

NOTICE  
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2016 IL App (5th) 150496-U

NO. 5-15-0496

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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DIANA FULLER-MOUTELL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Jackson County.
	)	
v.	)	No. 13-L-91
	)	
DEBBIE QUAMEN and KENT EPPLIN,	)	Honorable
	)	Christy W. Solverson,
Defendants-Appellees.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Presiding Justice Schwarm and Justice Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where there was no genuine issue of material fact regarding the plaintiff's claim for malicious prosecution, the trial court properly granted summary judgment in favor of the defendant, and where the plaintiff failed to state a cause of action for an abuse of process claim, the trial court properly granted the defendants' motion to dismiss the plaintiff's complaint.

¶ 2 The plaintiff, Diana Fuller-Moutell (Fuller), appeals the order of the circuit court of Jackson County entering summary judgment in favor of the defendant, Debbie Quamen (Quamen). On appeal, the plaintiff asserts that there was an issue of fact preventing entry of summary judgment for Quamen as to (1) the plaintiff's malicious

prosecution claim and (2) the plaintiff's abuse of process claim. For the reasons that follow, we affirm the decision of the circuit court.

¶ 3 At the time of the incident giving rise to the matter before us, Fuller, Quamen, and Kent Epplin (Epplin) were employees of the School of Medicine at Southern Illinois University Carbondale (University). Fuller and Epplin shared office space in Lindegren Hall. Quamen worked in a supervisory capacity over both Fuller and Epplin; Quamen was Epplin's direct supervisor, while Fuller was supervised by Barb Tuttle, who in turn was supervised by Quamen.

¶ 4 In June and July of 2012, Epplin was notified by three individuals that they had received anonymous letters that were critical of him. Epplin suspected that Fuller had accessed his work computer because these letters included personal information that would not be available to a person unless that person had access to his computer. Epplin reported his suspicions to Quamen and also to the University police department.

¶ 5 The University police department opened an investigation into the matter and assigned it to Detective Renee Eberhard (Eberhard). Eberhard instructed Epplin to compose an email and send it to Quamen at an agreed upon date and time to see if it would result in a response from Fuller. On August 16, 2012, at 11:54 a.m., Epplin composed and sent an email to Quamen describing Fuller in an unfavorable light; Quamen responded at 1:19 p.m. Within minutes of Quamen's reply, Epplin observed Fuller let out a sigh of disbelief, saying "Oh, my God. Oh, my God." Fuller then left her desk and asked Debra Simpson, a fellow employee who shared the office space, to go into the hallway with her. Fuller had a conversation with Simpson about the email, but

did not ask Simpson if she had seen who placed the email on her desk. Fuller returned to the office, requested a phone number, and left again. According to Fuller, she proceeded to the back staircase with her cell phone in order to call her direct supervisor, Tuttle.

¶ 6 Fuller proceeded down the stairs, where she encountered Quamen. It is undisputed that neither party anticipated running into the other in the stairway. During her deposition, Fuller testified that she had limited recall of this interaction, but denied "display[ing] any upset" and noted that "[Quamen] seemed strangely focused on why I was upset at that very moment, what had upset me. And I don't—I don't really think I was that upset. She was upset." Fuller told Quamen that Epplin had accused her "of things." Quamen asked Fuller how she had obtained that information "quite a few" times. Fuller denied raising her voice or blocking Quamen's exit. She stated that after this interaction, Quamen backed down the hall "and I asked her where she was going \*\*\* because she just left abruptly."

¶ 7 Quamen testified that she met Fuller on the ground floor of Lindegren Hall as Fuller was walking down the stairwell. Quamen recalled the encounter as an "upsetting experience." After Fuller indicated that Epplin had been lying to Quamen about Fuller and Fuller had had enough of it, Quamen repeatedly asked Fuller how she knew that Epplin was lying about her. Quamen stated that both voices were raised. Quamen felt threatened during the exchange and noted that she felt like she needed to find a witness because she needed help, but there was no one else she could see on that floor. Quamen backed down the hall, entered a nearby coworker's office, and called Eberhard. Quamen agreed that this was a comparatively controlled interaction with Fuller, as Fuller has had

previous outbursts in the workplace. In her affidavit, Quamen stated that she felt threatened by Fuller; Quamen was shaking, her voice was cracking, and her heart was racing.

