

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0083

BETWEEN

WHITFIELD ROBERTSON

CLAIMANT

and

AMANDA DAVID

FIRST DEFENDANT

and

FRISKUY AUDAIN

SECOND DEFENDANT

Appearances:

Mrs. Patricia Marks-Minors for the claimant. Mr. Israel Bruce for the defendants.

2017:Jan.24

Jun. 6 & 20

Jul. 25

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Mr. Whitfield Robertson, Ms. Amanda David and Ms. Friskuy Audain occupy neighbouring residential properties at Fountain, Saint Vincent and the Grenadines. Mr. Robertson received his land as a gift from his mother Rositta Farrell, now deceased. He alleged that Ms. David repeatedly trespassed onto his property and constructed a road over it. He claimed that Ms. Audain was allowed to build a wooden house on a portion of his property, but has exceeded that licence, trespassed on and now occupies a much larger part. He alleged further that Ms. Audain and Ms. David have caused survey plans to be drawn which misrepresent their ownership of the disputed land.

[2] Mr. Robertson claimed that Ms. David made false allegations against him which resulted in him being wrongfully prosecuted but in respect of „, he was acquitted. He accused Ms. David of malicious prosecution in relation to those criminal proceedings. He also alleged that she has threatened and assaulted him. Ms. David acknowledged that Mr. Robertson was prosecuted and acquitted. She contended that she made no false allegations against him and never threatened or assaulted him.

[3] Mr. Robertson seeks an injunction restraining Ms. David and Ms. Audain from entering his property and constructing anything on it, or interfering with or harassing him or. He also seeks an order cancelling the referenced survey plans; granting him vacant possession of the land occupied by Ms. Audain; damages for trespass, damage to property and malicious prosecution; aggravated damages; interest on any sum awarded by the court and costs.

[4] Ms. David and Ms. Audain resisted Mr. Robertson's claim and denied trespassing on his property. They asserted that the disputed land comprises an access road which they have been using for many years. They claimed that it is the only legitimate route to get to and from their home and the main road. They contended that Mr. Robertson's claim should be dismissed with costs. I have determined that Ms. David and Ms. Audain are not liable to Mr. Robertson.

ISSUES

[5] The issues are:

(1) Whether:

(a) Whitfield Robertson owns the disputed land? and

(b) Amanda David or Friskuy Audain trespassed on his property?

(2) Whether Amanda David assaulted Mr. Robertson by threatening or molesting him?

(3) Whether Amanda David is liable to Whitfield Robertson for malicious prosecution?

(4) To what relief is Whitfield Robertson, Amanda David or Friskuy Audain entitled?

ANALYSIS

Issue 1 - Does Whitfield Robertson own the disputed land?

[6] Mr. Whitfield Robertson is a sailor. He works as a captain on a boat in Europe and has lived in France for several years. In 2002, he became jointowner with his mother Rositta Farrell of one lot of land at Fountain. Their title was registered by Deed of Gift No. 1010 of 2002 whereby his mother transferred her interest in the land to both of them as joint tenants. He succeeded to full ownership on his mother's death by right of survivorship.

[7] The Schedule to the deed describes the land as follows:

'ALL THAT LOT PIECE OR PARCEL OF LAND situate at Fountain in

the Parish of Saint George in the State of Saint Vincent and the Grenadines being one (1) lot more or less and butted and bounded on the North by a road on the South by lands in the possession of Lennox Browne and on the West by lands in the possession of Joseph Allen or howsoever otherwise the same may be butted bound known distinguished or described together with all buildings and erection thereon with all ways waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.' (underlining added)

[8] Mr. Robertson contended that his Deed states that there is a road to the North of his property leading to Lennox Browne. He seems to be referring to the following description in the Schedule: 'butted and bounded on the North by a road, on the South by lands in the possession of Lennox Browne. In my view, it is pellucid that this description refers to a road on the northern boundary of Mr. Robertson's property and lands belonging to Lennox Browne on his southern boundary.

