a minor child, and, therefore, his parents no longer have any legal duty toward him which requires the parents to incur expenses due to his injury. Were any such recovery permitted, the measures of damages would not be loss of wages; it would be the costs actually expended. Plaintiffs cite *McCrorie v. Detweiler*, 69 Montg. 384, 67 York 160 (1954) as authority for the recovery of lost wages during the time parents attended to an injured son. This case is not precedent for the instant action. The lower court in *McCrorie* addressed the rights of the parents of a minor child, who required intensive home nursing care, to recover loss of wages by parents who assumed the duty of this care in lieu of hiring nurses. The court saw this loss as one occasioned by the defendant's negligence and could "find no good reason why the wrongdoer should not pay this pecuniary loss suffered by the parents." No case precedent was cited by the Montgomery County Court of Common Pleas, and this Court cannot accept this measure of recoverable damages as precedent in the present case.

This position is shared by the Mercer County Court in *Formicella v. Wagner*, 51 D&C 2d 49 (1970), which denied recovery of lost wages to a wife while nursing her injured husband at home. The court states at 123:

> "If recovery could be permitted under any recognized theory, wages lost would not necessarily be a proper measure of damages. Much more likely it would be the reasonable value of such services. *Walker v. City of Philadelphia*, 195 Pa. 168, 45 A. 657 (1900). Certainly, if this wife can recover damages for nursing her husband, the converse is true. Logically, a parent should then recover for caring for an injured child. However, we find such recovery denied. An injured husband cannot recover for nursing services rendered by his wife, a parent may not recover increased inconvenience to other members of the family, and a plaintiff cannot recover damages for nursing his family."

The court in *Formicella* cites *Woeckner*, supra; *Goodhart*, supra; and *Dormer v. Alcatraz Paving Co.*, 16 Pa. Super 407 (1901) as authority for its decision. The Pennsylvania Superior Court in *Dormer* would not allow a husband suing for injuries received by his wife to recover the amount his daughter would have received in another capacity as a factory worker where her mother desired her as a nurse. Just as services rendered by a child to parent are presumably gratuitous even after the child is emancipated, *Dettenmaier's Estate*, 13 Pa. Super. 170 (1900), and no payment therefore can be demanded unless a contract to pay is proven by clear, distinct, and positive evidence, *In re Reed's Estate*, 152 Pa. Super. 389, 33 A. 2d 251 (1943), the

values of services rendered by a parent to an adult child cannot be recovered without evidence of a contract for such services.

Were such a contract averred in the Complaint, the claim for recovery would be between the parties to the contract, or by the injured party against the tortfeasor for the liability incurred as a result of the injury. In no event could the one rendering the service to an adult sue the tortfeasor in their own right for recovery on the contract.

Plaintiff-parents, therefore, have failed to aver facts establishing their standing to sue the defendants, and have no basis in law for recovery of the damages claimed in Count 2 of the Complaint. Count 2 must, therefore, be stricken.

We will also grant the defendants' Motion for a More Specific Complaint. Defendants' knowledge of the condition of the land is a material fact upon which the cause of action is based, and it is, therefore, the plaintiffs' burden to aver this fact with sufficient particularity to permit defendants to prepare a defense. Defendants are under no absolute duty of inspection of the property, Restatement, Torts, Sec. 334, Comment (c), and the Pennsylvania Rules of Discovery permit the plaintiffs to ascertain facts material to their determination of the liability of defendants to plaintiffs. This burden cannot be shifted to defendants by a general averment of knowledge.

ORDER OF COURT

NOW, this 16th day of January, 1981, the Defendants' preliminary objections in the nature of a demurrer, a motion to strike, and a motion for a more specific pleading are sustained.

The Plaintiffs are granted leave to file an amended complaint within twenty (20) days of date hereof.

Exceptions are granted the Plaintiffs.

OLIVER OIL COMPANY, INC. v. GEIST, C.P. Franklin County Branch, A.D. 1980-206

Assumpsit - Malicious Use of Criminal Process - Wrongful Initiation of Civil Proceedings

1. The elements of the tort of malicious use of criminal process include

initiation or procurement of criminal proceedings without probable cause and with malice, and termination of those proceedings in favor of the accused.

2. The mere averment of approval of a criminal information by the District Attorney is insufficient, as a matter of law, that plaintiff had probable cause to press for criminal prosecution.

3. The elements of the tort of wrongful initiation of civil process include: initiation of proceedings without probable cause to believe that the claim asserted might be held valid, purpose of the proceedings are other than securing adjudication of the claim, and the proceedings have terminated in defendants' favor.

4. Where plaintiff alleges mistaken delivery of fuel oil to defendants which defendants admit, such an admission is insufficient to establish probable cause to initiate a civil suit.

Timothy S. Sponseller, Esq., Counsel for Plaintiff

Thomas J. Finucane, Esq., Counsel for Defendants

OPINION AND ORDER

KELLER, J., March 2, 1981:

The present action was initiated on July 28, 1980 by the filing of a Complaint in Assumpsit in which plaintiffs demand judgment from defendants in the amount of $79.03 as the value of 94.2 gallons of home heating oil delivered to defendants by mistake of plaintiffs. The complaint further alleges that defendants have derived the benefit of the oil, but have failed to pay plaintiff for that benefit. On August 18, 1980, defendants filed an Answer with New Matter and Counterclaim. Preliminary objections to the new matter and counterclaim were filed by plaintiff on September 8, 1980. Argument was heard on the preliminary objections on November 6, 1980.

