Alberta Court of Queen's Bench
Canada v. Lukasik
Date: 1985-03-29

C. A. Kent, for plaintiff.

R. Powelson, for defendant.

(Edmonton No. 8203-27413)

March 29, 1985.

[1] PURVIS J.:— This is a case of defamation and malicious prosecution. It all arose out of an insignificant automobile accident. The plaintiff is Ronald Pierre Canada. The defendant is Mrs. Nicole M. Lukasik, also known as Cecile Blanche Lukasik.

Facts

[2] It was close to midnight on 12th August 1980. The plaintiff was going to give his cousin, Robert E. Canada, a ride from his residence to downtown Edmonton. In backing out of his driveway, his car struck the fender of another car which was parked in such a way as to partially block the plaintiff's driveway (the "blocking car"). The plaintiff, whose evidence I accept, got out of his car and approached the passenger side of the blocking car. The window was open. The plaintiff bent down and asked the male passenger for automobile insurance and registration information.

[3] The male passenger, Peter Dziedzic, placed his hand on the plaintiff's face and pushed him away. The plaintiff recoiled and then pushed back. Mr. Dziedzic pushed the plaintiff to the ground by opening the door of the car. The plaintiff lost his glasses in this fall. By this time, Robert Canada had arrived and a scuffle, later a fight, ensued between Robert Canada and Mr. Dziedzic. The circumstances of that altercation are not relevant to this action except as part of the background to the impending incident.

[4] The plaintiff attempted to stop the fight. The defendant who was sitting, at best partially clad, in the driver's seat of the blocking car, started honking the horn and shouted, "Rape! Rape!" The plaintiff was by this time again at the now open car door. He reached in and held the steering wheel telling the defendant to "shut up, no one is touching you". The defendant continued to shout "Rape" and was still honking the horn. The plaintiff pulled at the horn rim and part of it came off. The defendant tried to leave the car via the driver's side. The plaintiff restrained her, apparently to prevent her from departing the scene.

[5] The defendant opened the driver's door and got out. The plaintiff still wishing to keep her at the scene followed her through the car and then in a further attempt once outside held her by her shoulders. The defendant was still screaming "Rape!" By this time the plaintiff's neighbours had arrived. The plaintiff let the defendant go and she went to the neighbours and told the plaintiff's neighbours that he had tried to rape her.

[6] The police arrived and took a statement from the defendant. The defendant told police that the plaintiff had torn her clothes off and had raped her or at least had tried to rape her. The police took the statement from a naked woman seriously and immediately handcuffed the plaintiff and pushed him into the police cruiser. The police returned the plaintiff's glasses.

[7] During subsequent more thorough interviews, the defendant fabricated an incredible story of a brutal attempted rape and threats of murder alleged to have been committed by the plaintiff. One might understand some confusion in the defendant's mind in the circumstances but that is contradicted by the explicit detail in the wholly fabricated story. The defendant created explicit details showing how the plaintiff was said to have ripped her dress off, how her bra came off, how her panties were removed, allegations of having her vaginal area fondled and being forced to the ground with an attempted rape. These statements were wholly false and, I find, fabricated with an intent to injure the plaintiff.

[8] The initial story given by the defendant was that the car was parked in the dark spot due to car problems. Later she said it was so Mr. Dziedzic could give her a massage. In the statement of defence she claims it was for a backrub. In her oral evidence, which I find was unreliable, she said they stopped so Mr. Dziedzic could apply suntan lotion to her back. It was of course midnight and the car was parked in a dark secluded spot. The court may ultimately never know why Mr. Dziedzic stopped the car or what he was doing with a totally or near naked Mrs. Lukasik at midnight in the dark of a parked car.

[9] The horror was just to begin for the plaintiff. The court heard how he was thrown into a police van; how he was interviewed at the police station; how he was brutalized in city cells; how he lost his liberty ultimately for eight days. The defendant fabricated such detail and was in the circumstances believed by the patrol officers that she set into motion the heavy wheels of the justice machinery. The plaintiff was the victim of the machine she set in motion.

