COURT OF APPEALS OF VIRGINIA

Record No. 1099-25-1

KRISTI L. CLINE
v.
KATHRYN RILEY, ET AL.

Present: Judges Beales, White and Duffan

Argued at Norfolk, Virginia

Opinion Issued October 6, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
John R. Doyle, III, Judge Designate

Thomas K. Plofchan, Jr. (Jacqueline A. Kramer; Westlake Legal Group, on brief), for appellant.

Ahmed E. Mohamed Khalil (Mark A. Short; Kaufman & Canoles, P.C., on brief), for appellee Kathryn Riley.

Ahmed E. Mohamed Khalil (Christopher R. Hedrick; Kayla D. Foit; Mason, Mason, Walker & Hedrick, P.C., on brief), for appellee Shawnalea Ross.

Darlene P. Bradberry, Chief Deputy City Attorney, for appellee Steve R. Drew.

MEMORANDUM OPINION BY
JUDGE KEVIN M. DUFFAN

Kristi L. Cline appeals the Newport News Circuit Court's dismissal of her malicious prosecution complaint against appellees, officers and former officers of the Newport News Police Department. The basis of Cline's underlying complaint is that felony sexual abuse charges stemming from her employment as a local daycare provider were wrongfully initiated and prosecuted against her. On appeal, Cline argues that it was improper for the circuit court to dismiss her complaint on a plea in bar because such dismissal was based on intervening and

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

superseding findings of probable cause during the course of the prosecution and therefore constituted a prohibited ruling on a plea to the general issue. For the following reasons, we disagree with Cline's argument and affirm the circuit court.

BACKGROUND

I. The Underlying Prosecution

On June 7, 2018, L.C.[1] initially reported to the Williamsburg Police Department that Cline, a daycare provider, and R.J., a Newport News police officer,[2] sexually abused her when she was a child, around 2008 or 2009. Based on these allegations, appellee Officer Kathryn Riley from the Newport News Police Department investigated L.C.'s claims and subsequently sought warrants against Cline and R.J. On March 29, 2019, a magistrate issued eight felony warrants against Cline.[3]

In April 2019, a special prosecutor from the Chesapeake Commonwealth's Attorney's Office was appointed because of R.J.'s employment by the Newport News Police Department. On October 4, 2019, the special prosecutor presented the case at a preliminary hearing in the juvenile and domestic relations district court (the JDR court). L.C. testified at the preliminary hearing and underwent cross-examination by Cline's and R.J.'s counsel. Counsel questioned L.C. on her recurring mental health issues and sexual assault allegations she had made in the past. In response to Cline's argument that L.C. dishonestly pursued these charges against her, the JDR court responded that it was "not prepared to say that as a matter of law [L.C.'s]

[1] We use initials to protect the complainant's identity.

[2] We use initials because he is not party to this appeal.

[3] Cline was charged with: two counts of aggravated sexual battery of a child under the age of 13 (Code § 18.2-67.3); three counts of taking indecent liberties with a child under the age of 15 (Code § 18.2-370); two counts of inanimate object sexual penetration of a child under the age of 13 (Code § 18.2-67.2); and one count of carnal knowledge of a child of 13 years of age (Code § 18.2-63).

testimony is incredible. So it has to roll to the circuit court and let that court sort it out." Accordingly, the charges were certified to the grand jury.

On November 12, 2019, the grand jury returned true bills on all eight charges.

A jury trial commenced on June 27, 2022, in the Newport News Circuit Court (the trial court). L.C. testified at trial and was, again, cross-examined by Cline's and R.J.'s counsel on her mental health issues and past sexual assault allegations that she had made. After the Commonwealth presented evidence, Cline and R.J. moved to strike; the trial court overruled the motion because the Commonwealth presented a sufficient prima facie case. After the presentation of all the evidence, Cline and R.J. made renewed motions to strike; the trial court overruled the motions, determining there was sufficient evidence for the jury to decide Cline's guilt.

