

In the Provincial Court of Alberta

Citation: Gunn v. Bews, 2018 ABPC 107

Date: 20180507
Docket: P1790301837
Registry: Edmonton

Between:

Sheila Catherine Gunn

Plaintiff

- and -

Dion Bews aka James Dion Bews

Defendant

Reasons for Decision of the Honourable Assistant Chief Judge G.W. Sharek

Introduction

[1] This matter came before me for trial on March 28 and 29, 2018 and relates to an alleged assault and battery of the Plaintiff by the Defendant.

Background Facts

[2] There was a Women's March held on January 21, 2017, which ended at the Legislative Grounds in Edmonton, Alberta.

[3] The Defendant, Dion Bews, attended the event as a participant and spectator, and the Plaintiff, Sheila Gunn, attended as a media person to cover the event for her employer, The Rebel Media. Ms. Gunn described The Rebel Media as "a conservative online news and commentary site". Ms. Gunn described herself as The Rebel's Alberta bureau chief and stated that The Rebel was operated by Ezra Levant, who she also described as "her employer".

[4] As a result of being at the march and subsequent rally for the purposes of providing media coverage, Ms. Gunn recorded many of the events, significant portions of which videotapes are Exhibit 1.

[5] At some point during the rally, Mr. Bews approached Ms. Gunn while she was filming, and with his left hand intentionally struck Ms. Gunn's camera, all of which is shown on Exhibit 1A. Ms. Gunn alleges that after Mr. Bews struck the camera, it in turn hit her in the face and caused her to fall backwards somewhat, against Mr. Barry Haughin, who was a volunteer with

The Rebel Media, accompanying Ms. Gunn at the rally. Ms. Gunn alleges that as a result of having been struck by the camera that was punched by Mr. Bews, she suffered short term redness on her face for a few hours, for which she did not seek medical attention. While there was evidence that a piece of camera equipment fell to the ground as a result of having been struck by Mr. Bews, there was no evidence of damage to the camera.

[6] Mr. Bews acknowledges having struck the camera, but denies that the camera struck Ms. Gunn at all.

[7] On June 5, 2017, Mr. Bews pleaded guilty in Provincial Court to “knowingly uttering a threat to Sheila Catherine Gunn to cause damage to property, to wit: a camera, on the 21st of January 2017”. Ms. Gunn did not participate in that proceeding at all, as she had not been advised that the criminal matter had been scheduled. The Honourable Judge D. Groves accepted the joint submission of the Crown and Defence Counsel and imposed a three month conditional discharge requiring Mr. Bews to perform 30 hours of community service within 10 weeks.

[8] The Plaintiff, Ms. Gunn, seeks general and aggravated damages of \$20,000.00 for the alleged assault and battery, plus punitive damages of \$20,000.00 along with solicitor-and-his-own-client costs on a full indemnity basis.

Issues

[9] The issues that need to be addressed are:

1. Did Mr. Bews commit an assault upon Ms. Gunn?
2. Did Mr. Bews commit a battery upon Ms. Gunn?
3. If either or both of these issues are answered in the affirmative, what damages is Ms. Gunn entitled to recover?

Analysis and Additional Facts

[10] Exhibit 1A is a video recording taken by Ms. Gunn that is the focal point of this action. Mr. Bews is seen closely approaching Ms. Gunn and her camera, which is on a tripod and the following verbal exchange takes place among Mr. Bews, Ms. Gunn and Mr. Haughian, as agreed to by counsel and shown on Exhibit 9.

Bews	:01	Ezra Levant, fuck you.
Gunn	:04	Wait so what did you say that it would be –
Bews	:06	I-I’m not –
Gunn	:07	No no no, I’m just asking a question, do I seem unreasonable to you?
Bews	:10	Yes, you seem unreasonable, you’re full of shit.

Gunn	:11	Because I seem really pleasant. I think – Am I coming across as pleasant right now?
Haughian	:15	Yeah, absolutely, we’re just trying to have a conversation here.
Gunn	:17	I’m having – I’m trying to have a conversation with you
Bews	:20	Go away, get out of my fucking face, I will break your camera, you don’t have the right to -
	:23	*Camera Struck*
Gunn	:24	Whoa.
Bews	:27	You don’t have the right to film me everywhere you go.
Haughian	:29	Yes she does.
Gunn	:30	Yeah I do, you just hit me in the face
Gunn	:34	No no hey don’t tell me to calm down, that guy hit me in the face.
White Hat	:36	I’m not telling you to calm down
Gunn	:37	That guy hit me in the face

[11] It is noteworthy that at the same time, Mr. Bews is looking into the camera and saying “Ezra Levant, Fuck You”, he is extending the middle finger of his right hand towards the camera, within 20-30 centimetres. He then turns his back to the camera, threatens to break Ms. Gunn’s camera, and then turns to strike the camera with his left hand. There is no doubt that he hit the camera, causing it to move. Nothing turns on the issue of whether he did that with an open hand or closed fist.

