

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nanaimo (City) v. Propp*,
2024 BCSC 2465

Date: 20241217
Docket: S101022
Registry: Nanaimo

Between:

City of Nanaimo and Dale Burgos

Plaintiffs

And

Dean Leon Propp

Defendant

Before: The Honourable Justice Thompson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

P. Hildebrand

The Defendant, appearing in person:

D. Propp

Place and Date of Hearing:

Nanaimo, B.C.
December 16, 2024

Place and Date of Judgment:

Nanaimo, B.C.
December 17, 2024

[1] The plaintiff Dale Burgos applies for summary judgment on his defamation claim against the defendant; in the alternative, he applies for judgment on admissions. In either case, the remedy he seeks is a permanent injunction.

[2] I am satisfied that there is no genuine issue for trial with respect to the defendant's response to civil claim as it exists or as it might be amended. The plaintiff Mr. Burgos is entitled to the injunction he seeks for the reasons that follow.

[3] Mr. Burgos is a communications manager with the plaintiff City of Nanaimo. He began his employment with the City in January 2024. Before that, he was a communications manager for School District 68. In that capacity, he was involved in events that were part of the District's efforts to create a gender-inclusive environment, such as raising a pride flag and publication of a school board statement in support of a gender-inclusive learning environment.

[4] The defendant is an individual that frequents the municipal hall. Since Mr. Burgos began his employment with the City, the defendant has made several statements calling Mr. Burgos a pedophile and accusing him of "sexualizing children." In particular, Mr. Burgos relies on the following statements in paragraphs 8(a) through 8(e) of the notice of civil claim:

- a) On or about February 5, 2024, and April 22, 2024, following public meetings of the City's Council, the Defendant made express statements to the effect that Burgos was a pedophile in the presence of several of Burgos' fellow City employees.
- b) On or about May 27, 2024, the Defendant attended a public meeting of the municipal Council of the City and made a video recording of both the proceedings and certain events immediately prior to the meeting, including City councillors and officials exiting the washrooms near to the Council chamber. The Defendant later posted the full recording to a [publicly] accessible Facebook page on the Internet, and included the following "voice over" remark while the video was showing the area where Burgos was seated, and wearing a plaid jacket:
"There's the pedo, sitting with his plaid jacket on."
- c) On or about July 22, 2024, the Defendant attended another public meeting of the municipal Council of the City, and made another video recording of the proceedings and statements within the Council chamber following the adjournment of the meeting. The Defendant recorded his own statement to the effect that the previous September, Burgos had

openly declared in front of the head office of School Board 68 that he was the one who had raised the "pedophile flag." Shortly following the meeting, the Defendant posted the video recording on a publicly accessible Facebook page on the Internet.

- d) On or about September 22, 2024, the defendant posted a message on the Facebook website which stated the following:

“Where is the head of communications Dale Burgos? How about educating the public as to what an AAP is !! instead of sexualizing children.”

The term "AAP" means “Alternative Approval Process”, and describes a statutory procedure by which municipal governments can obtain elector approval for a legislative step without holding a full referendum.

- e) On or about September 24, 2024, the Defendant posted a further message on Facebook which stated the following:

“Gord Fuller how about the head of communications. . DALE BURGOS , educate the public on what an A.A.P.. is instead of concentrated efforts to sexualize children”

The statements detailed in paragraphs (b) through (e) were made after the defendant was hand-delivered a cease-and-desist letter from the City's legal counsel.

[5] The defendant filed a response to civil claim admitting the making of all of the statements in the manner alleged and with the meanings alleged. With regard to each of the statements, the only defence pleaded is that he was exercising his freedom of expression and speech. His application response refers to s. 1(d) of the *Bill of Rights*, the freedom of speech provision, and a disclaimer on Facebook (“All videos, side comments in live videos are for entertainment purposes, and solely my opinion.”) The crux of his position is set out in an attachment to his application response which says:

My history with Dale Burgos began in Sept./23. Since then he has demonstrated on several occasion[s] that he is promoting the sexualizing of children by working with the school board and others to indoctrinate children with an agenda called SOGI in the public school system, etc. As a [father] and parent it is not only my right to [speak] up, it is my duty to protect all children from exploitation like this.

