

CANADA / JUDGMENT

Griffith v. Cox

2003 BCSC 1039

COURT

Supreme Court of British Columbia

DECIDED

3 July 2003

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2003BCSC1039 IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Griffith v. Cox, 2003 BCSC 1039 Date: 20030703 Docket: S78302 Registry: New Westminster Between: Spencer Griffith Plaintiff/Respondent And Randall Cox Defendant/Applicant Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Defendant/Applicant P. A. Spencer Spencer Griffith Appearing on His own behalf Date and Place of Hearing: May 28, 2003 New Westminster, B.C.

INTRODUCTION

- [1] The plaintiff seeks to strike out the Writ of Summons and Statement of Claim on the basis that the claims are out of time, and therefore statute barred. He does this primarily by way of summary Trial pursuant to Rule 18A.
- [2] Mr. Cox is a corporal in the R.C.M.P. and was stationed in Maple Ridge in the year 1997. The claim against him began with the issuing of a Writ on February 4, 2003, which alleges that on November 4, 1997, while Mr. Cox and Mr. Griffith were dropping their children off at school, an incident took place between the two of them which resulted in Mr. Cox reporting Mr. Griffith had threatened to kill him. CLAIM AND RESPONSE
- [3] Mr. Griffith alleges that Mr. Cox canvassed the area for witnesses, and in doing so maligned, slandered and defamed him by telling people that Mr. Griffith was under psychiatric care and had been harassing him.
- [4] Mr. Griffith claims that Mr. Cox is guilty of malice, defamation, slander, perjury and improper conduct for which he seeks compensation.
- [5] Mr. Cox's defence states that as of February 2003, he is still a corporal with the R.C.M.P. and is now with the Burnaby detachment and at the material times was a constable at the Ridge Meadows detachment in Maple Ridge. He confirms that Mr. Griffith did make a threat to kill him on November 4, 1997, and he subsequently prepared and provided a statement to the R.C.M.P. that same day. He says the plaintiff was arrested on November 4, 1997 and charged with uttering threats to cause death or bodily harm to the defendant contrary to s.264.1(1)(a) of the Criminal Code, R.S.C. 1985, c.46. At the trial of the proceedings in the Provincial Court

of British Columbia on December 4, 1997, Mr. Cox testified. On December 16, 1997, the plaintiff, Mr. Griffith, was convicted of uttering threats to cause death or bodily harm to the defendant contrary to s.264.1(1)(a) of the Criminal Code.

- [6] The defendant relies on the provisions of the Limitation Act and in particular s.3(2)(c), (d) and (e) and s.9 of the Limitation Act R.S.B.C. 1996, c.266.
- [7] In further answer to the plaintiff's claim, the defendant says his complaint as laid was true and protected by absolute or qualified privilege and witness immunity. As to alleged comments, he says such comments were true or protected by absolute or qualified privilege. Lastly, he says that no cause of action lies with respect to his testimony at the criminal trial.
- [8] He says that all times he was acting in the course and scope of his employment as a police officer.
- [9] In his affidavit in support of the application, Mr. Cox notes that he was not involved in the preparation or delivering the report to Crown Counsel seeking approval of the charge, or in swearing the Information against the plaintiff.
- [10] Mr. Griffith opposes the application on the basis of his affidavit sworn the May 22, 2003. As I read it, he is saying that Mr. Cox committed perjury at his criminal trial in 1997, and that he withdraws any claim for malicious prosecution.
- [11] Further he appears to have been aware of the fact that Mr. Cox had discussions with other witnesses to the threatening.
- [12] In spite of the Certificate of Conviction, he does not accept that the charge was proven to be true.
- [13] In argument, Mr. Griffith read his affidavit and then was quite helpful in his argument in defining the principal parts of his claim.
- [14] In essence he alleges Mr. Cox perjured himself in the earlier trial where Mr. Griffith was convicted of uttering threats against Mr. Cox.
- [15] Mr. Griffith argued that there was no protection for lying on the stand under oath.
- [16] He became more certain of this apparently in the context of a present trial that is on-going before Mr. Justice Goepel in the New Westminster Courts, and that is the reason for the recent issuing of the Writ.
- [17] He stressed that it is of public importance that a police officer must not mislead the Court.
- [18] He said that in fact he had previously laid charges against Mr. Cox, but those private Informations were thrown out.
- [19] He referred to a passage from the Nelles case as to the limits of malicious prosecution and asserted that passage supported his civil suit against Mr. Cox.

- [20] He argued that if the matter goes to trial, the crucial issue will be who said what to who, and that this matter was not suitable for a summary trial, and in particular he would need a full trial to prove the perjury of Mr. Cox. He made reference to the Judgment in Cotton v. Wellsby 59 B.C.L.R. (2nd) at 376, and also made reference to the well known judgment in Inspiration Management (1989), 36 B.C.L.R. (2nd) 202.
- [21] He concluded by saying "I want him charged with perjury, he has lied in Court, I can't make the Crown lay charges - they refuse, because I have pissed everybody off".
- [22] Mr. Spencer in reply submitted that Mr. Griffith knew of the two witnesses, Leal and Stanley, because in fact they gave evidence at his November 1997 criminal trial. That is borne out by reference to the Certificate of Conviction. He said that the witnesses could have been interviewed then, and in fact Mr. Griffith was then represented by counsel.
- [23] Secondly, no action could lie against a witness in judicial proceedings: See Geyer v. Merritt and Gouge (1979), a decision of Legg, J. DISCUSSION AND DECISION
- [24] As to perjury, this is succinctly put in the headnote of Legg, J.'s decision in Geyer v. Merritt and Gouge (1979) 16 B.C.L.R. 27 where a plaintiff sought a civil remedy against defendant barristers for "perjury, false statements and misleading justice". An application to strike out the pleadings was granted by Legg, J. saying at p.32: Whether the statements were made by the defendants as counsel, solicitors or witnesses, such statements were made on an occasion when they were absolutely privileged and no civil action will lie for what is alleged. In so concluding I have assume that the expression "false statements" may mean injurious falsehood, libel or slander.
- [25] As to there being grounds for malicious prosecution, in Nelles v. Ontario, [1989] s S.C.R. 170, at para. 42, the Court laid out the four necessary elements for the plaintiff to succeed, namely:
- (a) the proceedings must have been initiated by the defendant;
 - (b) the proceedings must have terminated in favour of the plaintiff;
 - (c) the absence of reasonable and probable cause;
 - (d) malice, or a primary purpose other than that of carrying the law into effect.
- [26] It is patent that the "chance encounter" as Mr. Griffith described it, led to him saying things to Mr. Cox that resulted in his conviction for uttering a threat. The elements of the claim for malicious prosecution are not made out.
- [27] As well, Mr. Spencer points to the provisions of the Limitation Act R.S.B.C. 1996, c.266. Subsection 3(2) reads: After the expiration of 2 years after the date on which the right to do so arose a person may not bring any of the following actions: ...
- (c) for defamation; ...

(e) for malicious prosecution

[28] Reference to Mr. Griffiths' affidavit sworn May 22, 2003, adds little to the facts before me on this summary trial. It is largely argumentative. There are no affidavits from the alleged potential witnesses, Leal or Stanley, as to any of the potential facts that might assist Mr. Griffiths in his allegations against Mr. Cox regarding the alleged defamation. There is no other evidence on which to found his assertions.

[29] In sum, all Mr. Griffiths' claims are dismissed for lack of evidence, and also for being out of time.

[30] The defendant is entitled to his costs at Scale 3. "R. Crawford, J." The Honourable Mr. Justice R. Crawford

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