Ultimately, the jury found Cline not guilty of two counts of aggravated sexual battery of a victim under the age of 13, but was undecided on the remaining six charges. Consequently, the trial court declared a mistrial.

II. The Malicious Prosecution Complaint

Cline filed her malicious prosecution complaint on June 12, 2024, in the Newport News Circuit Court (the circuit court) against five defendants in their individual and official capacities as Newport News police officers. The defendants include appellees Officer Kathryn Riley, Lieutenant Shawnalea Ross, and Chief Steve R. Drew.[4]

The basis of Cline's complaint was that officers of the Newport News Police Department—mainly, Officer Riley—pursued felony sexual abuse charges against her based solely on L.C.'s uncorroborated allegations and without probable cause. Cline claimed that

[4] Cline nonsuited the remaining two defendants at the February 4, 2025 motions hearing.

Officer Riley knew about these issues with L.C.'s allegations and therefore asserted that it was "reckless, careless, and willfully indifferent" for Officer Riley to pursue the warrants.

The appellees each filed pleas in bar and demurrers. Relevant to this appeal, appellees specifically asserted a plea in bar on the theory that the existence of probable cause barred Cline's claims for malicious prosecution. All parties agreed to a hearing on appellees' responsive motions on February 4, 2025. At that hearing, the court sustained Drew's demurrer, overruled Riley's demurrer, and allowed Ross to withdraw her demurrer.[5] Turning to the pleas in bar, Officer Riley's counsel offered the following exhibits over Cline's objection: (1) the order and motion appointing the special prosecutor, (2) the transcript from the preliminary hearing, (3) the grand jury true bills, (4) the transcript from the jury trial, (5) the final order from the jury trial, and (6) the eight arrest warrants issued against Cline.

After argument, the court granted in part and denied in part the pleas in bar based on intervening and superseding findings of probable cause. While the court did not find that the magistrate's decision to grant the warrants was an intervening cause itself, it found that: (1) the special prosecutor's decision to advance the case, (2) the JDR court's certification of the charges to the grand jury, (3) the grand jury's true bills of indictment on each charge, (4) the trial court's denial of Cline's motion to strike, and (5) the trial court's denial of Cline's renewed motion to strike were all separate and independent intervening causes. Thus, the circuit court found that probable cause existed in this case as a matter of law, and granted the pleas in bar. Accordingly, the court dismissed Cline's complaint.[6]

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[5] After the court ruled on Riley's plea in bar, it allowed Ross to withdraw her demurrer because Riley's plea in bar and Ross's demurrer were similar.

[6] As a result of dismissing Cline's entire complaint, the pleas in bar related to Cline's claims for punitive damages were also moot. However, the circuit court found that Cline could still assert claims based on "the arrest, the consequences of the arrest, [and] any publicity that may have occurred" prior to the commencement of the preliminary hearing.

On March 17, 2025, Cline filed a motion for reconsideration, which the court subsequently denied on April 14, 2025. It entered the final order on May 24, 2025, memorializing its findings from the February 4th hearing. Cline appeals.

ANALYSIS

I. Standard of Review

Whether a trial court erred in granting a plea in bar "is a mixed question of law and fact that this Court reviews de novo." *Commonwealth ex rel. Fair Hous. Bd. v. Windsor Plaza Condo. Ass'n,* 289 Va. 34, 58 (2014). "For those issues that present mixed questions of law and fact, we give deference to the trial court's findings of fact and view the facts in the light most favorable to the prevailing party, but we review the trial court's application of the law to those facts *de novo*." *Collins v. First Union Nat'l Bank*, 272 Va. 744, 749 (2006). When the "parties present evidence on the plea ore tenus, the circuit court's factual findings are accorded the weight of a jury finding and will not be disturbed on appeal unless they are plainly wrong or without evidentiary support." *Massenburg v. City of Petersburg*, 298 Va. 212, 216 (2019) (quoting *Hawthorne v. VanMarter*, 279 Va. 566, 577 (2010)).

