IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
October 5, 2022 Session

KENNETH J. MYNATT v. NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 39 ET AL.

Appeal by Permission from the Court of Appeals
Circuit Court for Rutherford County
No. 75CC1-2020-CV-77158 Darrell Scarlett, Judge

No. M2020-01285-SC-R11-CV

Kenneth J. Mynatt ("Plaintiff") served as the vice president of the local chapter of his union. He filed an action for malicious prosecution and civil conspiracy against the union, the local chapter, and several individuals associated with the union. He alleged that after he publicly criticized the union's financial waste, its leadership accused him of misusing union funds. Those accusations led to his indictment on two felony charges. In the resulting criminal case, the State filed a motion to retire the charges for one year, and those charges were ultimately dismissed after the year passed. In Plaintiff's complaint for malicious prosecution, he stated that he continued to maintain his innocence, that he refused any plea deals, and that the criminal case terminated in his favor because it was ultimately dismissed. The defendants filed a motion to dismiss, arguing that the retirement and dismissal of the criminal charges was not a favorable termination on the merits. Thus, they argued his complaint was missing an essential element of a malicious prosecution claim. The trial court agreed and dismissed the complaint. The Court of Appeals reversed, concluding that Plaintiff sufficiently alleged that the underlying criminal proceedings terminated in his favor. The defendants sought review from this Court, arguing that the Court of Appeals did not apply the correct standard for determining what constitutes a favorable termination for the purpose of a malicious prosecution claim. We conclude that the prohibition in *Himmelfarb v. Allain*, 380 S.W.3d 35 (Tenn. 2012), precluding a fact-intensive and subjective inquiry into the reasons and circumstances leading to dispositions in civil cases also applies to dispositions in criminal cases. We hold that plaintiffs can pursue a claim for malicious prosecution only if an objective examination, limited to the documents disposing of the proceeding or the applicable procedural rules, indicates the termination of the underlying criminal proceeding reflects on the merits of the case and was due to the innocence of the accused. Under this standard, Mr. Mynatt did not allege sufficient facts for a court to conclude that the dismissal of his criminal case was a favorable termination. We therefore reverse the holding of the Court of Appeals and affirm the trial court's judgment granting the motion to dismiss.

Tenn. R. App. P. 11 Appeal by Permission; Judgment of the Court of Appeals Reversed; Judgment of the Circuit Court Affirmed

ROGER A. PAGE, C.J., delivered the opinion of the court, in which SHARON G. LEE, JEFFREY S. BIVINS, HOLLY KIRBY, and SARAH K. CAMPBELL, JJ., joined.

Leon Dayan and Elisabeth Oppenheimer, Washington D.C., and Anthony A. Orlandi, Nashville, Tennessee, for the appellants, National Treasury Employees Union; National Treasury Employees Union, Chapter 39; Anthony Reardon; Colleen Kelley; and John E. Van Atta.

Daniel A. Horwitz, Lindsay E. Smith, and Melissa K. Dix, Nashville, Tennessee, for the appellee, Kenneth J. Mynatt.

Benjamin K. Raybin and Jonathan Harwell, Nashville Tennessee, for the Amicus Curiae, Tennessee Association of Criminal Defense Lawyers.

OPINION

I. Factual & Procedural Background

On April 29, 2020, Kenneth J. Mynatt filed a complaint for malicious prosecution and conspiracy in the Rutherford County Circuit Court against the following defendants: National Treasury Employees Union ("the Union"), National Treasury Employees Union Chapter 39 ("Chapter 39"), John E. Van Atta, Anthony Reardon, and Colleen Kelley ("Union leadership"), (collectively, "Defendants"). This appeal stems from the trial court's grant of Defendants' motion to dismiss. The following factual background is based on the allegations contained in Plaintiff's complaint.

In January 1991, Plaintiff began working for the Internal Revenue Service ("IRS") bargaining unit. Bargaining unit employees have the option to join the Union, which is based in Washington, D.C. Plaintiff joined the Union and was assigned to Chapter 39, headquartered in Nashville, Tennessee. In September 2009, Plaintiff ran for the office of executive vice president of Chapter 39 and was elected to a three-year term. In the same election, Mr. Van Atta was elected president. The new president and vice president were assigned roles as full-time stewards of Chapter 39, meaning that all of their time was devoted to union duties. However, they remained full-time IRS employees. Plaintiff claims that Mr. Van Atta appointed himself as bookkeeper and treasurer of Chapter 39. Mr. Van Atta allegedly possessed the checkbook and debit card, and only Mr. Van Atta and Plaintiff were authorized to sign checks or use the debit card.

