

# COURT OF APPEAL FOR ONTARIO

CITATION: Benson v. Cichorczyk, 2022 ONCA 800

DATE: 20221123

DOCKET: C58525

Doherty, Feldman and Trotter JJ.A.

BETWEEN

Nathan Benson

Plaintiff (Appellant)

and

Andrzej Cichorczyk, David Dick, City of Toronto, and Her Majesty the Queen in  
Right of Ontario as Represented by the Solicitor General

Defendants (Respondents)

Richard A. Levin, for the appellant

Douglas O. Smith and Jonathan Thoburn, for the respondents, David Dick and  
the City of Toronto

Heard: November 14, 2022

On appeal from the judgment of Justice Kevin Whitaker of the Superior Court of  
Justice, dated March 11, 2014, with reasons reported at 2014 ONSC 964.

REASONS FOR DECISION

[1] The appellant was injured when a vehicle struck the back of the van being used to take the appellant and other prisoners to court. The appellant sued David Dick, the driver of the prisoner van, the City of Toronto, the owner of the van, and Her Majesty the Queen in Right of Ontario for negligence. His claim focused on alleged design deficiencies in the vans used by the City of Toronto to transport prisoners to court. The appellant contended that the City did virtually nothing to protect the safety of the prisoners while they were travelling in the vans.

[2] The appellant settled his claim with Ontario and proceeded to trial against the two remaining defendants. At trial, the appellant took the position, that in light of the settlement with the Province, the appellant was only asking that Mr. Dick and the City of Toronto be held liable if the court was satisfied that punitive damages should be ordered against them. In support of this position, the appellant alleged, not only that the vans were negligently designed in several ways, but that the defendants' attitude toward the safety of the prisoners displayed a callous and wanton disregard for their wellbeing.

[3] In the Statement of Claim, the appellant alleged that Mr. Dick showed a disregard for the welfare of the prisoners in the van after the accident. Counsel, however, acknowledges that the negligence claim is based on alleged defects in the design of the van. Clearly, Mr. Dick cannot be found liable for those defects, much less responsible for punitive damages as a consequence of those defects.

The real target is the City of Toronto. The action was properly dismissed against Mr. Dick.

[4] Although the parties treated the availability of punitive damages as the sole issue at trial, punitive damages become relevant only after the defendants are found to be liable. The parties did address the question of the respondents' negligence in the course of their closing arguments.

[5] Specific findings with respect to the nature of a defendant's liability are potentially crucial when assessing the availability of punitive damages. It would have been better had the trial judge dealt with liability separate and apart from the availability of punitive damages. In the end, however, we are satisfied that the blending of the appellant's liability with the availability of punitive damages did not prejudice the appellant.

[6] We see no error in the trial judge's treatment of the punitive damages claim. He accurately set out the applicable law: paras. 48-49. He identified the particulars relied on by the appellant in support of the negligence claim: paras. 24-29. The trial judge accurately summarized the positions of the parties: paras. 30-31, 39-43.

[7] The trial judge ultimately described the competing positions of the parties as presenting two different approaches to the safety of prisoners being transported to and from court. The appellant's approach focused exclusively on the safety of the prisoners as riders in the van. The City took a broader view of the relevant safety

considerations. They maintained that the City was obliged to consider the protection of prisoners from each other while in the van, the protection of members of the public who might come in contact, direct or indirect, with the prisoners in the vans, and the protection of the officers involved in the transportation of the prisoners.

[8] The trial judge described both approaches as “rational”. He went on to indicate that he did not propose to “endorse” one approach over the other. The trial judge did not expressly decide whether the approach taken by the City resulted in a failure to take reasonable steps to protect the prisoners while in transit. Without making any finding on that issue, the trial judge went on and considered the availability of punitive damages. In his view, the appellant had failed to demonstrate the kind of conduct that could warrant punitive damages.

[9] The trial judge’s findings relating to punitive damages include:

- “There is no conduct here on the part of the TPS [Toronto Police Service], which is reprehensible, or should draw the condemnation of the community” [para. 50];
- “There is no basis for community sanction here – which is really at the heart of punitive damages” [para. 54]; and
- “There is simply no basis upon which to conclude that the conduct of the TPS should attract sanction and denunciation” [para. 56].

[10] The trial judge's findings are supported by the evidence. Counsel for the appellant's references to parts of the evidence go no further than to suggest other findings may have been possible on the entirety of the record. That possibility is no reason for this court to intervene in the findings made by the trial judge.

[11] The appeal is dismissed. In keeping with the agreement of the parties, I would award the respondents costs of the appeal in the amount of \$15,000, "all-in".

"Doherty J.A."  
"K. Feldman J.A."  
"G.T. Trotter J.A."