The decision of whether to grant a demurrer is a question of law, and appellate courts must review the trial court's judgment de novo. *Dunn, McCormack & MacPherson v. Connolly*, 281 Va. 553, 557 (2011) (quoting *Abi-Najm v. Concord Condo., LLC*, 280 Va. 350, 357 (2010)).

II. Malicious Prosecution

In the Commonwealth, actions for malicious prosecution arising out of criminal proceedings are disfavored. *Ayyildiz v. Kidd*, 220 Va. 1080, 1082 (1980). Plaintiffs bringing forward these malicious prosecution actions are subject to strict requirements, which "are designed to encourage persons to bring criminal actions in appropriate cases without fear of

reprisal by civil actions, criminal prosecutions being essential to the maintenance of an orderly society." *Id.* at 1082-83.

To present a prima facie case for malicious prosecution, "[t]he plaintiff must allege and prove that: (1) the prosecution was set on foot by the defendant and was terminated in a manner not unfavorable to the plaintiff; (2) it was instituted or procured by the cooperation of the defendant; (3) it was without probable cause; and (4) it was malicious." *Id.* at 1082.

"Probable cause in malicious prosecution actions is defined as 'knowledge of such a state of facts and circumstances as excite the belief in a reasonable mind, acting on such facts and circumstances, that the plaintiff is guilty of the crime of which he is suspected.'" *Lee v. Southland Corp.*, 219 Va. 23, 26 (1978) (quoting *Va. Ry. & Power Co. v. Klaff*, 123 Va. 260, 266 (1918)). "The test of probable cause is to be applied as of the time when the action complained of was taken." *Id.* (quoting *Bain v. Phillips*, 217 Va. 387, 394 (1976)). When facts relating to probable cause in a malicious prosecution action are in dispute, "the issue is one of fact to be resolved by the triers of fact." *Id.* at 27.

III. Appellees' motions were special pleas in bar.

Cline contends that because malicious prosecution requires a lack of probable cause, the appellees' pleas in bar function as prohibited pleas to the general issue and therefore the circuit court erred by dismissing her complaint at this stage. We disagree.

"A plea is a discrete form of defensive pleading. Distinguished from an answer, a plea does not address the merits of the issues raised by the complaint. Rather, it alleges a single set of facts or circumstances . . . which, if proven, constitutes an absolute defense to the claim." 1 Charles E. Friend & Kent Sinclair, *Friend's Virginia Pleading and Practice* § 8.01-4 (2026). Pleas include both pleas of the general issue and special pleas. 1 Friend, *supra*, § 8.01-4.

A general issue plea is "a general denial of the plaintiff's whole declaration or an attack upon some fact the plaintiff would be required to prove in order to prevail on the merits. It had the effect of challenging the plaintiff to go to trial and prove his case." *Stockbridge v. Gemini Air Cargo, Inc.*, 269 Va. 609, 617-18 (2005). General issue pleas are no longer permitted in Virginia. Rule 3:8(a).

A special plea in bar "is a defensive pleading that reduces the litigation to a single issue. . . . [I]f proven, [it] creates a bar to the plaintiff's right of recovery." 1 Friend, *supra*, § 8.01-4. A special plea "does not point out the legal insufficiency of allegations but rather demonstrates their irrelevance because of some other dispositive point—usually some affirmative defense[.]" *Cal. Condo. Ass'n v. Peterson*, 301 Va. 14, 20 (2022) (quoting *Our Lady of Peace, Inc. v. Morgan*, 297 Va. 832, 847 n.4 (2019)). "[G]eneral pleas were limited to attacking the matters pleaded by the opponent. By contrast, special pleas involve the introduction of new material by the pleader." 1 Friend, *supra*, § 8.01-4.