[6] The defendant’s application response asserts his belief in the truth of his statements, and he says that Mr. Burgos has never denied being a pedophile or the

sexualizing of children. He contends that there is no evidence of harm done to Mr. Burgos. I consider the harm to Mr. Burgos' reputation by being publicly labelled a pedophile to be obvious.

[7] There are circumstances in which the law permits a defamatory statement. Because the defendant is an in-person litigant, I think it is fair to consider how his pleadings might be amended. Having done so, I conclude – perhaps unsurprisingly – that there is no conceivable defence to the publication of these inflammatory and defamatory statements that would give rise to a genuine issue for trial.

[8] Truth is an absolute defence to a defamation claim. There is not a scintilla of evidence that the plaintiff is a pedophile or that he sexualizes children. The defendant appears to have joined ranks with the most extreme opponents of children being exposed to learning about sexual orientation and gender identity, castigating anyone involved in this teaching – either directly or indirectly – as pedophiles.

[9] It proves nothing if Mr. Burgos has not risen to this odious bait by denying he is a pedophile or has sexualized children. In my opinion, Mr. Burgos has acted sensibly by formally calling on the defendant to stop defaming him, and, when the defendant continued to defame him, turning to the Court to help restore what damage may have been caused to his reputation, and to prevent future damage.

[10] In short, I have seen and heard nothing that would indicate that a defence of justification, if pleaded, would raise a genuine issue for trial.

[11] The defence of fair comment applies when defamatory statements are opinions rather than statements of fact. The comment must be on a matter of public interest, and based on facts. It must be recognizable as an opinion, and be adjudged an honest belief such that any reasonable person could have expressed the same opinion.

[12] To the extent that these statements might be construed as opinions rather than statements of fact, there is no basis in fact for the opinions. The acts pointed to by the defendant could not reasonably support an opinion that Mr. Burgos is a

pedophile or has sexualized children. No reasonable person could base such an opinion in the facts relied upon. To the contrary, the statements are readily recognizable as complete nonsense. A plea of fair comment would be bound to fail; it would not raise a genuine issue for trial.

[13] Qualified privilege applies when a defendant has a duty or interest in making the impugned statement and the recipient has a corresponding interest in receiving it. Even if the defendant could establish that he had a duty as a father or a parent or a citizen of the City to make these statements, the persons he published the statements to have no corresponding interest in receiving them. A defence of qualified privilege could not raise a genuine issue for trial.

[14] It is doubtful that the defendant is positioned to rely on a defence, typically available to media, of responsible communication on matters of public interest. It is an element of this defence that the defendant takes reasonable steps to verify the accuracy of statements before publication. If these Facebook posts constitute journalism, they are an example of the sort of irresponsible "entertainment journalism" that is not entitled to the protection of this defence. No plea along these lines would raise a genuine issue for trial.

[15] In summary, the response to civil claim as it exists or as it might be amended raises no genuine issue for trial. I have no doubt on this score. In the case of each possible defence to these defamatory statements, it is plain and obvious that they could not apply. Mr. Burgos is entitled to an order on summary judgment that the defendant is liable in defamation.

[16] I will say a word about freedom of expression and freedom of speech. The law of defamation is a limit on these freedoms. No person has the freedom to defame others without legal excuse or justification. It may be that the defendant feels strongly that children should not be exposed to efforts to embrace diversity or promote inclusion, at least in relation to sexual orientation and gender identity. He is entitled to his opinion and entitled to freely express his opinion. This freedom does not extend to defaming others without legal excuse or justification.

[17] As Justice Duncan wrote in *Zall v. Zall*, 2016 BCSC 1730 at para. 75, allegations of pedophilia are "most serious and egregious." She rightly observed that "[p]edophiles are loathed in civilized societies."

[18] It is scandalous, reprehensible, and dangerous to accuse another citizen, without evidence, of being a pedophile. It is dangerous on multiple levels.

[19] It is dangerous because there are persons who might be moved to threaten or harm a person that has been identified as a pedophile. It is dangerous because a person labelled as a pedophile may not act as reasonably and lawfully as Mr. Burgos has done, but rather take the law into their own hands and seek revenge on the tortfeasor. And, it is dangerous to society because this most contemptible of *ad hominem* attacks degrades the public discourse that is central to a properly functioning democracy. It has become fashionable in some circles to hurl this epithet, "pedophile", without justification. When the Court is in position to do so, I think it is right to act decisively to deter this dangerous behaviour.

