, but not the one for disorderly conduct. Quist had advised defendants that their fence did not encroach on plaintiff's property; there was no evidence that he had ever believed otherwise, but, as he testified in his deposition, he advised defendants to move the fence anyway to assuage plaintiff. Plaintiff did not advise defendants 11 times that their fence was on her property, but, even if she did, Quist's investigation addressed her concerns.

¶ 23 Eliazar's response also argued that plaintiff had misstated Illinois law on whether or when a *nolle prosequi* is in favor of the accused. Under *Swick v. Liautaud*, 169 Ill. 2d 504 (1996), decided after *Remiyac*, the plaintiff in a malicious-prosecution case has the burden to prove that the *nolle prosequi* was based on reasons indicative of her innocence. There was no evidence why the State chose to dismiss the criminal case against plaintiff, so, as a matter of law, she could not prove this element of the tort.

¶ 24 Eliazar's response attached several exhibits. The first two were excerpts from Yost's deposition. In the former, she testified that customarily she designates as the "complainant" the person "who called the complaint in to dispatch, whether it be a victim or just a third party." In

the latter, she testified that defendants did not ask her to have plaintiff arrested and that the decision was entirely her own. The third exhibit was the excerpt from Eliazar's deposition in which he testified that he called the police because he was concerned with the danger that plaintiff had created to defendants and their dogs. The fourth exhibit consisted of copies of the citations for criminal damage to property and for disturbing the peace; the first was signed by Yost and Eliazar, but the second was signed by Yost alone. Finally were copies of the criminal charges that the State filed against plaintiff and an excerpt from Quist's deposition (previously attached to Eliazar's motion for summary judgment).

¶ 25 Plaintiff filed a reply in support of her cross-motion for summary judgment. She argued in part that defendants had had no reason to fear for their dogs' safety; there was no evidence that she had endangered them, and Eliazar had earlier said that plaintiff would not cut down the fence because his dogs would not let her.

¶ 26 Next, plaintiff argued, defendants could not have believed in good faith that their fence did not encroach on her property. First, in 2007, she had advised them of this fact and had also provided them a copy of the 2005 survey. Second, on May 22, 2008, she complained to the City, and Quist (plaintiff alleged) had made a note that the fence was eight inches over the property line. Further, the survey that defendants had ordered in 2009 showed that plaintiff's chain-link fence was 0.72 feet east of the property line, approximately the same as the 0.75-foot distance recorded in the survey that defendants had provided the City when they applied for the permit. Thus, defendants did not rely in good faith on any statement that Quist had made in their favor. Finally, the *nolle prosequi* had indicated plaintiff's innocence, as she had conceded nothing and was prepared to go to trial when the State obtained the dismissal without consulting her.

¶ 27 Plaintiff filed several additional exhibits in support of her cross-motion for summary judgment. The first consisted of copies of a page from the 2005 survey. The second consisted of copies of several documents that Steve McInnis, the City's director of building and community development, mailed to plaintiff. One was defendants' permit application. The other document pertinent here was "Notice of Complaint," on a building-department form. Under "Complaint," plaintiff stated on May 22, 2008, that defendants' fence was encroaching onto her property. On June 9, 2008, Quist recorded on the form that he had "[t]old [defendants] to move fence 8 inches west at front corner by June 20, 2008."

¶ 28 Next, as pertinent here, plaintiff filed a copy of the order that the trial court had entered on February 10, 2010, in the criminal case. The body of the order states, "Cause Nolle Prossed, defendant discharged; Surety on the bond released."

¶ 29 Plaintiff also filed (1) a copy of her complaint, filed July 21, 2009, against Carlos and Ma Del Secorro Quezada ("the civil defendants") as owners of the property at 2950 20th Place and (2) a copy of the settlement agreement that the parties signed on July 13, 2010. The complaint, which sought equitable relief and damages, alleged that the civil defendants' fence encroached onto plaintiff's property; that, in July 2009, the civil defendants began cutting and removing vegetation from plaintiff's property; and that plaintiff believed that they planned more trespasses onto her land. The settlement agreement provided that, by September 15, 2010, the civil defendants would remove their wooden fence and fill in all post holes and would be liable to plaintiff for any property damage caused by the process. Further, they would pay plaintiff for damage done to her fence and half of her expense in installing iron pipes along the property line.