Here, appellees filed pleas in bar based on the intervening and superseding findings of probable cause throughout the prosecution. To support these motions, appellees submitted records from the special prosecutor, JDR court, grand jury, and trial court.[7] The appellees did not limit their pleas in bar to whether probable cause existed only at the time when Officer Riley swore out the warrants. Instead, they introduced new supporting exhibits and evidence to argue that the subsequent determinations of probable cause bar the malicious prosecution claim. After a review of the evidence presented, the circuit court noted three separate intervening causes

[7] On appeal, Cline argues that the circuit court erred by admitting these exhibits because they were not relevant nor material. Cline, however, does not include authority or argument on why this would be the case. According to Rule 5A:20(e), the opening brief must contain "the argument (including principles of law and authorities) relating to each assignment of error." The effect of this omission is waiver. *Bartley v. Commonwealth*, 67 Va. App. 740, 744 (2017) ("Unsupported assertions of error 'do not merit appellate consideration.'" (quoting *Jones v. Commonwealth*, 51 Va. App. 730, 734 (2008))).

before the commencement of Cline's trial, and two additional intervening causes after the trial commenced that led it to determine that probable cause had been established as a matter of law.[8]

Because appellees' pleas in bar do not attack the point at which Officer Riley swore out the warrants—which is the basis of Cline's complaint—but are based on subsequent findings of probable cause and are supported with new evidence, appellees' pleas in bar are special, not general, pleas in bar. 1 Friend, *supra*, § 8.01-4. And because the existence of probable cause operates as a bar to a malicious prosecution case, the circuit court did not err in finding the litigation had been reduced to this single issue. Therefore, because appellees permissibly and successfully availed themselves of special pleas in bar, the circuit court did not err by dismissing Cline's complaint.

IV. The circuit court permissibly granted the appellees' pleas in bar based on intervening findings of probable cause.

Cline argues that the Virginia Supreme Court has rejected the theory of superseding and intervening findings of probable cause as an affirmative defense to malicious prosecution and cites to *O'Connor v. Tice*, 281 Va. 1 (2011), to support this contention. We disagree with Cline's reading of *O'Connor* as well as her argument. We also find that federal case law, based on Virginia malicious prosecution actions, provides a strong basis for the use of superseding and intervening findings of probable cause as an affirmative defense.

A. The Supreme Court of Virginia did not reject the theory of intervening and superseding findings of probable cause as an affirmative defense to malicious prosecution in O'Connor.

O'Connor involved a dispute between the O'Connors, the owners of a commercial building, and Tice, the owner of a painting business. *Id.* at 4. The O'Connors were dissatisfied with Tice's work, which was a third of the way completed, and fired him. *Id.* at 4-5. The

[8] Whether "[the plaintiff]'s assertion that [the defendant] lacked probable cause to seek a warrant for [the plaintiff]'s arrest is a legal conclusion, not a statement of fact." *Lewis v. Kei*, 281 Va. 715, 723 (2011).

O'Connors informed Tice of their intent to file a criminal complaint for construction fraud against him. *Id.* at 6. The O'Connors withheld from the local sheriff's deputy that Tice had already completed part of the work and that Tice's attorney had contacted them. *Id.* at 10. Based on the O'Connors' information, the sheriff's deputy swore out a warrant for Tice's arrest, which was issued by a magistrate, and led to a preliminary hearing. *Id.* at 6. At the hearing, the general district court granted Tice's motion to strike the evidence and dismissed the case for a lack of probable cause. *Id.* at 6-7.

Tice instituted a malicious prosecution action against the O'Connors, and the Supreme Court construed the O'Connors' argument as presenting an "advice of counsel defense" in "attempting to rely on [the previous] determinations as evidence of probable cause." *Id.* at 10. After explaining that a defendant must have "made a full, correct and honest disclosure of all material facts" to avail himself of this defense, the Court found that the O'Connors' defense failed because there was a reasonable question as to whether they withheld material facts from the sheriff's deputy. *Id.* at 10-11 (quoting *Andrews v. Ring*, 266 Va. 311, 322 (2003)).

