Citation: Lord and Lord v. A.G. Canada
2001 BCSC 212

Date: 20010205
Docket: S0010199
Registry: CHILLIWACK

2001 BCSC 212 (CanLII)

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DAVID WILLIAM LORD,
LORRAINE ELOUISE LORD

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA AS REPRESENTATIVE OF THE QUEEN, THE CORRECTIONAL SERVICE OF CANADA, OFFICER B. ALCOCK, SCS, MATSQUI, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, THE CITY OF ABBOTSFORD, THE ABBOTSFORD POLICE DEPARTMENT, DUTY SERGEANT, DAY SHIFT, NAME UNKNOWN AT THIS TIME

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE ALLAN

Counsel for the Plaintiffs: Mrs. Lord, appearing in person for herself and Mr. Lord

Counsel for the Defendants: S.J. Berezowskyj

Date and Place of Hearing: January 29, 2001
Chilliwack, BC

2001 BCSC 212 (CanLII)

[1] The defendants, City of Abbotsford, "Abbotsford Police Department", and "Duty Sergeant, Day Shift, Name Unknown At This Time," apply for an order that the action against them be dismissed pursuant to Rule 18A. The Abbotsford Police Department ("APD") is not a properly named defendant as it is not a legal entity. However, pursuant to s. 20 of the ***Police Act***, R.S.B.C. 1996, c.367, a municipality is jointly and severally liable for any tort committed by any of its police officers. Sergeant Herder is the "Duty Sergeant, Day Shift, Name Unknown at This Time." Accordingly I will refer to the City of Abbotsford and Sgt. Herder as "the Abbotsford Defendants."

[2] The plaintiff, David Lord, claims damages for false arrest and false imprisonment arising from an incident that occurred on November 11, 1998. Elouise Lord claims damages for nervous shock resulting from her husband's arrest and imprisonment.

Background:

[3] In June 1992, the plaintiffs' son, Derik Lord, then 19 years old, was convicted of two counts of first degree murder and sentenced to life imprisonment without eligibility for parole for 10 years. After his incarceration, his parents commenced regular visits. Mr. Lord's relationship with the

correctional staff has apparently been fraught with tension and hostility from the start.

[4] On May 27, 1997, on a family visit to his son at Kent Institution, Mr. Lord refused to obey an order of the correctional staff, and was ordered to leave the Institution. He was physically removed from the grounds and then charged by the Crown with trespass.

2001 BCSC 212 (CanLII)

[5] On March 3, 1998, Judge Hoy convicted Mr. Lord of Trespassing at a Penitentiary, an offence under the ***Corrections and Conditional Release Act***, S.C. 1992, c.20. Mr. Lord was fined $500 and placed on probation. As a term of his probation order, he was "prohibited from attending or entering any Federal institution Prison Penitentiary in Canada" for a one-year period.

[6] The Probation Order, which indicated an expiry date of March 2, 1999, was entered into the Canada Police Information Centre ("CPIC") by the Agassiz Detachment of the RCMP on March 5, 1998.

[7] Mr. Lord appealed his sentence and, on October 1, 1998, then Chief Justice Williams reduced his term of probation to September 3, 1998. The CPIC entry was not updated to reflect this fact.

[8] Mr. Lord began visiting his son again in Matsqui. Apparently no serious problems arose until November 11, 1998. On that day, at 1:26 p.m., a Corrections Officer at Matsqui telephoned the APD to advise that Mr. Lord's visiting privileges were suspended, he was attempting to enter the Institution to visit his son, and he was refusing to leave.

[9] Cst. Courtenay was dispatched to the Institution. He undertook a CPIC search that disclosed the original, unrevised, probation order. On the basis of that information, he arrested Mr. Lord for breach of probation and transported him to the APD. Mr. Lord advised Cst. Courtenay of the Order of Williams C.J.S.C., but was unable to produce a copy. At 2:13 p.m. and 3:35 p.m., Cst. Courtenay made two inquiries to the Agassiz RCMP to inquire about the status of the Probation Order. He was told that the Probation Order was still in effect and he received a copy by fax at 4:05 p.m.

[10] At 3:30 p.m., Mrs. Lord attended the APD. She advised Sgt. Herder, who was the day shift Station Commander, that the Probation Order was no longer in force.

[11] Sgt. Herder deposes that he told Mrs. Lord he would act on the Order of Williams C.J.S.C. if she produced a copy. He deposes that he was aware of the long history of difficulties between Mr. Lord and the prison authorities and he was

2001 BCSC 212 (CanLII)

concerned that if released, Mr. Lord would return and continue committing the offence of Trespass.

