

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7484
Summary Calendar

RAY FLOYD,

Plaintiff-Appellant,

VERSUS

BODDIE-NOELL ENTERPRISES,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(WC90-09-B-D)

February 17, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

This is a diversity action brought by a Mississippi resident against a North Carolina corporation. Plaintiff-Appellant, Ray Floyd, argues that Mississippi's trespass law, Miss. Code Ann. § 97-17-97 (1972), was unconstitutionally used to have him arrested after he was refused service at Appellee's restaurant. The district court granted the Defendant-Appellee's motion for summary judgment. We find no error and affirm.

BACKGROUND AND PROCEDURAL HISTORY

Floyd was refused service at a New Albany, Mississippi,

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Hardee's restaurant owned by the Appellee, Boddie-Noell Enterprises. Prior to this refusal, both parties concede that Floyd had been told his business was unwelcome at this establishment. The manager of the restaurant, Dan McGuire, filed trespass charges against Floyd for returning to the Hardee's premises after being warned to stay away. Floyd turned himself in, was formally arrested, and thereafter released. All trespass charges were eventually dropped against Floyd.

Floyd later filed suit in federal court against Boddie-Noell, seeking damages for false arrest and imprisonment, malicious prosecution, and the wrongful retention of McGuire as the manager of the New Albany Hardee's. Cross motions for summary judgment were filed. The district court granted summary judgment in favor of the Defendant on all of Floyd's claims.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, we apply the same standard of review applied by the district court. See Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). Summary judgment is appropriate only if, when viewed in the light most favorable to the nonmoving party, the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

ANALYSIS

1. Mississippi's Trespass Statute.

Floyd contends that Mississippi's trespass law, Miss. Code Ann. § 97-17-97 (1972), is unconstitutional because it was used to exclude him from a place of public accommodation, where he otherwise had a right of access. The parties agree that Hardee's is a public accommodation that falls within the strictures of the civil rights laws.² Floyd cites 42 U.S.C. § 2000a-1 (1981), for the proposition that he had an unfettered constitutional right to receive service at this particular restaurant. 42 U.S.C. § 2000a-1 provides:

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be by any law, statute, ordinance, regulation, rule, or order of a State, or any agency or political subdivision thereof.

Floyd had previously been asked not to return to the Hardee's in New Albany. Because it is not the usual practice of a business to turn away customers, we can infer that McGuire had a legitimate reason for requesting Floyd not to return. Nevertheless, Floyd is unable to use 42 U.S.C. § 2000a-1 as a means to challenge the Mississippi statute under which he was arrested. Section 2000a-1

² 42 U.S.C. § 2000a provides, in pertinent part:
All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

by its express terms, prohibits discrimination only on the grounds of race, color, religion, or national origin. There is no evidence that Floyd, a forty-eight year old white male, was discriminated against on any of these grounds. Miss. Code Ann. § 97-17-97 is otherwise valid on its face, and we agree with the district court's conclusion that no reasonable construction of the civil rights laws supports a finding that this statute is unconstitutional under the facts of this case. See, e.g., Silbert v. Ramsey, 482 A.2d 147, 151-52 (Md. 1984) (proprietor may exclude patron on grounds other than those listed in 42 U.S.C. § 2000a); Bonomo v. Louisiana Downs, Inc., 337 So.2d 553, 557 (La. Ct. App. 1976) (§ 2000a of the Civil Rights Act does not prohibit discrimination on "other reasons which are not arbitrary, capricious, or unreasonable . . . under particular circumstances which may be in question.").

2. Claims for False Arrest and Imprisonment.

False arrest is an intentional tort, arising when one causes another to be arrested falsely, unlawfully, maliciously, and without probable cause. See City of Mound Bayou v. Johnson, 562 So.2d 1212, 1218 (Miss. 1990). Probable cause exists if a party has an honest belief in the guilt of the person accused, and a reasonable basis for such belief. Page v. Wiggins, 595 So.2d 1291, 1294 (Miss. 1992). The Appellee, acting through its agent/employee, had probable cause to file a complaint of trespass against Floyd. McGuire had an honest belief that Floyd committed a trespass, based on the fact that a prior warning to stay away was given Floyd. Likewise, McGuire had a reasonable basis for his

decision to file charges against Floyd.

Because the arrest was valid, and otherwise complied with lawful procedures, the detention of Floyd fails to give rise to a claim of false imprisonment. Id. at 1294 (two elements for claim of false imprisonment: detention, and unlawfulness thereof).

3. Malicious Prosecution.

The "essence" of a malicious prosecution claim is the malicious institution of criminal proceedings against a party, absent probable cause therefore. City of Mound Bayou v. Johnson, 562 So.2d 1212, 1218 (Miss. 1990). Appellant's claim for malicious prosecution fails as well once probable cause for the trespass charge is shown.

4. Wrongful Retention.

Floyd also argues that Boddie-Noell was negligent in keeping McGuire in his position as manager of the New Albany Hardee's because Boddie-Noell should have been aware of McGuire's alleged violent nature. Floyd lists examples of McGuire's bad temperament (e.g., kicking and throwing things in the kitchen). What Floyd fails to show is the causal link between these petty displays of temper and the filing of trespass charges against him. Because causation is a necessary element in any tort action, the absence of a nexus between McGuire's temperament and Floyd's resulting damages is fatal to his claim for wrongful retention.

CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.