

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001385-MR

HARRY JOHNSON

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO.00-CI-00153

ST. CLAIRE MEDICAL CENTER, INC.

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: JOHNSON, SCHRODER, AND TACKETT, JUDGES.

SCHRODER, JUDGE. The appellant, Harry Johnson, appeals from an order of the Rowan Circuit Court granting summary judgment in favor of the appellee, St. Claire Medical Center, Inc. ("St. Claire"). We affirm.

The events underlying this case occurred on November 25, 1999. Mr. Johnson is a diabetic with a history of seizures, and had been brought into the St. Claire emergency room on numerous occasions prior to November 25, 1999. On the

night in question, Mr. Johnson was experiencing an episode of low blood sugar, which prompted his niece, Shannon Weaver, to call 911. EMS technicians arrived and transported Mr. Johnson to the St. Claire emergency room. Although he was sedate when the EMS technicians arrived, Mr. Johnson began to regain consciousness after receiving glucose in the ambulance. As he became more alert, Mr. Johnson became combative in the ambulance, threatening to punch one of the EMS technicians.

Upon arrival at the St. Claire emergency room, Mr. Johnson was unable to consent to treatment, and Ms. Weaver gave consent on his behalf. At this time, he was transported to an emergency room bed where his combative and aggressive behavior continued. Mr. Johnson punched one nurse with a closed fist when that nurse attempted to take a blood pressure reading, and then hit the same nurse in the chest. A second nurse was unable to take a blood sugar reading because Mr. Johnson twisted her fingers when she approached with the finger stick. The emergency room physician on duty was equally unable to conduct any meaningful assessment of Mr. Johnson's health because the patient refused to answer questions concerning his condition. Throughout this episode, Mr. Johnson was yelling profanities at the hospital staff, threatening the hospital staff, and generally disrupting the entire emergency room. Ultimately, Mr.

Johnson was placed in restraints with the assistance of hospital security staff.

A second emergency room physician attempted to treat Mr. Johnson, even granting Mr. Johnson's request that his upper body restraints be removed. However, Mr. Johnson refused to answer any of the physician's questions and refused treatment. His aggressive and disruptive behavior persisted, and Mr. Johnson was continually trying to kick, punch, bite or hit any staff member that approached him. At some point after Mr. Johnson was brought to St. Claire, the emergency room unit secretary contacted the Morehead police. The police officers were able to calm Mr. Johnson at his bedside, and escorted him to the police cruiser parked in front of the emergency room. After a brief detention, Mr. Johnson was released into the custody of his family.

Mr. Johnson then filed suit against St. Claire, claiming malicious prosecution, false imprisonment, and battery as a result of the treatment he received in the emergency room. Summary judgment in favor of St. Claire was awarded as to all claims. This appeal followed, and we affirm.

Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party, 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 Service Center, Inc., Ky., 807 S.W.2d 476, 483 (1991). On appeal, the standard of review of a summary judgment is whether "the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law". Scrifes v. Kraft, Ky. App., 916 S.W. 2d 779, 781 (1996). Where the relevant facts are undisputed and the dispositive issue becomes the legal effect of those facts, our review is de novo. Id. at 781.

We will address first Mr. Johnson's claim of malicious prosecution. Kentucky courts recognize the following six elements of the tort of malicious prosecution: (1) the institution or continuation of a prior judicial proceeding; (2) by, or at the instance of, the person sought to be charged; (3) the termination of the prior criminal proceeding in the plaintiff's favor; (4) malice in the institution of such proceeding; (5) want or lack of probable cause for the proceeding; and (6) suffering of damages as a result of the proceeding. Raine v. Drasin, Ky., 621 S.W.2d 895, 899 (1981). The trial court determined that Mr. Johnson failed to show that the hospital acted with the requisite malice in instituting the arrest.

On appeal, Mr. Johnson asserts that the trial court erred in granting summary judgment because malice could be

inferred by a lack of probable cause. While we agree with the trial court that the record fails to reveal any evidence of the requisite malice component, Mr. Johnson's claim for malicious prosecution must fail because a judicial proceeding was never instituted against him.

"The initiation of a criminal proceeding generally occurs upon either the actual arrest of a person, the return of an indictment, the issuance of an arrest warrant or a summons to appear and answer criminal charges." William S. Haynes, Kentucky Jurisprudence § 14-3(a) (1987). None of these occurred in the present case. Mr. Johnson was escorted out of the St. Claire emergency room by the Morehead police officers. Once outside, he was briefly detained while the police questioned him, and then released into the custody of his family members. He was not taken into custody, transported to the police station for further questioning, or arrested. Therefore, Mr. Johnson has failed to satisfy the threshold requirement that a judicial proceeding be instituted against him. "[O]ne must strictly comply with the prerequisites of maintaining an action for malicious prosecution." Raine v. Drasin, Ky., 621 S.W.2d 895, 899 (1981). Summary judgment on the claim of malicious prosecution was proper.