[12] Mrs. Lord deposes that Sgt. Herder told her not to bring the papers proving the probation order had been changed to the APD that night because "there was no way he was getting out that night." She deposes that he told her to bring the papers to Court the next morning. Mrs. Lord says that she went home and waited for a telephone call from her husband (which he was able to make only by telling the officers he wished to call a lawyer). He suggested that she ask a friend to drive her to the APD with the papers and she did so.

[13] Sgt. Davidson relieved Sgt. Herder as Station Commander at 5:30 p.m. He deposes that Sgt. Herder told him Mr. Lord had been arrested on a charge of Breach of Probation and that Mrs. Lord had told him she would return to the APD with a copy of the Court Order varying the Probation Order.

[14] At 7:50 p.m., Mrs. Lord returned to the APD with a copy of the reasons for judgment of Williams C.J.S.C. Sgt. Davidson released Mr. Lord ten minutes later. He advised the Agassiz RCMP they should review the file and update the CPIC information.

2001 BCSC 212 (CanLII)

2001 BCSC 212 (CanLII)

[15] Sgt. Thiessen, the officer in charge of the Records Section at the APD, deposes that records of Probation Orders are entered into CPIC, a computer database maintained by the RCMP in Ottawa. The information regarding convictions and probation orders is transmitted from the court registry to the appropriate local police agency. In this case, the Agassiz detachment of the RCMP were responsible for entering and updating the information into CPIC with respect to Mr. Lord's charge, conviction, and probation orders. As a matter of police practice, CPIC databases are relied upon by police officers as accurate sources of the status of warrants for arrest, probation orders, and the like. The APD played no role in entering any data concerning Mr. Lord into CPIC.

Discussion:

[16] The Abbotsford Defendants concede that at the time of his arrest, Mr. Lord was not in breach of a probation order.

[17] The plaintiffs do not question the CPIC procedures described by Sgt. Thiessen. It is clear that either the Chilliwack Court Registry failed to advise the Agassiz RCMP of the Order of Williams C.J.S.C. or the RCMP failed to input that data. In either event, the Abbotsford Defendants are not responsible for that omission.

The relevant law:

[18] Section 495(1)(b) of the *Criminal Code* permits police officers to arrest persons without warrant where they are found committing an offence. Section 495(2)(b) and (d) together provide, *inter alia,* that a peace officer shall not arrest a person without warrant for a hybrid offence (that may be prosecuted by indictment or summarily) unless that officer believes that an arrest is necessary to prevent the continuation or repetition of an offence. Failure to comply with a probation order is a hybrid offence: s. 733.1. Cst. Courtenay, the arresting officer, has deposed that he believed that it was necessary to arrest Mr. Lord in the public interest because he believed Lord would continue to commit the offence. Section 495(3) provides that a police officer is deemed to be acting lawfully unless it is subsequently alleged and established that the police officer did not comply with the requirements of subsection 495(2).

[19] S. 25(2) of the *Code* provides:

> Where a person is required or authorized by law to execute a process …, that person… is, if that person acts in good faith, justified in executing the process … notwithstanding that the process … is defective or that

2001 BCSC 212 (CanLII)

> it was issued … without jurisdiction or in excess of jurisdiction.

[20] For an arrest to be valid, the police officer must have reasonable and probable grounds for making the arrest: ***R. v. Storrey***, [1990] 1 S.C.R. 241. Mr. Justice Cory, for the Court, stated at p. 250:

> It is not sufficient for the police officer to personally believe that he or she has reasonable and probable grounds to make an arrest. Rather, it must be objectively established that those reasonable and probable grounds did in fact exist. That is to say a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest.

[21] The fact that the arrest is based on an invalid court order or warrant does not render the arrest a false arrest: ***Davidson v. Vancouver (City)*** (1986), 4 B.C.L.R. (2d) 68 (S.C.). There, police officers apprehended a child in Vancouver pursuant to an *ex parte* order of the Supreme Court of Ontario that, although valid on its face, was unenforceable in B.C. In an action against the officers for damages for negligence, Mr. Justice McKenzie held that the officers were protected by both s. 25(2) of the *Code* and the *Constables*

2001 BCSC 212 (CanLII)

Protection Act of England, 1750 (24 Geo. 2, c.44). The latter Act provides that no action shall be brought against a constable so long as he does not exceed the directions of an invalid warrant.

