COURT OF APPEAL FOR ONTARIO

CITATION: Sumner v. Ottawa (Police Services), 2023 ONCA 140
DATE: 20230228
DOCKET: C70573

Harvison Young, Thorburn and Copeland JJ.A.

BETWEEN

Joel Allan Sumner

Plaintiff
(Appellant)

and

Ottawa Police Services

Defendant
(Respondent)

Joel Allan Sumner, acting in person

Mary Simms, for the respondent

Heard: February 24, 2023

On appeal from the order of Justice Sally A. Gomery of the Superior Court of Justice, dated March 15, 2022, with reasons reported at 2022 ONSC 1651.

REASONS FOR DECISION

[1] The appellant appeals from a motion judge's order dismissing his action pursuant to r. 2.1.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 on the basis that the action was frivolous, vexatious and an abuse of process.

[2] The factual background giving rise to this matter may be briefly summarized. In February 2022, the appellant brought an action against the respondent, seeking injunctive relief to prohibit the Ottawa Police Service ("OPS") from interfering with the appellant's attempts to arrest Prime Minister Justin Trudeau. The appellant also sought injunctive relief requiring the OPS to "break down whatever door Justin Trudeau is behind and take him into custody for the crime of extortion under the colour of official right." The appellant sought damages in the total amount of $500,000.

[3] The respondent filed a request under r. 2.1.01(6) that the action be dismissed pursuant to r. 2.1.01(1). That rule provides that the court may stay or dismiss a proceeding "if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court".

[4] On appeal, the appellant submits that the motion judge was wrong to dismiss the action and that in doing so, she too committed an act of extortion that benefitted Prime Minister Trudeau. At para. 7 of his factum, he states that:

> The sole issue on appeal is: was it extortion, unjust, and/or corrupt for Justice Sally Gomery to knowingly take or withhold an official act and issue an order obtaining the Appellant's claim for damages in tort for the private benefit of Justin Trudeau?

[5] For the following reasons, we find that the motion judge committed no reversible error and the appeal should be dismissed.

Analysis

[6] A decision made under r. 2.1 is a discretionary decision and, as such, is entitled to deference. That said, discretionary decisions may be set aside where the court misdirects itself or comes to a decision that is so clearly wrong that it amounts to an injustice: *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 S.C.R. 125, at para. 27.

[7] We are unable to find that the motion judge misdirected herself or came to a clearly wrong decision in this case for a number of reasons.

[8] First, the motion judge carefully applied the procedure set out in r. 2.1.01(3). In particular, having reviewed the statement of claim, she advised the appellant that she was considering making the order. He was so notified, given the opportunity to provide written submission, and in fact did so. As the motion judge's reasons demonstrate, she considered the submissions and addressed them clearly.

[9] Second, the motion judge carefully and accurately set out the law and policy of r. 2.1.01. After stating that the rule's purpose is "nipping in the bud actions which are frivolous and vexatious in order to protect the parties opposite from inappropriate costs and to protect the court from misallocation of scarce resources", citing *Markowa v. Adamson Cosmetic Facial Surgery Inc.*, 2014 ONSC 6664, at para. 3, she noted that the abusive nature of a proceeding must be

obvious “on the face of the pleadings themselves”. She also properly instructed herself that r. 2.1.01 is a blunt instrument, reserved for the clearest of cases: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 81 C.P.C. (7th) 258, at para. 8, leave to appeal refused, [2015] S.C.C.A. No. 488; *Khan v. Krylov & Company LLP*, 2017 ONCA 625, 138 O.R. (3d) 581, at para. 12. Finally, she noted that in considering whether a claim ought to be struck under r. 2.1.01, the judge must read the statement of claim generously, and assume that the assertions of fact are true unless they are obviously implausible or ridiculous.

[10] Third, the motion judge considered the statement of claim through the lens of r. 2.1.01 and the considerations she had articulated. She set out the allegations the appellant made in his statement of claim, and then reviewed his submissions on the motion. She noted that the appellant was seeking both (i) orders prohibiting the police from interfering with his efforts to arrest Prime Minister Trudeau and requiring the police to arrest him for extortion themselves, and (ii) damages in tort based on the past failure of the police to arrest Prime Minister Trudeau, and because the police prevented the appellant from doing so.

[11] Finally, having carefully and accurately summarized the appellant’s submissions, the motion judge found that his statement of claim bore the following hallmarks of a frivolous and vexatious proceeding:

i) there is no legal basis under Ontario or Canadian law that would enable a person to obtain an injunction to require a police officer to arrest a potential offender, and for that reason, the plaintiff could not reasonably believe that the court would grant an order to force the police to arrest the Prime Minister, or to require them to cease protecting him from an individual who seeks to arrest him;

ii) the statement of claim is unintelligible, consisting largely of legal conclusions and argument rather than an account of the facts that could give rise to a legal remedy. For example, the appellant claims that on February 12, 2021, the Prime Minister "corruptly threatened" the plaintiff "and other Canadian citizens that if we do not buy influence in official acts from private third-party hotels and pay them a bribe we would be prosecuted by conspiring public officials for entering Canada", but the appellant does not indicate what the Prime Minister allegedly said, or allege any factual basis for the assertion that, in doing so, he was engaged in a corrupt act; and

iii) the statement of claim uses rhetorical questions, rambling discourse, and pseudo-legal jargon that has no meaning in modern Canadian law, including the repeated use of terms such as "misprisoning a felony" in reference to the respondent's failure to arrest the Prime Minister.

[12] The motion judge's thorough assessment of the appellant's statement of claim and submissions, and her consideration of hallmarks of frivolous and vexatious proceedings are well grounded in the r. 2.1.01 case law: see *Gao v. Ontario WSIB*, 2014 ONSC 6497, 37 C.L.R. (4th) 7, at para. 15; *Markowa*, at para. 11; and *Scaduto*, at paras. 7-9. Indeed, the appellant does not raise any errors made in her analysis of r. 2.1.01. His argument on appeal appears to focus on his view that the motion judge as well as the Prime Minister committed acts of extortion that do or should constitute legal causes of action in Ontario and could ground the relief claim. We see no merit to this argument and no error on the part of the motion judge in this respect.

[13] In conclusion, we find no basis for interfering with the motion judge's exercise of discretion to dismiss the action. She followed the proper procedure, set out the correct legal principles to be applied, and reached conclusions that were grounded in the record before her.

[14] The appeal is dismissed. No costs were sought and none are awarded.

"A. Harvison Young J.A."
"J.A. Thorburn J.A."
"J. Copeland J.A."