Here, Cline argues that the Court in *O'Connor* "reject[ed] this 'superseding act' supposition" by pointing out the O'Connors' flawed reliance on the probable cause findings by an advising Commonwealth's attorney, the prosecuting Commonwealth's attorney, and the magistrate. Cline emphasizes how these decision makers relied on the incomplete factual recitation by the O'Connors. Cline analogizes the O'Connors' actions to Officer Riley's alleged omission of L.C.'s mental health issues and past sexual abuse allegations when swearing out the warrants before the magistrate.

The Supreme Court rejected the O'Connors' argument that they could not be liable for malicious prosecution because they were relying on the advice of counsel.[9] But the O'Connors did not present an intervening and superseding plea in bar as the appellees' do here. We find that *O'Connor* does not stand for the proposition that the Supreme Court has rejected these appellees' affirmative defense, but rather reaffirmed the requirements of an advice of counsel defense in a malicious prosecution action.

B. Superseding and intervening findings of probable cause constitute a valid defense to a malicious prosecution action.

In addition to her interpretation of *O'Connor*, Cline emphasizes that "[t]he test of probable cause is to be applied as of the time when the action complained of was taken." *Lee*, 219 Va. at 26 (citation omitted). Typically, "the time when the action complained of was taken" refers to when a law enforcement officer swears out a warrant. *Id.* at 26-27 (citing *Bill Edwards Oldsmobile, Inc. v. Carey*, 219 Va. 90, 97 (1978) ("The crucial issue is whether [the plaintiff]'s evidence failed as a matter of law to establish lack of probable cause on the part of [the defendant] in . . . giving information which resulted in the issuance of the arrest warrant.")). But because there are no Virginia cases on point regarding intervening and superseding findings of

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[9] In attempting to rely on these determinations as evidence of probable cause as a matter of law, the O'Connors seem to suggest an "advice of counsel defense." That defense is not applicable in this case since the O'Connors only spoke to [the sheriff's deputy], and [the advising Commonwealth's attorney] was not acting as the O'Connor's attorney when he made his determination of probable cause. Even if the defense were available, it would not have been established in this case as a matter of law.

O'Connor, 281 Va. at 10.

probable cause as an affirmative defense, we look to federal case law analyzing Virginia malicious prosecution actions for guidance.[10]

In *Johnson v. Ortiz*, 721 F. Supp. 3d 418, 425 (E.D. Va. 2024), Johnson pursued both federal and Virginia malicious prosecution actions. Johnson claimed that the defendant-detective "[made] false statements to the special grand jury mischaracterizing [the jailhouse informant]'s description of the crime and how Johnson related to it." *Id.* at 429. The district court rejected Johnson's contention and found that because the special grand jury and the Commonwealth's Attorney decided to indict and prosecute Johnson, this "severed the causal chain between [the defendant-detective]'s alleged unconstitutional conduct and the plaintiff's injury." *Id.* It also held that, generally, "[t]he subsequent acts of independent decisionmakers, including prosecutors, grand juries, and judges, may constitute intervening superseding causes that break the causal chain between a law enforcement officer's misconduct and a plaintiff's unlawful seizure."[11] *Id.*

Here, Cline's complaint alleged that the charges sought by Officer Riley "were based on the uncorroborated allegations of a mentally unstable individual under psychiatric care, who had made a multitude of similar sexual assault and abuse allegations against her former friends and family members." This is analogous to an allegation of officer misconduct in *Johnson*, and similar to the *Johnson* court's analysis, we find here that the intervening and superseding determinations of probable cause—evidence that was presented to the circuit court in appellees'

[10] "[The Supreme Court of Virginia] has, over time, looked to federal law to help provide guiding principles or to exemplify a point." *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 309 n.4 (2013).