[9] Relying solely on the description of the boundaries described in the Schedule to his deed, Mr. Robertson alleged that Ms. Audain lives on the western and southern portion part of his land. He also claimed that Ms. David has encroached unlawfully on the eastern part of his land and created an access road. Mr. Robertson testified that Ms. David and Ms. Audain have caused

and/or assisted in having survey plans drawn in an effort to mislead the authorities as to the size of the portion of land belonging to him. He produced two of those plans, namely survey plans G35/56 and G25/23 which he relied on to demonstrate that he is the lawful owner of the disputed land - which comprises the property demarcated on survey plan G35/56 and the 12 foot road.

[10] His cousin, Mr. Richard Ross testified that he commissioned survey plan G35/56 on Mr. Robertson's behalf and with his express authority. He explained that Mr. Robertson contacted him to build a house for him. At the time, Mr. Robertson was living in France. Mr. Ross averred that Mr. Robertson sent the monies to him to pay for the survey. He explained that he needed to have the survey done because he was only able to locate three of the boundaries to the land.

[11] The survey was conducted by licensed surveyor Mr. Benson Quamina who prepared and lodged the survey plan at the Lands and Survey Department on November 8th, 2002. He explained that he used Mr. Robertson's Deed when the survey was commissioned and located the missing top right hand boundary to Ms. Audain's and Mr. Robertson's property based on the contents of the deed.

[12] The plan shows a parcel of land comprising 3,704 sq. ft. as the subject land belonging to Mr. Robertson. On the eastern side of the plan a 12 ft. road running north to south is illustrated along the length of the property. On the western side of the land and along the bottom part of the referenced parcel or southern boundary of the land, there is an 'L' shaped parcel of land containing the name 'Friskuy Audain'. Another parcel of land is outlined along the northern boundary of the depicted land.

[13] When asked what the words on his Deed 'bounded on the North by a road' meant, Mr. Robertson said that he understood that to be a reference to the 12 foot road on the East of survey plan G35/56. He also pointed to the East of that plan as the location of Lennox Browne's land. By contrast, Richard Ross stated that while his parent's property is located North of Mr. Robertson's land they do not share a common boundary. He testified that his father is the Lennox Browne mentioned in the deed. His testimony suggests that the description of that boundary in the deed contains an error. The court takes judicial notice that not infrequently, errors arise in the description of compass points and names of adjoining owners, in deeds registered under the Registration of Documents Act.¹

[14] When asked to indicate the location of Joseph Allen's land on the survey plan, Mr. Robertson. pointed to the 12 ft. road. His responses to those questions demonstrated that he was unable to find the properties by reference to compass points on the survey plan.

[15] It was acknowledged by all parties that Amanda David owns land..adjoining Mr. Robertson's. Mr. Robertson alleged that she entered his property on numerous occasions, dug down his land and obstructed his use and enjoyment of his property by constructing a road which limited access to his house. He claimed that Ms. David trespassed on his property, destroyed his galvanize fence and caused damage to his property.

[16] He claimed that he had his solicitors write to Ms. David to demand that she cease her unlawful actions but she has ignored his pleas. He complained further that Ms. David constructed

a road where he formerly had crops planted on his land, thereby depriving him of good access to his property. He claimed that the land he received from his mother has been split into 3 pieces - one occupied by Ms. Audain, one by him and the third converted into a 12 ft. road by Ms. David,. He alleged that as a result, he now has access to less land than to what he is entitled.

[17] Mr. Robertson alleged that Ms. Audain was given permission to occupy a portion of his land, but that she has exceeded that license and encroached on a larger part of the land. He claimed that he she is a trespasser

[18] He was shown survey plans G2523 and G18/47. G2523 purported to depict land owned by Friskuy Audain while G18/47 supposedly illustrated Ms. David's property. Mr. Robertson accepted that every plan he was shown depicts the existence of a 12 ft. road. However, he denied that the existence of any road leading onto his property from the main road.