¶ 8 Eberhard testified that on that afternoon, she received a call from Quamen in which Quamen was whispering and her voice was shaking. Quamen reported that she had a verbal altercation with Fuller and that she was going to hide in a first floor room. Quamen requested assistance. Eberhard arrived at the scene and spoke to the parties involved. Eberhard, Epplin, and Fuller all testified that Quamen was visibly upset when Eberhard arrived.

¶ 9 Eberhard asked Quamen if she wanted to file a complaint for disorderly conduct against Fuller, and Quamen responded that she did. Fuller was then arrested by University officers for disorderly conduct and given a citation with a court appearance date of September 7, 2012. Eberhard stated that if Quamen had declined to sign the complaint, there would have been no arrest. Eberhard forwarded the report and affidavit to the Jackson County State's Attorney's office. The State's Attorney filed an information against Fuller for computer tampering. Quamen and Epplin testified that they had no knowledge that the State's Attorney had been notified or that additional charges were filed.

¶ 10 Eberhard prepared a report and an affidavit regarding the events, which related that she had probable cause to believe that Fuller engaged in disorderly conduct based on the facts. The affidavit related that Quamen felt cornered by Fuller and needed to get

away from her to somewhere safe, and that Fuller has had other outbursts in the office and is normally verbally aggressive and confrontational.

¶ 11 In her affidavit, Fuller related that she was in an emotional state of mind because she had been the object of a scheme wherein a disparaging email from Epplin to Quamen was placed on her desk with the intent that she would read it, and she did read it and became upset. Fuller denied receiving the email by reading Epplin's computer, and denied having the computer sophistication to access computers in such a way. She stated when she first encountered Quamen that day, Quamen was already shaking and crying but her voice was controlled, and "[w]hatever caused [Quamen] to be shaking and crying had to be events that occurred before I first saw her." Fuller denied using threatening words to Quamen, engaging in threatening gestures to Quamen, or raising her voice to Quamen, even though Fuller was personally upset. The affidavit stated that the event in the stairwell lasted no longer than three minutes, and Quamen asked multiples times, in a controlled voice, how Fuller knew about the email. Fuller stated that she did not engage in behavior that would justify anyone in accusing her of disorderly conduct.

¶ 12 Fuller initiated this suit on August 6, 2013, against Quamen and Epplin, alleging that both were guilty of malicious prosecution, abuse of process, and libel. The relevant complaint before us is Fuller's third amended complaint, filed pursuant to agreement on October 27, 2015. Fuller's complaint alleged the same four claims against both Quamen and Epplin: (1) malicious prosecution with regard to the disorderly conduct charges; (2) abuse of process with regard to the criminal disorderly conduct charges; (3) malicious prosecution with regard to the computer tampering charges; and (4) abuse of process with

regard to the criminal computer tampering charges. Fuller alleged that she was damaged by the aforementioned event, as she was transferred to a different location at the University where she was assigned additional duties without proper training, so as to force her resignation; she suffered a loss of reputation; and she continues to experience emotional distress that manifests itself through high blood pressure and blood sugar irregularities.

¶ 13 Quamen and Epplin filed a motion for summary judgment, claiming that they had nothing to do with the State's Attorney's investigation and the subsequent charge for computer tampering. They asserted that the complaint for disorderly conduct was justified and was not a malicious prosecution or an abuse of process. Quamen claimed that the disorderly conduct complaint was separate and distinct from the information initiating the computer tampering charge, and there was no evidence that Quamen or Epplin maliciously prosecuted plaintiff or there was an abuse of process.

¶ 14 The trial court's October 30, 2015, written order found that Fuller had confessed the motion as to the malicious prosecution on charges for computer tampering. As to the six remaining charges, the trial court granted summary judgment to the defendants; specifically, the court found that Fuller could not establish probable cause or malice in regards to the malicious prosecution claims, and that Fuller failed to allege facts that were improper in the regular course of proceedings or acts that would give rise to abuse of process claims. Fuller appeals her claims that concern the disorderly conduct charge, arguing that summary judgment was improper regarding (1) the malicious prosecution claim against Quamen and (2) the abuse of process claim against Quamen.

¶ 15 Summary judgment is appropriate where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, 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. 735 ILCS 5/2-1005(c) (West 2014); *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). Summary judgment is proper if a plaintiff cannot establish an element of his claim, but the right of the moving party must be clear and free from doubt. *Id.* at 306. Our standard of review is *de novo*, and our function is to determine whether the court reached the proper result. *Id.* at 305.

