

[Cite as *Morris v. Dobbins Nursing Home*, 2011-Ohio-3014.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLERMONT COUNTY

STEPHANIE MORRIS,	:	
Plaintiff-Appellant,	:	CASE NOS. CA2010-12-102
- vs -	:	<u>OPINION</u>
	:	6/20/2011
DOBBINS NURSING HOME, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
Case No. 2009 CV 1943

Jacobs, Kleinman, Seibel & McNally, Mark J. Byrne, 2300 Kroger Building, 1014 Vine Street, Cincinnati, Ohio 45202, for plaintiff-appellant

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**HUTZEL, J.**

{¶1} Plaintiff-appellant, Stephanie Morris, appeals the decision of the Clermont County Court of Common Pleas granting summary judgment in favor of

defendants-appellees, Dobbins Nursing Home, Steve Meeker, and Vicki Chambers.<sup>1</sup>  
We affirm the trial court's decision, albeit on different grounds.

{¶2} From August 8, 2005, through March 14, 2006, Dobbins Nursing Home employed Morris as an activities aide. During Morris' employment, Meeker was the licensed nursing home administrator. Chambers was employed as the nursing home's activities director, and she was Morris' immediate supervisor.

{¶3} Upon being hired, Morris went through the nursing home's orientation. At her orientation, Morris signed a statement acknowledging that she was an employee at-will. Morris further acknowledged she had been informed of her job duties and the personnel policies of the nursing home. Less than three months later, near the end of October 2005, Morris attended a mandatory in-service meeting sponsored by Meeker. At this meeting nursing home employees were instructed on how resident funds should be handled. Morris signed the in-service attendance sheet, stating that she had read the nursing home's policy regarding money brought to Dobbins Nursing Home.

{¶4} The policy stated the following: "All money, rents, payments, residents' funds, donations in check, money order, cash – whatever, any & all forms it be in by its bearer brought or by \* \* \* any mode of delivery, goes to the [nursing home] administrator/administrator's office. Employees should avoid receiving above described funds & send funds & money bearer to administrator. If administrator [is] away, nurse in charge should be informed & nurse [should] lock funds in med[ical] cart lock-up. If funds are cash, write the bearer a receipt on any piece of paper, sign & date it. Write dollar amount, from whom, to whom & for what cash [is] for on

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1. Pursuant to Loc.R. 6(A), we sua sponte remove this appeal from the accelerated calendar.

another paper & put it [with] money when locked up & then deliver them to administrator as soon as possible."

{¶15} In November 2005, Morris received permission from Mable Farris, a resident at the nursing home, and Juanita Farris, Mable's daughter-in-law and the individual responsible for Mable's care in 2005 and 2006, to handle Mable's checks<sup>2</sup> and to provide transportation for Mable. Juanita allegedly wrote two notes giving Morris such permission, and the notes were filed in Mable's patient file by Edith Roepken, a charge nurse at Dobbins in November 2005, who was later promoted to director of nursing in January 2006.

{¶16} In February 2006, the Ohio Department of Health sent an investigator to Dobbins Nursing Home to conduct surveys. The state investigator talked with Morris and other nursing home employees. Morris alleges that at this time she reported that Dobbins Nursing Home was not following nursing home laws in the pursuit of its care for residents, and that several unlawful activities had been committed by the nursing home. Although not directly set forth in her complaint, Morris claims that the specific unlawful activities she reported to the state investigator included her compliance in acting as a nurse aide, at the request of Dobbins Nursing Home's director of nursing, without officially holding the position and the nursing home's failure to employ an activities director. Morris contends that as a result of the information she provided to the state investigator, Dobbins Nursing Home was fined for its failure to follow certain regulations relating to the operation of nursing home facilities.

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2. Nursing home residents were provided with a personal needs account. Funds deposited in this account included the portion of the resident's social security check that was remaining after the social security funds were used to pay Dobbins Nursing Home for services rendered to the resident during the preceding month. The amount left over after payment for the nursing home's services was paid to the resident by virtue of a check, which was delivered to the resident in his or her room at the nursing home.