[10] The plaintiff was charged with attempted rape, indecent assault, assault with intent to commit rape in relation to Mrs. Lukasik and assault causing bodily harm in respect of Mr. Dziedzic.

[11] The plaintiff was forced to undergo a psychological evaluation. He was transferred to the remand centre where he was, as a result of being charged with attempted rape, offered protective custody. He was moved from cell to cell. When the plaintiff was finally able to arrange release on bail, this nightmare poured over into his life in his regained freedom. He found himself unable to continue working as a salesman dealing with the public. His name had been in the paper and he did not want to answer questions or talk about his ordeal. He found work in a factory. However, he was let go because he lost too much time for court appearances. Ultimately, in November 1981, the plaintiff went through the preliminary inquiry. The defendant testified. This was 2½ months since the automobile accident. The defendant's story was even more graphic and detailed as she elaborated on the initial fiction. The preliminary investigation was adjourned until March 1981.

[12] Up to this point, the police had done no further investigation. The plaintiff was fortunate in that his girlfriend was a former employee of the city police. The girlfriend telephoned a detective to get more details, as she could not imagine such conduct from the plaintiff. Detective Forest, who testified in court, told of his investigation. He interviewed Mr. Dziedzic, Mrs. Lukasik and the plaintiff. He was convinced that the charges against the plaintiff were false. In his report to the Attorney General, he recommended the charges be dropped and they were.

[13] Mrs. Lukasik was charged and ultimately convicted of perjury in relation to these incidents. It is absolutely clear and is now admitted that the statements initially made and later confirmed were utterly false and without any basis.

Defamation and absolute privilege

[14] The plaintiff brought the present action in defamation and malicious prosecution to seek compensation for the wrongs done to him. The only real defence raised by the defendant was a claim of absolute privilege. During the trial the defendant's counsel alluded to truth as a defence but there is clearly no basis for such a claim.

[15] The defendant makes her claim relying on the case of *Boyachyk v. Dukes,* [1982] 5 W.W.R. 82, 37 A.R. 199 (Q.B.). That was a case in defamation. The defendant

had written a letter to the police department complaining in very strong terms of the conduct of a certain police officer. The police officer sued. Quigley J. found that the complaint was absolutely privileged, as it was the formal mechanism by which disciplinary hearings were commenced under s. 33, Police Act, R.S.A. 1980, c. P-12. Quigley J. extended the traditional witnesses' privilege to the quasi-judicial proceedings under s. 33, Police Act.

[16] The Alberta Court of Appeal in a short oral judgment dismissed the appeal. The court said (No. 15812, 4th May 1983, (unreported)) in total:

> The appellant, a plaintiff, appeals a judgment dismissing an action for defamation on the grounds that the occasion of the publication was one of absolute privilege.
>
> The publication was a letter initiating a complaint against the plaintiff, a police officer. The complaint is unfounded and the letter appears to be defamatory. It is, however, a letter which initiates proceedings under the Police Act. Those proceedings, successfully prosecuted, would result in a judicial or quasi-judicial hearing. That being so we agree with the learned trial judge that the document initiating the proceedings attracts the same protection as the proceedings themselves, namely one of absolute privilege.

[17] The appeal is dismissed. In the case before me, the outcry of the defendant at the time of the accident and her untrue accusations made to the neighbours before the police arrived are not part of the formal process by which proceedings are commenced. It appears that absolute privilege for witnesses applies to the defendant's false words under oath at the preliminary inquiry. It may be that it also applies to the false written statement given by the defendant to police on 13th August 1980.

[18] However, it clearly does not extend beyond the formal initiation of the judicial process.

[19] It is clear that the defendant defamed the plaintiff prior to the initiation of any formal process. I find, however, that the plaintiff's damages are aggravated by the defendant's repeated assertion of the truth of her lies. This is akin to the defendant's claim of truth as a defence.

