

Case No. _____

**IN THE
SUPREME COURT OF ILLINOIS**

ALAN BEAMAN,)	Original Motion for Supervisory Order
)	Pursuant to Supreme Court Rule 383
)	Fourth District, No. 4-16-0527
Movant,)	
)	
v.)	
)	McLean County Cir. Ct. No. 14 L 51
HON. JAMES A. KNECHT;)	
HON. THOMAS M. HARRIS;)	
HON. ROBERT J. STEIGMANN,)	
)	
Respondents.)	

MOTION FOR SUPERVISORY ORDER

Plaintiff Alan Beaman respectfully requests a supervisory order vacating the opinion of the Illinois Appellate Court, Fourth District and instructing the appellate court to remand this case for a trial on the merits in the Circuit Court of McLean County. Plaintiff has filed concurrently a petition for leave to appeal in this matter. As an alternative remedy, the extraordinary circumstances of this case also call for a supervisory order to ensure a prompt trial.¹

1. A supervisory order is warranted in this case (1) because a pattern of erroneous lower court decisions delaying justice and denying Beaman a day in court is a matter vital to the administration of justice that cannot be adequately addressed through the normal appellate process

¹“A.” references the appendix before the appellate court on remand, and “R.” references the circuit court record in Case No. 125617, the matter in which the petition for leave to appeal has been filed. The opinion of the circuit court and post-remand opinion of the appellate court are appended to this motion.

and (2) to prevent the appellate court from acting beyond the scope of its authority. *See Bryant v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 473, 479 (2007).

2. The appellate court has thrice prolonged the injustice suffered by Plaintiff through a pattern of manifestly erroneous decisions.

3. The appellate court extended Beaman's unlawful incarceration by erroneously affirming the denial of post-conviction relief. This Court unanimously reversed the appellate court and vacated the conviction. *People v. Beaman*, 229 Ill. 2d 56 (2008), *rev'g*, 368 Ill. App. 3d 759 (2006).

4. Beaman brought suit in the Circuit Court of McLean County six years ago, the trial court erroneously granted summary judgment nearly four years ago, and the case has been tied up in appellate proceedings ever since.

5. In this civil case, the appellate court erroneously affirmed the grant of summary judgment against Beaman by announcing and then applying a new standard for the commencement or continuance prong of the malicious prosecution tort.² This Court again unanimously reversed the appellate court and remanded the case. *Beaman v. Freemseyer*, 2019 IL 122654, *rev'g*, 2017 IL App (4th) 160527.

6. Now, as detailed in the Petition for Leave to Appeal, another erroneous decision by the appellate court has again denied Beaman the trial to which he is entitled:

- a. The appellate court announced a radical new doctrine that sounds the death knell for malicious prosecution claims brought by wrongfully convicted Illinoisians.

² The tort of malicious prosecution consists of five elements: “(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff.” *Beaman v. Freemseyer*, 2019 IL 122654, ¶ 26 (quoting *Swick v. Liautaud*, 169 Ill. 2d 504, 512 (1996)).

Under this unprecedented rule—which the court announced without briefing, citation, or explanation—a finding of evidentiary insufficiency in the criminal proceedings is a required element of a malicious prosecution claim by a wrongfully convicted plaintiff. That rule is entirely novel and legally incorrect, and it dismantles a vital source of accountability for those who maliciously cause wrongful convictions. *See* Pet. for Leave to Appeal at 7-10.

- b. The decision eviscerated this Court’s clear holding that a police officer may commence or continue a malicious prosecution through four distinct categories of action, one of which is “engag[ing] in wrongful or bad-faith conduct instrumental in the initiation of the prosecution.” *Beaman*, 2019 IL 122654, ¶ 45. The opinion reduced that fourth species of commencement or continuance to an empty set—a nullity. *See* Pet. for Leave to Appeal at 10-16.
- c. The appellate court expressly disregarded the factual record. The court also resolved disputed facts and inferences to award the summary judgment—“a drastic means of disposing of litigation”—to the Defendants on the lack of probable cause prong. *See Beaman*, 2019 IL 122654, ¶ 22; Pet. for Leave to Appeal at 16-20.