¶ 16 Fuller first argues that summary judgment in favor of Quamen as to the malicious prosecution charges was improper. We note that our courts have indicated that suits for malicious prosecution are not favored in law, as persons acting in good faith who have probable cause to believe crimes have been committed should not be deterred from reporting them by the fear of unfounded suits by those accused. *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 44 (1980).

¶ 17 In order to establish a malicious prosecution action, the plaintiff must allege facts showing: (1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff. *Swick v. Liautaud*, 169 Ill. 2d 504, 512 (1996). If the absence of one or more of these essential elements has been established to the point that it may fairly be said that no genuine issue of fact as to its absence exists,

summary judgment is appropriate. *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 45 (1980).

¶ 18 The trial court granted summary judgment on this issue on the basis that, as a matter of law, Fuller cannot establish lack of probable cause. In support of its finding, the trial court noted that it was undisputed that Quamen and Fuller met in the stairwell, "and that [Fuller's] actions upset Quamen to the extent that she called the police. Therefore, there is no genuine issue of material fact that Quamen was upset. As such, there is no question that there was probable cause for Quamen to sign the complaint for Disorderly Conduct." On appeal, Fuller argues that she "strongly disputed in her affidavit and her deposition that she caused Quamen to be upset" and that her affidavit stated that Quamen was visibly upset before their interaction.

¶ 19 Failure to prove a lack of probable cause is fatal to a claim for malicious prosecution. *Johnson v. Target Stores, Inc.*, 341 Ill. App. 3d 56, 73 (2003). In this context, probable cause has been defined as "a state of facts that would lead a person of ordinary caution and prudence to believe, or to entertain an honest and strong suspicion, that the person arrested committed the offense charged." *Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill. App 3d 340, 348 (2000). A mistake or error that is not grossly negligent will not affect the question of probable cause when there is an honest belief that the accused is probably guilty of the offense. *Johnson*, 341 Ill. App. 3d at 72. Whether the circumstances alleged to show probable cause are true is a question of fact, but, if true, whether those circumstances amount to probable cause is a question of law to be



decided by the court. *Adams v. Sussman & Hertzberg, Ltd.*, 292 Ill. App. 3d 30, 43 (1997).

¶ 20 We agree with the trial court that probable cause existed for Quamen to sign the complaint for disorderly conduct. It is undisputed that Quamen was upset at the time immediately preceding her signing the complaint. The fact asserted in Fuller's affidavit, *i.e.*, that Quamen was upset before the encounter with Fuller, even taken as true by this court, does not forgo a conclusion that the encounter with Fuller in the stairwell upset Quamen beyond a certain point, to where she felt threatened enough to call the police. Furthermore, Fuller's assertions that the encounter was "controlled," that she did not touch Quamen, and she did not block Quamen's ability to leave do not mean that Quamen also believed the interaction was calm. Quamen may have testified that the interaction was more controlled as compared to Fuller's usual outbursts, but that tells this court nothing about Quamen's beliefs about the animosity level at the time of this particular interaction. See *Johnson*, 341 Ill. App. 3d at 72 ("It is the state of mind of the one commencing the prosecution, and not the actual facts of the case or the guilt or innocence of the accused, that is at issue."). Fuller's testimony and affidavit, taken by this court in their most favorable light, simply do not allege circumstances demonstrating that Quamen's belief was unreasonable and she therefore lacked probable cause in signing the complaint. Moreover, Fuller's allegation in her affidavit that "whatever caused [Quamen] to be shaking and crying had to be events that occurred before I first saw her" is speculative and conclusory. According to Supreme Court Rule 191(a), a court must disregard conclusions in affidavits when adjudicating a summary judgment motion (Ill. S.

Ct. R. 191(a) (eff. Jan. 4, 2013); *Estate of Blakely v. Federal Kemper Life Assurance Co.*, 267 Ill. App. 3d 100, 105 (1994)). Based on the foregoing, then, Fuller cannot establish the absence of probable cause for the proceeding, a required element of malicious prosecution.