The preliminary objection to the new matter in the nature of a motion to strike has been withdrawn by plaintiff. (Brief on behalf of plaintiff, pp. 1-2.) The demurrer to the counterclaim is based on defendants' alleged failure to state any cause of action. The counterclaim consists of five counts: malicious use of criminal process, wrongful initiation of civil proceedings, tortious repetition of civil proceedings, defamation and tortious harassment. Plaintiff's demurrer to all five counts are based upon defendants' admission that the criminal complaint was approved by the District Attorney and this approval, plaintiff argues, establishes probable cause to bring the criminal action

against defendants; and upon defendants' admission that plaintiff delivered some oil to defendants which, plaintiff argues, shows that plaintiff had just cause to initiate the civil action against defendants.

The elements of the tort of malicious prosecution (malicious use of criminal process) are: initiation or procurement of criminal proceedings without probable cause and with malice; and termination of those proceedings in favor of the accused. Restatement, 2d Torts, Sec. 653 (1977). Plaintiff's argument that approval of a criminal complaint by the District Attorney establishes, as a matter of law, the requisite probable cause is not supported by Pennsylvania case. The Pennsylvania Supreme Court in *Altman v. Standard Refrigerator Co., Inc.*, 315 Pa. 465, 173 A. 411 (1934), states at 477:

> "Nothing will meet the exigencies of the case so far as respects the obligation that probable cause was wanting except proof of the fact. Though such allegation is a negative one in its form and character, it is nevertheless a material element of the action for malicious prosecution, and the burden is upon the plaintiff to prove affirmatively, by circumstances or otherwise, as he may be able, that the defendant had no reasonable or probable ground for instituting the original proceeding, unless the defendants dispenses with such proof by pleading singly the truth of the several facts involved in the charge."

The effect of the advice of legal counsel, including that of a district attorney, as discussed in Restatement, Torts Sec. 666, is to conclusively establish probable cause for initiating criminal proceedings if it is sought in good faith and given after full disclosure of the facts within the accuser's knowledge and information. The burden is upon the plaintiff to plead and prove his defense to bring him within the rule, and it is not necessary for defendants herein to negate good faith and full disclosure requisites. Defendants' burden of proving want of probable cause is evidentiary, and unless defendants prove that there was a lack of probable cause, malice is immaterial and irrelevant. *Neczypor v. Jacobs*, 403 Pa. 303 (1961). The mere averment of approval of a criminal information by the District Attorney is insufficient to establish, as a matter of law, that plaintiff had probable cause to press for criminal prosecution. If such were the case, a suit for malicious use of criminal process could never be sustained.

Plaintiff has raised arguments in its brief regarding the effect of a magistrate's hearing upon this matter, but the Court can only address those matters raised in the pleadings, and, therefore, the Court will not consider that argument at this

WHEREAS, experience has shown that Legal Services, Inc. has competently served its clients by providing responsible and effective legal representation in over 3,000 cases a year in Franklin and its neighboring counties in such areas as domestic relations, housing, consumer, and government benefits law; and

WHEREAS, the Legal Services, Inc. program has, at existing levels, been able to fulfill only a part of the essential work to be done in meeting the bona fide civil legal needs of low income people;

NOW, THEREFORE, BE IT RESOLVED, that THE FRANKLIN COUNTY BAR ASSOCIATION, acting through its Executive Committee, expresses its continuing support of the Legal Services Corporation, and of Legal Services, Inc., to which it has regularly contributed financial resources, and urges the President and members of Congress to support legislation reauthorizing the Legal Services Corporation, and to support an appropriation at existing or higher levels adequate to sustain competent legal representation of the poor through the Legal Services Corporation, without amendments that unfairly or unethically impede local programs in their effective representation of eligible clients.

point in the proceedings.

Plaintiff's demurrer to Count 2 of the counterclaim, wrongful initiation of civil process, cannot be sustained. In such an action, one seeking to recover damages has the burden of proving that the proceedings were initiated without probable cause to believe that the claim asserted might be held valid; that the proceedings were initiated for a purpose other than that of securing adjudication of the claim; and that the proceedings have terminated in his favor. Restatement 2d, Torts Sec. 674. The mere admission by defendants that oil was delivered to them does not establish probable cause to initiate civil action. As discussed previously, proof of the elements of this action is evidentiary and admission of one fact relevant to malice is not sufficient to sustain a demurrer to all counts of the counterclaim.

ORDER OF COURT

NOW, this 2nd day of March, 1981, the preliminary objections of the plaintiff are dismissed.

Exceptions are granted the plaintiff.

IN RE: HALDEMAN SUSPENSION, C.P. Franklin County Branch, Misc. Doc. Vol. X, Page 337

Appeal from Civil Service Commission - Unbecoming Conduct - Reckless Driving

1. The court may not set aside disciplinary action of a municipal employee where sufficient evidence is presented in the record to sustain the action of the administrative body.

2. Unbecoming conduct is any conduct which adversely affects the morale or efficiency of the bureau to which an official is assigned or which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.

3. In police work, safe operation of a motor vehicle is required and reckless driving is an offense that can support disciplinary action.

David W. Rahauser, Esq., Attorney for Appellant

Thomas J. Finucane, Esq., Attorney for Respondent