

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Millbrook First Nation v. Stephens, 2008 NSSC 179

Date: 20080521
Docket: 294559
Registry: Truro

Between:

Millbrook Band Council

Plaintiff

v.

Patricia Stephens

Defendant

DECISION

Judge: The Honourable Justice J. E. Scanlan

Heard: May 21, 2008 in Truro, Nova Scotia

Written Decision: June 10, 2008

Counsel: Ms. Jillian Ryan, Solicitor for the Plaintiff
Ms. Patricia Stephens, Defendant, self-represented

By the Court:

[1] Ms. Stephens entered into an agreement with the Millbrook Reserve in relation to 60 Tower Road. There were rules for tenants set out in relation to the residence. The first rule in that list of rules stated;

The tenant shall conduct him or herself in such a manner as not to interfere with the possession or occupancy of other tenants, such as loud noises at late hours. Written complaints from other tenants will result in the offender being issued a warning.

[2] In this case we heard evidence from Corporal Lilly that the RCMP were called to that residence 33 times. He talked about the system which records call outs being up and running for five years. He said that Ms. Stephens and her family were the only occupants in that house ever because it was a new residence when she occupied it. The 33 times would relate to the time of the tenancy by Ms. Stephens only.

[3] I am satisfied the events as described by Corporal Lilly would suggest that the tenants or the occupants have been conducting themselves in the manner which would interfere with the possession or occupancy of other tenants in the neighbourhood. Corporal Lilly, in his evidence, referred to the fact this address

has been a constant source of problems and concerns for the RCMP for some time including one occasion when the emergency response team was called out on May 30-31, 2007. They had to make hard entry in through the back door of the residence. In other words, they were not invited in or they did not knock, they busted the door in. They were concerned because of the suggestion that one of the occupants at least had access to a bullet proof vest and they were lead to believe there were firearms involved. The records indicate, from Corporal Lilly, there were no firearms found when they actually did gain entry.

[4] Corporal Lilly also referred to the records for Ms. Stephens' sons, Albert and Carl. The records are lengthy. It is not precisely clear how many of those convictions related to the time these sons were in the house but as recently as May 3, 2008 there was an incident at the residence. A taxi cab allegedly was called to the house to deliver some beer and upon arrival the beer was taken from him and into the residence. He went in to get his money or his beer.

[5] Ms. Stephens seems to think the real perpetrator of the offence in that case was the taxi driver because he had tattoos and he refused to leave when asked to do so. I guess it is all from where you sit in terms of perspective. I suspect the taxi

driver was thinking the real offence was they took his beer without paying for it. The only reason there was no conviction was that he was concerned because he should not have been delivering beer as he was not a licensed sales person. In other words he was bootlegging. That does not mean the offence did not occur. There is nothing about that offence that suggests to me that he deserved to have his beer taken from him, get a whack on the head and be assaulted by the occupants.

[6] I think it is important that Ms. Stephens understand there are at least two perspectives to a situation like that and hers is not always right or at least it is not the full story. In that case had they not called him to the house with the beer, had they not taken it from him without paying, and had they not bopped him on the head when he tried to get either his beer or money, there would not be a problem.

[7] There is a constant theme as I listened to the evidence and Ms. Stephens' position. That is all of this was always somebody else's fault. She says that her only wrong was in being too generous in letting too many people come into her house or that when she is away her sons have done things that she now sees were unacceptable.

[8] We heard from Corporal Lilly, he said he actually went into the house on one occasion and the place was in pretty rough shape even though it was a fairly new house. In fact, he said one of the doors was coming off and he actually finished taking it off. As I understand it somebody slammed his hand in the door. He said there were 30 to 40 people there when he was responding to the nuisance complaint. There is no evidence that Ms. Stephens was there but certainly Mr. Lilly says there were 30 or 40 people there.

[9] We see James Johnson's recital of what I understand to be the same incident. He says he got a noise complaint. He went and there were 18 people seen to be leaving the premises. He was very precise in the number.