1 Cap. 132 of the Revised Laws of Saint Vincent and the **Grenadines**, 2009.

[19] His Aunt Cecelia Ross and cousin Aneca ass-Matthews testified on his behalf. Ms. Ross testified that Mr. Robe son has less land than his mother. She claimed further that no road existed on the land in 1991. She recalled that her sister Lorna used to forbid Ms. David from walking through that path which she said was a track at that time. She claimed that the track was only lately installed. She said that before that, Ms. David used to access her property through many different roads. She indicated that the disputed road is situated on Mr. Robertson's property.

[20] For her part, Ms. Ross-Matthews stated that Ms. David and Ms. Audain trespassed on Mr. Robertson's property while he was in France. She claimed that **.Ms .** David trespassed onto his property, cut down fruit trees and constructed a road. She also accused her of damaging his property.

[21] Mr. Harold David, Mr. Richard Wright and Mr. Ricky Ross testified respectively on behalf of Ms. David and Ms. Audain. Mr. David was an older gentleman who alleged that he has lived in that area from 1954. He appeared very knowledgeable about the history of land ownership in the area of the disputed land. He claimed to have bought land from one Henry Theophilus Bramble who owned much land and lived in Fountain at that time.

[22] Mr. David testified that Rositta Farrell and James Alleyne also bought land from Mr. Bramble. He recalled that Mr. Alleyne bought land the same year that he did. He said that Mr. Bramble measured the road to go with Mr. Alleyne's land and Mr. Alleyne graded the road but left it as dirt. He was adamant that when Rositta Farrell bought her land, the road over which this present dispute arose, was in existence. He insisted that Ms. Audain also bought land from Mr. Theophilus Bramble which she now occupies. He said that he was aware of this because he was related to Mr. Bramble.

[23] Mr. David explained that in the early days the access road had steps at one part of it. He stated that the road which was then a track, went all the way down to Ms. Audain's land to Mr. Robertson's to Ms. David's land. He explained that the steps have now been removed and the land was leveled. He said Ms. David fixed it and concreted it.

[24] He was asked if there was another access road. He replied that there is a different road to the lower side which connects to one James' property, but it is a private road. He indicated that it was not 'by we side', meaning on the area where he and the parties reside. This corroborated Ms. Audain's and Ms. David's testimony.

[25] Mr. David denied that anything was planted in the vicinity of the road. According to him, Mr. Robertson dug up the road and planted plantains and other things in it. He said nothing was in the road before Mr. Robertson did that. He denied that Ms. David cut down those trees. He also denied that Mr. Robertson put up any galvanize fence. He acknowledged that he is related to Ms. David's children but not to her.

[26] Ms. David bought her land from Mr. Ricky Wright. He testified that it was previously owned by Mr. Joseph Alleyne. He said that he used to access that property by two ways, namely through the known official road which he described as leading from the main road to Mesopotamia; and through his friend Mr. James' land which was closer to where he was living. He said that the official road went downhill for a bit and then connected with a flight of stairs.

[27] Mr. Wright indicated that there was no other access to his land. He stated that to the best of his knowledge no one owned the land which comprised that track and that he used it to access his property for the roughly 7 years that he owned it. He said the access was a track then but has now been fixed by the neighbours. He remarked that someone had fenced and encroached on part of the road. He never saw anything planted in the track when he owned it.

[28] Mr. Ross testified that he lived in the area of the disputed property between 1980 and 1993 with his parents Lennox Browne and Loma Browne. He built Mr. Robertson's house. He described the disputed road as a concrete road. Before it was fixed he said that the area contained just grass and bushes.

[29] He explained that when he lived there, his mother worked the lands which belong to Mr. Robertson. He said that no structure was on it then. He recalled that Ms. Audain was occupying her land on an 'L' shaped parcel of land which was below Mr. Robertson's land.

[30] Mr. Ross said that Joseph 'Allen' owned the land which Ms. David now owns. He acknowledged that the relationship between him and Mr. Robertson deteriorated when he was finishing up the construction of his house. He indicated that the road was not in dispute when his mother was working the lands belonging to Rositta Farrell. I believe him.

