SUPREME COURT OF NOVA SCOTIA
Citation: *Raymond v Brauer*, 2014 NSSC 168

Date: 2014-05-06
Docket: Ken No. 399386
Registry: Kentville

Between:

Paulette Raymond

Plaintiff/Applicant

v.

Connie Brauer and
Victor Harris

Defendents/Respondents

Revised Decision:	The name "Ms. Raymond" at the beginning of paragraph 13 has been corrected on May 9, 2014 to read "Ms. Brauer." This decision replaces the previously released decision.
Judge:	The Honourable Justice Gregory M. Warner
Heard:	March 3 and 7, 2014 in Kentville, Nova Scotia and April 2, 2014, 2014 in Windsor, Nova Scotia
Counsel:	Paulette Raymond, self-represented Applicant Connie Brauer and Victor Harris, self-represented Respondents

By the Court:

[1] Paulette Raymond seeks, for the third time, an order for civil contempt against Connie Brauer, one of the Defendants in this litigation for breach of an interim order of November 7, 2012. The operative provision of the order reads:

> IT IS HEREBY ORDERED THAT until further Court Order or conclusion of this proceeding, Connie Brauer and Victor Harris are prohibited and restrained from broadcasting, disseminating, posting on the Internet, distributing or publishing in any manner whatsoever, directly or indirectly, any statements, depictions, descriptions, opinions and commentary, which reference by name or innuendo Paulette Raymond.

Background

[2] The Applicant commenced an action on June 29, 2012, against her former husband and his present spouse for several remedies arising out of an acrimonious divorce and about 16 years of continuous contests over child support. The primary claims were defamation and cyberbullying.

[3] All parties are and have been self-represented. Since August 2012, the parties have filed and contested at least 21 interim motions in this proceeding.

[4] On April 13, 2013, the Applicant filed her first contempt motion for breach of the November 7, 2012, order. Justice Moir dismissed it on July 19, 2013.

[5] On October 10, 2013, the Applicant filed a second motion for contempt, amended on November 7, 2014. This motion was heard by Justice Wood on November 19, 2013, and was dismissed in a written decision dated December 11, 2013 (2013 NSSC 388). On April 24, 2014 (2014 NSCA 43), the Nova Scotia Court of Appeal dismissed the Applicant's motion for an extension of time to appeal that decision.

[6] This third motion for contempt was filed on February 14, 2014. The parties appeared on it and other motions on March 3, 2014. This matter was adjourned to March 7, 2014. On March 7 cross-examination of the Applicant was adjourned to April 2, 2014.

[7] The Court advised the Applicant that the third motion would proceed on the basis of new evidence; that is, evidence of contempt since the date of the hearings and decisions by Justice Moir and Justice Wood.

[8] The documentary evidence consists of the Notice of Motion, and four Affidavits of the Applicant.

[9] The four affidavits were:

a) An affidavit, called "Volume VIII", sworn and filed December 16, 2013, with the three attachments numbered "A" to "C", which attached exhibits give an overview of the Applicant's seven volumes of evidence from the prior contempt applications, sworn between July 15, 2013 and December 10, 2013, numbered by the Applicant "Volumes I to VII", and containing "Exhibits" 1 to 39.

b) An affidavit, sworn February 14, 2014. Attached are 5 "exhibits" (numbered "D" to "H") through which the Applicant identifies Google search results, websites, screenshots and posts of the Respondent Ms. Brauer, with the USB flash stick purporting to contain evidence of new hyperlinks from the Respondent's current Homepage, YouTube and Twitter postings, to pre-November 7, 2012 sites and postings containing postings about the Applicant.

c) An affidavit, called "Volume VI", sworn November 19, 2014 (filed December 13, 2013) attaching six "exhibits" (#29 to #34) consisting of e-mail communications with various courts, court dockets, lists of three of the Defendants' websites or posts, and affidavits of service.

d) An affidavit, called "Volume VII", sworn December 10, 2013 (filed December 13, 2013), containing six "exhibits" (#35 to #39), dealing with school and Halifax rental matters related to the Applicant.

[10] The Applicant was cross-examined, and allowed to comment during the attempt to open and follow sites, postings, and hyperlinks on an electronic record (the USB flash drive) attached to Exhibit H of the Applicant's February 14, 2014 affidavit.

[11] After a lengthy period of opening the folders, files, YouTube and Twitter postings, and following the hyperlinks (those that would open) during the April 2, 2014 hearing, the Court agreed to view the remaining items on the USB flash drive for which there was not time to observe in court. The Court has viewed all of the entries on the USB flash drive filed with the Applicant's February 14, 2014 affidavit.

