PROVINCIAL COURT OF NOVA SCOTIA
Citation: *Rozee v. Young*, 2014 NSPC 109

Date: 2014-12-19
Docket: 2794692
Registry: Pictou

Between:

Robin Lynn Rozee

v.

Darrin Wayne Young

Judge:	The Honourable Judge Del W. Atwood
Heard:	December 19, 2014, in Pictou, Nova Scotia
Allegation:	810CC
Counsel:	Robin Lynn Rozee, Applicant, in person Alain Begin for Darrin Wayne Young

By the Court:

[1] The court has for decision the application of Robin Lynn Rozee. Ms. Rozee makes application against Darin Wayne Young for an order pursuant to section 810 of the *Criminal Code*.

[2] Mr. Young is not charged with a criminal offence. Section 810 is a form of preventative justice that is intended to arrest the continuation of threatening or harmful conduct that may give rise to the commission of a criminal offence.

[3] Section 810 of the *Criminal Code* states that an information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to him or to her or to his or her spouse or common law partner or a child or will damage his or her property.

[4] Subsection 3 of section 810 states that the justice or summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for his or her fears, order that the defendant enter into a recognizance.

[5] If the court should make such an order, the court must consider, pursuant to the provisions of sub-s. 810(3.1) of the *Criminal Code*, whether a firearms prohibition order ought to be ordered.

[6] Where sub-section 810(3) states that the court *may* order that a defendant enter into a recognizance, it is clear that Parliament intended to confer upon summary-proceeding courts a discretion; that discretion must be exercised judicially. The manner in which judicial discretion ought to be exercised was canvassed thoroughly by Handrigan JPC of the Newfoundland and Labrador Provincial Court, as he then was, in *Miller v. Miller*, [1991] N.J. No. 5.

[7] First of all, the burden of proof is upon the applicant. The applicant must satisfy the court that it is more likely than not that the applicant has reasonable grounds for fear as outlined in sub-section 810(1) and that the applicant actually is seized of those fears.

[8] In considering evidence, the court obviously must focus on evidence that it considers to be credible and trustworthy. The court's focus must be, in my view, on determining whether Ms. Rozee has satisfied the court on a balance of probabilities--because that is the standard of proof that has been consistently applied by courts throughout this Country on such 810 applications and that is

certainly underscored in *Miller v. Miller* --that she is in fear for her safety, the safety of her property or safety of a child or common law partner or spouse.

[9] Because of the fact that the burden of proof is upon Ms. Rozee, it is important that I focus upon Ms. Rozee's evidence first.

[10] I found Ms. Rozee's evidence to be very straightforward, presented in a very earnest and authentic fashion. Ms. Rozee certainly provided the court with a great deal of background information; however, it was clear to the court that that was necessary information for me to hear in order to understand the context of her relationship with Mr. Young.

[11] I did not get the impression that Ms. Rozee sought to withhold intentionally any important information. Ms. Rozee testified today accompanied by a binder of notes. It is clear to the court that she and Mr. Young have known each other for a period long of time; between 2003, when they were married, and 2008, when they separated, they were in an intimate personal relationship.

[12] They have had ongoing contact since their legal separation in February of 2009 in order to arrange appropriate sharing of child rearing responsibilities; it is clear to the court that Ms. Rozee would appear before the court with a huge inventory of information and it is inevitable that certain points will have to be left

out because the court doesn't have a lifetime to devote to a hearing of a peace bond application.

[13] Ms. Rozee cannot testify with chronological certitude regarding each and every significant event that has gone on in her life, at least insofar as it intersects with Mr. Young. But I believed Ms. Rozee when she described what had happened, particularly the incident on October 20th of 2014. I did not find that Ms. Rozee was contradicted or impeached in any material fashion although she was certainly cross-examined very thoroughly and very fairly by Mr. Begin.

[14] Ms. Rozee, in my view, did not try to embellish her evidence to suggest that there had been actual physical violence or threats of physical violence; rather, what she referred to was a pattern of contact that she considered to be, and I know I'm drawing an inference, but I believe that it is a reasonable inference, a form of harassment and psychological intimidation.