[10] I am not blind to Ms. Stephens plight. In other words, I hear what she is saying about the residential school experience and the inter-generational impact. The fact that perhaps that has resulted in her not necessarily appreciating the proper boundaries either for herself or her children or those around her. She says she has residual issues that stem from the two or three generations which her family has been directly involved in the residential schools. I understand, as well, that she is not the only person in that situation. There is a whole community

probably in Millbrook that has a wide spread impact from that. Millbrook is not alone. It is nation wide. It is a tragedy. It is a blight on our nation for which non-natives have acknowledged a degree of responsibility, in fact total responsibility as I understand it. They have acknowledged there is an impact and it is long lasting. Communities and individuals have to be allowed to heal. Millbrook in this case is saying, we're building new houses as best we can. There are thirteen hundred people on this Reserve. We're trying to make decent homes for them where they can live, prosper, recover, and enjoy life as it should be. That includes situations where they, in some cases, will allot houses to individuals just because they, two or three generations going back, have lived in the same house. They say, look it is a family house, it is a matter of ownership. In other cases they acknowledge that people do not have money. They are prepared to put them in there rent free. Mr. Johnson thought that was Ms. Stephens' situation. I accept her evidence that it was not necessarily rent free because she was on social assistance and there was a \$400.00 allotment from her social assistance that actually went to pay rent.

[11] I appreciate as well that Ms. Stephens herself is a recovering alcoholic. She has been alcohol free, as I understand it, for 13 years. That is commendable. She

deserves full credit. I understand, as well, her children have been perhaps not welcomed into the community the way she would have hoped they would be welcomed. I am not saying it is all the communities fault because I do not know if the community understands her children any better than the children understand the community. Some of the incidents she described are very, very serious, including the fact that her son was stabbed 13 times. It all boils down to, in this case, the question as to whether or not Ms. Stephens, as the renter, and the people that live there with her are conducting themselves in a way which is not going to interfere with the possession or occupancy of other tenants in the neighbourhood. The answer is clearly no. What has been going on in that house has a negative impact on the neighbourhood.

[12] The Band is within its rights. This was not done six weeks after Ms. Stephens moved in. The Band did not vote to evict until January 9, 2008. She had been in there for quite a long time before that.

[13] There were still problems at the house. As late as May 3, 2008 there was yet another incident involving an assault on a taxi driver. There was no conviction out of that but that does not mean there was no assault. It just means there was no

conviction. The fact of the matter was the police had to be called. There was violence in the house. Even without a conviction there was a crime committed in that house. There was a crime committed when they took the beer from him outside of the house.

[14] I am not sure where Ms. Stephens is going from here but I would suggest to her that she make it very clear to her children, she will not be made welcome in any community she ever goes to if this type of shenanigans continues in the next place she lives. I do not care if it is on Reserve or off Reserve, people are not going to put up with this type of behaviour. It is simply not acceptable. That is a shame. As I listened to Ms. Stephens, she described the way she lived and the things that she has been doing. I listened to her talking about having the Priest over and having Bible studies at her house and the Pastor over and going to Church when she can, working night shifts, all those things. The shame of it all is it seems to me she is a very good person. The problem is she has not run her household in such a way as to prevent it from becoming intolerable to all those people around her, the neighbours. The neighbours should not have to put up with this type of goings on.

[15] I accept Ms. Stephens' evidence this is not the only house on the Millbrook Reserve that has this type of goings on. That does not make it acceptable there either. This is a community that needs to heal. Everybody in the community has to understand this community is not going to be a nice place to live unless this kind of activity stops. Two wrongs do not make a right. I am only dealing with Ms. Stephens' wrong. In fact with her children's wrongs.

[16] Ms. Stephens said that she has no human rights on the Reserve. The point that I just made talks about rights on or off the Reserve. That is Ms. Stephens would not have the right to do this in any community. Again I refer to the fact, I do not think it was Ms. Stephens that was necessarily partying each and every time but her children certainly were and their friends were there. It was loud and it was causing disturbances. I think it would not matter whether she was on Reserve or off Reserve it would not be tolerated. In fact I suspect if she was off Reserve it would have been shut down much quicker than it was.

[17] The fact that Ms. Stephens has trouble dealing with boundaries is something she will no doubt continue trying to address through counselling. She has made it the communities problem in the sense that she has not been able to impose

boundaries on her children in such a way that they will not be a menace to the community. Even her friends who chose to just drop by and free load off of her, she said, “that’s the Indian way, you just invite them into your house and you feed them.” I am using Ms. Stephen’s words. That is fine. People come to my house and I make them welcome and I feed them and they can stay as long as they want. If they are there they respect the rules of my house. I say, if you are too offensive in your behaviours I may well get kicked out of here so you better not do it. That is the way Ms. Stephens has to live no matter where she is going to live.

