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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-21-288

BRENDA BERRYHILL,
ADMINISTRATRIX OF THE ESTATE
OF RONNIE LYNN HILL II
APPELLANT

V.

ANGELA AND PHILLIP LESTER
APPELLEES

Opinion Delivered May 11, 2022

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. 14CV-18-115]

HONORABLE SPENCER G.
SINGLETON, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Brenda Berryhill, administratrix of the estate of Ronnie Lynn Hill II, appeals the Columbia County Circuit Court order granting Angela and Phillip Lester’s summary-judgment motion and dismissing her complaint with prejudice. On appeal, Brenda argues that the circuit court erred by granting summary judgment on her abuse-of-process claim. We affirm.

This case arises out of a May 11, 2017 incident between Ronnie and Angela in the Wal-Mart parking lot in Magnolia. Following the incident, Angela filed a criminal report against Ronnie alleging that he had caused a grocery cart to collide with her vehicle that resulted in \$1,000 in damages. On June 22, the Magnolia Police Department arrested Ronnie for felony criminal mischief. He was released on bond, and on June 28, he had a heart attack and died.

On April 26, 2018, Ronnie's mother, Brenda, as administratrix of his estate, filed a complaint against the Lesters concerning the May 11 incident. She claimed that Angela had fabricated the incident and that Angela and Phillip had publicly shamed and humiliated Ronnie,¹ which caused his death. She alleged claims for negligence, reckless negligence, outrage, abuse of process, and malicious prosecution.²

On October 20, 2020, the Lesters moved for summary judgment on all of Brenda's claims. As to her abuse-of-process claim, the Lesters argued that there was no evidence that they had used the judicial process to extort or coerce Ronnie. They further asserted that under Arkansas law, negligence or careless behavior is insufficient to prevail on an abuse-of-process claim. They attached their depositions.

Brenda responded to the Lesters' summary-judgment motion, arguing that the evidence showed that the Lesters initiated the criminal proceeding to coerce Ronnie to complete an anger-management program, which is an improper purpose of the criminal-justice system. She relied on Angela's and Phillip's depositions wherein they stated that they asked a law enforcement officer whether Ronnie could be ordered to attend anger management instead of being charged with a felony.

On March 5, 2021, the circuit court entered an order granting the Lesters' summary-judgment motion on all of Brenda's claims and dismissing her complaint with prejudice. As to the abuse-of-process claim, the court concluded that

¹In the complaint, Brenda further alleged that the Lesters had made Facebook posts about the incident and that other Facebook users had shared the post.

²Because Brenda challenges the circuit court's finding only on her abuse-of-process claim, we do not discuss the details concerning her other tort claims.

[t]he Plaintiff cannot draw a reasonable inference from comments made by the Lesters to an officer or at the deposition that they believed Mr. Hill should be required to undergo anger management instead of being imprisoned that the Lesters were using the criminal process in an attempt to coerce or extort Mr. Hill into participating in anger management.

Brenda appealed the dismissal order to this court.

The law is well settled regarding the standard of review used by this court in reviewing a grant of summary judgment. *Fed. Nat'l Mortg. Ass'n v. Taylor*, 2015 Ark. 78, 455 S.W.3d 811. A circuit court will grant summary judgment only when it is apparent that no genuine issues of material fact exist requiring litigation and that the moving party is entitled to judgment as a matter of law. *Id.* The burden of proof shifts to the opposing party once the moving party establishes a prima facie entitlement to summary judgment, and the opposing party must demonstrate the existence of a material issue of fact. *Id.* After reviewing the undisputed facts, the circuit court should deny summary judgment if, under the evidence, reasonable minds might reach different conclusions from the same undisputed facts. *Id.*

On appeal, this court determines if summary judgment was appropriate by deciding whether the evidentiary items presented by the moving party leave a material question of fact unanswered. *Repking v. Lokey*, 2010 Ark. 356, 377 S.W.3d 211. This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* This review is not limited to the pleadings but also includes the affidavits and other documents filed by the parties. *Id.*

Brenda argues that the circuit court erred by granting summary judgment on her abuse-of-process claim. She asserts that the court erroneously determined that as a matter of

law, it could not be reasonably inferred from the Lesters' comments that they intended to use the judicial process to coerce Ronnie to participate in anger management. She claims that anger management is a private purpose that the public criminal process was not intended to address.

In order to prove the tort of abuse of process, a plaintiff must establish the following elements: (1) a legal procedure set in motion in proper form, even with probable cause, and even with ultimate success, (2) the procedure is perverted to accomplish an ulterior purpose for which it was not designed, and (3) a willful act in the use of process which is not proper in the regular conduct of the proceeding. *Wal-Mart Stores, Inc. v. Binns*, 341 Ark. 157, 15 S.W.3d 320 (2000) (citing *Union Nat'l Bank of Little Rock v. Kutait*, 312 Ark. 14, 846 S.W.2d 652 (1993)). The test of abuse of process is whether a judicial process is used to extort or coerce. *Brooks v. First State Bank, N.A.*, 2010 Ark. App. 342, 374 S.W.3d 846. The key to the tort is the improper use of process after its issuance to accomplish a purpose for which the process was not designed. *Harmon v. Carco Carriage Corp.*, 320 Ark. 322, 895 S.W.2d 938 (1995). Thus, it is the purpose for which the process is used, once issued, that is important in reaching a conclusion. *Sundeen v. Kroger*, 355 Ark. 138, 133 S.W.3d 393 (2003). Abuse of process is a narrow tort. *Union Nat'l Bank of Little Rock*, 312 Ark. 14, 846 S.W.2d 652. A "vexatious" lawsuit is not enough; indeed, abuse of process is more difficult to prove when the action is based on probable cause. *Id.*

Brooks v. First State Bank, N.A., is instructive on coercion and extortion for an abuse-of-process claim. 2010 Ark. App. 342, 374 S.W.3d 846. In *Brooks*, the plaintiff unknowingly deposited a counterfeit check into her savings account, and the bank reported her to the

police after she refused to repay the money. *Id.* After the plaintiff's arrest, the bank contacted her and told her that she could repay the money "if you like." *Id.* at 8, 374 S.W.3d at 851. The plaintiff did not allege that any bank representative threatened or harassed her for the money, nor did she recall anyone but the judge ordering her to repay the bank. *Id.* On appeal, we held that the circuit court did not err by granting summary judgment on the plaintiff's abuse-of-process claim concerning the incident. *Id.* We stated that the plaintiff "offered no proof whatsoever of any coercive actions or efforts to extort by the bank," and we reasoned "that abuse of process is a narrow tort, and neither coercion [n]or extortion is a reasonable inference to be drawn from the one phone call after her arrest." *Id.* at 8–9, 374 S.W.3d at 851.

Similarly, in this case, we hold that the circuit court did not err by granting summary judgment on Brenda's abuse-of-process claim. Viewing the evidence in the light most favorable to Brenda, the evidence merely shows that the Lesters suggested to law enforcement, not Ronnie, that Ronnie attend anger management in lieu of a felony punishment. The court correctly determined that neither coercion nor extortion is a reasonable inference to be drawn from the Lesters' comment. Accordingly, we affirm the circuit court's grant of summary judgment on the abuse-of-process claim.

Affirmed.

HARRISON, C.J., and GRUBER, J., agree.

Burgess Law Firm, P.L.L.C., by: *Mark C. Burgess* and *John Mark Burgess*; and *Pickett Law Office*, by: *John Pickett*, for appellant.

Kutak Rock LLP, by: *Niki T. Cung*, *Samantha Blassingame*, and *Alexis E. Stevens*, for appellees.