

1 IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT  
2 ROCK ISLAND COUNTY, ILLINOIS  
3 SMALL CLAIMS DIVISION

FILED in the CIRCUIT COURT  
of ROCK ISLAND COUNTY  
GENERAL DIVISION

APR 10 1991

5 ROGER WITTEKIND,  
6 Plaintiff,

*Hannette S. Kenney*  
Clark of the Circuit Court

7 vs.

NO. 90 SC 3806

8 BEVERLY RUSK,  
9 Defendant.

10 REPORT OF PROCEEDINGS of the hearing before the  
11 Honorable John M. Telleen on the 19th day of February, 1991.

12 APPEARANCES:

13 Mr. Roger Wittekind appears pro se

14 Mr. Duane Thompson, Attorney for Defendant.

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17 Diane Reason  
18 Official Court Reporter

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Page 4 is she (pro)  
Page 11 misquided

1 BY THE COURT: All right, Mr. Wittekind is present  
2 in person and Mr. Duane Thompson appears as counsel for the  
3 defendant Beverly Rusk in 90 SC 3806. Mr. Wittekind has  
4 scheduled a motion for reconsideration and retrial, was  
5 filed on January 15, 1991. You can proceed, Mr. Wittekind.

6 MR. WITTEKIND: Earlier there were two points that  
7 the one saying probable cause that a judge determine there  
8 was probable cause, and another one that I didn't show  
9 malice.

10 I have looked up the laws according to malice, and  
11 it says this: anything abusing the process of law injure  
12 another person it's self malicious. And what I wanted to do  
13 earlier, I wanted to show that they have done this before.  
14 They've obstructed justice and lied under oath to obtain a  
15 criminal conviction, and they're using that conviction to  
16 convince the judge that I could have done this other thing  
17 wrong.

18 It also says under malicious prosecution that -  
19 oh, it says that, it talks about my character, and what I  
20 would like to point out there is if this woman understood my  
21 character she would have never brought charges against me,  
22 and that in itself makes it malicious, and I've proved that  
23 in the courtroom.

24 There is one more. The three main pieces of

25 # 2

1 evidence I used to show these people are liars are police  
2 reports, testimony from an earlier trial, and the very own  
3 daughter. I did have the daughter subpoenaed for that  
4 purpose. I had to go through - I had to go through the  
5 normal motions. That was just to impeach the mother.  
6 Apparently when I pointed out that, you know, her daughter  
7 proved all her mother's allegations wrong I guess I could  
8 have used more appropriate words. I guess I could have said  
9 her daughter proved her mother was lying.

10 BY THE COURT: For the record, the document that  
11 Mr. Wittekind handed to the court was the printed docket  
12 sheet in 90 CM 9. I am handing it back to him.

13 MR. WITTEKIND: But this is just to show that I  
14 did get my subpoena for Cheryl Wingert issued, and it was on  
15 the grounds to impeach the complaining witness, and that's  
16 exactly what she did, and apparently that might be the best  
17 way to do it again. Might be, you know, if we do get the  
18 retrial, to bring her in and have her impeach her own mother  
19 again.

20 This letter that Beverly wrote me, the one Beverly  
21 wrote to my attorney, she can prove the allegations in there  
22 false.

23 BY THE COURT: You are referring to now, that's the  
24 letter that Mr. Thuline wrote to Mrs. Beverly Wingert. Just  
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1 a minute. Down below that is Plaintiff's Exhibit 4 from  
2 Beverly Wingert Rusk to Don Thuline. Is that what you're  
3 referring to?

4 MR. WITTEKIND: Yeah.

5 BY THE COURT: Dated April 27, '83.

6 MR. WITTEKIND: That I was not bothering Cheryl.  
7 Her mother blows everything out of proportion. This whole  
8 event has been based on lies, and lies that are malicious,  
9 and if she understood why I wanted to talk she would have  
10 never pressed charges.

11 She just so prejudiced. The word prejudiced fits,  
12 and that's another reason why Cheryl should be present  
13 because you can see, you know, that would have helped show  
14 the mother is prejudiced.

15 BY THE COURT: Okay. Anything further?

16 MR. WITTEKIND: Just that it's all been lies.  
17 Lies prove malice, and the lies did affect the jury, and  
18 this judge that so called signed probable cause, and on my  
19 pleadings, on my original pleadings I stated that there was -  
20 how did it put it? That they errored something . . . I got  
21 it written down there. That they made a gross negligence.  
22 I used the words gross negligence in my original pleadings  
23 that they did nothing to sustain that Beverly was telling  
24 the truth, that she was all lies. I proved this in the

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1 courtroom. I proved she was lies and subpoenaed the people  
2 that did it.