[31] Ms. David testified that when she bought her land, the road was there but it was just grass and difficult to move on, so she improved it. She denied removing any plantains or golden apple trees from that area. She said that Mr. Robertson planted those trees just before he moved to France in or about 2003. She maintained that the only official- access point to her property is from the road she built.

[32] She indicated that the Planning Department never stopped her from building the road. She claimed that she got their permission. She admitted that she could gain access through the

neighbour's yard but maintained that it was not the official access. She denied cutting into Mr. Robertson's land to build the road.

[33] Ms. Audain testified that she bought the land on which her house is built. She recalled that he father gave her an old board house in 1970. She claimed that she contacted one Mr. Bramble about buying a piece of land from him and made her first deposit of \$100.00 on 4th May, 1974. She testified that she made a second deposit of \$300.00 leaving a balance of \$200.00. She said that the owner sadly passed away and she made her final payments to his widow.

[34] Ms. Audain explained that after making the final payment in 1979, she moved her board house onto the land which she later converted into a wall structure. She stated that Mrs. Bramble passed away before she was able to secure a deed. She claimed that at that time she did not have the funds to pay for registration of a deed evidencing her ownership. According to her, the whereabouts of the Bramble's only child and heir is unknown. She consequently registered a Deed of Settlement attesting to her ownership of the property and has remained in occupation since then.

[35] Mr. Robertson contended that Ms. Audain has built a concrete structure and a road on his property without his sent. He made no such !legation in his claim form. I therefore disregard that assertion and make no such finding. He submitted that he is the lawful owner of the property by virtue of Deed No. 1010 of 2002 and that Ms. David and Ms. Audain have trespassed on it.

[36] Mr. Robertson contended further that Ms. David and Ms. Audain provided surveyors with false information as a result of which survey plans were drawn for their benefit. This allegation deviates from the pleading in his claim form where he stated:

'The Defendants have caused and or assisted in having survey plans drawn in an effort to mislead the authorities as to the size of the portion of land legally belonging to the claimant';

Furthermore, no credible evidence has been adduced to support that claim. In any event it does not disclose a cause of action.

[37] The Land Surveyor's Act provides that every plan authenticated by the Chief Surveyor shall in any court of law be conclusive evidence of the survey information comprised therein unless such land is cancelled by the Chief Surveyor.² Section 26 empowers the Chief Surveyor to cancel any survey plan if it is found to be inaccurate by reason of error or omission.

[38] No licensed land surveyor or other expert was called as a witness to point out any error in the impugned survey plans. They *ex facie* were authenticated by the Chief Surveyor and accordingly are conclusive as to the boundaries delimited on them. Mr. Robertson has advanced no sufficient basis on which the court may act to cancel them. He relied entirely on his witnesses' accounts and the description of the boundaries in his Deed.

[39] Mr. Robertson submitted further that the deed on which Ms. Audain relies holds false information and is a self-serving document. He argued further that Ms. Audain cannot prove that the land she claims to have bought from Henry Bramble is in fact the parcel she occupies. Ms.

Audain exhibited Deed of Settlement No. 4003 of 2005 as proof of her title to her land. It is expressed to be a conveyance from Friskey Audain to Friskey Audain of '3/4 lot more or less' situate at Fountain.

2 Cap. 370 of the Revised Laws of Saint Vincent and the Grenadines, 2009; section 25.

[40] It is well-established that such a declaration will be ineffective to create title to property. The legal authorities including Gordon Charles V Claire Holas³ illustrate that:

'A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law.'³

Such a document has limited evidential value and is not a legitimate method of conveying title to land. Something more is required such as a memorandum on writing from the legal owner.

[41] Mr. Robertson's witnesses gave evidence which was diametrically opposed to Ms. David's and Ms. Audain's witnesses. Much rests on the credibility of the respective parties and their witnesses. Mr. Harold David gave very compelling and credible testimony. He was forthright and projected an air of authenticity. He was frank, matter of fact and unwavering in his testimony which had the ring of truth to it. I believe him. However, this does not convey Ms. David's Deed of Settlement into a Deed of Conveyance. It just discredits Mr. Robertson's account.