¶ 30 On December 17, 2013, the trial court granted summary judgment to Eliazar. The court's written order stated without elaboration that plaintiff had not met "the requirements for malicious

prosecution[,] namely probable cause, malice and favorable termination[.]" On January 16, 2014, plaintiff, now proceeding *pro se*, filed a motion to reconsider, attaching several exhibits, some not previously filed. Also on January 16, 2014, she filed a notice of appeal. On March 12, 2014, the trial court denied plaintiff's motion. She did not file another notice of appeal.

¶ 31 Before we reach the merits of plaintiff's appeal, we consider our jurisdiction to do so. See *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011) (court of review has independent duty to consider its jurisdiction and must dismiss appeal if jurisdiction is lacking). Plaintiff filed her notice of appeal and her postjudgment motion on the same day. Under Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008), a notice of appeal must be filed within 30 days after the entry of the final judgment appealed from or, if a timely motion directed against the judgment is filed, within 30 days after the entry of the order disposing of the last pending motion directed against the judgment. Plaintiff's notice of appeal was premature, because, on the date that she filed it, the trial court had not yet disposed of her motion to reconsider. However, after the trial court resolved her postjudgment motion, the notice of appeal became effective. See Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008). Thus, we have jurisdiction. We also note that, although Eliazar has not filed a brief, we may decide the merits of the appeal without the aid of an appellee's brief. See *Baca v. Trejo*, 388 Ill. App. 3d 193, 194 (2009).

¶ 32 We turn to whether the trial court erred in granting summary judgment to Eliazar. Summary judgment is proper when the pleadings, depositions, and other matters on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). Our review is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). The elements of a cause of action for malicious prosecution are (1) the commencement or continuation of an original

criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in the plaintiff's favor; (3) the absence of probable cause for the proceeding; (4) malice; and (5) damages. *Swick*, 169 Ill. 2d at 512.

¶ 33 Here, the trial court concluded that plaintiff had not raised a genuine issue of material fact as to elements (2) through (4) of the tort. Of course, we are not bound by the trial court's reasoning and may affirm its judgment on any basis called for by the record. See *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007). We rely on two such grounds.

¶ 34 First, we hold that plaintiff did not raise a genuine issue of material fact on element (2): that the prosecution was terminated in her favor. It is important to recognize that a plaintiff ultimately must prove that a *nolle prosequi* was entered for reasons indicative of her innocence. *Swick*, 169 Ill. 2d at 513. The circumstances must compel an inference that there were no reasonable grounds to pursue the case; "otherwise, every time criminal charges are nol-prossed a civil malicious prosecution action could result." *Id.* at 513-14.

¶ 35 Given plaintiff's substantial burden, the evidence raised not a genuine issue of fact, but only a basis for speculation. The *nolle prosequi* order was a "bare bones" statement. No other evidence in the record provides insight into the State's reason for seeking the dismissal. The order was entered long after November 7, 2008, and, indeed, well after plaintiff had filed her suit against the civil defendants. The State *might have* concluded that there was no basis to prosecute plaintiff, but it is equally plausible that the State decided to forgo further criminal proceedings for reasons that our courts hold do not indicate innocence. These possibilities include (not exclusively) (1) the unavailability of one or more witnesses (see *Boyd v. City of Chicago*, 378 Ill. App. 3d 57, 72 (2007))[2]; (2) other factors making it impractical to bring plaintiff to trial (*Swick*,

[2] In *Adams v. Sussman & Hertzberg, Ltd.*, 292 Ill. App. 3d 30, 42 (1997), the criminal

169 Ill. 2d at 513); and (3) a distaste for prolonged felony criminal proceedings against a property owner whom a jury might perceive sympathetically.

¶ 36 Moreover, although we need not reach the issues of probable cause and malice, we note that the charges of criminal damage to property and disorderly conduct were approved by Yost and the State's Attorney's office and that plaintiff alleged no facts to suggest that either had acted in bad faith or on the basis of information known to be inaccurate. The undisputed facts include that plaintiff cut down part of a wooden fence for which defendants had paid; that she told Yost that she would cut down more after the officers departed; and that she was carrying a chainsaw, which could be perceived as dangerous by both people and dogs. In light of all these facts, plaintiff's theory that the State came to see the prosecution as baseless is all the more speculative.