Mr. Johnson next claims that the trial court erred in granting summary judgment on the claim of false imprisonment.

In Kentucky, false imprisonment is defined as "any deprivation of the liberty of one person by another or detention for however short a time without such person's consent and against his will, whether done by actual violence, threats or otherwise.

Furthermore, false imprisonment requires that the restraint be wrongful, improper or without a claim of reasonable justification, authority or privilege." Banks v. Fritsch, Ky. App., 39 S.W.3d 474, 479 (2001).

Even reviewing the evidence in a light most favorable to Mr. Johnson, the claim for false imprisonment fails because St. Claire was justified in restraining Mr. Johnson. Physical restraint is permitted in order to prevent a person from endangering himself or others, provided the restraint is reasonable in time and manner in light of the circumstances. William S. Haynes, Kentucky Jurisprudence § 9-3(b) (1987). The case of Allen v. Vogue Amusement Company, Ky. App., 377 S.W.2d 805 (1964), seems to be the only Kentucky case directly addressing the permissible extent of restraint where the restraint is justified. In Allen, a minor child was held in the manager's office of a movie theatre after disrupting the other patrons. He was detained in that office until his mother arrived. This Court determined that the restraint of the boy was justified as "a proper measure to protect the defendants'

property from invasion and interference by the boy." Id. at 806.

While the factual background of Allen is very different than the present case, the underlying principle is applicable: the extent of restraint must be reasonable in light of the danger posed. In Allen, in order to maintain a quiet theatre and protect property, it was reasonable for the manager to simply keep the boy in his office until the mother arrived. Here, the threat was to personal safety. It is undisputed that Mr. Johnson was physically violent and verbally aggressive during his stay at the St. Claire emergency room, thereby jeopardizing the safety of the hospital staff. Moreover, by rendering any meaningful assessment or treatment impossible, Mr. Johnson was endangering his own health. The restraint imposed was necessary and reasonable in light of the physical threat Mr. Johnson posed to himself and to the emergency room staff. It should be noted, as further evidence that St. Claire acted reasonably, that Mr. Johnson's restraints were released at one point when he was able to calm down. The restraints were only used a second time because Mr. Johnson's behavior again became disruptive and threatening.

Viewing all facts in a light most favorable to Mr. Johnson, the evidence does not support a claim of false imprisonment. The undisputed facts reveal that St. Claire was

privileged in their restraint of Mr. Johnson due to the threat of physical injury he posed, and that the extent and manner of the restraint was reasonable in light of the danger posed.

Mr. Johnson's final claim is that the trial court erred in granting summary judgment on the claim of battery because genuine issues of material fact existed as to the extent of Mr. Johnson's consent. Mr. Johnson argues that any consent given to St. Claire did not authorize the use of restraints, and that the application of those restraints amounts to battery. We disagree.

St. Claire was privileged in their restraint of Mr. Johnson pursuant to KRS 503.110(4), which provides in pertinent part:

The use of physical force by a defendant upon another person is justifiable when the defendant is a doctor or other therapist or a person assisting him at his direction and: (a) the force is used for the purpose of administering a recognized form of treatment which the defendant believes to be adapted to promoting the physical or mental health of the patient; and (b) the treatment is administered with the consent of the patient . . . or the treatment is administered in an emergency when the defendant believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

It is uncontroverted that Mr. Johnson's low blood sugar presented an emergency. Upon arrival at the emergency

room, Mr. Johnson was unable to give consent due to his low blood sugar level so his niece, Ms. Weaver, consented on his behalf. However, even disregarding Ms. Weaver's consent, any reasonable person would have consented to treatment considering the severity of Mr. Johnson's condition. However, Mr. Johnson's physical and verbal threats made administration of treatment dangerous, if not impossible. In order to provide the proper treatment to Mr. Johnson, and to protect the safety of the hospital staff, it was necessary to restrain him. There is nothing in the record to suggest that the force applied to Mr. Johnson was unnecessary in light of the circumstances. Therefore, summary judgment as to the claim of battery was warranted.

The lower court properly granted summary judgment in favor of the appellees. The judgment of the Rowan Circuit Court is, therefore, affirmed.

ALL CONCUR.

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