3 BY THE COURT: All right, any response Mr.  
4 Thompson?

5 MR. THOMPSON: Just briefly, Your Honor. The  
6 motion presumably is filed pursuant to Chapter 110 Section 2-  
7 1203 on post trial motions. In order to prevail for  
8 reconsideration or rehearing I think the burden is on the  
9 plaintiff to show that there's been newly discovered  
10 evidence or some errors caused by the court.

11 It would seem that Mr. Wittekind's argument the  
12 court erred in hearing the witnesses and weighing the  
13 credibility, and it's obviously within the court's  
14 discretion to make that decision. But I see nothing new  
15 today that Mr. Wittekind raised today that wasn't already  
16 raised at the trial.

17 The other thing, newly discovered evidence. It  
18 would seem he wants to call Cheryl Wingert in to impeach the  
19 defendant in this case, but by his own submission of a copy  
20 of a docket sheet in another case it shows he knew of the  
21 whereabouts and how to subpoena her at that time, so that  
22 this is not newly discovered evidence, or evidence that  
23 wasn't available at the time of trial.

24 I don't see he's presented anything on his motion

1 that would entitle him to a rehearing on this matter, and as  
2 I said, it's in the court's discretion to reconsider its  
3 ruling, and I am sure the court will do that. But I have  
4 heard nothing different today than what was argued at the  
5 trial court.

6 BY THE COURT: You can respond to what Mr.  
7 Thompson said only. Don't make a new argument.

8 MR. WITTEKIND: I do not know Cheryl Wingert's  
9 whereabouts. That's why I had to go through the court to  
10 find her. The other one being so called new evidence to  
11 prove that they lied in court before. I tried to present  
12 that the first time. I tried to show that lying.

13 I got Ed Rusk on the stand, and I tried to get him  
14 to admit to all the things he did wrong to get this sort of  
15 conviction, so I'm not entering that as new evidence. I  
16 tried to enter that before, and that earlier conviction is  
17 the reason why the judge signed this deal on probable cause.

18 There were three witnesses that I would have  
19 brought out if you would let me question Ed Rusk. There  
20 were three witnesses to the event in question - the so  
21 called criminal trespassing.

22 I was not on the Rusk property. I was clearly off  
23 their yard, and he attacked me. He said I tried fighting  
24 him. He had already knocked my glasses off. After my

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1 glasses were knocked off and in the neighborhood yard yeah,  
2 I tried pushing him back, but I didn't provoke it. He makes  
3 it look like I provoked it, and that's the reason for these  
4 three witnesses. That I was not on his property, I was on  
5 the neighbor's yard, and he was standing between me and my  
6 motorcycle.

7 BY THE COURT: You are referring now to the 1983  
8 case?

9 MR. WITTEKIND: Yeah. This would be evidence to  
10 prove that the probable cause was based on lies. But that's  
11 what - I did get the police report. I wanted to enter that  
12 too. I figured in small claims all I had to do was have it  
13 certified. That proves there were witnesses to the event  
14 that were not brought in the courtroom and would have  
15 contradicted their testimony. I did use a police report. A  
16 police report was used in this hearing for telephone  
17 harassment to show they can tell enormous lies; that they  
18 are capable of telling lies without shame, and that I  
19 consider fully malicious.

20 BY THE COURT: Okay. All right. The motion for  
21 reconsideration and retrial has two points in it. Count 1  
22 says that the judge was prejudicial and should have  
23 disqualified himself.

24 Subparagraph A has to do with, makes this

1 statement. Evidence of prejudice is in the simple fact that  
2 the trial judge determined that he didn't need or want the  
3 opening remarks. That point is overruled. That's not  
4 prejudice. That has to do with the judicial economy, and  
5 the issues were simple enough that the court could rule on  
6 the case without the necessity of opening statements. The  
7 court decides the case based upon the evidence that is  
8 legally presented.

9 Subparagraph B, a document not allowed to be used  
10 by the plaintiff was allowed to be used by the defense  
11 without plaintiff's evidence to negate it. That's not  
12 specifically spelled out in the motion. That point is  
13 overruled.