Plaintiff published critiques of IRS and Union spending in a newsletter, started a website called "NTEUcontrarians.com," and did an interview with the Washington Post that resulted in the publication of a full-page article.[1] Plaintiff allegedly sought to force transparency and accountability, which led to a spiral of events that he characterized as a conspiracy involving multiple government agencies, and ultimately led to unspecified criminal charges being brought against him.[2] The truth of those allegations is not at issue on appeal.

Over time, Plaintiff's relationships with his peers, Union leadership, and IRS management deteriorated. Plaintiff alleges that after he criticized the Union and agency for financial waste, Defendants accused him of misusing union funds, which led to his indictment on two state felony charges in 2014.[3] In the criminal case against Plaintiff, the prosecution decided to retire[4] the charges for one year, during which time they could have revived the charges at any point. The prosecution never sought to revive the case, and it was formally dismissed in November 2016.

Plaintiff brought this action against Defendants for malicious prosecution and civil conspiracy. Plaintiff alleged that his indictment and arrest occurred because Defendants "created a false narrative, manufactured phony evidence, and tampered with witnesses as a part of a conspiracy." Plaintiff alleged that he maintained his innocence and refused to accept any plea deals.

Addressing the prima facie elements for malicious prosecution, Plaintiff asserted that Defendants initiated the criminal prosecution without probable cause and with malice, that the criminal prosecution terminated in his favor, and that "[a]s a direct and proximate result, [he] suffered damages including . . . shame, humiliation, anxiety, personal injuries, loss of time from work, diminished earning capacity in his profession, embarrassment, cost of legal defense and investigation . . . , [and] loss of his marriage and family." Defendants filed a motion to dismiss Plaintiff's complaint, arguing that it should be dismissed because

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[1] Joe Davidson, *TSA loss becomes NTEU campaign issue*, Wash. Post (June 28, 2011), https://perma.cc/UE7S-BEQ8. In this article, the author discusses the union's 2011 presidential election. *Id.* The NTEU Contrarians website is quoted, saying that, "[i]n the last few years certain elected officials in the NTEU national office have undertaken efforts to diminish the power of chapter leaders and create a form of governance resembling a dictatorship." *Id.*

[2] Plaintiff's complaint states that the indictment was sealed and does not specify the charges.

[3] Federal prosecutors declined to initiate charges. State prosecutors sought the felony charges.

[4] "Retire" is a loosely defined term, and its usage varies throughout the state. For purposes of this opinion, and based on the complaint, we are focusing on the dismissal itself.

Plaintiff could not show that the retirement and dismissal constituted a favorable termination on the merits, which is an essential element of a malicious prosecution claim.

The trial court agreed with Defendants and dismissed the claims. The court stated that "[t]o establish a malicious prosecution claim, a plaintiff must show that the underlying action terminated in the plaintiff's favor on the merits." The trial court quoted *Parrish v. Marquis* to explain what "on the merits" means: "[i]f a court concludes that the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense that it would support a subsequent action for malicious prosecution." 172 S.W.3d 526, 531 (Tenn. 2005) (quoting *Lackner v. LaCroix*, 692 P.2d 393, 395 (Cal. 1979)), *overruled in part by Himmelfarb v. Allain*, 380 S.W.3d 35, 41 (Tenn. 2012). The trial court determined that, for a court to find a favorable termination, the dismissal must reflect a determination on the merits and must reflect innocence. Specifically, the court stated that "[w]here there is no consideration of any of the facts or evidence, it cannot be a determination on the merits." The trial court also dismissed the conspiracy claim because "a claim of conspiracy is only actionable where the underlying tort is actionable," and civil conspiracy is not an independent claim. *See Watson's Carpet & Floor Coverings, Inc. v. McCormick*, 247 S.W.3d 169, 179–80 (Tenn. Ct. App. 2007); *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983).

The Court of Appeals reversed and remanded, determining that Plaintiff "sufficiently alleged in his complaint that the underlying proceedings terminated in his favor by asserting that the charges against him were dismissed, that he was innocent of the charges, and that he entered into no deal or agreement with the prosecutor." *Mynatt v. Nat'l Treasury Emps. Union, Chapter 39*, No. M2020-01285-COA-R3-CV, 2021 WL 4438752, at *6 (Tenn. Ct. App. Sept. 28, 2021). The court reasoned that "there are outcomes other than an acquittal following trial that can constitute a favorable termination" and it is "plausible that the charges were dismissed due to a lack of evidence." *Id.* at *3, *6.

