

Circuit Court for Anne Arundel County
Case No: C-02-CV-17-003801

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2079

September Term, 2018

DEVI PORTER

v.

STEPHANY PORTER, *et al.*

Kehoe,
Gould,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 30, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Devi Porter (“Ms. Porter”), appellant, was employed by Stephany Porter and Melany Siravo (the “Porter Sisters”), appellees, as an at-will, live-in caregiver for their elderly mother, Lucille Kirby.¹ Following the termination of Ms. Porter’s employment by the Porter Sisters in 2017, she filed a complaint, subsequently amended, in the Circuit Court for Anne Arundel County alleging wrongful termination, defamation, and two counts of malicious use of process.² In response, the Porter Sisters filed a motion to dismiss, contending that Ms. Porter had failed to state a claim upon which relief could be granted.³ In the alternative, they moved for summary judgment, attaching affidavits as factual support and arguing that there were no genuine issues of material fact. Following written opposition by Ms. Porter and two motion hearings, the court dismissed each count of the Complaint. On appeal, Ms. Porter contends that the court erred in dismissing her Complaint. For the following reasons, we affirm the decision of the circuit court.

STANDARD OF REVIEW

“In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” *Scarborough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019). However, if the court, in ruling on a motion to dismiss, considers materials outside of the pleadings, the motion

¹ There is no familial relationship between Devi Porter and the Porter Sisters.

² Ms. Porter’s complaint and amended complaint are hereinafter referred to collectively as “the Complaint.”

³ The Porter Sisters also filed a supplemental motion to dismiss Ms. Porter’s amended complaint incorporating by reference all allegations, arguments, and citations set forth in their original motion to dismiss.

to dismiss “shall be treated as one for summary judgment.” Md. Rule 2-322(c); *see also Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 476 (2004). A motion for summary judgment is properly granted where “there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.” Md. Rule 2–501.

WRONGFUL TERMINATION

As to Ms. Porter’s count for wrongful termination, the record reveals that the court relied on matters outside of the pleadings when ruling on the Porter Sisters’ motion on summary judgment grounds. We must first, therefore, “determine whether there is a genuine dispute of material fact.” *Duffy v. CBS Corp.*, 458 Md. 206, 217 (2018). The record reveals that the Porter Sisters, in support of their motion for summary judgment, submitted the subject employment agreement between the parties and affidavits attesting to facts material to the case for the court’s consideration. Pursuant to Maryland Rule 2-322(c), Ms. Porter was afforded a “reasonable opportunity to present all material pertinent” to the Porter Sisters’ motion for summary judgment, as she conceded that she had received the motion a couple of weeks before the first hearing and having been provided a three-month continuance for a second motions hearing. Ms. Porter, however, failed to provide the court with any affidavit or evidence which rebutted the affidavits and employment agreement supplied by the Porter Sisters. Because the facts advanced by the Porter Sisters were rebutted by Ms. Porter, the record does not disclose a genuine dispute of material fact and we must, therefore, determine whether the Porter Sisters were entitled to judgment as a matter of law given the facts presently before this Court.

Ms. Porter’s Complaint alleged that the Porter Sisters wrongfully terminated her “for contacting Adult Protective Services about their mother.” However, her employment agreement with the Porter Sisters stated that her employment could be terminated “without cause with no advance notice,” consistent with the common law rule that “an employment contract of indefinite duration, that is, at will, can be legally terminated at the pleasure of either party at any time.” *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 450 (2017). For Ms. Porter to prevail in her claim for wrongful termination, it was necessary for her to establish 1) that she was discharged, 2) that the basis of the discharge violated “some clear mandate of public policy,” and 3) that there was “a nexus between [her] conduct and the employer’s decision to fire [her].” *Id.* at 451.

Based on the evidence before the court, Ms. Porter failed to establish a nexus between her discharge and her conduct, *i.e.*, her contacting adult protective services. The affidavits provided by the Porter Sisters attest that they terminated Ms. Porter after they discovered razor blade cuts on their mother’s fingers and feared that Ms. Porter was abusing their mother. The affidavits further state that, prior to her termination, Ms. Porter “did not tell [the Porter Sisters] that she called Adult Protective Services,” but instead told them that the “bank must have contacted adult protective services.” In fact, Ms. Porter conceded this point at the hearing. Accordingly, there was no evidentiary support before the court that the Porter Sisters terminated Ms. Porter because she called Adult Protective Services and, as to the count for wrongful termination, the Porter Sisters were entitled to judgment as a matter of law.

MALICIOUS USE OF PROCESS

According to their affidavits, the Porter Sisters filed a wrongful detainer action and a petition for peace order against Ms. Porter, stemming from her refusal to vacate Ms. Kirby's home following her termination. In Ms. Porter's Complaint, she alleged two counts of malicious use of process stemming from the Porter Sisters' filing of these actions. One of the required elements for a malicious use of process claim is that "the proceeding must have been instituted without probable cause." *One Thousand Fleet Ltd. P'ship v. Guerriero*, 346 Md. 29, 37 (1997). As to both counts, Ms. Porter failed to adequately plead that the Porter Sisters lacked probable cause for the actions filed and it was proper, therefore, for the court to dismiss these two counts.

In reviewing the grant of a motion to dismiss, "[t]he well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010). Though the Complaint asserted that the Porter Sisters "filed a Wrongful Detainer knowing there was no probable cause to do so," this is a conclusory statement which is unsupported by the facts as alleged in the Complaint. The record reveals that Ms. Porter did not have a lease to reside at the subject premises and that she was only required to live there to provide caregiving services to Ms. Kirby pursuant to the terms of her employment agreement. Though the Complaint stated that Ms. Porter resided at the subject property, received mail there, and listed the address on her driver's license, these qualities alone are insufficient to establish her right to possession of the property by law under §14-132 of the Real Property Article. Moreover, during the wrongful detainer action, the District Court specifically found that Ms. Porter was not a tenant of the property

as she contended. Because she was not a tenant, the Porter Sisters would have had probable cause to file their wrongful detainer action when she refused to leave the property.

Likewise, the Complaint did not allege any facts which suggested that there was lack of probable cause for the Porter Sisters' claim to file for a peace order. The Complaint merely advanced the conclusory statement that Ms. Porter was "by no means a threat to Defendant's safety in any way."

DEFAMATION

As to Ms. Porter's defamation claim, the Complaint did not provide sufficient factual support for the claim and it was proper, therefore, for the court to dismiss this count. As the circuit court correctly stated, "the Complaint itself fail[ed] to identify with any level of specificity the specific . . . statements that were made, nor the individuals to whom they were made to."

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**