14 Speaking generally as to the prejudice of the  
15 court, and that I should have disqualified myself, I'm aware  
16 of no rule that required me to disqualify myself from this  
17 case. There's no allegation of any rule requiring  
18 disqualification, nor is the court aware of one.

19 As to paragraph 2 on prejudicial error seriously  
20 affecting the whole trial, subparagraph A, there was no  
21 evidence of malice at law requiring the court to find  
22 malice.

23 Subparagraph B, the weight of the evidence is that  
24 there was no malice, and that the fact is that the plaintiff  
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1 failed to prove that the defendant was guided by malice.  
2 Also it failed to show that there was no probable cause on  
3 the part of the defendant in the initial prosecution.

4 I don't understand the part about the "negligence  
5 of the State in dealing with probable cause", but in any  
6 event, if there were any such negligence on the part of the  
7 State that is not binding on Beverly Rusk, and it does not  
8 take away from her probable cause with regard to the  
9 prosecution.

10 Subparagraph C, I'm denying that point. I don't  
11 know if you are talking about a presumption used by me or by  
12 some other judge, but in any event, the plaintiff failed to  
13 prove the cause of action against Beverly Rusk, and the  
14 motion for new trial is denied. You can prepare an order  
15 denying the plaintiff's motion, Mr. Thompson.

16 MR. THOMPSON: Do you want me to make findings in  
17 accordance with your ruling in the order?

18 BY THE COURT: I don't think it's necessary. It's  
19 of record. You don't need to repeat it.

20 MR. WITTEKIND: Just because things weren't clear  
21 in that motion I can't use them? Is that what you are  
22 saying?

23 BY THE COURT: Pardon?

24 MR. WITTEKIND: What do I do now? I still want to  
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1 prove that my motive was never to harass her. I know right  
2 here right in the courtroom I proved I never wanted to  
3 harass her. I wasn't trying to make her look bad in court.  
4 That's why I lost this criminal trespassing. If they wanted  
5 to lie let them lie. But okay.

6 BY THE COURT: Mr. Wittekind, look . .

7 MR. WITTEKIND: It just says you can't win without  
8 an attorney. That's all the court system says.

9 BY THE COURT: Well, that's not exactly true, but  
10 certainly you are better off if you have a trained legal  
11 mind advising you on your rights, and I don't doubt that  
12 it's difficult for a lay person to prosecute their own case.

13 On the other hand, I note that you defended  
14 yourself in one case and were successful in defending  
15 yourself.

16 MR. WITTEKIND: I did that by showing malice. I  
17 showed she lied.

18 BY THE COURT: Well - -

19 MR. WITTEKIND: I offered that.

20 BY THE COURT: That was not a necessary finding of  
21 the not guilty finding in the criminal prosecution.

22 Now I am just going to talk now. So the premise  
23 that you were found not guilty because Beverly Rusk was  
24 guilty of malice is just - doesn't follow legally. Now you

1 were found not guilty. That's only the first thing that you  
2 have to prove to recover on a malicious prosecution case.

3 You also have to prove that the prosecution  
4 commenced without reasonable cause, and that the, or the  
5 complaining witness in the other case was guilty of malice  
6 in proceeding against you.

7 Now you have a viewpoint, or you have a feeling  
8 that Beverly Rusk was motivated by malice in starting that  
9 prosecution and making that complaint. It is the court's  
10 viewpoint based upon the evidence that your viewpoint is  
11 misguided, and that you did not show that Beverly Rusk was  
12 guilty of any malice whatsoever toward you.

13 MR. WITTEKIND: I offered this as evidence. Lies  
14 is what proved the malice. I proved she lied and lied and  
15 lied, and the probable cause was based on her lies.

16 Your Honor, I have to admit I don't agree with  
17 your judgment, but I guess there's nothing I can do about  
18 it.

19 BY THE COURT: I will advise you, just so that you  
20 don't think you've been taken advantage of, that if a  
21 litigant thinks that the trial judge was in error you do  
22 have the right to appeal to the Appellate Court.

23 If you are going to do that you have to -- I don't  
24 know if you have done it before or not.

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MR. WITTEKIND: Where do I get the forms at?

BY THE COURT: You have to file a notice of appeal within 30 days from today, and you are going to have to specifically follow the rules with regard to the prosecution of appeals. Beyond that I cannot give you any advice as to what you should do or whether you should do it. I merely advise you that that's the first requirement.

The hearing is terminated, and the reporter needn't write any more.