This Court granted Defendants' ensuing application for permission to appeal to consider under what circumstances the dismissal of criminal charges constitutes a "favorable termination" for the purposes of a malicious prosecution claim.

II. Standard of Review

This is an appeal from the trial court's grant of a motion to dismiss for failure to state a claim upon which relief can be granted. Our review of a dismissal under Rule 12.02 of the Tennessee Rules of Civil Procedure requires us to take the allegations in the

complaint as true. *Crews v. Buckman Lab'ys Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002). This is because a motion filed under Rule 12.02(6) challenges "the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." *Webb v. Nashville Area Habitat for Human.*, 346 S.W.3d 422, 426 (Tenn. 2011); Tenn. R. Civ. Pro. 12.02(6). By filing a motion to dismiss, a defendant effectively "admits the truth of all of the relevant and material allegations contained in the complaint, but it asserts that the allegations fail to establish a cause of action." *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005) (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)). As such, "courts should grant a motion to dismiss only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Crews*, 78 S.W.3d at 857. The "trial court's decision to dismiss a petition for failure to state a claim creates a question of law which we review de novo with no presumption of correctness." *Metro. Gov't of Nashville v. Bd. of Zoning Appeals of Nashville*, 477 S.W.3d 750, 754 (Tenn. 2015) (citing *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999)).

III. Analysis

Malicious prosecution is a common law tort claim that allows a person who was a defendant in one case to sue an individual involved in the earlier proceeding for knowingly and maliciously pursuing the defendant for a false act or crime. 5 Tenn. Prac. Civ. Proc. Forms § 8:211 (3d ed. 2001). In the United States Supreme Court case *Albright v. Oliver*, Justice Kennedy wrote in his concurrence that "a malicious prosecution, like a defamatory statement, can cause unjustified torment and anguish—both by tarnishing one's name and by costing the accused money in legal fees and the like." 510 U.S. 266, 283 (1994) (Kennedy, J., concurring) (citations omitted). The tort of malicious prosecution seeks to redress misuse of the legal process, but courts have also observed that "[a]ctions for malicious prosecution . . . ought not to be favored but managed with great caution." *Roblyer v. Hoyt*, 72 N.W.2d 126, 128 (Mich. 1955) (quoting *Van Sant v. Am. Express Co.*, 158 F.2d 924, 931 (3d Cir. 1946)). The possibility of a malicious prosecution action has the "tendency to deter our public officials from the proper performance of their duties to the detriment of the safety and welfare of the community." *Id.* The possibility may also tend to "reduce the public's willingness to resort to the court system for settlement of disputes." *Himmelfarb*, 380 S.W.3d at 41.

To state a claim for malicious prosecution, a plaintiff must show that the defendant (1) instituted a proceeding against him "without probable cause," (2) "with malice," and (3) that the proceeding "terminated in the plaintiff's favor." *Parrish*, 172 S.W.3d at 530 (citing *Christian v. Lapidus*, 833 S.W.2d 71, 73 (Tenn. 1992)). The elements for malicious prosecution are the same regardless of whether the underlying action was criminal or civil. 5 Tenn. Prac. Civ. Proc. Forms § 8:211.

This appeal only relates to the final element of Plaintiff's malicious prosecution claim. Specifically, we granted Defendants' application for permission to appeal to consider under what circumstances the dismissal of criminal charges constitutes a "favorable termination" for the purposes of a malicious prosecution claim. We must also determine whether Plaintiff sufficiently pleaded that the earlier prosecution terminated in his favor.

A.

The applicable standard for a "favorable termination" has evolved in many courts over the last two centuries, including courts in Tennessee. *See Himmelfarb*, 380 S.W.3d at 38–39 (a brief overview of the evolution of favorable termination in the United States). At English common law, the primary inquiry was whether the termination of the initial action was final or plainly inconsistent with innocence. *See Pierce v. Street* (1832) 110 Eng. Rep. 142, 143; *Dowell v. Beningfield* (1841) 174 Eng. Rep. 384, 384–85, 388. Concerns developed about the chilling effect of overly expansive malicious prosecution claims, and the Tennessee courts began to shift to requiring an "indication of innocence." *See Sewell v. Par Cable*, No. 87-266-II, 1988 WL 112915, at *3 (Tenn. Ct. App. Oct. 26, 1988) ("A disposition that does not indicate the plaintiff's innocence is not considered a favorable termination.").[5]

