DA 23-0256

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 14

WILLIAM JAMES RUPNOW, JR.,

Plaintiff and Appellant,

v.

MONTANA STATE AUDITOR AND COMMISSIONER OF INSURANCE; MIKE WINSOR; JENNIFER HUDSON; and XYZ government subdivision,

Defendants and Appellees.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. CDV-2018-0616
Honorable Kaydee Snipes Ruiz, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Neal P. DuBois, Dubois Mills, PLLC, Great Falls, Montana

For Appellees:

Andres Haladay, Risk Management and Tort Defense, Helena, Montana

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Submitted on Briefs: November 15, 2023

Decided: January 30, 2024

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Appellant William James Rupnow, Jr. (Rupnow) appeals the Order Granting Defendants' Motion to Dismiss issued on May 6, 2022, by the Eighth Judicial District Court, Cascade County.

¶2 We state the issue on appeal as follows:

Whether the District Court erred in dismissing Rupnow's Complaint.

¶3 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 Rupnow is a licensed bail bondsman operating EZ Bail Bonds. On February 12, 2014, Rupnow, through EZ Bail Bonds, issued a $10,000 bond for Victorianne Dahl (Dahl) for release on the charges brought against her in the Eighth Judicial District Court. Dahl's release order set forth a variety of conditions of release. Dahl entered into a bail bond contract with EZ Bail Bonds to post the bond for her release which evidently required Dahl to make installment payments to EZ Bail Bonds. In his opening brief on appeal, Rupnow avers the following facts (*record citations omitted*):

> On February 12, 2014, Rupnow, through EZ Bail Bonds, issued a $10,000.00 bond for Victorianne Rose Dahl ("Dahl") related to her bond set for release on charges including Criminal Endangerment, a felony, Driving Under the Influence of Alcohol, Driving the Wrong Way on a One-Way Street, Failure to Remain at Accident Scene, Failure to Give Notice of an Accident, and a Seat Belt Violation. Condition[s] of bail related to Dahl's criminal case were set by the District Court, which included a requirement that Dahl be equipped with SCRAM, an alcohol monitoring devise [sic]. Dahl contracted EZ Bail Bonds and agreed with its terms to receive a complaint [sic] monitoring device and related services.
>
> The District Court set further conditions related to the SCRAM requirement as follows: Dahl must "follow all policies, procedures and rules

of the monitoring provider" and further indicated "termination of services for failure to pay for monitoring will result in bail revocation." Dahl was ultimately noncompliant with the court ordered conditions of release as she was consistently late with her payments to EZ Bail Bonds and violated other conditions of bail and release.

Dahl was in violation of her bond/release conditions and on October 11, 2014, EZ Bail Bonds attempted to work with Dahl and advised her to remit the required payment by or before October 12, 2014 at 7:00 PM to avoid a bond revocation. Although she promised to do so, Dahl did not make payment on the agreed date and time but instead requested another extension from EZ Bail Bonds until October 20, 2014. EZ Bail Bonds reluctantly agreed to Dahl's proposal. Dahl again failed to make payment on October 20, 2014 resulting in continuing and clear violation in her bail conditions and terms of service of EZ Bail Bonds.

After Dahl violated her bond conditions and court-imposed release conditions, and after EZ Bail Bonds attempted to work with her to become compliant, Rupnow requested Dahl to provide EZ Bail Bonds with her location so he could address the issue of her violations. In response, Dahl communicated to EZ Bail Bonds an inaccurate location causing Rupnow concern and a feeling of insecurity since he was responsible for Ms. Dahl as a bondsman. Dahl at this point had proven to be a flight risk and unable to comply with court-imposed bail conditions.

In pursuit of his bondsman duties, Rupnow located and approached Dahl at which time she approached EZ Bail Bonds with the SCRAM device in her hand, rather than on her body, another violation of bail/release conditions. Rupnow advised Dahl at this time he was revoking her bond. Rupnow communicated to Dahl that he was taking her into custody for her violations and because he was no longer secure with his bond.

