

COURT OF APPEAL
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of Yukon
du Yukon

COURT OF APPEAL OF YUKON

Citation: *Senft v. Vigneau*,
2020 YKCA 8

Date: 20200327
Docket: 18-YU840

Between:

Angela R. Senft and Michael E. Senft

Respondents
(Plaintiffs)

And

Audrey Vigneau and Susan Herrmann

Appellants
(Defendants)

Before: The Honourable Madam Justice D. Smith
The Honourable Mr. Justice Harris
The Honourable Madam Justice K. Shaner

On appeal from: An order of the Supreme Court of Yukon, dated February 13, 2019
(*Senft v. Vigneau*, Whitehorse Docket 17-A0120).

Counsel for the Appellants: D.F. Sutherland, Q.C.
M. Hannam

Counsel for the Respondents: G. Whittle
M. Whittle

Place and Date of Hearing: Whitehorse, Yukon
November 13, 2019

Place and Date of Judgment: Vancouver, British Columbia
March 27, 2020

Date of Corrigendum: April 2, 2020

Corrigendum to Written Reasons by:
The Honourable Madam Justice D. Smith

Madam Justice D Smith:

[1] Reasons for Judgment in these matters dated March 27, 2020, and indexed as 2020 YKCA 8, are hereby amended as set out below.

[2] On the cover page, the name of counsel for the appellants is corrected to read "D.F. Sutherland, Q.C.".

[3] At paragraph 40, the sentence "He also identified words she used words that in his opinion might be considered comments based on the factual circumstances:" is corrected to read, "He also identified words she used that in his opinion might be considered comments based on the factual circumstances:".

[4] In the last sentence of the quote in paragraphs 45 and 96, "If you find that there is no malice and the statement amount to fair comment, you must find in favour of the defendants and dismiss the plaintiffs' case" is corrected to read, "If you find that there is no malice and the statement amounted to fair comment, you must find in favour of the defendants and dismiss the plaintiffs' case".

[5] At paragraph 46, the sentence "This aspect of the jury charge followed the *CIVJI* pattern instruction on malice (found at 11A.01.VII) and is the central issue in this appeal" is corrected to read, "This aspect of the jury charge followed the *CIVJI* pattern instruction on malice (found at 11A.01.VIII) and is the central issue in this appeal".

[6] In the first sentence of paragraph 54, the sentence "The order of the questions directed the jury to consider the issue of malice before the defence of fair comment; only if jury did not find the appellants had acted with malice, was the jury then directed to consider whether the appellants had established the defence of fair comment" is corrected to read, "The order of the questions directed the jury to consider the issue of malice before the defence of fair comment; only if the jury did not find the appellants had acted with malice, was the jury then directed to consider whether the appellants had established the defence of fair comment."

[7] At paragraph 57, sub paragraph 2, the word “primarily’ is corrected to read “primarily”.

[8] At paragraph 61, the quote “it is necessary that the evidence should raise a probability of malice and be more consistent with its existence than with its non-existence and that there must be more than a scintilla of evidence” is corrected to read, “it is necessary that the evidence should raise a probability of malice and be more consistent with its existence than with its non-existence and that there must be more than a scintilla of evidence”.

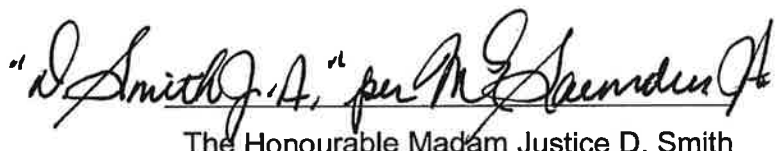
[9] At paragraph 61, the quote “This would seem to be support by other authorities” is corrected to read, “This would seem to be supported by other authorities”.

[10] At paragraph 68, the quote “Only the trier of fact can determine Mr. Staniford’s state of mind when he published the two press releases” is corrected to read, “Only the trier of fact can determine Mr. Staniford’s state of mind when he published the two press releases”.

[11] At paragraph 91, the quote “What the trial judge found to be malice was not malice at law because her finding of Mr. Staniford’s motivation did not represent an indirect motive of ulterior purpose” is corrected to read, “What the trial judge found to be malice was not malice at law because her finding of Mr. Staniford’s motivation did not represent an indirect motive or ulterior purpose”.

[12] Following paragraph 104, the following paragraph is added as paragraph 105:

The costs of the appeal are awarded to the appellants. The costs of the trial below are remitted to the court below for determination following the new trial. The June 28, 2019 order of Justice Fisher requiring that, the appellant Herrmann post security for costs pending the appeal and granting the respondents Senfts permission to register a writ of execution for the amount of the judgments, post-judgment interest and costs, be vacated.


The Honourable Madam Justice D. Smith