[12] After striking the camera, Mr. Bews tells Ms. Gunn that she has no right to film him everywhere he goes, and within seven seconds of Bews striking the camera, Ms. Gunn says “Yeah, I do, you just hit me in the face”. Within 14 seconds of Mr. Bews striking the camera, Ms. Gunn says on three occasions “that guy hit me in the face” or words to that effect.

[13] In *Canadian Tort Law*, Allan Linden, 10th ed. states at para 2.42:

“2.42 Assault is the intentional creation of the apprehension of imminent harmful or offensive contact. The tort of assault furnishes protection for the interest in freedom from fear of being physically interfered with. Damages are recoverable by someone who is made apprehensive of immediate physical contact, even though that contact never actually occurs. The underlying policy

thrust of the tort of assault, like that of battery, is the reduction of violence. Because threatening to inflict harm is apt to attract retaliation in the same way as causing harm, it must also be discouraged by tort law.”

[14] It is clear, and I find, that Mr. Bews committed an assault on Ms. Gunn by saying “Go away, get out of my fucking face, I will break your camera ...” Furthermore, Mr. Bews pleaded guilty to uttering a threat to Sheila Catherine Gunn to cause damage to property which, coupled with the clear facts on the video, Exhibit 1A and the transcript, Exhibit 9, clearly support the conclusion that Mr. Bews created an apprehension of imminent or offensive contact with Ms. Gunn.

[15] I am also satisfied, on the balance of probabilities, that Mr. Bews committed battery upon Ms. Gunn.

“A direct, intentional and physical interference with a person of another that is either harmful or offensive to a reasonable person is a battery. The tort recognizes a person’s right to bodily integrity and personal security. Freedom from physical interference is so highly valued that battery is actionable without proof of damage”.

The Law Of Torts, Phillip Osborne, 4th ed page 253.

“The tort [of battery] does not require that the contact be physically harmful to its recipient or cause any personal injury. It is the intangible right to autonomy over one’s own body which is protected ...”.

“To be actionable, it must be committed either intentionally or negligently:”

“... an intentional act occurs when the Defendant desired the consequences or ought to have been substantially certain that they would flow from the act”.

Lewis Klar, Tort Law, 4th ed. Page 46.

[16] I am satisfied by the evidence of Mr. Ezra Warnock that not only did he see Mr. Bews push the camera, but he saw the camera being pushed against Ms. Gunn. Although Ms. Tianna Barnes testified that she recalled Mr. Bews pushing the camera to the side and that she did not see the camera hit Ms. Gunn, I do not accept that. The video shows that Mr. Bews struck the camera squarely, and not to the side, and the video also shows that Mr. Bews was between Ms. Barnes and the camera; thus her vision of precisely what happened would have been obscured. This is corroborated by the evidence of Ms. Katelynn Donaldson who said that the Defendant struck the camera straight on, and the camera moved in that direction. She also stated that it was a quick strike and not a gentle push causing the camera to move backwards towards Ms. Gunn who was 4 to 6 inches behind the viewfinder. While Ms. Donaldson testified she did not see contact made with Ms. Gunn, she acknowledged that that was “possible”.

[17] In addition to the video and the independent witnesses’ evidence, the fact that Ms. Gunn stated 3 times within 14 seconds of the camera being struck that she had been hit in the face falls within the meaning of the *res gestae* exception to the hearsay rule as a spontaneous exclamation. While perhaps it is not necessary to be admitted as hearsay because the Plaintiff was at this trial, testified under oath and was cross-examined, I find that the *res gestae* exclusion would also apply, as there was little time for “calculated insincerity” in the statements made by Ms. Gunn

immediately after the incident. (See *The Law of Evidence in Canada*, Sopinka, Letterman and Bryant, 4th ed. Para. 6.348).

[18] Based on all the evidence, I find that Mr. Bews struck the camera with his left hand, straight on, causing the camera to move backwards, striking Ms. Gunn. He struck the camera intentionally, as he had threatened to do, and he did so not caring whether the camera struck Ms. Gunn. Hence I have concluded that Mr. Bews committed a battery upon Ms. Gunn.

[19] The physical injuries suffered by Ms. Gunn were minor, indeed trivial, amounting to redness in the face for a few hours after the incident.