[42] Mr. Ross was also very helpful. He struck me as a person who wanted the truth to be revealed even at the expense of destroying any last vestige of a meaningful relationship with Mr. Robertson. He was clear that Ms. Audain had lived on the subject land for many years. He knew her to own it. His testimony was all the more acceptable because he was related to Mr. Robertson. To me, he had no axe to grind even though he admitted that their relationship had deteriorated. He did not appear to be bitter or harbor any acrimony against Mr. Robertson. I formed a similar view of Mr. Wright who although soft-spoken held his ground under strenuous cross-examination.

[43] Ms. David and Ms. Audain also impressed me as witnesses of truth. I did not have that measure of comfort about Mr. Robertson and his witnesses. They were not believable. They were evasive at times and less than forthcoming. Where their testimony conflicts with the witnesses for Ms. David and Ms. Audain, the latter's accounts are preferred.

[44] In view of the overwhelmingly convincing [testimony of Ms. David, Ms. Audain and their witnesses, and the documentary evidence provided, I am led to conclude that Rositta Farrell occupied and

³ Civil Suit No. 151/199.6

owned only the 3,704 sq. ft. parcel of land as illustrated on survey plan G35/56. This was what she conveyed to herself and her son, by Deed of Gift 1010 in 2002.

[45] Contrary to Mr. Robertson's representations, I find that he did not acquire the portion of land which Friskuy Audain has been in possession since about 1953 or the area which was delineated, used and traversed by the previous owners Mr. Joseph Alleyne and Mr. Wright. I accept that Mr. Theophilus Bramble measured it out as a road to enable access to Mr. Alleyne's land. Without that he would have been landlocked and at the mercy of the neighbour identified as Mr. James.

[46] I also accept the testimony of Amanda David, Frisky Audain, Richard Ross, Harold David and Ricky Wright that the road was formerly a track which permitted access from the Vigie main road. Their consistent and credible testimony is that the track is the only official access to the main road. I believe them when they say that the road through Mr. Allen's property is a--private access. . It is this road which Ms. David subsequently converted in a concrete road. She was not trespassing on Mr. Robertson's land when she did so.

[47] It is trite law that a landowner is entitled to an access from a landlocked property to a main thoroughfare. I find that Ms. Audain and Ms. David and their predecessors in title have historically used the concrete road on the disputed land as the official access to the main Vigie Highway. To deprive them of its use would be denying them an established right of way. I accept Mr. Wright's testimony that no one owned that road. I find therefore that Whitfield Robertson does not own the land which comprises the 12 ft. access road which is depicted on survey plan G35/56.

[48] I also accept Ms. Audain's account regarding how she acquired the land from Mr. Bramble. Mr. David's testimony corroborated hers in material particulars regarding this acquisition. Pursuant to the Land Surveyor's Act, survey plan G35/56 is accepted as determinative of the boundaries of Mr. Whitfield Robertson's property. Mr. Ross' testimony that his parent's property is North of Mr. Robertson's creates a conflict with the description in Mr. Robertson's deed.

[49] The Chief Surveyor has resolved that by approving survey plan G36/56 in its current form. I infer that he thereby concluded that the boundaries are accurate. I accept his opinion on that specialized field. In doing so, I remain mindful that often errors are made in capturing the boundaries of properties in Deeds. I therefore conclude that survey plan G35/56 accurately depicts Mr. Robertson's boundaries. For the foregoing reasons, I hold that Mr. Whitfield Robertson does not own any part of the disputed land.

[50] Accordingly, I find that Ms. David and Ms. Audain did not trespass onto Mr. Robertson's property by:

1. destroying any trees;
2. constructing a road; or
3. destroying his fence or any other property. *I*

I therefore dismiss Mr. Robertson's claims in trespass against Ms. David and Ms. Audain.

Issue 2 • Did Amanda David assault Mr. Robertson by threatening or molesting him?