¶ 37 We recognize that, at the summary-judgment stage, the evidence must be construed liberally in favor of the nonmovant and strictly against the movant (*Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989)) and that a plaintiff need not prove her entire case but need only provide a factual basis that would arguably entitle her to judgment (*Village of Palatine v. Palatine*

---

prosecution of the malicious-prosecution plaintiff for criminal trespass was nol-prossed because, on orders from his superiors, a crucial State witness refused to testify. The appellate court held that the plaintiff had satisfied the *Swick* test, because the State's inability to prove its case was indicative of the plaintiff's innocence. *Id.* The appellate court relied on Illinois authority long predating *Swick*, and foreign authority predating *Swick* by more than a decade, to reach this conclusion. To the extent that *Adams* conflicts with *Boyd*, we find *Boyd* better reasoned. The unwillingness of a witness to testify can be quite unrelated to whether the State had reasonable grounds to pursue the prosecution. See *Swick*, 169 Ill. 2d at 513-14.

Associates, LLC, 2012 IL App (1st) 102707, ¶ 43). Nonetheless, if what is contained in the papers on file would be all the evidence before a court and would be insufficient to go to a jury, then summary judgment is proper. *Pyne*, 129 Ill. 2d at 358. Here, the evidence, even construed liberally in plaintiff's favor, would leave only speculation as to why the *nolle prosequi* was entered. Therefore, we hold that summary judgment was proper on this ground.

¶ 38 Plaintiff argues that she raised a factual issue of whether the *nolle prosequi* terminated the criminal case in her favor. Plaintiff notes that she was "active" in the criminal case and vigorously asserted her innocence. Aside from the fact that plaintiff's argument impermissibly cites documents contained in the appendix to her brief, and not to the record (see *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000)), the argument lacks merit. Plaintiff's subjective belief in her innocence is not the touchstone for deciding whether the criminal proceeding was terminated in her favor.

¶ 39 We hold second that summary judgment was proper because, as a matter of law, Eliazar did not initiate or take a sufficiently active role in the prosecution of plaintiff. Although the trial court did not rely on this ground for summary judgment, Eliazar raised it repeatedly in the trial court, giving plaintiff ample opportunity to contest it (which she did). As we may affirm the grant of summary judgment on any ground of record, we invoke this ground also.

¶ 40 Plaintiff was arrested by Yost and prosecuted by the State's Attorney's office. Under Illinois law, a private person is not liable for malicious prosecution unless he either initiated the proceeding or his participation in it was so active as to amount to advice and cooperation. *Denton v. Allstate Insurance Co.*, 152 Ill. App.3d 578, 583 (1986). To attribute the actions of the police to the defendant, a malicious-prosecution plaintiff must prove either that the defendant requested, directed, or pressured the officer into swearing out a complaint for the plaintiff's

arrest or that the defendant knowingly gave false information to the police. *Id.*; *Geisberger v. Vella*, 62 Ill. App. 3d 941, 943 (1978). Plaintiff did not raise a factual basis for either conclusion.

¶ 41 Although Eliazar signed one of the citations that Yost filled out against plaintiff, both he and Yost testified that neither Eliazar nor Carlos ever requested (much less directed or pressured) her or Baran to arrest plaintiff. Yost testified that she made the decision on her own initiative directly after speaking to plaintiff. There was no evidence to contradict this testimony. Moreover, there was no evidence that Eliazar (or Carlos) knowingly provided false information to the officers. Finally, Yost testified that she designated Eliazar as the "complainant" because he was the person who called the police and spoke to the dispatcher. Eliazar signed one citation, for criminal damage to property, but he did not sign the other citation, for disorderly conduct. That sole action does not raise a factual basis for asserting that Eliazar was legally responsible for the prosecution of plaintiff. Therefore, summary judgment was proper on this basis as well.

¶ 42 Because we have affirmed the judgment on the foregoing two bases, we need not consider whether it was proper on the further grounds relating to probable cause and malice.

¶ 43 The judgment of the circuit court of Lake County is affirmed.

¶ 44 Affirmed.