[15] I do not accept the proposition that a peace bond applicant must satisfy the court that there has been actual physical violence or threats of physical violence. Fear, as comprehended in section 810 of the *Criminal Code* may arise from conduct that falls short of that and I find that I am supported in that proposition by reference to, for example, section 264 of the *Criminal Code* that makes it

criminally harassing for an individual to engage in conduct that causes a person to have fear for safety. What can constitute criminal harassment? Well, subsection 2 of section 264 refers to repeatedly following from place to place the other person or anyone known to them; or repeatedly communicating with, either directly or indirectly the other person or anyone known to them; or besetting or watching the dwelling house or place where the other person or anyone known to them resides, works, carries on business or happens to be; or engaging in threatening conduct directed at the other person or any member of their family.

[16] The Ontario Court of Appeal in the leading decision of *R. v. Kosikar*, [1999] O.J. No. 3569 at para. 25 pointed out that criminal harassment can arise even in the event of only one instance of prohibited conduct under sub-section 264(2) of the *Criminal Code*.

[17] Now, I hasten to point out that Mr. Young is not before the court charged with criminal harassment but I do make these observations in refuting the proposition that Ms. Rozee must come to court and establish that there must have been actual threats of violence or actual violence in order to prosecute successfully a s. 810 application. I simply do not believe that to be the state of the law in Canada.

[18] I am satisfied that, in particular, the incident on October 20th happened precisely as Ms. Rozee described it. In reviewing Mr. Young's evidence, I found that Mr. Young's evidence caused the court a great deal of concern. In my view, the evidence of Mr. Young defied common sense in many respects. It appeared to be Mr. Young's proposition that it was Ms. Rozee who was seeking to maintain, continue or preserve the relationship.

[19] It is clear to the court that that is contrary to the very clear facts. Ms. Rozee ended the relationship, or at least the relationship ended in 2008. There was a separation agreement in 2009.

[20] Mr. Young testified and it is clear to the court from Mr. Young's own testimony that Ms. Rozee has been attempting to minimize her contact with Mr. Young. Mr. Young stated: "If she tells me to get out of the house, I left".

[21] I infer from that that Ms. Rozee has had occasion to ask Mr. Young to leave her presence more than once. Mr. Young acknowledged receiving a text message from Ms. Rozee in the aftermath of October 20, 2014: "If you come near the house and cause a scene again, I will report it". And so, far from Ms. Rozee soliciting or seeking Mr. Young's presence, it is clear to the court that she was doing exactly the opposite.

[22] With respect to the intercepting of mail, I accept Ms. Rozee's account of that. An individual's personal mail is highly private and that privacy is well respected. Mr. Young, in my view, had absolutely no business in retrieving any mail at any time, even if it was only on one occasion for an individual from whom he was lawfully separated.

[23] I find it also troubling that on 20 October 2014 Mr. Young would have gone to Ms. Rozee's residence in RCMP uniform, and that in my view lends credence to Ms. Rozee's account. In my view, that is exemplary of extremely poor judgment and satisfies that court that Mr. Young was seeking to use that uniform to intimidate and exercise power over Ms. Rozee in a completely inappropriate fashion.

[24] I accept Ms. Rozee's evidence, as well, regarding the use in the past by Mr. Young of a handgun like gesture because I feel that Ms. Rozee, over the past number of years has, indeed, been subject to a pattern of conduct that has sought to psychologically instill a sense of fear, domination and control over her and I accept her evidence and I do believe that she has made out the burden of proof required under section 810 of the *Criminal Code*.

[25] Accordingly, Mr. Young, the court orders and directs that you enter into a Recognizance for a period of 12 months in the amount of $500.00, without cash deposit or surety to justify. The court orders that you keep the peace and be of good behaviour; that you stay away from the person, home and place of work of Robin Lynn Rozee, have no contact or communication with her, directly or indirectly, even if invited, except either through a lawyer or in accordance with an order of another court of competent jurisdiction for access to a child or children.

[26] I do not believe that texting contact is going to be appropriate here. The court is going to add an additional condition that notwithstanding the generality of the foregoing, you must not communicate with Robin Lynn Rozee via texting, social networking, or the internet or by means of any internet enabled device.

[27] I do consider the necessity of an order under section 810(3.1) of the *Criminal Code*. The court is going to order that you not have in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance for a period of six (6) months and you are to make immediate arrangements to surrender any such items to the RCMP in a lawful fashion.

[28] Mr. Young, that peace bond will be ready for your signature shortly. We'll have you take a seat out in the lobby. Once it has been signed, you'll be free to go. Ms. Rozee, if you're able to wait, we'll be able to provide you with a copy of that. If you're not able to wait, we'll be able to send it out to you by the mail.

JPC