In the 1992 case *Christian v. Lapidus*, this Court declined to require that the underlying lawsuit result in "a final judgment on the merits"—i.e., a verdict of acquittal, in the criminal context, or no liability, in the civil context—"because it permits a wrongdoer to escape liability for institution of a malicious prosecution simply by having the suit dismissed prior to trial." 833 S.W.2d at 74. Instead, the *Christian* Court required the plaintiff to "demonstrate an inference of innocence" in the underlying lawsuit. *Id.* The *Christian* Court held "abandonment or withdrawal of an allegedly malicious prosecution is sufficient to establish a final and favorable termination so long as such abandonment or withdrawal was not accompanied by a compromise or settlement, or accomplished in order to refile the action in another forum." *Id.* "The reasoning behind this rule can be found in the public policy of Tennessee, which supports and favors settlement agreements in compromise of litigation." *Meeks v. Gasaway*, No. M2012-02083-COA-R3-CV, 2013 WL 6908942, at *6 (Tenn. Ct. App. Dec. 30, 2013).

Two more recent Tennessee Supreme Court cases, *Parrish v. Marquis* and *Himmelfarb v. Allain*, both involved malicious prosecution claims stemming from an

[5] *Sewell*, however, allows for a fact-specific inquiry into the circumstances giving rise to the dismissal. *See, e.g.*, *Sewell*, 1988 WL 112915, at *3 ("The plaintiff must go further and present evidence concerning the circumstances surrounding and the reasons for the dismissal of the charges."). *Sewell* was overruled by *Himmelfarb* to the extent that it suggests a court should investigate the subjective motives of the prosecutor.

underlying civil lawsuit and further developed the final element of a malicious prosecution claim. First, in *Parrish v. Marquis*, a client filed a legal malpractice action against her attorney, alleging that the attorney failed to properly represent her interests and engaged in "cost-consuming and inefficient litigation." 172 S.W.3d at 528. The trial court granted the attorney's motion for summary judgment because the statute of limitations had expired and the plaintiff lacked standing. *Id.* The attorney then filed a malicious prosecution complaint. However, this Court ultimately concluded that the attorney's cause of action "was not based on a favorable termination because the underlying legal malpractice complaint was dismissed on procedural grounds that did not reflect on the merits." *Id.*

The *Parrish* Court instructed future courts to "examine the circumstances of the underlying proceeding" to determine whether the termination was favorable. *Id.* at 531. But if "the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense that it would support a subsequent action for malicious prosecution." *Id.* (quoting *Lackner*, 602 P.2d at 395). Courts that follow the Restatement (Second) of Torts approach, which was favorably cited in *Parrish*, call for a fact-specific examination of the circumstances of dismissal and require the circumstances to indicate innocence. *See* Restatement (Second) of Torts §§ 674 cmt. j, 676 (Am. Law Inst. 1977); *Himmelfarb*, 380 S.W.3d at 39 (citing *Siliski v. Allstate Ins. Co.*, 811 A.2d 148, 151–52 (Vt. 2002)); *see also Frey v. Stoneman*, 722 P.2d 274, 278–279 (Ariz. 1986) (discussing the jurisdictions that allow an examination of the circumstances). The *Parrish* Court established that a favorable termination must "reflect on the merits," which seemingly shifted toward a requirement that the circumstances of the underlying case affirmatively indicate innocence—a requirement that the *Christian v. Lapidus* Court had declined.

This Court again considered the favorable termination element of a malicious prosecution claim in the case of *Himmelfarb v. Allain*. In *Himmelfarb*, a patient sued two physicians for leaving a guide wire in a vein leading to her heart, and later, she voluntarily dismissed her claims under Tennessee Rule of Civil Procedure 41.01 after discovering that another party was responsible. *Himmelfarb*, 380 S.W.3d at 37. The physicians then filed a malicious prosecution action against the patient. *Id.* The patient moved for summary judgment because, she argued, the physicians could not establish that the underlying action was terminated in their favor, but the trial court denied her motion. *Id.*

On appeal, this Court looked to *Parrish* and reiterated that to satisfy the favorable termination element of a malicious prosecution claim, the dismissal must be "a reflection on the merits of the underlying case." *Id.* at 40. However, we departed from the *Parrish* case in one notable aspect—we "decline[d] to follow those [majority of] jurisdictions that have adopted comment j to the Restatement (Second) of Torts section 674 and that examine

the circumstances under which a voluntary nonsuit is taken,"[6] *id.* at 39–40, and overruled *Parrish* "[t]o the extent that *Parrish* can be read as adopting the Restatement (Second) approach," *id.* at 41.