[51] Mr. Robertson alleged that Ms. David used abusive language and threats to him and has called and continues to call police officers to the area to make false reports about him. He complained that many times he felt that he cannot live in peace due to Ms. David's aggressive and distressing attitude towards him.

[52] Mr. Robertson failed to particularize the threats alleged made against him by Ms. David. I therefore find that she made no such threats or otherwise assaulted him. He has failed to establish on a balance of probabilities that he was assaulted by Amanda David and Ms. Audain. Mr. Robertson's claim against Ms. David for assault is dismissed.

Issue 3 • Is Amanda David liable to Whitfield Robertson for malicious prosecution?

[53] Mr. Robertson testified that he was prosecuted at the Calliaqua Magistrate's court based on untruths told by Ms. David and was found not guilty of the charge. Ms. David admitted that she called in the police but said she filed no criminal charges against him or gave any statement that he assaulted her. She indicated that she did not know if criminal charges were brought against him. She said that she did not know if he was fined or imprisoned and testified that the Magistrate said that the police did not do their work properly .

[54] Mr. Robertson submitted that Ms. David lodged false accusations against him which resulted in him being prosecuted and acquitted. He argued that where a person falsely and maliciously gives a police officer information indicating that some person is guilty of a crime and is further willing to give evidence in court, he is clearly the prosecutor in the case. He relied on **Martin v Watson**⁴ as authority for that proposition.

[55] He contended further that the prosecution was instituted with malice, in with an indirect and improper motive and not in furtherance of justice. He gave no evidence in support of this assertion. He argued that Ms. David was motivated by malice when she brought the charges against him and they were capable of damaging his reputation and jeopardizing his liberty. No testimony was adduced to this effect.

[56] Mr. Robertson argued that he was required to expend funds to defend himself and had to go through the ordeal of being arrested and taken to court to answer the charge and then endure a full trial of the matter. He did not testify to this effect and did not state what charges were brought against him or what false allegations were lodged against him by Ms. David. Those are essential elements of the tort of malicious prosecution.

[57] A claimant who asserts that he was maliciously prosecuted, must plead and establish that the defendant instituted the referenced criminal proceedings against him and did so maliciously and without reasonable and probable cause and further that the proceedings ended in an acquittal. He must also prove that he suffered damage as a result.⁵

[58] Mr. Robertson pleaded simply:

⁴ [1996] AC 74.

'On at least one occasion, the Claimant was prosecuted based on the First Defendant's untruths but was found guilty by the Calliaqua Magistrates Court.'

This bare assertion does not embody any allegation of malice or lack of reasonable or probable cause. Mr. Robertson also failed to provide adequate evidence of such malicious prosecution against Amanda David. His claim is therefore dismissed.

Issue 3-To what relief is Whitfield Robertson, Amanda David or Friskuy Audain entitled?

[59] Whitfield Robertson has failed to establish his claims in trespass to person, trespass to land and malicious prosecution. They are accordingly dismissed as are his prayers for damages, injunction and costs. There is no known civil wrong which arises from obtaining a survey in the circumstances he described. That 'cause of action' is ill-conceived and is accordingly disregarded.

[60] In view of the findings, it is appropriate to make a declaration that survey pJan G35/56 accurately reflects the boundaries of Mr. Robertson's land. Ms. Amanda David and Ms. Friskuy Audain are entitled to recover their costs.

ORDER

[61] It is ordered and declared:

1. Whitfield Robertson's claims against Friskuy Audain and Amanda David for trespass to land and damage to property are dismissed.
2. Whitfield Robertson's claim against Amanda David for malicious prosecution is dismissed.
3. Survey plan G35/56 which was approved and lodged by the Chief Surveyor on 8th November, 2002 accurately reflects the boundaries of the subject land belonging to Mr. Whitfield Robertson as described in the Schedule to Deed of Gift No. 1010 of 2002.
4. Whitfield Robertson shall pay to Amanda David and Friskuy Audain each, prescribed costs of \$7500.00 pursuant to CPR 65.5 (2) (b).

[62] I wish to thank counsel for their written submissions.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar