Court of King's Bench of Alberta

Citation: Giesbrecht v Prpick, 2024 ABKB 433

Date: 20240715
Docket: 1608 00404
Registry: Medicine Hat

Between:

Randy Giesbrecht, Robert Hazelaar and Shanon Simon

Plaintiffs

- and -

Danica Prpick

Defendant

Endorsement on Costs
of the
Honourable Justice N.E. Devlin

---

[1] The Plaintiffs sued in defamation and were successful after a lengthy trial: ***Giesbrecht v Prpick***, 2024 ABKB 51. They succeeded on all but one issue, being the admissibility of the "BMO Email". Evidence and argument on that point consumed little time at trial and the exclusion of that letter from the scope of the defamatory statements had a negligible impact on the damages awarded. At the end of the day, each plaintiff was awarded a total of $40,000 in general and aggravated damages.

[2] Therefore, the Plaintiffs are, in principle, entitled to their costs of this action: *Alberta Rules of Court*, Alta Reg 124/2010, r 10.29; ***McAllister v Calgary (City)***, 2021 ABCA 25 at para 21. The quantum of a cost award must be reasonable and proper, taking into consideration factors listed in Rule 10.33, which includes consideration of the parties conduct of litigation, and provides as follows:

> **Court considerations in making costs award**
>
> 10.33(1) In making a costs award, the Court may consider all or any of the following:

(a) the result of the action and the degree of success of each party;

(b) the amount claimed and the amount recovered;

(c) the importance of the issues;

(d) the complexity of the action;

(e) the apportionment of liability;

(f) the conduct of a party that tended to shorten the action;

(g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.

(2) In deciding whether to impose, deny or vary an amount in a costs award, the Court may consider all or any of the following:

(a) the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action;

(b) a party's denial of or refusal to admit anything that should have been admitted;

(c) whether a party started separate actions for claims that should have been filed in one action or whether a party unnecessarily separated that party's defence from that of another party;

(d) whether any application, proceeding or step in an action was unnecessary, improper or a mistake;

(e) an irregularity in a commencement document, pleading, affidavit, notice, prescribed form or document;

(f) a contravention of or non-compliance with these rules or an order;

(g) whether a party has engaged in misconduct;

(h) any offer of settlement made, regardless of whether or not the offer of settlement complies with Part 4, Division 5.

[3] Here, the Plaintiffs' case was crisply presented, lasting 3 ½ days, the majority of which was consumed by cross-examination. The defence then called 12 witnesses over a further eight days of trial.

[4] Ms. Prpick, acting as a self represented litigant, presented her case in a proper and professional manner. There was no misconduct in the presentation of the evidence or use of Court time. That said, the defence was absolutely meritless and, in many facets, bore no rational connection to the actual issues at hand in the defamation claim. Worse, she persisted in presenting and arguing certain positions even though she held materials which clearly showed them to be meritless. I decline to characterize this as intentional litigation misconduct only because of Ms. Prpick's non-conventional relationship with reality in relation to the merits of her case.

[5] Nevertheless, the Plaintiffs were forced to incur costs significantly more than what was called for or proportional to the complexity and quantum of the claim.

[6] The Plaintiffs state that their actual legal costs to pursue this action amount to over $130,000 and argue that their relatively modest damage award – which was proportional to the trial as they presented it – would be rendered nugatory without a meaningful cost recovery. The size of this bill becomes understandable in light of the undo length of time this case took to come to trial, excesses in the discovery process insisted upon by Ms. Prpick, and the need for repeated appearances pertaining to adjournments.

[7] The volume and nature of correspondence Ms. Prpick levied upon the Court provides some illustration of the unusual "burn rate" of time and energy involved in interacting with the defendant in the litigation context.

[8] For all these reasons, the Plaintiffs seek a 2.5 times multiplier be applied to Column 2 of Schedule C of the Rules, as a bare application of Column 2 costs only provides for an award of $41,880, exclusive of disbursements. Use of such a multiplier would result in total costs and disbursements being awarded in the amount of $124,000.

[9] In support of their position, the Plaintiffs rely on ***GO Community Centre v Clark Builders and Stantec Consulting Ltd***, 2020 ABQB 203 at para 59, where Renke J commented as follows on the purposes underlying cost awards:

> ... costs promote rational and litigation norm-consistent decision making. On the one hand, costs discourage frivolous claims and discourage improper litigation behaviour. On the other hand, by adding a measure of predictable risk to litigation, costs can contribute to incentives for settlement. These objectives promote access to justice by freeing the litigation system from cases that need not or should not be litigated...

[10] The Court appreciates that Ms. Prpick adamantly wanted her day in court to air her theories about a variety of grand criminal conspiracies afoot in the town of Redcliff, of which she believes herself to have been a victim. However, the fundamental injustice of having to spend significant money combating meritless claims, defences, or positions was noted by our Court of Appeal in ***Warman v Law Society of Alberta***, 2015 ABCA 368 at para 28, n 15.

[11] Even more pointedly, in ***Beier v Proper Cat Construction Ltd***, 2013 ABQB 351 at para 56, Wakeling J (as he then was) held that:

> [t]he common law principle that a person has the right to be heard or to have his day in court is not more important than speedy resolution of meritless claims or defences the continuation of which drives up the cost of litigation for everyone not just those prosecuting an action or maintaining a defence which has no real prospect of success.

[12] These principles find considerable traction in this case. In order to have their relatively short day in court and clear their names – something of immense personal importance to each of the Plaintiffs who were severely defamed as public servants of long standing – the Plaintiffs became captive riders on Ms. Prpick's journey of conspiratorial fantasy.

[13] For her part, Ms. Prpick resists any costs award on the basis that the Plaintiffs were "wholly unsuccessful" in the action. For this surprising proposition she relies on an interlocutory

ruling of Master Robertson. I confess to being unable to understand how plaintiffs who recovered to the dollar what they claimed can be branded "unsuccessful" and disentitled to costs. I respectfully do not give effect to this submission.

[14] Ms. Prpick also submits that the Plaintiffs should be disentitled to costs due to their reliance on part of a document I found to be inadmissible under Rule 5.33. She characterizes the Plaintiffs' conduct in advancing a defamation claim, based on the BMO Email, litigation misconduct.

[15] While I ruled against the Plaintiffs on this aspect of their case, the usability of the document was an open question in need of judicial resolution. Moreover, the Plaintiffs' position was consistent with extant authority which I distinguished or disagreed with. There was no misconduct in their approach. Finally, this aspect of the case consumed little Court time.

[16] Overall, this is a case in which enhanced costs for the Plaintiffs are required for justice to be done. However, full solicitor and client indemnity is not appropriate. The conduct of the trial, while frustrating overall, was not of a nature that would demand it. I also find that it would work a reciprocal overall injustice to impose costs of that magnitude on Ms. Prpick.

[17] Applying my discretion, and knowledge of the entire conduct of this case, I am satisfied that a two-times multiplier of Column 2 costs is appropriate. I am moved to a multiplier of this magnitude in part because Column 2 costs do not reflect the complexity and intensity of the matters tried in this case. Proportionality thus requires a further enhancement.

[18] Costs are awarded in the amount of $83,760. To this I would add disbursements, other recoverable charges, and GST (all of which I find to have been properly incurred) totaling $14,954.97, for a total award of $98,714.97.

[19] I appreciate that this is a very significant amount to award against an individual in Ms. Prpick's position. However, consuming weeks of Court time to advance unsupported and fantastical allegations against good, hard-working members of the community, through a multiweek proceeding, comes with consequences.

Dated at the City of Calgary, Alberta this 15th day of July, 2024.

N.E. Devlin
J.C.K.B.A.

Appearances:

Jonathan McCully and Justin Williams
for the Plaintiff

Danica Prpick
Self Represented Defendant