7. In addition to the commencement or continuance prong and the lack of probable cause prong, the circuit court also granted summary judgment on the favorable termination and malice elements of the malicious prosecution tort. The appellate court did not consider these bases for summary judgment, but the circuit court’s analysis is plainly wrong, rendering extended appellate review unnecessary:

- a. Favorable termination: Prosecutors dropped the charges against Beaman after this Court threw out the conviction and unanimously declared: “We cannot have

confidence in the verdict finding [Plaintiff] guilty of this crime given the tenuous nature of the circumstantial evidence against him . . .” *Beaman*, 229 Ill. 2d at 81. Beaman then won a certificate of innocence through litigation in the Circuit Court of McLean County, and then Governor Quinn pardoned him on the basis of innocence. R. 3479-80; A.3377. Any one of these events would defeat summary judgment on the “indicative of innocence” prong all by itself. *Rich v. Baldwin*, 133 Ill. App. 3d 712, 715 (5th Dist. 1985) (“dismissal of a . . . charge against the plaintiff at the instance of the prosecutor” generally suffices to show favorable termination); *Walden v. City of Chicago*, 391 F. Supp. 2d 660, 664, 680 (N.D. Ill. 2005) (certificate of innocence); *Kluppelberg v. Burge*, 84 F. Supp. 3d 741, 744 (N.D. Ill. 2015) (pardon on the basis of innocence). The circuit court clearly erred by holding, as a matter of law, that the criminal proceedings did not terminate in Beaman’s favor.

- b. Malice: The element of malice clearly presents a jury question because it comes down to competing inferences about state of mind to be drawn from the facts. The appellate court conceded that a juror could find that “Warner intentionally concealed the . . . polygraph report.” App. Ct. Op. ¶ 110. Of course a juror could find malice toward Beaman based on Warner’s concealment of exculpatory evidence. As for Freesmeyer, maybe he ignored the evidence exculpating Beaman out of gross incompetence; maybe it was an innocent mistake to floor the accelerator when a fast speed would hurt Beaman’s alibi and to brake when *that* would hurt the alibi; maybe Freesmeyer concealed time of death evidence and other suspects from the grand jury out of forgetfulness; and maybe he simply forgot to

memorialize the one time trial that exculpated Beaman along with the 14 other trials. All of these maybes underscore the need for a trial to resolve this case. The circuit court clearly erred by holding, as a matter of law, that malice did not taint the conduct of the Defendants.

8. The circuit court's bases for granting summary judgment on Beaman's other claims—intentional infliction of emotional distress, conspiracy, respondeat superior, and indemnification—depended on the exact same reasoning as its rejection of the malicious prosecution claim. Therefore, the Court should order these claims to trial as well.

9. The pattern described above—justice for Beaman delayed and denied by manifest errors that have required this Court's intervention and unanimous reversal—calls out for a prompt trial. This is the rare case in which a supervisory order is warranted. The Court should give Beaman the closure he deserves for over a dozen years of wrongful incarceration.

WHEREFORE Movant Alan Beaman respectfully requests that the Court issue a supervisory order instructing the Illinois Appellate Court to order a trial in this case.

Respectfully submitted,

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NOTICE OF FILING

TO: Thomas G. DiCianni
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
140 South Dearborn St., 6th Floor
Chicago, Illinois 60603

PLEASE TAKE NOTICE that on February 25, 2020, the undersigned served and filed by electronic means the MOTION FOR SUPERVISORY ORDER with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

s/David M. Shapiro
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CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on February 25, 2020, the foregoing MOTION FOR SUPERVISORY ORDER was filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701. I further certify that the same were served by electronic transmission on:

Thomas G. DiCianni
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
140 South Dearborn St., 6th Floor
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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