2001 BCSC 212 (CanLII)

[22] In ***Wall v. British Columbia*** (28 July 1995), Vancouver Registry, C890773; [1995] B.C.J. No. 1697 (Q.L.) (S.C.), the plaintiff was charged with an offence in Port Alberni. The matter was transferred to Richmond for disposition, and the plaintiff pled guilty and paid a fine. Erroneously, the case was not stayed in Port Alberni and a warrant issued for his arrest remained outstanding for four years. A police officer in Langley, relying upon a warrant that came up on CPIC, arrested the plaintiff. The plaintiff immediately advised the officer that there was a mistake. The officer asked for documentary proof and invited the plaintiff to phone his lawyer. Unfortunately, it was after 6:00 p.m. and the plaintiff did not think he could contact his counsel. The officer could not release him on the unendorsed warrant on a promise to appear and transported him to the APD. After a short time, he was released on his own recognizance.

[23] The Court concluded that the warrant, which was valid on its face, constituted reasonable and probable grounds for executing it by arresting the plaintiff. However, that fact

did not constitute a complete defence to false arrest or imprisonment. The issue was what if any steps the officer had to take to determine if the plaintiff was telling them the truth. In this case those steps were reasonable and there was no unlawful arrest or false imprisonment. The plaintiff's action was dismissed.

2001 BCSC 212 (CanLII)

Is this matter suitable for disposition by summary trial?

[24] In ***Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.*** (1989), 36 B.C.L.R. (2d) 202 at 215 (C.A.), McEachern C.J.B.C., for the majority, set out the test for determining whether a summary trial is appropriate. Judgment will issue if the Court can find the necessary facts on the evidence to decide disputed questions of fact or law and if, in the circumstances, it would be just to decide the issues summarily.

[25] Mrs. Lord submits that it is necessary to conduct examinations for discovery and discover the parties' documents in order to obtain access to the facts necessary to decide this lawsuit. She suggests that important relevant information can be obtained from the various police forces, the Court staff, the Attorney General of B.C. and the Attorney General of Canada. I advised Mrs. Lord that this application

must focus solely on the issue of liability on the part of the Abbotsford Defendants.

[26] No disputed issues arise with respect to the law relating to the potential liability of the Abbotsford Defendants.

[27] The Court may determine that a summary trial is inappropriate for the resolution of disputed issues for a number of reasons. Often issues of credibility, which cannot be resolved on affidavits alone, prevent the Court from finding the necessary facts. On the material before me, the only significant issue of contradictory evidence and credibility arises from the conflict between (a) Sgt. Herder's evidence that he encouraged Mrs. Lord to obtain a copy of the Probation Order or the Reasons for Judgment and return with them, and (b) Mrs. Lord's evidence that he told her not to bother because Mr. Lord would not be released that night in any event.

[28] While not conclusive, Sgt. Herder's evidence is supported by Sgt. Davidson.

[29] I am not prepared to determine what Sgt. Herder said or did not say on the basis of the conflicting affidavit evidence. However, the fact is that as soon as the police

2001 BCSC 212 (CanLII)

officers received documentary proof that the probation order had been varied, Mr. Lord was released from custody.

[30] On the undisputed facts, liability can and should be determined summarily. The cost of proceeding to full trial following a panoply of pre-trial procedures would be excessive for all the parties, including the plaintiffs. There is sufficient evidence to resolve the issues of fact and law and it would not be unjust to do so.

[31] Mrs. Lord submits that if this matter is to be determined summarily, there should at least be an adjournment to permit the plaintiffs to amass further information through the discovery process. I do not agree that any further pre-trial procedures are necessary or would prove helpful to resolve the issues.

[32] I note that Mrs. Lord presented the Court with a very helpful Chambers Brief, setting out the applicable law regarding Rule 18A applications and a very capable argument.

Conclusion:

[33] In this case, the police officers acted in good faith on what they considered to be a valid warrant under the authority of CPIC. They listened to Mr. Lord's protests and made diligent inquiries to determine if the Probation Order was

2001 BCSC 212 (CanLII)

defective. They asked him to produce the documentation and they asked him if he wanted to speak to a lawyer. They believed that if they released him, he would return to the Institution and continue committing the offence. It was unfortunate that because the incident occurred on November 11, a statutory holiday, the Court Registry was closed. He was released when Mrs. Lord produced the necessary documentation to show that he was not in breach of the apparently valid Probation Order.

2001 BCSC 212 (CanLII)

[34] I conclude that the Abbotsford Defendants are not liable for false arrest or false imprisonment. The action against them is dismissed.

Costs:

[35] In ***Wall***, *supra*, the Court, before ordering that each party bear their own costs, made the following observation at p. 22:

> This action was necessitated because the system made a mistake. While the R.C.M.P. officers acted in good faith and are not liable, it is understandable why a citizen of this country would be outraged and feel that the R.C.M.P officers could have done more to avoid exposing an innocent person to such a humiliating process.

Those comments are apposite in this case and for similar reasons, I would order that each party bear their own costs.

"M.J. Allan, J."
The Honourable Madam Justice M.J. Allan

2001 BCSC 212 (CanLII)