{¶17} On February 28, 2006, Morris injured her back while at the nursing home, and as a result of said injury filed a workers' compensation claim. Morris was "on and off" work for a period of time. She returned to work on March 14, 2006, and was called into a meeting with Meeker and Chambers. At this meeting Morris was accused of committing numerous violations of company policy, including misappropriating resident funds. When Meeker and Chambers asked Morris to retrieve the resident's funds, Morris claimed that she did not have the funds in her possession as she had returned the funds to the resident's family at least two days earlier. Despite Morris' claim that she had permission from Mable Farris and Juanita Farris to handle Mable's funds, Morris' employment was terminated on March 14, 2006, for the misappropriation of resident funds and for insubordination. As Morris was being escorted off the premises, she made the following statement to Chambers: "If you don't put my things down, I'll give them reason to call the police on me to get me out of here."

{¶18} After terminating Morris' employment, Meeker and Chambers reported Morris' misappropriation of resident funds to the New Richmond Police Department. Chambers also reported Morris' threatening statement. On March 15, 2006, an arrest warrant was issued and criminal charges for theft and menacing were brought against Morris in the Clermont County Municipal Court. On May 12, 2006, the charges against Morris were dismissed, and Morris was ordered not to have any further contact with Chambers or Dobbins Nursing Home.

{¶19} Thereafter, Morris initiated suit against Dobbins Nursing Home, Meeker, and Chambers for disability discrimination, wrongful discharge in violation of public

policy, libel and slander, and malicious prosecution.<sup>3</sup> Appellees filed a motion for summary judgment, and the trial court granted their motion as to all counts. Morris filed a timely appeal challenging the trial court's decision to award summary judgment in appellees' favor with respect to the wrongful discharge and malicious prosecution claims.

{¶10} Assignment of Error No. 1:

{¶11} "THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO \* \* \* APPELLEES BECAUSE ISSUES OF MATERIAL FACT EXIST AS TO WHETHER MORRIS WAS TERMINATED IN VIOLATION OF OHIO PUBLIC POLICY \* \* \*."

{¶12} Assignment of Error No. 2:

{¶13} "THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO \* \* \* APPELLEES BECAUSE ISSUES OF MATERIAL FACT EXIST AS TO MORRIS' CLAIM AGAINST \* \* \* APPELLEES FOR MALICIOUS PROSECUTION."

{¶14} This court's review of a trial court's ruling on a motion for summary judgment is de novo. *Grizinski v. Am. Express Fin. Advisors, Inc.*, 187 Ohio App.3d 393, 2010-Ohio-1945, ¶14. "De novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Brewer v. Cleveland Bd. of Edn.* (1997), 122 Ohio App.3d 378, 383. Summary judgment is appropriate when there are no genuine issues of material fact to be litigated, the moving party is entitled to judgment as a matter of law, and reasonable minds can

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3. Morris had originally brought suit against Dobbins Nursing Home, Meeker, and Chambers on March 14, 2007. Her original suit was dismissed, and the present action was refiled on September 16, 2009, pursuant to R.C. 2305.19 and Civ.R. 41.

come to only one conclusion, and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Williams v. McFarland Properties, L.L.C.*, 117 Ohio App.3d 490, 2008-Ohio-3594, ¶7.

{¶15} To prevail on a motion for summary judgment, the moving party must be able to point to evidentiary materials that show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The nonmoving party must then present evidence that some issue of material fact remains to be resolved. *Id.* All evidence submitted in connection with a motion for summary judgment must be construed most strongly in favor of the party against whom the motion is made. *Morris v. First Natl. Bank & Trust Co.* (1970), 21 Ohio St.2d 25, 28.

{¶16} In her first assignment of error, Morris claims the trial court erred in granting summary judgment in appellees' favor as genuine issues of material fact exist as to whether her employment was terminated in violation of Ohio's public policy. Morris claims that the trial court erred in applying the Whistleblower Statute, R.C. 4113.52, to her claim because she was proceeding under a common-law theory of wrongful discharge. Morris therefore contends that the six-month statute of limitations set forth in R.C. 4113.52 does not apply. Relying on R.C. 2305.09(D) and *Pytlinski v. Brocar Prod., Inc.*, 94 Ohio St.3d 77, 80, 2002-Ohio-66, Morris argues that her common-law claim of wrongful discharge is governed by a four-year statute of limitations, which has not expired. She further argues that under a common-law wrongful discharge analysis genuine issues of material fact exist that prevent summary judgment from being entered in appellees' favor.

