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DISTRICT II

April 30, 2014

To:

Hon. Thomas J. Gritton
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Lori Fleming
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You are hereby notified that the Court has entered the following opinion and order:

2013AP904

Jason L. Edmonson v. Lori Fleming (L.C. # 2012CV898)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Jason L. Edmonson, a prisoner under WIS. STAT. § 801.02(7)(a)2. (2011-12),¹ appeals from an order dismissing his malicious prosecution claim against his former wife, Lori Fleming. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.²

In 2006, the state charged Edmonson with crimes against Fleming, including battery, false imprisonment, and second-degree sexual assault. Edmonson was convicted by a jury of

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² Because we affirm, Edmonson's previously filed motion for summary reversal, which was held in abeyance pursuant to a December 3, 2013 court order, is hereby denied.

battery and false imprisonment and acquitted of the sexual assault charges.³ In 2012, Edmonson filed an “intentional tort” complaint alleging that Fleming committed various actions “constituting fraud” and “maliciously made false statements to police, accusing Mr. Edmonson of the crime or offense of sexually assaulting her.” Edmonson alleged that he was entitled to recover damages “including, but not limited to pecuniary and compensatory damages.” He further requested declaratory judgments “regarding the sham marriage between” the parties and “stating which Wisconsin statutes ... have been violated” by Fleming.

The parties appeared before the trial court and, when asked to clarify the nature of his claims, Edmonson answered: “Compensatory, punitive damages, and declaratory judgment ... stating whether or not Defendant Fleming intentionally falsified her marriage application.” Edmonson stated that he sought compensation from Fleming for “falsely accusing [him] of sexually assaulting her knowing those charges were false and the injuries [he] incurred as a result.” The trial court asked: “And then the question I have is, what are your damages as far as you said compensatory and punitive, what would those be?” Edmonson replied that he did not have an itemization of the “damages at this time.” After learning that the parties’ marriage had already been annulled, the trial court determined that Edmonson was not entitled to declaratory relief: “whatever I would do with the declaratory judgment would have no impact whatsoever because there is an annulment on file.” The trial court further determined that the action was

³ Edmonson is presently incarcerated in connection with a conviction for first-degree sexual assault of Fleming’s child.

frivolous and used for an improper purpose, and entered an order of dismissal pursuant to WIS. STAT. § 802.05(4)(b):⁴

I have looked at this case closely, the original pleadings. The original pleadings are based upon a criminal matter that was presented before Judge Carver where Mr. Edmonson was convicted on a false imprisonment charge and acquitted on several other charges, second degree sexual assault—I believe there were two counts there—and also a disorderly conduct he was acquitted on.

The damages, even if he won this suit, there would be no damages in my opinion and no reasonable jury could find damages, and so I'm finding that this lawsuit was filed with the intent to harass Ms. Fleming and with the intent to continue litigation that is inappropriate and there is nothing within this complaint that I find that under the circumstances is legitimate.

Edmonson contends that the trial court erred by ignoring his jury demand and discovery requests, and by failing to grant summary judgment. These arguments fail to address the issue on appeal, which is whether the trial court erred in dismissing the action pursuant to WIS. STAT. § 802.05(4)(b), after finding that it was frivolous and used to harass Fleming. We will decline to review an inadequately briefed issue. *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (brief so lacking in organization and substance that to decide the appellate issues, we would first have to develop them).

⁴ Under the Prisoner Litigation Reform Act, the trial court “shall review” a prisoner’s initial pleading “as soon as practicable,” and may sua sponte dismiss the action without requiring an answer or response if it determines that the action is frivolous, used for any improper purpose, seeks monetary damages from an immune defendant, or fails to state a claim upon which relief may be granted. WIS. STAT. § 802.05(4)(a) and (b); *State ex rel. Schatz v. McCaughtry*, 2003 WI 80, ¶¶13-14, 263 Wis. 2d 83, 664 N.W.2d 596. A prisoner’s action is frivolous under § 802.05(4)(b)1., if the trial court determines that the complaint was filed for an improper purpose “such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,” or if its legal claims are unwarranted by existing law, or its allegations lack evidentiary support. Sec. 802.05(2).

Even if we addressed the appellate issue, we would conclude that the trial court properly determined that Edmonson's action was frivolous and used to harass Fleming. Both in the trial court and again on appeal, Edmonson fails to develop any argument supporting a legally viable claim for malicious prosecution.⁵ Though specifically asked for clarification, Edmonson was unable to provide the trial court with any legitimate theory for recovery. His complaint fails to establish the existence of even one of the six elements of malicious prosecution.⁶ This supports the trial court's determination that the action was commenced without a reason to believe that its claims were warranted in law and with the purpose to harass Fleming.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

⁵ The six essential elements of a claim for malicious prosecution are: (1) a prior institution of judicial proceedings against the plaintiff, (2) such former proceedings must have been put in motion by or at the instance of the defendant, (3) such proceedings must have terminated in favor of the plaintiff, (4) malice in instituting the former proceedings, (5) want of probable cause for instituting the former proceedings, and (6) damage resulting to the plaintiff from the former proceedings. *Elmer v. Chicago & Nw. Ry. Co.*, 257 Wis. 228, 231, 43 N.W.2d 244 (1950). All six elements must be present, and the absence of any one element is fatal to a malicious prosecution claim. *Strid v. Converse*, 111 Wis. 2d 418, 424, 331 N.W.2d 350 (1983).

⁶ We summarily reject Edmonson's argument that he was entitled to summary judgment. First of all, Edmonson filed a motion for judgment on the pleadings, not summary judgment. Regardless, given our determination that his complaint failed to establish any viable claim for relief, Edmonson certainly has not demonstrated his entitlement to judgment as a matter of law. See *Fifer v. Dix*, 2000 WI App 66, ¶5, 234 Wis. 2d 117, 608 N.W.2d 740.