[20] Mr. Burgos seeks an injunction, a discretionary and equitable remedy. It is an appropriate remedy in a defamation action where the evidence indicates a likelihood that the defendant will continue to defame despite a finding of liability or where there is a real possibility that enforcement of any damage award may not be possible: *Zall*, at para. 98. To obtain a permanent injunction, a party must establish its legal rights and that an injunction is an appropriate remedy: *Cambie Surgeries Corp. v. British Columbia (Medical Services Commission)*, 2010 BCCA 396 at paras. 27-28.

[21] This is a case with some material similarities to *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939, wherein Justice Wedge imposed a permanent injunction when the defendant entirely ignored the requests to stop making defamatory statements alleging serious fraud, seeming intent on continuing his campaign of slander and libel.

[22] I agree that the combination of the egregious nature of the defamatory statements, the fact that they continued after the defendant received the cease-and-

desist letter, and the defendant's repeated assertion of his right to make these statements as part of his freedom of expression, indicates that there is no genuine issue about whether the injunction sought should be ordered. It is clear that no other remedy would suffice. It would be inappropriate to resile from making an injunction order when it would play a useful role in mitigating the dangers that I referred to a few moments ago.

[23] I appreciate that part of the order requires the defendant to take positive steps to take down the defamatory material from his Facebook page. This is a very inexpensive and easily taken step, and there is no ambiguity about what must be done by the defendant. It is not in any way oppressive to him to take this step. However, to fail to take down this defamatory material would continue to oppress Mr. Burgos and continue the dangerous libel.

[24] I recognize that the Court may be called upon again by way of using its contempt powers if the defendant refuses to comply with the terms of the order, but this is no impediment to the granting of an injunction with mandatory terms on the facts of this case.

[25] The orders sought are set out in the notice of application. Mr. Propp, they require the following:

1. The Defendant Dean Leon Propp be enjoined and restrained from the publication or distribution, on the internet or by or through any other method or medium, of any defamatory statements about or referring to the Plaintiff Dale Burgos, including without limiting the generality of the foregoing through social media websites or e-mail.
2. The Defendant, within seven days of pronouncement of the order, must remove from the internet:
 - a) any defamatory statements previously posted to the internet about or referring to the Plaintiff Dale Burgos;
 - b) any commentary or statements relating to the Plaintiff Dale Burgos added by the Defendant to any recording of that certain meeting of the municipal Council of the City of Nanaimo held May 27, 2024; and
 - c) any commentary or statements relating to the Plaintiff Dale Burgos added by the Defendant to any recording of that certain meeting of the municipal Council of the City of Nanaimo held June 22, 2024.

[26] Mr. Propp, do you understand the order that I have made?

[27] THE DEFENDANT: Yes, I do.

[28] THE COURT: I think it is wise that I tell you now that if you breach the order, you will be exposed to punishment for contempt of court.

[29] THE DEFENDANT: Okay.

[30] THE COURT: Mr. Hildebrand, anything you need to raise?

[31] CNSL P. HILDEBRAND: Yes, Justice. I'm just wondering if it would be appropriate to have it as part of the order that Mr. Propp's approval as to the form of the order be dispensed with as it appears to be identical in the wording to the notice of order sought in the notice of application.

[32] THE COURT: I have given that some thought, Mr. Hildebrand, and I am not going to dispense with his signature on the order. I think it will be, in these circumstances, useful if his signature appears on the form of order. And, as I know that you are aware, the *Supreme Court Civil Rules* provide remedies in the event that Mr. Propp does not respond to your request to endorse that the order is in proper form.

[33] CNSL P. HILDEBRAND: Yes. I understand. Thank you, Justice.

[34] THE COURT: So, Mr. Propp, Mr. Hildebrand is going to send you a written copy of the order exactly in the form set out in the notice of application, which I have read to you today. And you are going to be asked to sign that order – not sign that you agree with the fact that it was made, but sign to agree that that was, in fact, the order that was pronounced by this Court.

[35] THE DEFENDANT: Understand.

[36] THE COURT: And, return it to Mr. Hildebrand. He will forward it to the registrar, who will enter the order in the books of the court and give you a copy of that order.

“Thompson J.”