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2012 IL App (3d) 110105-U

Order filed March 1, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

FRANK M. BETTASSO, JR.,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	LaSalle County, Illinois,
)	
v.)	Appeal No. 3-11-0105
)	Circuit No. 09-L-198
CITIZENS FIRST NATIONAL BANK,)	
)	Honorable
Defendant-Appellee.)	Eugene P. Daugherty,
)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

- ¶ 1 Held: Trial court did not err when it granted defendant's motion to dismiss the complaint for plaintiff's failure to state a claim for false imprisonment and false arrest where plaintiff could not establish that defendant directed plaintiff's arrest or provided information constituting the sole basis for the arrest.
- ¶ 2 Plaintiff Frank Bettasso filed a complaint for false imprisonment and false arrest arising from his February 20, 2009 arrest for criminal trespass to real estate based on his entry onto property of defendant Citizens First National Bank. The trial court granted summary judgment in favor of

Citizens. We affirm.

¶ 3

FACTS

¶ 4 Plaintiff Frank Bettasso brought an action against defendant Citizens First National Bank for false imprisonment and false arrest. In the complaint, Bettasso alleged that he had never received notice that he was not allowed to enter the bank, that he was to avoid contact with his estranged wife while she worked at Citizens, and that after her termination from the bank, he began to again visit and conduct business with the bank. Citizens filed a motion for summary judgment. Bettasso filed a response to Citizens' summary judgment motion and attached affidavits in which he averred that he was not notified by either a bank employee or a police officer that he was not allowed entry to the bank. He further averred that he never received a certified letter from Mattingly warning him not to enter the bank's facilities. The parties presented the following evidence in support of, or opposition to, the motion.

¶ 5 In March 2008, Bettasso made a series of telephone calls to Citizens. At that time, his estranged wife worked at the bank and was allegedly having an affair with the bank president. The tone and content of the calls caused the Citizens' employees who took them to feel uncomfortable or threatened. Citizens called the Princeton police department. Princeton police officer Daniel Jaeger investigated. He visited the bank and interviewed several employees about the calls. He advised Citizens that he could issue a trespass warning to Bettasso. Citizens opted to have Jaeger issue a trespass warning. Only a limited number of bank employees were made aware of the trespass warning. Citizens sent Bettasso a letter, under the signature of Johanna Mattingly, informing him that it had closed Bettasso's accounts. Purportedly, Mattingly also sent a certified letter to Bettasso warning him to stay off the bank's property. However, there is no evidence the letter was sent or

received, and Bettasso denied receipt of the letter. Mattingly's employment at the bank terminated prior to July 2008.

¶ 6 Jaeger issued a verbal trespass warning to Bettasso on March 11, 2008. His report memorializing the encounter stated: "I informed Bettasso that he is not to enter or call any Citizens Bank property, and asked if he understood that, and he told me that he did." Based on Princeton police department procedure, Jaeger will issue a trespass warning on request of a property owner. The warnings are issued verbally and documented in the officer's written report. A trespass warning is violated when an individual physically enters a premises after being forbidden to do so. A trespass warning remains effective until the requesting party asks that it terminate. Jaeger's usual procedure in issuing a trespass warning involved explaining the consequences of violating the warning, including arrest.

¶ 7 In April 2008, the attorney for Citizens sent a letter to Bettasso stating that any future entry by Bettasso into the bank could be considered trespass. The letter was sent to the attorney handling Bettasso's dissolution of marriage action. There was no evidence presented as to whether the letter was forwarded to Bettasso. In September 2008, Bettasso called Citizens requesting the comptroller's business card. The bank employee who answered the call offered to mail the card, but Bettasso preferred to pick up the card in person. Later, after an employee with knowledge of the prior trespass warning learned Bettasso had entered the bank, she called the police department. She was advised that the police could arrest Bettasso or issue another trespass warning. She directed that another trespass warning be issued. Bettasso visited the Citizens trust department in November 2008 without incident. The police were not notified.

¶ 8 On the morning of February 20, 2009, Bettasso entered the bank. After he left, an employee

called the police and spoke to Princeton police chief Tom Root. Root notified Officer Jeffrey Underwood that Citizens wanted to file a complaint for trespass. Root told Underwood that Bettasso had previously been warned to stay off Citizen’s property. Underwood went to the bank to investigate, where he spoke with four employees who saw Bettasso at the bank that morning. Following the interviews, Underwood wrote a complaint and notice to appear for criminal trespass to property against Bettasso. The complaint was signed by a Citizens’ employee. It stated:

“Criminal Trespass to Property - In that the said defendant knowingly entered upon the land of Citizen’s First National Bank *** after receiving prior to such entry, notice from the management staff that such entry was forbidden.”

¶ 9 Continuing his investigation, Underwood reviewed security surveillance videos that showed Bettasso at the bank in the morning. Underwood then reviewed several police reports prepared by Jaeger and verified that Jaeger had issued a verbal trespass warning. Jaeger’s reports established that he expressly told Bettasso he was not to enter or call Citizens and that Bettasso stated he understood the warning. Later the same afternoon, Underwood arrested Bettasso for criminal trespass. The charge was later nolle prosequed on Citizens’ request.

