

# COURT OF APPEAL FOR ONTARIO

CITATION: Okafor v. Ontario (Attorney General), 2022 ONCA 770

DATE: 20221109

DOCKET: C70316

Fairburn A.C.J.O., Doherty and Lauwers JJ.A.

BETWEEN

Anthony Okafor

Plaintiff (Appellant)

and

Attorney General of Ontario and Regional Municipality of Waterloo Police  
Services Board

Defendants (Respondent)

Andrew Ostrom, for the appellant

Jeffrey Claydon, for the respondent

Heard: November 2, 2022

On appeal from the order of Justice Paul M. Perell of the Superior Court of Justice,  
dated January 11, 2022, with reasons reported at: 2022 ONSC 264.

REASONS FOR DECISION

[1] This is an appeal from summary judgment dismissing the appellant's action claiming damages for malicious prosecution. The underlying criminal prosecution rested on allegations that the appellant fraudulently received social assistance.

[2] The appellant maintains that the motion judge erred in numerous respects. At the end of oral submissions, we dismissed the appeal with reasons to follow. These are the reasons.

[3] First, the appellant maintains that the motion judge erred when he said that he was not granting "partial summary judgment". The appellant contends that the continuation of the claim against the police service, after the claim against the Attorney General was dismissed, necessarily meant that the motion judge was granting a partial summary judgment.

[4] We see no error in the motion judge's comment that this case did not involve "partial summary judgment." All the motion judge was conveying was that the claim against the Attorney General was being dismissed in its entirety, meaning that there was no partial summary judgment in respect of that party.

[5] In any event, the motion judge found that there was "no risk of inconsistent findings of fact or law" in this case because the malicious prosecution claim against Crown counsel was "independent and separate" from the case against the Waterloo Regional Police. We see no error in the motion judge's approach and his decision is owed deference on this point.

[6] Second, the appellant contends that the motion judge erred by treating prior judicial determinations, such as his prior committals to trial following two separate preliminary inquiries, as determinative of whether the appellant could prove that Crown counsel commenced or continued the prosecution without reasonable and probable cause. This is one of the elements of the tort of malicious prosecution.

[7] We do not agree that the motion judge erred by treating the prior judicial determinations as determinative. To the contrary, he cited authority for the proposition that, while a committal to trial following a preliminary inquiry is strong evidence supporting reasonable grounds, it “is not categorically dispositive” of such grounds.

[8] Third, the appellant says that the motion judge’s reasons are insufficient. In particular, he says that the motion judge relied upon the reasons of the trial judge who convicted the appellant in 2007, a conviction that was later overturned by this court on a procedural error: *R. v. Okafor*, 2009 ONCA 672, 97 O.R. (3d) 690. The appellant contends that the trial judge’s reasons failed to address certain inadequacies in the evidence and that, before relying upon those reasons as evidence of reasonable grounds, the motion judge was duty bound to scrutinize them more closely.

[9] We do not accept that the motion judge was required to do anything more than he did, when he focussed upon the overwhelming evidence of reasonable

grounds that belied the suggestion that Crown counsel had acted without reasonable and probable grounds. Among that evidence was the fact that, following an appeal to this court, where the conviction was set aside on the basis of a procedural ground, this court decided that it was appropriate to return the matter to another trial.

[10] Finally, the motion judge is said to have erred in failing to infer malice on the part of Crown counsel. This suggestion is without merit. Among other things, the motion judge relied upon the unchallenged evidence of the impugned Crown counsel that, at the time that the prosecution was undertaken, they did not even know about the facts said to have given rise to the malice. We simply adopt the motion judge's reasons on this point (see paras. 22-24, 135-40).

[11] The appeal is dismissed. Pursuant to counsel's agreement, the appellant will pay costs in the amount of \$10,000, all inclusive.

"Fairburn A.C.J.O."

"Doherty J.A."

"P. Lauwers J.A."