We noted that the trial court's order dismissing the plaintiff's case without prejudice "neither addressed the merits of [the plaintiff's] case, nor the liability of [the defendants]." *Id.* This Court then held that a voluntary dismissal "taken pursuant to Tennessee Rule of Civil Procedure 41 is not a favorable termination on the merits for purposes of a malicious prosecution claim." *Id.* at 37. We explained that, among other reasons, we did not "wish to deter parties from dismissing their claims when a dismissal is the appropriate course of action." *Id.* at 41.

As demonstrated, this Court has considered at length and thoughtfully developed the favorable termination standard for the purposes of a malicious prosecution claim where the underlying proceeding was civil. After *Parrish* and *Himmelfarb*, it is clear that a favorable termination must "relate to the merits—reflecting on … []either innocence of []or responsibility for the alleged misconduct," *id.* (quoting *Parrish*, 172 S.W.3d at 531), and not a dismissal on procedural or technical grounds.[7] Additionally, in *Himmelfarb*, by

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[6] Comment j to the Restatement (Second) of Torts section 674 specifies three situations in which a termination is deemed favorable:

> (1) the favorable adjudication of the claim by a competent tribunal, or (2) the withdrawal of the proceedings by the person bringing them, or (3) the dismissal of the proceedings because of his failure to prosecute them.

Restatement (Second) of Torts § 674 cmt. j (Am. Law Inst. 1977). Comment j further states that "[w]hether a withdrawal or an abandonment constitutes a final termination . . . depends upon the circumstances under which the proceedings are withdrawn." *Id.*

[7] Our research reveals there is not a consistent standard across the United States; however, "indicates innocence" and a reflection "on the merits" appear to be common favorable termination standards for purposes of malicious prosecution claims. *See, e.g.*, *Plouffe v. Mont. Dep't of Health and Hum. Servs.*, 45 P.3d 10, 18 (Mont. 2002) ("For the termination of the underlying action to be deemed favorable to the defendant, the termination must reflect on the merits of the underlying action." (quotation omitted)); *Lackner*, 602 P.2d at 395 ("If the termination does not relate to the merits reflecting on neither innocence of nor responsibility for the alleged misconduct the termination is not favorable in the sense it would support a subsequent action for malicious prosecution."); *Davidson v. Castner-Knott Dry Goods Co.*, 202 S.W.3d 597, 605 (Ky. Ct. App. 2006) ("[D]ismissal of a suit for technical or procedural reasons that do not reflect on the merits of the case is not a favorable termination of the action." (quotation omitted)); *Palmer Dev. Corp. v. Gordon*, 723 A.2d 881, 884 (Me. 1999) ("Society does not want litigants who committed the acts of which they are accused, but who were able to escape liability on a 'technicality' or procedural device, to turn around and collect damages against their accuser. This reason justifies a requirement that the favorable termination of the underlying proceeding be on the merits or, in some way, reflect on the merits."). *But see*

prohibiting courts from delving into the circumstances of a voluntary dismissal, *id.* at 39–41,[8] we "set[] a high standard for a court to find a favorable termination where there is no order expressly stating a ruling on the merits," *In re McKenzie*, No. 08-16378, 2013 WL 1091634, at *11 (Bankr. E.D. Tenn. Mar. 5, 2013).

In prohibiting courts from examining the underlying proceeding to determine whether the dismissal was favorable to the defendant, we favorably cited to the Colorado case *Hewitt v. Rice*, which explained:

> There are sound reasons why the tort of malicious prosecution is subjected to rigorous standards of proof. The tort of malicious prosecution has traditionally been disfavored in the law because of its chilling effect on the right of access to the courts. Relaxing the standard of favorable termination by allowing the jury to consider the facts and circumstances underlying the parties' decision to settle a case would lower the burden of proof in a malicious prosecution case and deter the settlement of cases . . . . Making it easier to prove a malicious prosecution case . . . runs the risk of chilling access to the courts and unnecessarily expanding liability.

154 P.3d 408, 416 (Colo. 2007) (en banc) (citation omitted).

However, notably absent from our jurisprudence is significant guidance as to what qualifies as a favorable termination in the criminal context. More specifically, this Court has never directly addressed when the dismissal of criminal charges can constitute a favorable termination. Of course, as the *Christian* Court alluded to over thirty years ago, a criminal trial followed by an acquittal is certainly a favorable outcome, but it is not the only way to meet the favorable termination standard.[9] *Christian*, 833 S.W.2d at 74.

Glasgow v. Fox, 757 P.2d 836, 839 (Okla. 1988) (requiring a favorable termination to "reach the substantive rights of the cause of action and thereby vindicate appellant as to the underlying action").

[8] There is also inconsistency as to whether reviewing courts can review the circumstances of the dismissal or are limited to the dismissal documents. For example, Florida requires the dismissal to indicate the defendant's innocence based on the "reasons and circumstances underlying the dismissal." *Cohen v. Corwin*, 980 So. 2d 1153, 1155–56 (Fla. Dist. Ct. App. 2008).

[9] Over a century ago, this Court accepted that a prosecutor's entry of a nolle prosequi could support a malicious prosecution claim, *Scheibler v. Steinburg*, 167 S.W. 866, 866–867 (Tenn. 1914), and nearly two centuries ago, that dismissal of a criminal warrant for lack of proof qualified. *Williams v. Norwood*, 10 Tenn. (2 Yer.) 329, 336 (1829). As discussed above, the law has evolved significantly since these holdings. Particularly, the holding in *Scheibler* is inconsistent with the standard we adopt today. Therefore, to the extent *Scheibler* is inconsistent with our holding herein, it is overruled.

As the Court of Appeals in this case outlined, our intermediate courts have determined that there are several outcomes in a criminal case that do *not* satisfy the favorable termination standard in a resulting malicious prosecution action:

> (1) dismissal based on any type of plea, settlement, compromise, *see Landers v. Kroger Co.*, 539 S.W.2d 130, 133 (Tenn. Ct. App. 1976); *Collins v. Carter*, No. E2018-01365-COA-R3-CV, 2020 WL 1814905, at *5 (Tenn. Ct. App. Apr. 9, 2020); (2) dismissal contingent upon the accused's agreement to pay court costs because an innocent defendant cannot be taxed with costs, *see Cannon v. Peninsula Hosp.*, No. E2003-00200-COA-R3-CV, 2003 WL 22335087, at *2 (Tenn. Ct. App. Sept. 25, 2003); *Bowman v. Breeden*, No. CA 1206, 1988 WL 136640, at *2 (Tenn. Ct. App. Dec. 20, 1988); (3) dismissal based upon the unconstitutionality of a statute, *see Spurlock v. Pioneer Credit Co.*, No. 1386, 1991 WL 51404, at *2 (Tenn. Ct. App. Apr. 11, 1991); and (4) dismissal based upon double jeopardy, *see Foshee v. S. Fin. & Thrift Corp.*, 967 S.W.2d 817, 820 (Tenn. Ct. App. 1997).

Mynatt, 2021 WL 4438752, at *4.

In our view, certain notable differences between civil lawsuits and criminal prosecutions justify an independent examination of the appropriate favorable termination standard in the criminal context. The difference that is most relevant in the case before us is that in a civil case, the complainant decides whether to voluntarily dismiss the lawsuit, but in a criminal proceeding, the prosecutor is the one with such authority. We are also mindful of the fact that prosecutors, unlike private litigants, have obligations to the public. Still, despite their differences, some of the same policy reasons supporting a heightened favorable termination standard where the underlying action was civil also apply in the criminal context. In addition, the threat of a later malicious prosecution action could have a chilling effect on prosecutors or deter citizens from good-faith reporting of potentially criminal conduct.

Defendants contend that the distinction between civil and criminal actions is immaterial for the purpose of malicious prosecution claims and that this Court should extend the favorable termination standard articulated in *Parrish* and *Himmelfarb* to apply equally where the underlying proceeding was criminal. Defendants argue that a favorable termination must address the merits of the lawsuit, the determination must be based on an objective examination of the dismissal document or applicable rules of procedure, and the dismissal must *affirmatively indicate* that the plaintiff was innocent. *See Himmelfarb*, 380 S.W.3d at 40–41; *Parrish*, 172 S.W.3d at 531.

