



man. Defendant is a Tennessee corporation with premises in Shelby County. On July 16, 2001, Adams entered Defendant's premises without permission. Defendant's security guards allegedly knew that Adams was retarded and lived nearby, yet they did not tell him to leave. Defendant's guards allegedly believed that Adams had AIDS, though Plaintiff maintains that Adams does not have AIDS and is not HIV-positive. Instead, the security guards called the Memphis Police Department to arrest Adams for criminal trespass.

Adams was allegedly placed in a cell with a habitual offender and raped. On the morning of July 17, 2001, the guards allegedly saw Adams crying and took him to the Rape Crisis Center. Plaintiff claims that objective evidence was obtained which supported the allegation of rape. Plaintiff has claims against other defendants, including the police officers for transporting him in deliberate indifference to his vulnerable mental state, and the prison officials for placing Adams with the general prison population despite his disability.

Defendant filed a motion for summary judgment on January 17, 2003. On May 1, 2003, the Court issued an order to show cause, requiring Plaintiff, as next friend and legal guardian of Kenneth Adams, to file a response to Defendant's motion. Plaintiff responded to the show cause order on May 15, 2003. Plaintiff notified the Court that Plaintiff and counsel for Defendant reached an agreement whereby Plaintiff would respond to the motion for summary judgment after taking the deposition of Defendant's security guards. According to Local Rule 7.2(a)(2), the Court issued an order and notice advising parties that they may not by unilateral agreement enlarge proscribed periods for responding to a motion for summary judgment.

Therefore, the Court ordered Plaintiff to respond to Defendant's summary judgment motion within thirty days of deposing the guards. Plaintiff notified the Court that the deposition took place

on July 30, 2003. Therefore, Plaintiff should have filed a response to Defendant's motion by August 29, 2003. To date, Plaintiff has not filed a response. Accordingly, the Court will decide the matter on the pleadings.

## **II. STANDARD FOR SUMMARY JUDGMENT**

Summary judgment may be granted if no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. (Fed. R. Civ. P. 56.) Material facts are those facts which are defined by substantive law and are necessary in order to apply the law. (Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).) A genuine issue for trial exists if the evidence would permit a reasonable jury to return a verdict for the non-moving party. (Id.)

In evaluating a motion for summary judgment, the evidence, facts, and any inferences must be viewed in a light most favorable to the non-moving party. (Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Walbourn v. Erie County Care Facility, 150 F. 3d 584, 588 (6th Cir. 1998).) Once a properly supported motion for summary judgment has been made, the "adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." (Fed. R. Civ. P. 56(e).) Summary judgment is appropriate when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." (Matsushita Elec. Indus. Co., 475 U.S. at 587.)

## **III. ANALYSIS**

### **A. Abuse of Process**

Defendant argues that Plaintiff cannot establish a claim of abuse of process. In Tennessee, a prima facie claim of abuse of process is comprised of two basic elements. A plaintiff must prove "(1) the existence of an ulterior motive, and (2) an act in the use of process other than such as would

be proper in the regular prosecution of the charge.” (Bell ex rel. Snyder v. Icard, 986 S.W.2d 550, 555 (Tenn. 1999).) “‘Legal process’ is generally defined within the scope of the tort of abuse of process as process which emanates from or rests upon court authority.” (1 Am. Jur. 2d Abuse of Process § 2 (2003) (footnotes omitted).) Even if Defendant’s action of calling the police would qualify as legal process, Plaintiff has not alleged ulterior motive or an act outside of the normal process. Plaintiff has alleged that Defendant called the police in “reckless disregard” of Adams’s welfare, not that Defendant had the requisite intent to cause Adams injury. (Compl. ¶ 13.) Nor has Plaintiff alleged any act by Defendant which was outside of the ordinary procedures for notifying the police of a trespasser. Plaintiff has failed to create a genuine issue of material fact as to Defendant’s alleged abuse of process.

### **B. Malicious Prosecution**

Defendant argues that Plaintiff cannot create a genuine issue as to her claim of malicious prosecution. To establish a claim for malicious prosecution in Tennessee, a plaintiff must prove that “(1) a prior suit or judicial proceeding was instituted without probable cause, (2) defendant brought such prior action with malice, and (3) the prior action was finally terminated in plaintiff’s favor.” (Roberts v. Federal Express Corp., 842 S.W.2d 246, 248 (Tenn. 1992).) “The action for malicious prosecution is only intended to apply to cases where criminal accusation has been made against an innocent man through malice, and in the absence of even a fair and reasonable probability of its truth.” (Sadek v. Nashville Recycling Co., 751 S.W.2d 428, 431 (Tenn. Ct. App. 1988).) Plaintiff admits that Adams trespassed on Defendant’s property, therefore he was not innocent. Plaintiff has failed to create a genuine issue of material fact as to Defendant’s alleged malicious prosecution of Adams.

### **C. False Arrest**

Defendant alleges that Plaintiff cannot establish a claim of false arrest. A plaintiff suing under Tennessee law must prove “(1) the detention or restraint of one against his will, and (2) the unlawfulness of such detention or restraint.” Coffee v. Peterbilt of Nashville, Inc., 795 S.W.2d 656, 659 (Tenn. 1990). These elements are identical to the elements for a cause of action for false imprisonment. Sherrod v. Piedmont Aviation, Inc., 516 F.Supp. 39, 43 n.3 (E.D. Tenn. 1978). Plaintiff has not alleged that Adams was detained by Defendant. She alleges that Defendant called the police to apprehend Adams. (Compl. ¶ 13). Without an accusation of detention or restraint, Plaintiff has failed to create an issue of material fact as to the false arrest claim.

### **D. Outrageous Conduct**

Finally, Defendant argues that Plaintiff has not established a prima facie claim of outrageous conduct. In Tennessee, a plaintiff establishes outrageous conduct by showing “(1) the conduct complained of must be intentional or reckless; (2) the conduct must be so outrageous that it is not tolerated by civilized society; (3) the conduct complained of must result in serious mental injury.” (Bain v. Wells, 936 S.W.2d 618, 622 (Tenn. 1997).) The Court determines whether the alleged misconduct “has been so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.” (Id. at 622-23.)

The threshold for outrageous conduct is very high. (Cf. Swallows v. Western Elec. Co., Inc., 543 S.W.2d 581, 582-83 (Tenn. Ct. App. 1977) (holding that an employer’s alleged investigation and harassment for approximately six months, does not state a cause of action for outrageous conduct); Johnson v. Woman’s Hosp., 527 S.W.2d 133, 141 (Tenn. Ct. App. 1975) (holding that

evidence of a hospital's display to mother of body of her premature child who had expired shortly after birth and had been placed in a jar of formaldehyde did not warrant finding that doctor or his nurse were guilty of tort of outrageous conduct.) Defendant's security guards allegedly phoned the police upon seeing a disabled trespasser on the premises. (Compl. ¶¶ 11-13.) Plaintiff does not claim that he was innocent of the charge. Therefore, Defendant's alleged misconduct does not reach the elevated threshold to go outside the bounds of all decency in civilized society. The Court finds that Plaintiff has failed to create a genuine issue of material fact as to Defendant's alleged outrageous conduct.

#### **IV. CONCLUSION**

For the reasons stated herein, the Court finds that Plaintiff failed to establish a prima facie case by a preponderance of the evidence. As no genuine issue of fact exists, the Court grants Defendant's motion for summary judgment.

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

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BERNICE BOUIE DONALD  
UNITED STATES DISTRICT COURT