Despite her knowing violations of her bond/release conditions and being calmly advised she was going to be taken into custody and taken to jail, Dahl immediately became hostile and resisted and fought with Rupnow while he was performing his duly authorized duties as a bail bondsman. Rather than engage in a fight with Dahl, Rupnow deployed pepper spray to de-escalate the situation in a manner and for the purpose of causing the least amount of injury to both parties.[1]

[1] We include Rupnow's asserted rendition of facts which we accept for purposes of considering the merits of his claims. Intermixed with his factual assertions are his inaccurate interpretation of

¶5 Subsequently, the State, through Mike Winsor, Special Assistant Attorney General with the Montana State Auditor, initiated criminal process against Rupnow by filing an Affidavit, Motion, and Order for Leave to File Information Directly in District Court on February 9, 2016. Without objection, the District Court found probable cause to charge and granted the State leave to file the Information. Via Information, the State charged Rupnow with felony assault with a weapon and aggravated assault. After a trial, the jury ultimately acquitted Rupnow on the aggravated assault charge but hung on the assault with a weapon charge.

¶6 Following completion of the criminal charge against Rupnow, Rupnow filed his present complaint against the Montana State Auditor and Commissioner of Insurance, Mike Winsor, Jennifer Hudson, and XYZ government subdivision (Defendants), alleging malicious prosecution, abuse of process, and violation of his rights under the Montana Constitution. Defendants filed a motion to dismiss under M. R. Civ. P. 12(b)(6), asserting the cause should be dismissed as no claim could be sustained against Defendants based on prosecutorial immunity. On May 9, 2022, the District Court granted the Defendants' Motion to Dismiss. Rupnow now appeals. He asserts the District Court erred in granting the dismissal as Defendants "ignored the authority granted to bondsmen by Montana law," "lacked probable cause to arrest, charge and prosecute" him, and that he "was forced to

Montana bail law and of a bail bondsman's authority under Montana law as well as his subjective characterization of Dahl's actions and motivations which we do not consider as facts.

expend significant time and money to defend himself against malicious and wrongful prosecution, abuse of process and violations of his civil rights[.]"

STANDARD OF REVIEW

¶7 We review de novo a district court's ruling on a motion to dismiss. *Renenger v. State*, 2018 MT 228, ¶ 5, 392 Mont. 495, 426 P.3d 559; *Puryer v. HSBC Bank USA, N.A.*, 2018 MT 124, ¶ 9, 391 Mont. 361, 419 P.3d 105. A determination that a complaint fails to state a claim upon which relief may be granted is a conclusion of law which we review for correctness. *Renenger*, ¶ 5.

DISCUSSION

¶8 *Whether the District Court erred in dismissing Rupnow's Complaint.*

¶9 Rupnow asserts he had the authority to arrest Dahl without a warrant and Defendants lacked probable cause to pursue and/or charge Rupnow for his conduct in doing so. Rupnow recognizes that prosecutors are entitled to absolute immunity when acting in the traditional prosecutorial role as an advocate. *Buckley v. Fitzsimmons*, 509 U.S. 259, 273-74, 113 S. Ct. 2606, 2615-16 (1993). "'One of the central issues to be determined in a malicious prosecution claim is whether the party that instigated the underlying lawsuit lacked probable cause for doing so.'" *Spoja v. White*, 2014 MT 9, ¶ 12, 373 Mont. 269, 317 P.3d 153 (quoting *Seltzer v. Morton*, 2007 MT 62, ¶ 72, 336 Mont. 225, 154 P.3d 561). Rupnow argues that as Defendants lacked probable cause to pursue and/or charge him, they are not entitled to prosecutorial immunity in regard to his malicious prosecution claim as their actions were taken outside their prosecutorial functions and their actions constitute an abuse of process.

¶10 Defendants assert Rupnow seeks damages based on the filing and maintaining of criminal charges against Rupnow. Defendants assert these are core prosecutorial functions, shielded by absolute prosecutorial immunity. *See Renenger*, ¶ 9. Defendants contend that even if Rupnow's arguments are accepted—that there was no probable cause and prosecutors had improper motives—such do not defeat prosecutorial immunity as prosecutorial immunity applies notwithstanding lack of probable cause or allegations of wrongdoing. *See Rosenthal v. Cty. of Madison*, 2007 MT 277, ¶ 29, 339 Mont. 419, 170 P.3d 493 ("Filing and maintaining criminal charges are among the many duties of a prosecutor and when a prosecutor acts within the scope of these duties, that prosecutor is absolutely immune from civil liability, regardless of negligence or lack of probable cause."). We are not persuaded by Rupnow's position.