{¶17} Under Ohio law, at-will employees may be discharged by their employer for any reason, or for no reason at all, provided that their termination is not contrary to public policy. *Greeley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St.3d 228, paragraph two of the syllabus. "An at-will employee who is discharged or disciplined in violation of the public policy embodied in R.C. 4113.52 may maintain a common-law cause of action against the employer pursuant to *Greeley v. Miami Valley Maintenance Contrs., Inc.* \* \* \* and its progeny, so long as that employee had fully complied with the statute and was subsequently discharged or disciplined." (Emphasis added.) *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 1997-Ohio-219, paragraph three of the syllabus. However, if an employee fails to strictly comply with the requirements of R.C.4113.52,<sup>4</sup> the employee cannot base a *Greeley* claim solely upon the public policy embodied in that statute. *Id.* at 153. Rather, the employee must identify an independent source of public policy to support her claim. See *Thompson v. Gynecological Oncology & Pelvic Surgery Assoc.*, Franklin App. No. 06AP-340, 2006-Ohio-6377, ¶50 ("[A] plaintiff may not bring a public policy tort claim based on the public policy embodied in a statute unless she either complies with the statute embodying the public policy or identifies an independent source of

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4. "Ohio's Whistleblower Statute, R.C. 4113.52, provides specific procedures an employee must follow to gain statutory protection as a whistleblower. R.C. 4113.52(A)(1)(a) addresses the situation where an employee in the course of his or her employment becomes aware of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the employer has the authority to correct, and the employee reasonably believes that the violation either is a criminal offense that is likely to cause an imminent risk of physical harm or a hazard to public health or safety or is a felony. Under such circumstances, *R.C. 4113.52(A)(1)(a)* requires that the employee orally notify his or her supervisor or other responsible officer of the employer of the violation and subsequently file with that person a written report that provides sufficient detail to identify and describe the violation. *If these requirements have been satisfied* and the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within twenty-four hours after the oral notification or the receipt of the written report, whichever is earlier, the employee may *then* file a written report with the prosecuting authority of the county or municipal corporation where the violation occurred or with some other appropriate person specified in R.C. 4113.52(A)(1)(a)." (Emphasis sic; internal quotation marks omitted.) *Kulch*, 78 Ohio St.3d at 141.

public policy supporting her claim."); *Lesko v. Riverside Methodist Hosp.*, Franklin App. No. 04AP-1130, 2005-Ohio-3142, ¶34 ("[A]ppellant is entitled to bring a public policy tort claim regardless of whether she complied with R.C. 4113.52, as long as she can identify a source of public policy separate from the public policy embodied in R.C. 4113.52."); *McGuire v. Elyria United Methodist Vill.*, 152 Ohio App.3d 186, 2003-Ohio-1296, ¶26 ("If an individual's termination is for a reason that is in violation of public policy, but is independent of the public policy embodied in R.C. 4113.51 et seq., [the employee] may bring suit under *Greely* alone without complying with R.C. 4113.52.").

**{¶18}** In the instant case, Morris did not comply with the requirements set forth in R.C. 4113.52. Morris has not produced any evidence demonstrating, nor has she alleged, that she notified appellees, orally or in writing, of any nursing home violations prior to reporting such violations to the state investigator. Because Morris did not comply with the requirements of R.C. 4113.52, she therefore cannot maintain her common-law wrongful discharge claim based upon the public policy embodied in the Whistleblower Statute. She must identify an independent source of public policy to proceed with a *Greely* claim.

**{¶19}** To proceed with a claim for wrongful termination in violation of Ohio public policy, a plaintiff must demonstrate four things:

**{¶20}** "1. That a clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity element).

**{¶21}** "2. That dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the jeopardy element).

{¶22} "3. The plaintiff's dismissal was motivated by conduct related to the public policy (the causation element).

{¶23} "4. The employer lacked overriding legitimate business justification for the dismissal (the overriding justification element)." *Painter v. Graley*, 70 Ohio St.3d 377, 384, fn. 8, 1994-Ohio-334.

{¶24} The clarity and jeopardy elements are questions of law and policy to be determined by the court, whereas the causation and overriding justification elements are questions of fact to be determined by the jury. *Collins v. Rizkana*, 73 Ohio St.3d 65, 70, 1995-Ohio-135.

{¶25} Morris contends that there are two clear public policies that would be jeopardized if Dobbins Nursing Home were permitted to terminate her employment under the circumstances described above. First, Morris contends that a clear public policy is embodied in Sections 483.25, 483.30, 483.152, 483.154, and 488.9, Title 42, C.F.R.,<sup>5</sup> which detail how a nursing home facility should be operated. Morris

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5. {¶a} Section 483.25, Title 42, C.F.R., sets forth the quality of care that nursing home facilities must provide to their residents. "Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychological well-being, in accordance with the comprehensive assessment and plan of care." Id.

{¶b} Section 483.30, Title 42, C.F.R., provides that "[t]he facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychological well-being of each resident, as determined by resident assessments and individual plans of care."

{¶c} Section 483.152, Title 42, C.F.R., sets forth the requirements for the approval and operation of a nurse aide training and competency evaluation program, and Section 483.154, Title 42, C.F.R., provides the specific contents that must be contained within a nurse aid competency evaluation.

{¶d} Section 488.9, Title 42, C.F.R., provides for onsite observation for those facilities that are accredited as Medicare and Medicaid Service Centers. "As part of the application review process, the validation review process, or the continuing oversight of an accreditation organization's performance, CMS may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and to assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, the review of the documents, auditing meetings concerning the accreditation process, the evaluation of survey results or

contends that these regulations specifically prohibit a nursing home facility from operating without an activities director and from allowing employees to act as a nurse aide when they are not certified to do so. While we agree that Ohio does have an interest in ensuring that nursing home facilities are operated safely and in accordance with the law, the federal regulations that Morris relies upon, do not, alone, support her public-policy claim.

{¶26} The sections of the Code of Federal Regulations that Morris relies upon merely provide baseline technical criteria that Dobbins Nursing Home had to meet in order to operate the nursing home facility. By relying solely on these operating regulations, without relying on the public policy embodied in the Whistleblower Statute, Morris is unable to demonstrate that her termination violated public policy. None of the regulations relied on by Morris affirmatively required her, as an employee of the nursing home, to report improper operation of the nursing home. The alleged misconduct by appellees is not manifested clearly enough in the regulations set forth by Morris to warrant abrogating the at-will employment doctrine. See e.g. *Dean v. Consol. Equities Realty #3, L.L.C.*, 182 Ohio App.3d 725, 2009-Ohio-2480; *Hale v. Volunteers of America*, 158 Ohio App.3d 415, 2004-Ohio-4508; *Shaffer v. Ohio Health Corp.*, Franklin App. No. 04AP-236, 2004-Ohio-6523. Accordingly, we find that Sections 483.25, 483.30, 483.152, 483.154, and 488.9, Title 42, C.F.R., do not embody a clear public policy on which Morris may bring a wrongful discharge claim.

{¶27} Morris also contends that Ohio's public policy against fraud, as it is set forth in R.C. 2913.42(A)(1),<sup>6</sup> also provides a basis for her wrongful discharge claim.

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the accreditation decision-making process, and interviews with the organization's staff." Id.

6. R.C. 2913.42(A)(1) provides: "No person, knowing the person has no privilege to do so, and with

Although not set forth in her complaint, Morris seeks to add additional improper grounds for her termination by arguing that she was asked by Meeker in February 2006, after the state investigator had visited the facility, to falsify a document which would indicate that a residents' council meeting had occurred in January 2006. Morris claims that Meeker asked her to falsify the document so that Dobbins Nursing Home could avoid an additional citation by the state, but she refused to falsify the document. In her memorandum in opposition to appellees' motion for summary judgment, Morris argues that she "falls within the protection afforded in Ohio for wrongful termination \* \* \* because she refused to execute or backdate false documents that she knew would be sent to the State of Ohio attesting to facts that she knew were untrue."

{¶28} "We are mindful that even if a complaint neither contains allegations on a legal theory nor suggests or intends to advance that theory, the complaint may still be sufficient if it contain[s] allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at *trial*." (Emphasis sic; internal quotation marks omitted.) *White v. Mt. Carmel Med. Ctr.*, 150 Ohio App.3d 316, 2002-Ohio-6446, ¶52. However, in the present case, we find that appellees could not have been expected to infer that Morris was going to claim wrongful discharge for refusing to commit a criminal act. Nothing in Morris' complaint alluded to such a theory. Her complaint is completely devoid of any reference to wrongful termination for refusing to create false documents. The only ground for termination alleged in Morris' complaint was that she "was terminated because of her acts in

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purpose to defraud or knowing that the purpose is facilitating a fraud, shall \* \* \* [f]alsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record."

reporting unlawful conduct by Dobbins [Nursing Home] to the State of Ohio authorities." There is no allegation that she ever informed the Department of Health's investigator, or any other state authority, of the alleged request that she commit fraud. In fact, as the alleged incident occurred *after* the state investigator had visited Dobbins Nursing Home, it would have been impossible for Morris to report such activity to the state investigator conducting the February 2006 surveys.