¶ 10 The trial court granted Citizens’ motion for summary judgment, finding that Bettasso could not establish that Citizens caused or procured his arrest or that it lacked a reasonable belief that an offense occurred. The trial court determined that Citizens’ belief that Bettasso had received a trespass warning was reasonable. Bettasso appealed.

¶ 11 **ANALYSIS**

¶ 12 The issue on appeal is whether the trial court erred when it granted summary judgment in

favor of Citizens on Bettasso's complaint for false imprisonment and arrest.

Bettasso argues that there are genuine issues of material fact that preclude summary judgment, including whether he received a trespass warning. In support of his argument, Bettasso points to his two affidavits filed in response to Citizens' summary judgment motion, in which he denied receiving any notice that he was not to trespass at the bank.

¶ 13 Summary judgment is proper where the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (c) (West 2010). In ruling on a summary judgment motion, the trial court is to construe the evidence in a light most favorable to the nonmoving party. *Carey v. Kagianas*, 312 Ill. App. 3d 666, 669 (2000). Summary judgment should not be granted if reasonable persons could draw divergent inferences from the undisputed facts. *Carey*, 312 Ill. App. 3d at 669. This court reviews a trial court's grant of summary judgment de novo. *Carey*, 312 Ill. App. 3d at 669.

¶ 14 A person commits criminal trespass to property when he or she "enters upon the land of another, after receiving, prior to such entry, notice from the owner or occupant that such entry is forbidden." 720 ILCS 5/21-3(a)(2) (West 2008). To establish false imprisonment or arrest, a plaintiff must demonstrate that the defendant caused or procured his or her restraint without reasonable belief that the plaintiff was committing an offense. *Randall v. Lemke*, 311 Ill. App. 3d 848, 851-52 (2000). To establish liability when alleging a claim against a private defendant based on a false arrest by a police officer, the plaintiff must show the defendant "(1) directed the officer to arrest the plaintiff; or (2) procured the arrest by giving information that was the sole basis for the arrest." *Randall*, 311 Ill. App. 3d at 852.

¶ 15 The evidence presented on Citizens' summary judgment motion does not raise any genuine issues of material fact. Rather, Citizens did not direct the Princeton police department to arrest Bettasso. Citizens sought assistance from the police after Bettasso entered its property on February 20, 2009, contrary to a prior warning that he was not to enter the premises. Based on the phone call incidents that occurred in March 2008, the police department and the bank were aware that the police had issued a trespass warning to Bettasso at that time. Officer Jaeger's March 2008 police report indicated that he responded to the bank to investigate claims of phone harassment. Several employees stated to him that they had received phone calls from Bettasso that had a threatening tone and scared them. A subsequent report indicated that Jaeger met with Bettasso and warned him not to trespass on Citizens' property and that Bettasso affirmatively responded that he understood the warning. The Princeton police investigated a March 2008 incident where Bettasso called the bank. Bettasso was contacted by a Princeton police officer in April 2008, who indicated that Bettasso stated he did not know he could not call the bank, but would stop calling.

¶ 16 The bank employee called the police on February 20 and signed the complaint due to Bettasso's violation of the warnings not to call or enter the bank. Although Citizens initiated contact with the police, it did not direct the police to arrest Bettasso. He was not arrested until after Underwood completed his investigation. The evidence demonstrates that the arrest was not based solely on information provided by the bank. Underwood, who responded to the bank on February 20, interviewed four witnesses who saw Bettasso in the bank, wrote a complaint based on the information, watched surveillance video depicting Bettasso at the bank, and reviewed police reports concerning the past incidents between Citizens and Bettasso. The record does not present any issues of material fact that Citizens directed or procured Bettasso's arrest.

¶ 17 For the second element necessary to sustain his cause of action for false arrest, Bettasso must demonstrate that Citizens' belief he was trespassing was unreasonable. We find there are no issues of genuine fact that Citizens had a reasonable belief that Bettasso was trespassing. Bank employees accepted Jaeger's offer that he warn Bettasso not to enter the bank in March 2008. Jaeger's police report provides that he issued a trespass warning to Bettasso, who stated he understood it. Citizens' attorney sent a letter to the attorney representing Bettasso in his then-pending dissolution action which ordered Bettasso to "cease and desist" contacting or visiting the bank. Bank employees notified the police that Bettasso was violating the trespass warning after further incidents where Bettasso called or entered the bank. Bettasso's claim that he did not receive notice of the warning does not constitute an issue of material fact. Whether he was warned not to trespass is irrelevant to the question of the bank's reasonable belief. Similarly, contrary to Bettasso's claim, the absence of the letter allegedly sent to Bettasso from Mattingly barring him from the bank is immaterial. The police reports demonstrate that Bettasso was issued a trespass warning.

¶ 18 We find that the trial court did not err in granting summary judgment in favor of Citizens. There are no genuine issues of material fact regarding the elements of false arrest or imprisonment. Bettasso cannot demonstrate that Citizens directed or procured his arrest or that its belief he was committing the offense of criminal trespass was unreasonable.

¶ 19 For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

¶ 20 Affirmed.