

CANADA / JUDGMENT

Griffith v. Cox

2003 BCCA 694

COURT

British Columbia Court of Appeal

DECIDED

4 November 2003

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2003BCCA0694 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Griffith v. Cox, 2003 BCCA 694 Date: 20031104 Docket: CA031092 Between: Spencer Griffith Appellant (Plaintiff) And Randall Cox Respondent (Defendant) Before: The Honourable Mr. Justice Lowry (In Chambers) Oral Reasons for Judgment Appellant appearing in person with J. Griffith P.A. Spencer Counsel for the Respondent Place and Date: Vancouver, British Columbia November 4, 2003

- [1] LOWRY, J.A.: Application is made by Spencer Griffith for an extension of time to file his factum in this appeal. He would, as well, need an extension of time to file the appeal book.
- [2] The application is opposed primarily on the basis that the appeal is without merit, although reliance is also placed on the fact that Mr. Griffith has not paid or made any arrangements for paying or securing the costs of \$3,400 awarded in the Supreme Court.
- [3] The history of the matter insofar as it relates to the present application can be briefly stated. Mr. Griffith sued Randall Cox, an RCMP officer, for what is conveniently described as defamation, malicious prosecution and perjury, arising out of a Provincial Court trial where Mr. Cox gave evidence against Mr. Griffith, who was charged with various offences and, ultimately, convicted of uttering threats in December of 1997.
- [4] The learned trial judge dismissed the action on 3 July 2003 following the hearing of a Rule 18A application principally on the basis that the claims of malicious prosecution and defamation were time barred and that there is an immunity in favour of a witness with respect to any claim for perjury in respect of evidence given in the course of a trial in the witness box. In support of that proposition the trial judge relied upon Geyer v. Merritt and Gouge (1979) 16 B.C.L.R. 27, quoting from 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.

- [5] In contending that the appeal is without merit and that that ground should be taken into account, the respondent, Mr. Cox, relies on the decision of this Court in *Topgro Greenhouses et al v. Houweling*, 2003 BCCA 355. It does appear from the report of what was a review of the decision of a chambers judge that the lack of any merit in an appeal alone may be sufficient ground for denying an extension such as is sought here, although I recognize that is much more the exception than the rule.
- [6] The circumstances that give rise to this application are somewhat unusual in that the time that elapsed from what was required for the filing of the factum was only one day. Indeed, Mr. Griffith, with the assistance of his wife who is helping him with this litigation, did fax a form of factum to the Registry on October 21, which was the last day upon which it could be filed. It was, however, not in the form required. They were so advised and attended the next day in an effort to file the factum. They were then told that the factum was late and an application would have to be made.
- [7] What concerns me most in respect of this matter is that there does not appear to be any basis upon which this appeal could succeed. That being the case, I do not see any purpose being served in permitting it to continue. I consider that the application to extend time should, for that reason, be dismissed.
- [8] I am concerned, but to a lesser degree, about the outstanding costs. Were I to have extended the time, I consider it would have been appropriate to require that the costs either be paid or secured and that security for costs of the appeal be posted. I take it from what Mr. Griffith has said in the course of the hearing this morning that would be difficult for him in any event.
- [9] Accordingly, the application is dismissed. "The Honourable Mr. Justice Lowry"
CORRECTION: December 22/03 The citation on the Style of Cause "Griffith v. Spencer" should be "Griffith v. Cox".

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