{¶29} Accordingly, we find Morris' late disclosure of a new ground for termination in her memorandum in opposition to summary judgment to be improper. "A plaintiff cannot fulfill her burden under Civ.R. 56 merely by asserting new claims in response to a properly supported motion for summary judgment." *Bradley v. Sprenger Enterprises, Inc.*, Lorain App. No. 07CA009238, 2008-Ohio-1988, ¶8. Therefore, R.C. 2913.42(A)(1) cannot form the independent basis for Morris' wrongful discharge claim in violation of public policy.

{¶30} Because Morris is unable to establish as a matter of law that a clear public policy exists and is manifested in a state or federal constitution, statute or administrative regulation, or in the common law, we find that appellees are entitled to summary judgment on Morris' wrongful discharge claim. Morris' first assignment of error is overruled.

{¶31} In her second assignment of error, Morris claims that the trial court erred in granting summary judgment to appellees on her malicious prosecution claim as genuine issues of material fact exist regarding whether Chambers maliciously provided untrue statements to the police or intentionally provided incomplete testimony to the police so that the arrest warrant was issued without probable cause. Morris also claims that the trial court erred in considering appellees' advice of

counsel defense as appellees failed to properly raise or plead it as an affirmative defense to the action.

{¶32} "To prevail on a malicious prosecution claim, a plaintiff must prove (1) malice in initiating or continuing the prosecution, (2) lack of probable cause, and (3) termination of the prosecution in favor of the accused." *Frazier v. Clinton Cty. Sheriff's Office*, Clinton App. No. CA2008-04-015, 2008-Ohio-6064, ¶14. Appellees did not challenge the third element of a claim for malicious prosecution, but rather moved for summary judgment on the ground that Morris could not demonstrate that the prosecution was initiated with malice and without a finding of probable cause.

{¶33} "Malice is the state of mind under which a person intentionally does a wrongful act without a reasonable lawful excuse and with the intent to inflict injury or under circumstances from which the law will infer an evil intent. \* \* \* For purposes of malicious prosecution it means an improper purpose, or any purpose other than the legitimate interest of bringing the offender to justice." (Internal citations omitted.) *Criss v. Springfield Twp.* (1990), 56 Ohio St.3d 82, 84-85. Malice may be inferred from lack of probable cause. *Barnes v. Meijer Dept. Store*, Butler App. No. CA2003-09-246, 2004-Ohio-1716, ¶27.

{¶34} Probable cause exists when a reasonably prudent person believes that the individual to be arrested has committed a crime. *Frazier*, at ¶15. "Because the Fourth Amendment provides that 'no Warrants shall issue, but upon probable cause,' a determination by a judicial officer who issues a warrant that probable cause exists insulates a defendant on whose complaint the warrant issued from liability on a claim of malicious prosecution, unless the probable cause hearing was tainted by fraud,

deception, or false or materially incomplete testimony by the complainant." *Wiedemann v. Sky Bank, Inc.*, Greene App. No. 2007CA0017, 2007-Ohio-5373, ¶28.

{¶35} Charges of theft in violation of R.C. 2913.02(A)(2) and menacing in violation of R.C. 2903.22 were brought against Morris after Meeker and Chambers spoke with the New Richmond Police Department following Morris' termination. On March 15, 2006, Chambers provided the following statement to the New Richmond Police Department:

{¶36} "On 3-14-06 I became aware through conversation with Stephanie Morris that she had removed a resident's personal funds from the facility without the authorization of the administration or her supervisor. This is in total violation of facility policy and procedures. I demanded that she leave the facility and go to her home and bring the money back to the facility for safekeeping of the resident. She totally refused to do so. She was terminated from Dobbins on this day.

{¶37} "The amount of money she had was unknown at the time.

{¶38} "I escorted her out of the facility upon her termination. She was told at that time that she was not permitted back on the property and if so the police would be called. She also threatened me as I was escorting her out of the facility. She stated: 'If you don't put my things down I'll give them reason to call the police on me to get me out of here.'"