[20] In *Christie v. Geiger,* Alta. Q.B., 4th December 1984 (unreported) [now reported 35 Alta. L.R. (2d) 316, 58 A.R. 168], Foisy J. said at p. 10 [p. 323, Alta. L.R. (2d)]:

> The law of defamation protects the plaintiff's interest in his reputation and good name. As Cave J. said in *Scott v. Sampson* (1882), 8 Q.B.D. at 503 (Div. Ct.):
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> "… the law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit …"

Defamation is a strict liability tort. Ordinarily the intention of the defendant is irrelevant. Lord Dunedin said in *Adam v. Ward,* [1917] A.C. 309 at 325 (H.L.):

"That words intended innocently may yet be held to be defamatory is quite certain."

[21] Here, I find the intent was malicious. The defendant's counsel argued that the defendant had a reasonable belief she was being raped. In the circumstances, especially in light of the deliberate and detailed story the defendant fabricated, I find that the defendant had no honest belief in her claim. It was a deliberate calculated attempt to injure the plaintiff. In Alberta, s. 2(2) of the Defamation Act, R.S.A. 1980, c. D-6, makes it clear that damage is presumed once defamation is proved.

[22] Thus all the elements exist for an action in defamation to succeed.

Malicious prosecution

[23] The alternative action was in malicious prosecution. The elements of this action are:

(1) That the proceedings were either directly instituted by the defendant or were set in motion at the instigation of the defendant;

(2) That the proceedings have been terminated in favour of the plaintiff;

(3) That the plaintiff prove as against the defendant an absence of reasonable and probable grounds for the action prosecuted;

(4) That the plaintiff prove that the defendant was actuated by malice in what was done.

[24] It was admitted that the defendant set the proceedings in motion against the plaintiff. The defendant cited *Casey v. Auto. Renault Can.,* [1965] S.C.R. 607, [1966] 2 C.C.C. 289, 54 D.L.R. (2d) 600, in this regard. That was an action in malicious prosecution.

[25] The plaintiff in that case was successful at trial but reversed on appeal on the basis that the prosecution was never instituted or commenced. The plaintiff had apparently sold some cars stored by the defendants. The defendants characterized the plaintiff as a common thief and instructed their general sales manager to lay a charge of theft against the plaintiff, which he did, swearing out the information. Subsequently, the informant sales manager requested that the charge be withdrawn as it appeared there was insufficient evidence on which to proceed. In examination it appears that the only reason the information was laid was to pressure the plaintiff to pay a sum of money.

[26] Martland J., speaking for the majority, examined what constituted a prosecution and reviewed the two conflicting lines of authority that had been examined by the Privy Council in *Mohamed Amin v. Bannerjee,* [1947] A.C. 322. Martland J. found, at p. 305, "the essence of the matter … was the filing of an information …" and at p. 307,

> … as the respondent had caused everything to be done which could be done wrongfully to set the law in motion against the appellant on a criminal charge, an action for malicious prosecution lay against the respondent, the other required elements of that tort being established.

[27] It is admitted that the proceedings terminated in favour of the plaintiff. The defendant claims there was reasonable and probable cause for the action prosecuted. As mentioned earlier, the facts created by the defendant clearly negative any inference of probable cause. It was a tissue of lies.

[28] The final requirement is that the defendant be actuated by malice or some bad motive. Cleasby B., in *Johnson v. Emerson* (1871), L.R. 6 Ex. 329, set out the reason for this requirement, at p. 344:

> And thirdly, lest persons should be deterred, by fear of the consequences, from enforcing the law with dispatch upon bona fide suspicion, before a man can be made responsible it must be shewn that, in taking the proceeding, he was actuated by malice or by some bad motive.

[29] In the present case malice is clear. I find that the defendant repeatedly made false statements with the intent to injure the plaintiff. All the elements of malicious prosecution are proven.