¶11 For purposes of this appeal, we accept Rupnow's rendition of facts related to issuance of the bail bond related to Dahl. In essence, Rupnow interprets § 46-9-401, MCA, and § 46-9-510, MCA, as: (1) allowing bondsmen the ability to arrest their clients upon their own initiative and (2) obligating the jail to incarcerate these individuals notwithstanding the lack of a warrant or order revoking the individual's release.

¶12 "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Section 1-2-101, MCA. "'Statutory interpretation, the goal of which is to give effect to the legislature's intent, begins with the text of the statute.'" *Westview Mobile Home Park,*

LLC v. Lockhart, 2023 MT 201, ¶ 11, 413 Mont. 477, 538 P.3d 1 (quoting *Giacomelli v. Scottsdale Ins. Co.*, 2009 MT 418, ¶ 18, 354 Mont. 15, 221 P.3d 666). "'We must, to the extent possible, effect the manifest intent of the Legislature in accordance with the clear and unambiguous language of its enactments in context, without resort to other means of construction.'" *Westview*, ¶ 11 (quoting *Babcock v. Casey's Mgmt., LLC*, 2021 MT 215, ¶ 6, 405 Mont. 237, 494 P.3d 322). "We do this 'by first attempting to construe the subject term or provision in accordance with the plain meaning of its express language, in context of the statute as a whole, and in furtherance of the manifest purpose of the statutory provision and the larger statutory scheme in which it is included.'" *Westview*, ¶ 11 (quoting *Babcock*, ¶ 6). In interpreting statutes, we do not merely read single sentences out of context. Indeed, "[w]here there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Section 1-2-101, MCA. We must, then, harmonize the relevant provisions of the statute and avoid an absurd result. *Westview*, ¶ 14.

¶13 This case concerns the interpretation and application of Title 46, chapter 9, MCA—Montana's statutory scheme for pre-trial release—bail.[2] The statutes when read logically

[2] For purposes of this appeal, statutory references, unless otherwise noted, are to the 2021 version of the Montana Code Annotated, in effect at the time of Rupnow's actions toward Dahl. It is noted that the 2023 Legislature made some changes, in HB 62, to Title 46, chapter 9, MCA. 2023 Mont. Laws ch. 592. Primarily, the Legislature provided additional requirements under the statute which a surety must follow—such as notifying local police and sheriff's offices of the intent to apprehend and to provide information as to the name and license number of the individual to effectuate the arrest and the name and location of the person to be taken into custody—to effectuate a surrender of a defendant under § 46-9-510(1)(b), MCA. These additional surety requirements did not apply to Rupnow at the time of his interaction with Dahl.

together do not provide bail bondsmen with an unfettered right to remit a bail bond client to jail without an outstanding warrant. Rupnow asserts that § 46-9-505, MCA, in essence, provides a surety the right to surrender a client to the jail, regardless of whether a warrant has been issued, whenever the surety feels "insecure." Such an interpretation would provide bail bond sureties authority to arrest vastly exceeding that held by law enforcement.[3] Having untrained, armed sureties authorized to hunt down, enter homes and upon premises to arrest defendants, wherever they may be, without warrant or even probable cause, only for the purpose of enforcing a civil contract, is clearly not what the statutory scheme provides or what the legislature intended in enacting Title 46, chapter 9, MCA.

¶14 Once bail has been established consistent with § 46-9-201 and § 46-9-301 *et seq*., MCA, § 46-9-401(1)(d), MCA, permits posting of the bond by a commercial surety. Section 46-9-401(3), MCA, then provides, "This chapter does not prohibit a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant." Section 46-9-401(3), MCA.[4] If the legislature intended the surety to have unfettered ability to surrender a defendant when the surety feels insecure, it would not have included specific reference to § 46-9-510, MCA. Section 46-9-401(3), MCA, by its plain language requires the surrender to be pursuant to § 46-9-510,

[3] And would, in essence, create a civil debtor's prison with the lender being the judge and jury of any asserted infraction.

[4] When the additional criteria required of sureties in effectuating a surrender under § 46-9-510, MCA, was added by the passage of HB 62, § 46-9-401(3), MCA (2021) was eliminated.