Conversely, Plaintiff cites to *Collins v. Carter*, a recent Court of Appeals opinion, and urges this Court to find that he must only demonstrate a formal end to a prosecution in

a manner that is *not inconsistent* with the plaintiff's innocence.[10] 2020 WL 1814905, No. E2018-01365-COA-R3-CV, at *5 (Tenn., Apr. 9, 2020) ("A favorable termination should allow an inference that the accused was innocent of wrongdoing."); *see also Laskar v. Hurd*, 972 F.3d 1278, 1289 (11th Cir. 2020) ("[A] formal end to a prosecution in a manner not inconsistent with a plaintiff's innocence is a favorable termination.").

Plaintiff contends that there are other protections that ensure a holding in his favor would not have a chilling effect, including the Tennessee Public Participation Act ("TPPA"), Tennessee Code Annotated sections 20-17-101 to -110; Tennessee's public interest and common interest privileges; and the fact that the remaining elements of a malicious prosecution claim are difficult to satisfy (i.e., lack of probable cause and malice). He further argues that a fact-specific inquiry into the circumstances that gave rise to the dismissal is required. *See Collins*, 2020 WL 1814905, at *5 ("[T]he circumstances under which the prior action terminated remains a question of fact."). According to Plaintiff, because the charges against him were formally dismissed without compromise or settlement, the prosecution terminated in his favor.

In response, Defendants argue that in *Parrish*, this Court rejected the "not inconsistent with innocence" approach, instead requiring that the disposition of the underlying case favorably "reflect on the merits." Defendants highlight *Himmelfarb*'s express rejection of the Restatement (Second) of Torts section 674 in arguing that it is impermissible to use extrinsic evidence to determine the reasons an underlying case was voluntarily dismissed and that plaintiffs must instead establish the dismissal was a determination on the merits based on the dismissal documents or the applicable rules of procedure.[11]

[10] Amicus Tennessee Association of Criminal Defense Lawyers ("TACDL") advocates for a standard that is even more lenient, arguing that a termination is favorable so long as it does not indicate guilt. In its brief, TACDL states that the malicious prosecution remedy is of vital importance to criminal defendants because it is the only way for innocent defendants to be made whole after a baseless prosecution. TACDL proposes that the proper inquiry for a favorable termination is whether the disposition indicates guilt and that a dismissal of any sort (absent evidence of compromise or settlement) is sufficient to find a favorable termination.

[11] Defendants also point out that Plaintiff agreed to waive his speedy trial rights in order to obtain the retirement, arguing that this constitutes a compromise and renders the subsequent dismissal insufficient to support a malicious prosecution claim. The Court of Appeals rejected this argument, stating that a waiver of speedy trial rights "is not equivalent to a compromise resulting in dismissal and does not bear on his guilt or innocence." *Mynatt*, 2021 WL 4438752, at *6. We need not address this issue today because we conclude that a dismissal alone does not constitute a favorable termination, even if Plaintiff had not waived his speedy trial rights.

After considering the arguments of the parties and the decisions of courts in other jurisdictions, we conclude that a heightened barrier to bringing a successful claim of malicious prosecution is also appropriate in the criminal context and that the favorable termination standard articulated in *Parrish* and *Himmelfarb* should be extended to apply where the underlying proceeding was criminal. *See, e.g.*, *Ash v. Ash*, 651 N.E.2d 945, 947 (Ohio 1995) ("A proceeding is 'terminated in favor of the accused' only when its final disposition indicates that the accused is innocent."); *Lay v. Pettengill*, 38 A.3d 1139, 1152 (Vt. 2011); *see also* Restatement (Second) of Torts § 660 cmt. a (Am. Law Inst. 1977) (explaining that where the underlying action is criminal, the proceeding ends in a favorable termination "only when their final disposition is such as to indicate the innocence of the accused"); *cf. Thompson v. Clark*, 142 S. Ct. 1332, 1340 (2022) (holding that elements of malicious prosecution claim in federal court under §1983 are defined by the common law as it existed in 1871, which did not require an affirmative indication of innocence to establish favorable termination of the prosecution).

We conclude that, regardless of whether the underlying action was civil or criminal, a fact-intensive and subjective inquiry into the reasons for and circumstances leading to the disposition is not permissible. *See, e.g.*, *Neff v. Neff*, 247 P.3d 380, 394 (Utah 2011) (requiring that the judgment in the underlying criminal proceeding indicate the accused's innocence for purposes of a malicious prosecution claim). Particularly where the underlying proceeding was criminal, the possibility of future discovery is not only daunting, but will be costly and time-consuming. Former prosecutors will be difficult to locate and might not have notes or recollection of their reasons for dismissing a criminal case. In criminal cases, prosecutors should feel free to dismiss cases if they conclude that the public interest is served by doing so without concern that they will be subject to later discovery regarding their reasons for dismissal, and citizens should not be deterred from providing information to prosecutors.