Damages

[30] The only remaining issue is that of damages. *Whitehouse v. Reimer* (1979), 11 Alta. L.R. (2d) 252, 107 D.L.R. (3d) 283, 21 A.R. 541 (Q.B.), was a case of malicious prosecution and false imprisonment. In his learned judgment Moshansky J. quoted with approval from the decision of Hold C.J. in *Savile v. Roberts* (1698), 1 Ld. Raym. 374, 91 E.R. 1147, which laid down the categories of damages in malicious prosecution. Moshansky J. summarized these categories at p. 303 as:

> These categories are: (1) "the damage to a man's fame" (*i.e., to his reputation); (2) "such as are done to the person; as where a man is put in danger to lose his … liberty"; (3) "damage to a man's property, as where he is forced to expend his money in necessary charges, to acquit himself of the crime of which he is accused''.* There is no question that this statement has been accepted as authoritative, ever since it was made: see *Quartz Hill Consolidated Gold Mining Co. v. Eyre* (1883), 11 Q.B.D. 674 (C.A.), and *Wiffen v. Bailey and Romford Urban Dist. Council,* [1915] 1 K.B. 600.

> On the evidence in this case I find that the malicious criminal prosecution of the plaintiff by the defendant is actionable in that the circumstances satisfy, not only one, but all three of these conditions.
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> *The Courts have generally regarded the principal head of damage with respect to a malicious criminal prosecution as being the injury to a person's reputation.* (The italics are Purvis J.'s.)

[31] In examining *Paragon Properties Ltd. v. Magna Envestments Ltd.,* [1972] 3 W.W.R. 106, 24 D.L.R. (3d) 156 (Alta. C.A.), per Clement J.A. at p. 167; *Tanner v. Norys,* [1979] 5 W.W.R. 724, 21 A.R. 410(T.D.), Moshansky J. at pp. 308-309 observed that the trend in quantum was to increase damages as the courts reflected society's condemnation of the wrongful actions. He said:

> The several cases which I have taken into consideration on the question of quantum of damages indicate a current trend in the Courts to cast off the timidity heretofore demonstrated in recognizing that a wrong of the type with which the Court is here concerned ought, in a proper case, to attract substantial damages. This trend has, very recently, received dramatic approval from our highest Court. The Supreme Court of Canada in a monumental decision, *Charrier v. A.-G. Que.* (1979), 104 D.L.R. (3d) 321, 48 C.C.C. (2d) 34, [1979] 2 S.C.R. 474, dealt with a case involving false arrest, false imprisonment and the abuse of power by police officers and other officials.

[32] In *Chartier v. A.G. Que.,* [1979] 2 S.C.R. 474, 9 C.R. (3d) 97, 104 D.L.R. (3d) 321, 48 C.C.C. (2d) 34, 27 N.R. 1, the plaintiff was awarded $50,000 on the basis of the outrageous conduct of the government officials.

[33] Considering the unique circumstances of this case, the continued assertion of the false claim knowing of the injury to the plaintiff and the abuse of the judicial system, exemplary damages are clearly in order. However, such damages are substantially mitigated due to the criminal law punishment Mrs. Lukasik has received. Considering the loss of the plaintiffs liberty for eight days, the humiliation and gross injury to his reputation, a reasonable figure for general damages is $12,000. Certainly the claim of $1,200 for solicitor's fees is made out as special damages. The plaintiff brought no evidence as to lost wages so no award is made in that respect.

[34] In *Farrell v. C.B.C.* (1983), 44 Nfld. & P.E.I.R. 182, 130 A.P.R. 182 (Nfld. T.D.), Lang J., in his reasons, awarded costs on a solicitor-client basis in circumstances where the defendant persisted in alleging the truth of the defamatory words despite there being no basis for such allegation.

[35] I summarize damage award against the defendant as follows:

1. General damages — $12,000

2. Special damages — $ 1,200

TOTAL: $13,200

[36] I direct that the defendant shall pay costs to the plaintiff to be taxed on a solicitor-client basis.

Order accordingly.