¶ 21 Even assuming *arguendo* that Fuller could establish a lack of probable cause, she must still prove malice. In order to prove malice, there must be a finding that the proceedings were commenced or continued with the purpose of injuring the plaintiff or for some other purpose than to establish a commission of a criminal offense. *Johnson*, 341 Ill. App. 3d at 76-77. The trial court found that there was no evidence in the record that the complaint was signed for any purpose other than the incident between Quamen and Fuller in the stairwell. On appeal, the plaintiff offers no further argument regarding this element, besides noting that a lack of probable cause is sufficient to permit an inference of malice by the trier of fact, if there is no other credible evidence which refutes that inference. See *Frye v. O'Neill*, 166 Ill. App. 3d 963, 977-78 (1988). We agree with the trial court that the record, even taken in the most favorable light to the nonmoving party, does not support a finding of malice; indeed, the record would rebut any such inference of malice. The acrimonious relationship in this case appears to be between Epplin and Fuller, and Epplin did not sign the complaint. Thus, Fuller also cannot demonstrate that Quamen acted with malice in signing the complaint for disorderly conduct, a required element of malicious prosecution.

¶ 22 Fuller next asserts that the trial court's decision regarding the abuse of process charges was error. At issue in this appeal are two such charges: an abuse of process

charge against Quamen for computer tampering, and an abuse of process charge against Quamen for disorderly conduct. In this case, the trial court granted the defendants' section 2-615 motion to dismiss these claims. A section 2-615 motion to dismiss tests the legal sufficiency of the complaint. 735 ILCS 5/2-615 (West 2014); *Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 491 (1999). The question presented is whether the allegations of the complaint, when taken as true and viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). The standard of review is *de novo*. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 147-48 (2002).

¶ 23 There are two distinct elements in an abuse of process claim: (1) the existence of an ulterior purpose or motive and (2) some act in the use of process that is not proper in the regular course of proceedings. *Neurosurgery & Spine Surgery, S.C. v. Goldman*, 339 Ill. App. 3d 177, 183 (2003). Because the tort of abuse of process is not favored under Illinois law, the elements must be strictly construed. *Id.*

¶ 24 In order to satisfy the first element, a plaintiff must plead facts that show that the defendant instituted proceedings against him for an improper purpose, such as extortion, intimidation, or embarrassment. *Community National Bank in Monmouth v. McCrery*, 156 Ill. App. 3d 580, 583 (1987). Fuller makes such a claim, arguing that Quamen had her arrested even though Quamen had no basis for believing that Fuller had engaged in any acts of disorderly conduct, and that Quamen attempted to use the judicial process not because she believed that Fuller should be arrested, but because she wanted Fuller removed from the University.

¶ 25 However, our courts have noted that the mere institution of a suit for an improper purpose does not itself constitute an abuse of process, the second element being the gravamen of the offense. *McCrery*, 156 Ill. App. 3d at 583. In order to satisfy the second element, the plaintiff must plead facts that show a misapplication of process, or, in other words, the plaintiff must show that the process was used to accomplish some result that is beyond the purview of the process. *Id.* When process is used only for its intended purpose, there has been no misapplication of process. *Holiday Magic, Inc. v. Scott*, 4 Ill. App. 3d 962, 966 (1972).

¶ 26 Here, Fuller failed to allege a misuse of process in her third amended complaint. Fuller alleged under "facts common to all counts" that "as a direct and proximate result of the charges and statements made to SIU Police by Quamen and Epplin, Fuller-Moutell was placed under arrest and charged with disorderly conduct, she was given a citation to appear in court, she was cuffed, and she was held in custody for a period [*sic*] 2.5 hours, until she was released after having been forced to post bond." Under count two, abuse of process against Quamen for the computer tampering charge, Fuller alleged that "[she] was placed under the jurisdiction of the Jackson County Circuit Court and forced to defend felony<sup>1</sup> charges related to computer tampering." Finally, under count eight, Fuller repeated these allegations and added that "[she] was further placed under the jurisdiction

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<sup>1</sup>Quamen's brief points out that the record indicates that Fuller was charged with a Class B misdemeanor in Jackson County, not a felony, and that this was addressed in a separate pleading before the trial court.

of the Jackson County Circuit Court in that she was arrested on August 16, 2012, she was forced to post bond with the Court, and she was given a ticket with an appearance date of September 7, 2012."

¶ 27 As the trial court correctly noted, the process that Fuller complains of is the normal and legitimate legal process. There is nothing abusive about being given a citation in response to a charge, nor with being required to post bond afterwards. Furthermore, being "required to submit to the jurisdiction of the court" or being served with a summons or citation that requires a court appearance occurs in most court proceedings. Thus, even taking the allegations in their most favorable light, Fuller's third amended complaint fails to allege facts stating a cause of action for abuse of process.

¶ 28 Based on the foregoing, we affirm the decision of the circuit court of Jackson County.

¶ 29 Affirmed.