MCA. Section 46-9-510, MCA, involves surrender of the defendant when a forfeiture proceeding is pending and logically should be read and interpreted in conjunction with the provisions of Title 46, chapter 9, MCA. Title 46, chapter 9, MCA, sets forth the process for revocation of the order of release for violation of release conditions, forfeiture of bond, and the authority of a surety company to surrender a defendant. While § 46-9-510(1)(b), MCA, provides for some authority for a surety to arrest and surrender a defendant, this authority cannot be exercised unless the court has issued a warrant for the defendant and forfeiture is pending or bail has been declared forfeited by the court. The statutory scheme provided by the legislature is logical and coherent, providing limited, particular rights to sureties with judicial oversight. The statutory provisions limit a surety's bail bond to appearance violations (not ancillary release order conditions) only. Section 46-9-503(5), MCA. They provide a surety the right to notice of forfeiture and, upon a pending forfeiture proceeding, the right to find and surrender the defendant.[5] They do not, however, elevate a surety's financial interest under a civil contract above a defendant's rights to liberty and due process or provide a surety arrest authority far exceeding that of any law enforcement officer.

¶15 Section 46-9-503(1), MCA, provides:

> If a defendant violates a condition of release, including failure to appear, **the prosecutor may** make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the

[5] Now with additional requirements placed on the surety under § 46-6-508, MCA (2023), as provided in § 46-9-510(1)(b), MCA (2023).

> defendant must be brought before a judge in accordance with 46-7-101. [(Emphasis added.)]

This provision deals with alleged violations of release conditions of which the court would not necessarily be aware, but for a motion brought by the prosecutor. Based on the information provided by the prosecutor, the court may issue a warrant or could also set hearing on the motion. This provision provides no authority to a surety to unilaterally revoke bail or to assert alleged release order violations, rights which are reserved to the court and the prosecutor respectively.

¶16 Section 46-9-503(2), MCA, provides for situations where the court is aware of a defendant's failure to appear and provides the court authority to issue a warrant and declare the bail forfeited:

> If a defendant fails to appear before a court as required and bail has been posted, **the judge may declare the bail forfeited**. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.

Section 46-9-503(2), MCA (emphasis added). The court is not required at the time of a defendant's failure to appear to declare the bail forfeited, but rather may determine it appropriate to issue a warrant and first obtain custody of the defendant to inquire into the facts and circumstances of his/her failure to appear before declaring the bail forfeited. However, if the court declares bail forfeited at the time of the defendant's failure to appear, notice of the forfeiture to the defendant and his surety is required.

¶17 If the court does declare the bail forfeited, in addition to the written notice to the surety of the forfeiture, § 46-9-503(3), MCA, further provides the surety with opportunity

to surrender the defendant pursuant to § 46-9-510, MCA, or appear and satisfactorily excuse the defendant's non-appearance:

> If at any time within 90 days after the forfeiture the defendant's sureties surrender the defendant pursuant to 46-9-510 or appear and satisfactorily excuse the defendant's failure to appear, the judge shall direct the forfeiture to be discharged without penalty. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

Section 46-9-503(3), MCA.

¶18 Sections 46-9-503(4) and (5), MCA, provide further protections to the surety requiring the bond be exonerated in situations where defendant's appearance was impossible and limiting a surety's liability for the defendant's appearance and not for the defendant's compliance with other release conditions:

> (4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection (3).
>
> (5) **A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines, restitution, or violations of release conditions other than failure to appear.** The original bond is in effect pursuant to 46-9-121 and is due and payable only if the surety fails, after 90 days from forfeiture, to surrender the defendant or if the defendant fails to appear on the defendant's own within the same time period.

Section 46-9-503(4) and (5), MCA (emphasis added). As the surety is liable only for a defendant's appearance, it is disingenuous to assert surrender rights for conduct relating to something other than the defendant's failure to appear, such as failing to make payments on a bond agreement or inappropriately handling an alcohol monitoring device.

¶19 Similar to the provisions of § 46-9-503, MCA, § 46-9-505, MCA, likewise provides the court, upon verified application of the prosecutor, not the surety, authority to issue an arrest warrant for breaches or *threatened breaches* of any of the conditions of bail. Section 46-9-505, MCA, also provides to pretrial service agencies, not sureties, the power of arrest without a warrant under particular circumstances.