The Law

[12] The law respecting civil contempt was identified by Justice Wood at paragraphs 2 and 3 of his decision. He adopted as the current state of the law paragraphs 47 and 70 in *Godin v Godin*, 2012 NSCA 54. I too adopt Justice Saunders' statement of the law. He wrote:

> [47] Notwithstanding the trial judge's diligent and repeated efforts to ensure that the appellant had proper notice of the allegations and a full opportunity to fairly present her position, I have, respectfully, come to the

conclusion that in the circumstances of this case the judge erred in finding the appellant guilty of contempt. I believe many of the unique and troubling features of this case have led to a result that requires our intervention. Before exploring some of those details, I think it important to emphasize certain fundamental principles. Many of these were explored by Justice Farrar in *Soper v. Gaudet*, 2011 NSCA 11. From that and the jurisprudence cited therein, we know (and I am here extracting those principles which are especially important in this case) that:

1. finding a party in contempt falls within a trial judge's discretion;

2. on appeal, the standard of review applied to the exercise of that discretion is one of reasonableness.

3. we are not to substitute our own view for the judge's discretion unless we conclude that the judge erred in law; misapprehended material evidence; or produced a result which is obviously unjust;

4. notwithstanding its civil nature, contempt of court is quasi-criminal;

5. the standard of proof in contempt proceedings is proof beyond a reasonable doubt;

6. the party alleging contempt has the burden of proof;

7. in a case of civil contempt the following elements must be established beyond a reasonable doubt:

(i) the terms of the order must be clear and unambiguous;

(ii) proper notice must be given to the contemnor of the terms of the order;

(iii) there must be clear proof that the contemnor intentionally committed an act which is in fact prohibited by the terms of the order, and

(iv) *mens rea* must be proven which, in the context of civil contempt proceedings, means that while it is not necessary to prove a specific intent to bring the court into disrepute, flout a court order, or interfere with the due course of justice, it is essential to prove an intention to knowingly and wilfully do some act which is contrary to a court order.

. . .

> [70] I fully appreciate the significance of the contempt power in a trial judge's arsenal as a ready means to maintain respect for the rule of law and to dispense even-handed justice to all parties. Nonetheless, it is a blunt instrument only to be wielded sparingly, in circumstances where no other sanction will do. Its penal consequences require a strict application of proper procedures. This critical balance is aptly described by Melissa N. MacKovski in **Administering Justice: The Law of Civil Contempt**, [2009] Annual Review of Civil Litigation 80:
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> > ... civil contempt may attract severe consequences. Court orders are meant to be followed and breaches in a civil context may result in criminal penalties. The contempt power remains an important tool in ensuring compliance with court orders which is fundamental to the rule of law and the fair and proper administration of justice. Without the ability to sanction for contempt, the dignity of the court and the integrity of the justice system are threatened. ... the use of the contempt power should be tempered and reserved for those cases where the breach is both serious and beyond a reasonable doubt. Otherwise the power itself risks being diluted. ....

Analysis

[13] Ms. Brauer submits that at the hearing when he made the interim injunction, Justice Murphy directed the Respondents not to make any new postings referring directly or indirectly to the Applicant. She submits that Justice Murphy explained that the Respondents were not required to remove any existing postings referencing the Applicant.

[14] The Respondents argue that they are social and law reform activists, active on the internet, YouTube and Twitter. Ms. Brauer has kept her website homepage up to date and made many new videos and postings respecting both their web-based business and law reform activities, but has not posted anything new about the Applicant.

[15] The Applicant argues that the November 7, 2012, Order was not limited to making new postings about her. She submits that by making hyperlinks to some of her old web-postings – such as to the "Stop the Torture" site, on which there are several direct defamatory-like references to Ms. Raymond, she is breaching Justice Murphy's Order.

[16] The transcript of the hearing and oral decision of Justice Murphy were not produced and tendered as evidence for this motion. This Court's decision is based on its reading of the November 7, 2012 Order, and the evidence in this motion.

[17] The Applicant's motion is based on her submission that the evidence shows that the Respondents, specifically Ms. Brauer, hyperlinked their new postings and the updated homepage to the prohibited postings made before November 7, 2012.

[18] I am satisfied that the plain meaning of the words of the November 7, 2012 Order – "broadcasting, disseminating, posting on the Internet, distributing or publishing, in any manner whatsoever, directly or indirectly, any statements, depictions, descriptions, opinions and commentary, which reference by name or innuendo Paulette Raymond", would prohibit inserting hyperlinks on any new postings or websites to the pre-November 17, 2012, postings that did reference the Applicant. The Order did not simply prohibit the Respondents from making new postings on the internet.