Moreover, there are numerous reasons why a prosecutor might decide to dismiss a case. For instance, dockets may become overcrowded, a prosecutor's primary witness may be afraid to testify, or it may be difficult for the prosecutor to gather evidence in a timely manner. Although there is a presumption of innocence in criminal cases, a dismissal does not, by virtue of that, indicate innocence or that the action is without merit. These other possibilities demonstrate that while a lack of evidence is certainly one possible reason to dismiss a case, it is far from the only possible reason.

We now clarify that the favorable termination standard provided in *Himmelfarb* and *Parrish* applies regardless of whether the underlying dismissal involves a criminal or civil

action.[12] A plaintiff can pursue a claim for malicious prosecution only if an objective examination, limited to the documents disposing of the proceeding or the applicable procedural rules, indicates the termination of the underlying criminal proceeding reflects on the merits of the case and was due to the innocence of the accused.

B.

We now turn to the specifics of the appeal before us. Ordinarily, when a voluntary dismissal is taken in a civil case, the rights of the parties are not adjudicated, and the case may be refiled at any time subject to the statute of limitations and Rule 41 of the Tennessee Rules of Civil Procedure. *See, e.g.*, *Crowley v. Thomas*, 343 S.W.3d 32, 34–35 (Tenn. 2011); Tenn. R. Civ. P. 41.01. Similarly, when a prosecutor retires a case, the parties agree that their rights are not adjudicated, and the prosecutor may revive the case at any time during the retirement period.

Here, the dismissal documents from the underlying case are not before the Court, and Plaintiff did not allege in his complaint that anything therein specifically discusses the merits or indicates Plaintiff's innocence. According to Plaintiff, he was only "required to *allege* favorable termination" in his complaint, and he explains that "an allegation . . . can be tested and challenged at a later stage in the proceedings." He maintains that the Court is required to take those allegations as true because a defendant admits those allegations as true for purposes of the motion when it files a motion to dismiss.

However, "courts are not required to accept as true assertions that are merely legal arguments or 'legal conclusions' couched as facts." *Webb*, 346 S.W.3d 422, 427 (quoting *Riggs v. Burson*, 941 S.W.2d 44, 47–48 (Tenn. 1997)); *Donaldson v. Donaldson*, 557 S.W.2d 60, 61 (Tenn. 1977) ("[A] complaint . . . must contain 'direct allegations on every material point necessary to sustain a recovery on any legal theory, . . . or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial.'") (quoting 5 Charles A. Wright & Arthur R. Miller, Fed. Prac. and Proc. § 1216 (1st ed. 1969)). Without more, this Court cannot consider the dismissal in this case a favorable termination—the dismissal did not reflect on the merits of the case or indicate innocence. Rather, his allegations require discovery to prove the final element of his malicious prosecution claim. And, as determined above, this is not permissible under the *Himmelfarb* and *Parrish* standard.

[12] While *Himmelfarb* said "termination on the merits," it was embracing the part of *Parrish* that said "reflects on the merits," which is the proper standard. *See Parrish*, 172 S.W.3d at 531 (quoting *Lackner*, 602 P.2d at 393 ("It is not essential to maintenance of an action for malicious prosecution that the prior proceeding was favorably terminated following trial on the merits. However, termination must *reflect* on the merits of the underlying action.").

Because Plaintiff's complaint did not allege facts sufficient to show that the dismissal of his criminal charges constituted a favorable termination reflecting on the merits and indicating innocence, Plaintiff cannot prove an essential element of his malicious prosecution claim. Therefore, the Court of Appeals erred in reversing the trial court's dismissal of the complaint.

IV. Conclusion

This Court holds that, regarding the final element of a malicious prosecution claim, the favorable termination standard established in *Himmelfarb* and *Parrish* applies equally where the underlying judicial proceeding was criminal. A favorable termination must reflect on the merits and indicate innocence, and the determination must be based on the dismissal documents or applicable rules of procedure. Under this standard, Plaintiff did not allege sufficient facts to find that his dismissal was a favorable termination for purposes of maintaining a claim for malicious prosecution. We therefore reverse the Court of Appeals and affirm the judgment of the trial court in favor of Defendants. The costs of this appeal are taxed to the appellee, Kenneth J. Mynatt, for which execution may issue if necessary.

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ROGER A. PAGE, CHIEF JUSTICE