[11] The district court also opined that "[a] police officer may remain liable for malicious prosecution . . . only under certain narrow circumstances, such as when an officer 'lied to or misled the prosecutor,' 'failed to disclose exculpatory evidence to the prosecutor,' or 'unduly pressured the prosecutor to seek the indictment.'" *Johnson*, 721 F. Supp. 3d at 429 (quoting *Evans v. Chalmers*, 703 F.3d 636, 647-48 (4th Cir. 2012)).

special pleas—also operate to bar Cline's malicious prosecution complaint. There were probable cause findings by every decision maker in the underlying prosecution, including: the magistrate, the special prosecutor, the JDR court, the grand jury, and the trial court. While Riley's account of L.C.'s claims may have been the initiation of the proceedings, each subsequent determination of probable cause was evidence that was presented to the circuit court in the special pleas. Additionally, the circuit court also believed that the special prosecutor's continuing work on Cline's prosecution evidenced a separate basis of probable cause. And as stated, the JDR and trial courts, after hearing L.C.'s testimony, believed there was probable cause. Finally, the trial court denied Cline's motion to strike as well as her renewed motion to strike because it found that the Commonwealth had met its burden in its prima facie case and that it had presented sufficient evidence for the jury to determine Cline's guilt.

Because intervening and superseding findings of probable cause may be considered, these separate findings—which the circuit court reviewed in the special pleas—constitute a valid defense to a malicious prosecution action. Accordingly, the circuit court did not err by dismissing Cline's malicious prosecution complaint.

V. It was not inconsistent for the circuit court to grant appellee Officer Riley's plea in bar while overruling her demurrer.

Cline argues that it was legally inconsistent for the circuit court to overrule Officer Riley's demurrer, to then grant Officer Riley's plea in bar based on probable cause as a matter of law. Simply, Cline believes that if she succeeded on one of the appellees' motions, she should have succeeded on all others. We disagree.[12]

[12] On this assignment of error, the parties craft their arguments using *Rollins v. Consol. Bank & Trust Co.*, 54 Va. Cir. 147 (Richmond 2000), and *Chipouras v. AJ&L Corp.*, 223 Va. 511 (1982). We find that this assignment of error is best disposed of by distinguishing the standards for demurrers and pleas in bar. *Hannah v. Commonwealth*, 303 Va. 109, 121 (2024) ("Judicial restraint dictates that we decide our cases on the best and narrowest grounds available to us.").

First, "[a] demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof. We accept as true all facts properly pleaded in the . . . complaint and all reasonable and fair inferences that may be drawn from those facts." *Lewis v. Kei*, 281 Va. 715, 719 (2011) (alterations in original) (quoting *Glazebrook v. Bd. of Supervisors of Spotsylvania Cnty.*, 266 Va. 550, 554 (2003)). On the other hand, a plea in bar "does not point out the legal insufficiency of allegations[,] but rather demonstrates their irrelevance because of some other dispositive point—usually some affirmative defense[.]" *Cal. Condo. Ass'n*, 301 Va. at 20 (citation omitted). In order to do so, pleaders must present new evidence. 1 Friend, *supra*, § 8.01-4.

There is a distinction between a demurrer and a plea in bar; a demurrer invokes a pleading standard while a plea in bar invokes an evidentiary standard. Here, the circuit court found that, on its face, Cline's complaint adequately pled malicious prosecution, which led it to overrule Officer Riley's demurrer. However, the circuit court found that appellees presented sufficient evidence—the exhibits attached to their responsive motions—to succeed on their defense of intervening and superseding findings of probable cause, operating as a bar to the malicious prosecution claims. In finding so, it granted Officer Riley's plea in bar. These procedural outcomes are not inconsistent. Therefore, it was not error for the circuit court to both overrule the demurrer and grant the plea in bar.[13]

CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.

[13] Accordingly, because the circuit court correctly granted appellees' pleas in bar and correctly dismissed Cline's complaint, we do not address Cline's argument challenging the circuit court's sustaining Chief Drew's demurrer nor Officer Riley's argument challenging the circuit court's overruling her demurrer.