[20] The assault and battery of Ms. Gunn by Mr. Bews were unprovoked. There is no evidence either on the video or of the independent witnesses to support the notion that Ms. Gunn in any way antagonized or provoked Mr. Bews. I do not accept the evidence of Mr. Bews that he feared for his safety. He subsequently tempered that by saying that he felt threatened because The Rebel used “video evidence to raise funds and incriminate people in the court of public opinion.” None of this supports a conclusion that Mr. Bews was in any way provoked prior to this attack, or that he had reason to fear for his own safety.

[21] Someone who fears for their safety, in my view, does not face a camera he believes, correctly, to be recording and say obscenities. And someone who fears for their safety does not, seconds later, after having had a chance to leave to scene, return to strike the camera he believes to be recording him.

[22] The fact that Ms. Gunn continued to film Mr. Bews despite his requests that she not do so does not amount to provocation or any other justification for the actions of Mr. Bews. Ms. Gunn was in a public place and was entitled to be there. She was also free to record the people and events as they took place and it was not for Mr. Bews to seek to verbally or physically curtail her right to do so.

[23] The day following this incident, Ms. Gunn posted to The Rebel website a vitriolic monologue about this incident and within an 8 minute timeframe, referred to the Defendant, whose identity at that time was unknown, as “that little cuck”, that “little left wing beta male”, “a little loser”, “a little puke coward” and “a little oxygen burglar”. Ms. Gunn asked her viewers to “please share” the video of the incident. The video posted the day following the incident is Exhibit 6.

[24] Having found that the Defendant, Mr. Bews, committed both an assault and a battery upon Ms. Gunn, the next issue is to determine the damages that she is entitled to recover.

General Damages

[25] The injuries suffered by the Plaintiff were minor, indeed trivial. She had a red mark on her face for a few hours after this incident, and it thereafter resolved entirely. She sought no medical attention. There are few cases dealing with quantification of general damages for such a minor injury. I refer to *Johnson v Roberts* 2014 BCPC 263 which assessed minor injuries for assault at \$1,000.00. I accept that as a reasonable and fair quantification of the value of the injuries suffered by Ms. Gunn arising from this incident, and Ms. Gunn will be entitled to general damages of \$1,000.00.

Aggravated Damages

[26] The Plaintiff testified that “since day one” of commencing her work with the Rebel, she received threats of violence and rape. She claims that as a result of this incident such threats have increased, and that she has now changed the way that she does her job. She said that she has to cover events with a different level of awareness, and that The Rebel now has a security budget and from time to time she utilizes the services of a bodyguard. She blames the increased harassment and security requirements on this incident, and seeks aggravated damages as a result. She provided no specific evidence such as e-mails, text messages, videos, diaries or even examples of subsequent harassment or threats received arising directly from this incident.

[27] The Plaintiff had every right to be upset and concerned about these actions of Mr. Bews, and she certainly had the right to express those concerns publicly. However, the issue with respect to aggravated damages is whether it was this incident, or the subsequent website post the next day by Ms. Gunn, or other subsequent events that caused her to have additional threats made against her and necessitate additional security at future events.

[28] Aggravated damages are compensatory in nature. Aggravated damages are to be distinguished from punitive damages as aggravated damages are designed to compensate the victim, including for such intangible losses as distress and humiliation whereas punitive damages are intended to punish or sanction a party. Such stress and humiliation must be proven on the balance of probabilities and that has not been accomplished by the Plaintiff in this action. While the Plaintiff may indeed be encountering more threats, humiliation and distress than she had earlier on in her career with The Rebel and prior to this incident, the evidence does not establish that this incident itself is wholly or partly the cause. Were it not for the video posted by the Plaintiff the day after this incident, my findings in this regard may well have been different. The video posted by Ms. Gunn (Exhibit 6) was not only abusive and disrespectful, it encouraged viewers to circulate that posting of the video of this incident. Since the Plaintiff and her employer, The Rebel, voluntarily chose to make this incident widely known, and go viral by encouraging further publication, the Plaintiff can hardly be seen to complain that the publication of this incident and its subsequent notoriety, has caused her damage for which the Defendant should compensate her. The claim of the Plaintiff for aggravated damages is dismissed.

Punitive Damages

[29] The Alberta Court of Appeal has succinctly summarized the law in Alberta regarding punitive damages in the case of *321665 Alberta Ltd v Husky Oil Operations Ltd* 2013 ABCA 221, where at paragraph 48 it is stated:

“48 Punitive damages flow from "high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour": *Whiten v. Pilot Insurance Co*, 2002 SCC 18 at para 94, [2002] 1 SCR 595, *Richard v. Time Inc.*, 2012 SCC 8 at para 149, [2012] 1 SCR 265. The Supreme Court advises that "punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own," and that "conduct meriting punitive damages must be 'harsh, vindictive, reprehensible and malicious' as well as 'extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment' (*Vorvis* at p. 1108)": *Honda Canada Inc. v. Keays*, 2008 SCC 39 at

paras 62 & 68, [2008] 2 SCR 362. A punitive damages award should only be awarded in exceptional cases where the misconduct would otherwise remain unpunished or where other penalties are (or are likely to be) inadequate to achieve the objectives of retribution, deterrence and denunciation. Even so, a punitive damages award must be subject to a principle of restraint. The analysis expected of a court is to "relate the facts of the particular case to the underlying purposes of punitive damages and ask itself how, in particular, an award would further one or other of the objectives of the law, and what is the lowest award that would serve the purpose, i.e., because any higher award would be irrational": *Whiten* at para 71, *Richard* at para 210."