> **Issuance of arrest warrant -- redetermining bail -- definition.**
> (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person.
>
> (2) On verified application by the prosecutor setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.
>
> (3) If the defendant has been released under the supervision of a pretrial services agency, referred to in 46-9-108(1)(f), an officer of that agency may arrest the defendant without a warrant or may deputize any other officer with power of arrest to arrest the defendant by giving the officer oral authorization and within 12 hours delivering to the place of detention a verified written statement setting forth that the defendant has, in the judgment of the officer, violated the conditions of the defendant's release. An oral authorization delivered with the defendant by the arresting officer to the official in charge of a county detention center or other place of detention is a sufficient warrant for detention of the defendant if the pretrial officer delivers a verified written statement within 12 hours of the defendant's arrest.
>
> (4) Upon the arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.
>
> (5) As used in this section, "pretrial services agency" means a government agency or a private entity under contract with a local government whose employees have the minimum training required in 46-23-1003 and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial.

Section 46-9-505, MCA.

¶20 Contrary to Rupnow's assertion, the power of a surety to surrender a defendant does not come about under § 46-9-510, MCA, unless the court has issued a warrant for the defendant for her non-appearance, placing the surety at risk, or upon a declaration of forfeiture of the bail, also placing the surety at risk. In sum, when a forfeiture proceeding is pending or forfeiture declared, a surety is then provided the authority to arrest and surrender the defendant pursuant to § 46-9-510(1)(b) MCA.[6] *See also* § 46-9-510, MCA, *Annotations*, Comm'rs Comments (1991).

¶21 The agreement between a bail bond company and a defendant is a civil contract. If a surety believes, after posting a bond, that the defendant has breached any bail condition or committed some other infraction the surety perceives should require surrender of the defendant, the surety can so advise the prosecutor and provide the facts and circumstances necessary for the prosecutor to determine whether to file a motion or verified application to the court for revocation of the release order. Based on this Court's review of the statutes, there is no authority provided to the surety to unilaterally revoke bail, arrest, and incarcerate the defendant without a warrant or forfeiture notice issued by the court.

¶22 The statutory scheme for bail provided in Title 46, chapter 9, MCA, did not provide authority for Rupnow to have arrested Dahl or to assault her using pepper spray in doing so. As such, there was probable cause to arrest and charge Rupnow for his conduct against

[6] Now with additional requirements placed on the surety under § 46-6-508, MCA (2023) as provided in § 46-9-510(1)(b), MCA (2023).

Dahl.[7] As probable cause existed to charge Rupnow, his claims of malicious prosecution and abuse of process fail as a matter of law.

¶23 Although Rupnow's claims fail as a matter of law as probable cause existed to charge and pursue criminal charges against him, we note our precedent in *Rosenthal* directs dismissal of Rupnow's complaint even if probable cause had been lacking and the prosecutor had improper motives that influenced the decision to file the complaint. Rupnow's claims are based on his criminal charges and their subsequent prosecution. His malicious prosecution claim asserts prosecutors brought criminal charges to make an example out of him. His constitutional claim is based on the criminal charges brought against him. His complaint seeks civil liability from the State and its agents for traditional prosecutorial functions—bringing and pursuing criminal charges. As such, prosecutorial immunity would bar Rupnow's civil claims even if probable cause for the charges against was lacking or the charges were brought by improper motives.

CONCLUSION

¶24 The District Court did not err in granting Defendants' Motion to Dismiss.

¶25 Affirmed.

/S/ INGRID GUSTAFSON

[7] In addition to there being probable cause to charge Rupnow for his conduct against Dahl based on the statutory scheme for bail not providing him authority to arrest Dahl without a warrant of bond forfeiture notice from the court, it is noted that Rupnow has waived the claim that Defendants lacked probable cause by failing to contest the District Court's initial granting of Defendants' motion for leave to file an Information charging Rupnow with aggravated assault and assault with a weapon. *See State v. Hamilton*, 2018 MT 253, ¶ 17, 393 Mont. 102, 428 P.3d 849.

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR

Justice Beth Baker, specially concurring.

¶26 I agree with the Court that because Rupnow's claims all arise from the criminal charges and prosecution against him, they are barred by prosecutorial immunity. *Rosenthal*, ¶¶ 29-30. "Prosecutorial immunity is an established immunity against civil liability." *Renenger v. State*, 2018 MT 228, ¶ 9, 392 Mont. 495, 426 P.3d 559. "A criminal prosecutor is absolutely immune from civil liability when performing the traditional functions of an advocate, regardless of negligence or lack of probable cause." *Renenger*, ¶ 10 (internal quotations and citations omitted). The defendants are absolutely immune from suit, and the District Court properly dismissed Rupnow's complaint. I would affirm on that basis and not reach Rupnow's additional arguments.

/S/ BETH BAKER