
CANADA / JUDGMENT

Brown v. Searle

2014 BCSC 659

COURT

Supreme Court of British Columbia

DECIDED

2 April 2014

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2014 BCSC 659 Brown v. Searle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Brown v. Searle,

2014 BCSC 659

Date: 20140402

Docket: 13-3952

Registry: Victoria

Between:

Kevin Brown

Appellant

And

Christopher Searle and Carole Searle

Respondents

Before: The Honourable Mr. Justice Macintosh

On appeal from the Order of The Honourable Judge A.J. Palmer

of the Provincial Court of British Columbia,

dated October 7, 2013 (Action No. WCO-P-C-5633)

Oral Reasons for Judgment

Counsel for Appellant:

Geofrey D. Simair

Appearing on their own behalf:

Christopher and Carole Searle

Place and Date of Hearing:

Victoria, B.C.

March 31, 2014

Place and Date of Judgment:

Victoria, B.C.

April 2, 2014

- [1] THE COURT: The appellant, Kevin Brown, asks this Court to allow his appeal by dismissing the counterclaim of the respondents, Christopher Searle and Carole Searle, or alternatively, ordering a new trial for both claims, his own and the Searles' counterclaim.
- [2] The judgment below, in the Provincial Court, was pronounced with written reasons after a two-day trial. Eight witnesses gave evidence. Neither side was represented, and the trial judge improvised, I believe correctly, by sometimes questioning witnesses at length himself, to ensure he had a clear understanding of the facts.
- [3] An appeal to this Court from a civil trial in the Provincial Court is based on the evidence presented at the Provincial Court trial. The appellant is therefore faced with the stringent and well-known tests imposed by the common law, which protect the factual findings at trial, absent what is called palpable and overriding error by the trial judge.
- [4] A palpable error is simply one that is obvious. An overriding error is one that is sufficiently important in the case that it undermines the factual analysis relevant to the legal questions before the court.
- [5] Here, I do not see any such error by the trial judge. His findings of fact were reasonable based on what the parties and the other witnesses said at trial. The appellant himself chose not to present evidence in chief in the conventional way, but he was sworn and the judge asked him questions over 14 pages of transcript to ensure that he, as the judge, properly understood the appellant's position.
- [6] The judge questioned several witnesses in the same manner, and thus was able to learn the facts of the case. The appellant himself cross-examined witnesses called for the defence.

[7] In this Court, the appellant is represented, and argues through his counsel that the judge did not follow all the normal procedures one would expect in a trial. For example, the appellant points out that the judge dispensed with final argument. I note that no party requested final argument, and I observe that a Provincial Court judge is afforded broad discretion in how a trial is run in that Court.

[8] Provisions in s. 10 of the Small Claims Rules recognize the need for a relatively informal process as the circumstances dictate. Rule 10(1) provides that:

A judge may conduct a trial without complying with the formal rules of procedure and evidence, and in doing so may

(a) ask the parties to explain their cases . . . or

(b) receive evidence in any other way the judge thinks appropriate . . .

[9] Particularly when the parties are unrepresented, as they were in this case, a trial judge must be given broad discretion in how to run the process. The overriding principle is to ensure fair process, and so long as that principle is protected, a trial judge in a dispute of this nature must be allowed to supervise the process without appellate interference on procedural grounds, unless a party has been shown to have been prejudiced as a result.

[10] There was nothing like that here. A review of the transcript shows that the judge took the right steps to ensure fairness and to obtain a proper understanding of the facts.

[11] I am not addressing at any length in these reasons the history of the dispute, or the facts of the case, because both were adequately addressed by the trial judge in his reasons.

[12] The appellant is the residential neighbour of the respondents. He deliberately caused rain water and stream water to be diverted from his property onto the respondents' property.

[13] That diversion caused a nuisance. It started to flood low-lying areas of the respondents' property where their septic field was located and this threatened the integrity of the septic field.

[14] The respondents needed to remedy the problem arising from the diversion. They tried many ways to solve it before resorting to the steps which gave rise to their counterclaim.

[15] They first blocked the inflow of water with plywood, but Mr. Brown simply relocated the pipe which directed the water onto the Searles' property. The Searles then retained a lawyer to write letters to the appellant's lawyer in the hope of reaching resolution peacefully. When that approach failed, they dug their own drainage ditch along their side of the property line to flow the water away from the septic field. That ditch soon eroded. Finally, they again went to a lawyer, this time seeking injunctive relief, but they were advised against pursuing that remedy.

- [16] What the respondents finally did to protect their septic field from the appellant's water diversion onto their property is summarized by the trial judge at page 10, paragraphs 52, 53 and 54 of his reasons. I agree with his analysis and his disposition.
- [17] All of the respondents' expenditures allowed by the trial judge from the counterclaim were reasonable expenditures undertaken to alleviate the harm the respondents suffered from the nuisance caused by Mr. Brown with his water diversion.
- [18] The evidence shows that the respondents' claims are, if anything, on the low side. For example, the claim for the split cedar safety fence is for the wood alone, with the respondent Christopher Searle having done all the work of building the fence without advancing a claim in this proceeding for that effort.
- [19] The appellant objected to allowing the respondents' claim for legal fees of \$736.19 because s. 19(4) of the Small Claims Act, R.S.B.C. 1996, c. 430, precludes the awarding of counsel fees in a proceeding, but the legal fees claimed were for paying the lawyer who wrote the letters trying to reach settlement long before the appellant started the litigation.
- [20] The appellant also argued in this Court that the claim for legal fees was brought too late under the statutory time limitations for making claims, but the claim was made in the counterclaim promptly after Mr. Brown chose to sue.
- [21] Accordingly, I dismiss the appeal with costs payable to the respondents.
- [22] I wish to thank Mr. Simair for his capable assistance to me when his client here was unrepresented in the court below, and to thank the Searles for their assistance to the Court as self-represented parties.

"MACINTOSH J."

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