{¶39} Pursuant to R.C. 2913.02(A)(2), "[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services \* \* \* [b]eyond the scope of the express or implied consent of the owner or person authorized to give consent." Morris claims appellees acted with malice when they reported her removal of resident funds from the facility because

they knew at the time they filed the police report that Morris had permission from Mable Farris and Juanita Farris to handle Mable's funds, the funds had already been returned to Mable's family, and Morris had been acting with Roepken's knowledge and permission in handling the funds. Appellees contend, however, that they acted truthfully and without malice when they reported Morris' mishandling and removal of resident funds from the nursing home premises without prior approval. Further, appellees contend that they were required to report Morris' actions under Section 483.13(c)(2)-(4), Title 42, C.F.R., and the nursing home's abuse investigation policy.

**{¶40}** Section 483.13(c)(2)-(4), Title 42, C.F.R.,<sup>7</sup> requires that nursing home facilities develop and implement policies for dealing with the mistreatment of residents and residents' property. It further requires that all alleged violations involving the misappropriation of resident property or funds be reported immediately to officials in accordance with state law. *Id.* In compliance with this regulation, Dobbins Nursing Home implemented a policy for investigating suspected abuse of a resident or a resident's property. The policy provided that "[s]hould the investigation

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7. **{¶a}** Section 483.13(c)(2)-(4), Title 42, C.F.R., provides the following:

**{¶b}** "(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

**{¶c}** " \* \* \*

**{¶d}** "(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

**{¶e}** "(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

**{¶f}** "(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken."

reveal that abuse occurred, the administrator will report such findings to the local police department, the ombudsman, and the state licensing agency within twenty-four (24) hours of the results of the completion of the investigation." Morris was aware of the nursing home's abuse investigation policy as she had signed a copy of the policy on August 8, 2005.

{¶41} Based on the foregoing, we find that appellees had a legitimate interest in reporting Morris' handling of resident funds to the New Richmond Police Department. Appellees had cause to believe that Morris had improperly handled and misappropriated resident funds in violation of the nursing home's internal policies and federal regulations. Regardless of whether Morris had received permission from Mable Farris, Juanita Farris, or Roepken to handle Mable's funds, the nursing home's internal policies made it clear that only the nursing home administrator, Meeker, was authorized to handle resident funds or provide permission for other employees to handle such funds, and that employees who violated the policy would be subject to an internal abuse investigation and possible criminal investigation by the local police department. Morris has failed to present evidence that would indicate that appellees acted with an improper or malicious motive in reporting her misconduct to the police.

{¶42} We further find that Morris has failed to meet her burden of offering evidence that would indicate that the criminal proceedings initiated against her were brought without probable cause. "Upon proof that a warrant for [one's] arrest had issued, which [is] offered to demonstrate that the criminal proceedings did not lack probable cause, it became [the plaintiff's] burden under the rule of *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-170, to offer evidence that proof of the warrant was insufficient for that purpose." *Weidemann*, 2007-Ohio-5373 at ¶31. Appellees

presented evidence that an arrest warrant was issued by the Clermont County Municipal Court on March 15, 2006. The burden was on Morris to present evidence showing that the warrant was fraudulently procured or issued on the basis of incomplete or misleading testimony.

{¶43} With respect to the menacing charge, which makes it illegal for a person to "knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person \* \* \*"; R.C. 2903.22(A); Morris has not argued nor presented evidence that demonstrates that Chambers committed fraud or deception or provided incomplete testimony when reporting Morris' threatening statement to the New Richmond Police Department. Chambers, the New Richmond Police Department, and the issuer of the arrest warrant took Morris' statement that she'd give Chambers a "reason to call the police" seriously. Without the production of some evidence to call Chamber's statement to the police into question, there is no reason to believe that the arrest warrant was issued on insufficient probable cause.

{¶44} Morris has failed to present evidence demonstrating that a question of fact exists regarding whether appellees instituted criminal proceedings with malice or without probable cause. Accordingly, we find that appellees are entitled to summary judgment on the malicious prosecution claim. We find it unnecessary to address appellees' advice of counsel defense or Morris' claim that the defense cannot be raised as it was not properly or timely pleaded as an affirmative defense. Morris' second assignment of error is overruled.

{¶45} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.