

COURT OF APPEAL FOR ONTARIO

CITATION: Kanak v. Riggin, 2018 ONCA 345

DATE: 20180309

DOCKET: C63856

Doherty, van Rensburg and Nordheimer JJ.A.

BETWEEN

Tracey Kanak

Plaintiff (Appellant)

and

Darryl Riggin

Defendant (Respondent)

Andrew Rogerson, for the appellant

Julian Porter, Q.C., for the respondent

Heard and released orally: April 4, 2018

On appeal from the judgment of Justice Lucy McSweeney of the Superior Court of Justice, dated May 18, 2017 with reasons reported at 2017 ONSC 2837.

REASONS FOR DECISION

[1] The plaintiff appeals from the dismissal of her action after a five-day trial. The principal claim was for defamation but there were other alternative causes of action advanced.

[2] The trial judge gave careful and detailed reasons for her conclusions. She found that the statements made by the respondent were defamatory but, given that they were made in the context of providing an employment reference, they were subject to a defence of qualified privilege. The trial judge also concluded that the plaintiff had failed to prove malice in the making of the statements so the defence of qualified privilege was not defeated.

[3] There is no error in the legal principles applied by the trial judge. Her conclusions are based on the facts as she found them. There is no basis for this court to interfere with those findings, absent palpable and overriding error, of which

there is none in this case. The appeal on the merits cannot succeed. In particular, on the hearsay issue the evidence was not adduced for the truth of its contents. With respect to the rule in *Browne v. Dunn* (1893), 6 R. 67, H.L., we do not see that that principle was properly engaged in this case in either of the instances referred to by the appellant.

[4] The appellant also challenges the quantum of costs awarded by the trial judge. Costs are a matter of discretion and the appellant cannot show any error that the trial judge made in the exercise of her discretion. That said, the parties have agreed that, in the circumstances of this case, the costs ought not to have included costs for the voluntary mediation.

Conclusion

[5] The appeal on liability is dismissed. Leave to appeal costs is granted and the costs award is reduced by the sum of \$8,275.00. The respondent is entitled to his costs of the appeal fixed in the amount of \$16,000 inclusive of disbursements and HST.

“Doherty J.A.”

“K. van Rensburg J.A.”

“I.V.B. Nordheimer J.A.”