[18] I want to make it clear as well, the order that I make does not banish Ms. Stephens from the community. The order I make deals with the property only. I understand what she is saying that effectively if she has no place to live it is the same thing as banishment. That is a tragedy. The council says, through their lawyer, look we still have the offer out for \$1,500.00. First months rent, damage deposit, moving expenses up to a maximum of \$1,500.00. It is an offer that I have never seen an evicting landlord make to any non-native. It is unheard of that they would still help you re-establish yourself someplace else.

[19] I say to Ms. Stephens again, if her sons are going to be with her and act the way they have been acting, it is costing her dearly. If they keep causing problems she is going to find herself evicted from one place after the other. It is a shame.

[20] I accept Ms. Stephens is a good person. She has tried hard. She has fought battles that most of us never have to fight in our entire lives. She has been faced with obstacles, including the residential school, and in terms of alcohol. She is still here and she is fighting for herself and she is fighting for her sons.

[21] Having said that, I am satisfied under all of the law that is before me, and the facts that I am dealing with, I am obliged and have no other option than to say, yes, the applicant has proven the facts and the law suggests they are entitled to the order giving them possession of that property.

[22] What I am going to say next is not something that I am ordering. I am urging the Band consider taking this order and holding it. They can go in tomorrow and enforce it if they want to, they could go in tonight and enforce it if they want to, and they could have Ms. Stephens moved out of that property. I am asking the Band to consider holding the order. It continues to be effective on a

moments notice if they want to execute on the order and they can move Ms. Stephens out with the assistance of the RCMP. If there are no problems I would hope they will not act on the order and respect the fact one of their own is calling out for some help. I have no authority to say they have to comply with the direction I have just given. I want that made clear. If they decide tonight Ms. Stephens is getting out of that house, she is gone. If they decide to hold the order and next week something happens, they can simply say we have an order and Ms. Stephens is gone. If they decide to wait a year and have not done anything and there is no further problems then there is a Mic Mac family who is perhaps saved from I'm not sure what because I do not know where Ms. Stephens will go. After the first month's rent is used up I do not know how she supports herself. It is not going to make it any better for her children off Reserve either.

[23] I am telling Ms. Stephens now there are no more parties at that residence. She is to tell her groups of 10 or 20 or 30 or her extended family from the other Reserves, "I've got a real problem here, I'm trying to hang onto my house so me and my boys have a place to live. That means I'm not going to have a crowd of people into my house." Then nobody has a chance to complain. She is to tell her boys that there is not to be a single incident at that house including things like

calling a cab driver whether he is in the house or out of the house. Just do not call a cab driver to have beer delivered. They do not go out in the street and wrestle. They do not go out in the back yard and throw snow balls that are going to hit the neighbour's house. In other words, it is a place to live. Hopefully, hopefully, if the Band decides to go along with that recommendation sooner or later they will understand that, yes, there are boundaries in life and Ms. Stephens will understand how to impose those boundaries herself.

[24] Again, I want to emphasize this final decision is not mine. My decision is Ms. Stephens is gone if the Band chooses to move her out of there immediately. I hope there is one last chance.

[25] I say to Ms. Ryan, who is legal counsel for the band on this application, there are an awful lot of people in that community that are crying out for help. I remember a number of years back I was faced with a very serious criminal matter. I thought to myself, in any other case I would have said no. In the criminal law context I thought of the **Gladue** factors in terms of native background in that case. I understood some five years later from the Crown that one person who I would have given up on in any other circumstance has completely turned his life around.

That was a small victory for him. This may be the one last chance that Ms. Stephens can get which will help her set boundaries for her boys that make life tolerable for that community.

[26] Ms. Stephens should understand if she wants to stay there and if her boys are not prepared to go by the rules she better be prepared to leave or send them packing on their own right away. She has to set that boundary not them.

[27] Again, I emphasize it is not my decision. My decision is I have signed this order which says Ms. Stephens is to be out and I leave it for the Band to decide.

[28] I wish everybody luck.

J.