[30] Mr. Bews pleaded guilty to knowingly uttering a threat to cause damage to property, and was sentenced to a conditional discharge, requiring him to perform 30 hours of community service. The issue now is whether he should also pay punitive damages. In addition to the discretion available as suggested in the *Husky Oil Operations* case, where other penalties are "inadequate", the case of *Whiten*, at paragraph 123 provides guidance:

"To the extent a defendant has suffered other retribution, denunciation or deterrence, either civil or criminal, for the misconduct in question, the need for additional punishment in the case before the court is lessened and may be eliminated. In Canada, unlike some other common law jurisdictions, such 'other' punishment is relevant but it is not necessarily a bar to the award of punitive damages. The prescribed fine, for example, may be disproportionately small to the level of outrage the jury wishes to express. The misconduct in question may be broader than the misconduct proven in evidence in the criminal or regulatory proceeding. The legislative judgment fixing the amount of the potential fine may be based on policy considerations other than pure punishment. The key point is that punitive damages are awarded "if, but only if" all other penalties have been taken into account and found to be inadequate to accomplish the objectives of retribution, deterrence, and denunciation."

[31] With respect to the criminal proceedings against Mr. Bews, I am satisfied that Judge Groves did not have a complete picture of the events. The record of the criminal proceedings, Exhibit 7 and the evidence in this matter disclosed that Judge Groves did not have the benefit of viewing the video which is Exhibit 1A, nor did she have the benefit, which I did, of two days of testimony from the Plaintiff and Defendant plus four other witnesses. Furthermore, and significantly, Judge Groves did not have the benefit of a Victim Impact Statement from the Plaintiff, who was unaware that the criminal proceedings were taking place.

[32] Former Chief Justice Beverly McLachlin stated:

"Canadians are privileged to live in a peaceful country. Much of our collective sense of freedom and safety comes from our community's commitment to a few key values: democratic governance, respect for fundamental rights and the rule of law, and accommodation of difference. Our commitment to these values must be renewed on every occasion, and the institutions that sustain them must be cherished."

Supreme Court of Canada, “Word of Welcome from the Chief Justice of Canada”,
online: Supreme Court of Canada website <<http://www.scc-csc.ca/home-accueil/index-eng.aspx>>

[33] The Canadian Charter of Rights and Freedoms defines as a fundamental freedom in section 2(b), “Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”.

[34] In a free and democratic society, people, including media, should be able to attend public events, say what they wish (with certain limited exceptions), without the fear of having themselves or their property threatened or physically abused. The fundamental freedom of the media as provided for in the Canadian Charter of Rights and Freedoms guarantees that the media shall have the freedom to report and provide opinion with respect to such public events as the 2017 Women’s March. To seek to curtail the media’s right to report and opine on the event, such as the Defendant Bews did here, was unacceptable and his resort to physical violence against a member of the media qualifies as “high handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour” as stated in *Whiten*. It is conduct that, “by any reasonable standard is deserving of full condemnation and punishment”, as stated in *Vorvis*.

[35] The said, I must also exercise restraint and award punitive damages in the lowest amount that would serve the purpose of deterrence and denunciation. Mr. Bews is entitled to his political views, and the Plaintiff and The Rebel are entitled to their political views. Mr. Bews however, was not entitled to commit assault and battery because his political views differed from those of the Plaintiff or The Rebel. I assess punitive damages against Mr. Bews in the amount of \$2,500.00.

Conclusion

[36] In conclusion, the Plaintiff is entitled to general damages of \$1,000.00 for personal injuries and \$2,500.00 punitive damages. Her claim for aggravated damages is dismissed.

[37] I will hear from the parties regarding costs.

Heard on the 28th and 29th days of March, 2018.

Dated at the City of Edmonton, Alberta this 7th day of May, 2018.

G.W. Sharek
A Judge of the Provincial Court of Alberta

Appearances:

Nicholas Trofimuk of Reynolds, Mirth, Richards & Farmer LLP
for the Plaintiff

Christopher Dawson of McCuaig Desrochers LLP
for the Defendant