[19] The prohibition is made in clear and unambiguous language. To broadcast is to spread information widely; to disseminate is to scatter far and wide; to distribute also means to scatter or spread out; and, to publish means to make public or to make publicly known. In the context of disseminating prohibited information on the internet, through one's homepage, or YouTube, or Twitter, or other postings, it makes no difference whether the reference is direct or by new hyperlinks to other sites or postings. All clearly constitute broadcasting, disseminating, distributing and publishing. Any new hyperlinks to statements which make reference the Applicant constitute a breach of Justice Murphy's Order.

[20] The first of the elements of proof of civil contempt – that the terms of the November 7, 2012 Order clearly and unambiguously prohibit what would constitute the rebroadcast of prohibited statements if the Applicant establishes that the Respondents made new hyperlinks to the prohibited statements, has been proven beyond a reasonable doubt.

[21] There is no possible interpretation of Justice Murphy's order that would lead a reasonable person to believe that by hyperlinking a prohibited posting to a new posting would not constitute a breach of Justice Murphy's order.

[22] The second element is that proper notice of the terms of the order was given to the Respondents. The Respondents participated in the hearing of the motion resulting in Justice Murphy's order and had a copy of it. They do not deny knowledge of the Order and its terms.

[23] The third element requires clear proof that the contemnor intentionally committed a prohibited act. The fourth element requires that *mens rea* be proven; *mens rea* does not involve a specific intent to bring the court into disrepute or flout an order, but an intention to knowingly and wilfully do some act that is, in fact, contrary to the order.

[24] If the Court finds that the Applicant has made clear proof that the Respondents made new hyperlinks to the old prohibited postings, there is no doubt that the hyperlinks

were made knowingly and intentionally. There is no evidence they could have been made accidentally.

[25] The difficulty facing the Applicant, as with the two prior contempt motions, is proving beyond a reasonable doubt that the Respondent did create hyperlinks from her new postings or websites to the old postings which make reference to the Applicant.

[26] The Applicant provided Justice Wood with a USB flash drive allegedly showing links to postings that refer to her by name. At paragraphs 7 to 10 in his decision, Wood J. refers to his failed attempts, upon his review of the exhibits and the USB flash drive contents, to conclude that the Respondent created new hyperlinks to websites where there are postings that refer to her by name.

[27] This Court has conducted an extensive review of the folders, files, webpages, YouTube and Twitter videos as well as hundreds of links that originate with, or flow from, any of these current webpages.

[28] The Court advised the parties at the beginning of this process that it was only interested in new hyperlinks created after November 19, 2013, the date of the hearing before Justice Wood.

[29] None of the folders, files, videos or postings that are referred to in Exhibit 3, Tab H, or following on the USB flash drive, went to one of the old sites which contains references to the Applicant with one exception. The Respondent's YouTube homepage, under the Tab "About", includes a hyperlink to the "Stop the Torture" webpage. It is clear that the homepage has been updated since November 19, 2013 because of the access provided from the YouTube homepage to the very recent "Nelson Mandala" video, but there is no evidence that the hyperlink to the "Stop the Torture" website was created after November 17, 2013.

[30] The overwhelming majority of the items on the USB flash drive had no links, or the links would not open, or the links were to sites and postings that did not refer to the Applicant.

[31] Many of the sites are directed at the "cult of corruption" of judges, courts and other democratic institutions. They advocate for equal (shared) parenting rights, and complain about judges breaching their Charter rights. These include recent YouTube videos and postings. They include the YouTube video: "Nelson Mandala and no rights for Canada", which links to her Homepage and another site: www.occupythecourts.ca, and "NS Judge violated our Charter Rights to Freedom of Speech".

[32] Only the "Stop the Torture!" site contains troubling references to the Applicant.

[33] Justice Wood suggested in his decision that establishment of prohibited hyperlinks may require technical opinion evidence. The Applicant submitted this was unnecessary. It may be that someone with better skills than this judge might be able to determine whether the hyperlink to prohibited site is new. The application of my limited technical skills to the USB flash drive did not provide clear proof of a new hyperlink after November 19, 2013.

[34] The test for contempt, as opposed to the claim for defamation, which is set for trial in September, 2014, requires proof beyond a reasonable doubt of a breach of the injunctive order. It is not so clear, on the evidence and submissions on this application, that the maintaining of an existing link from a current homepage to an old prohibited webpage is a breach of the terms of Justice Murphy's order. It might constitute defamation, and is likely contrary to the spirit of Justice Murphy's order, but it does not meet the test for an order of civil contempt.

[35] The application is dismissed without costs.

Warner, J.