IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2023-404-001062
[2025] NZHC 156

UNDER	the Defamation Act 1992
BETWEEN	JOHN PATRICK MURPHY Plaintiff
AND	JINZHEN CAI also known as JASMINE CAI Defendant

On the papers

Counsel:	Plaintiff in person P M Hunter for Defendant
Judgment:	20 February 2025

JUDGMENT OF ANDERSON J
[Costs]

This judgment was delivered by me on 20 February 2025 at 3:00 pm pursuant to r 11.5 of the High Court Rules 2016.

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Registrar/Deputy Registrar

Solicitors:
Simpson Western North, Auckland

Introduction

[1] By my decision of 17 December 2024, I made a declaration[1] that Jinzhen Cai, the defendant, is liable to John Patrick Murphy, the plaintiff, in defamation and made an award of damages for $20,000. Mr Murphy is a registered vehicle trader, trading through a company, Central Car Co Ltd (Central). The claim related to two Facebook posts made by Ms Cai on Central's Facebook page, which advertises vehicle stock for sale. I found that the Facebook posts conveyed that Mr Murphy had stolen Ms Cai's car. This judgment deals with the issue of costs.

[2] Mr Murphy seeks costs of $3,500 plus disbursements of $10,471.60. Ms Cai raises three issues in opposition to the costs claim:

(a) that because Mr Murphy was "represented" throughout by a McKenzie friend, he should not be entitled to costs as a self-represented litigant;

(b) that the claim ought to have been brought in the District Court; and

(c) that the document service fees claimed of $1,196 are unnecessary and/or unreasonably expensive.

Use of a McKenzie friend

[3] Mr Murphy did not have any solicitor on the record. He had the assistance of a McKenzie friend throughout the hearing and its preliminary steps.

[4] From 1 September 2024, a party acting in person can be awarded costs by applying the daily recovery rate of $500 for the time specified for a step in a proceeding in sch 3 of the High Court Rules 2016 (HCR).[2]

[5] Under the amended HCR, a "party acting in person" is defined in r 14.2A:

> (2A) In subclause 1(f), **party acting in person —**
>
> (a) means a party who is without a solicitor on the record and who represents their own personal interests; and

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1 Defamation Act 1992, s 24.
2 High Court Rules 2016, r 14.2(1)(f).

(b) includes a party who is a lawyer and who represents their own personal interests.

[6] Ms Cai submits that Mr Murphy did not represent his own personal interests in the proceeding, given that Mr Spring appeared with him at all face-to-face conferences and presented for him in Court at the trial. Hence, she says, Mr Murphy is not self-represented within the new Rule.

[7] The background is that, exceptionally and reluctantly, I permitted Mr Spring to take an unusually wide role at trial. That is because Mr Murphy had come to the hearing under misconceptions of the proper role of a McKenzie friend. He was wholly unequipped and unprepared to present his case; and had health issues that were of concern to me. If forced to present his case, there was a real risk that Mr Murphy would have been unable to complete it, resulting in the trial adjourning part heard. That was an outcome that would have been particularly unfair for Ms Cai. She had just successfully opposed an adjournment, had just appointed counsel, and did not now oppose Mr Spring's involvement.

[8] Mr Murphy remained a "party acting in person" in this extraordinary scenario. The role of a McKenzie friend is to assist a party acting on person, not to "represent" them. The words "represents their own personal interests" in r 14.2A is not intended to distinguish between lay litigants with and without McKenzie friends and/or to invite an assessment of the assistance in a particular case given to a litigant by the McKenzie friend.

[9] The assistance given by a McKenzie friend and the change in policy to allow lay litigants to claim costs share a common purpose: improving access to justice. It would be perverse in principle to allow the presence of a McKenzie friend to bar lay litigants from a costs claim.

Should Mr Murphy have brought his claim in the District Court?

[10] Rule 14.13 of the HCR states:

> Costs ordered to be paid to a successful plaintiff must not exceed costs and disbursements that the plaintiff would have recovered in the District Court if the proceeding could have been brought there, unless the court otherwise directs.

[11] Ms Cai says that the claim could and should have been brought in the District Court. Mr Murphy claimed general damages of $350,000, and aggravated and punitive damages of $50,000. At the hearing itself, Mr Murphy only pursued compensatory damages of $200,000 and abandoned his claim for aggravated and punitive damages. That lower claim is well within the jurisdiction of the District Court. Even that level of damages was wholly excessive, as I recorded in my judgment.[3] The damages I awarded were only $20,000. In my view, the proceeding as pursued at trial could and should have been brought in the District Court. Rule 14.13 applies.

[12] Nonetheless, Mr Murphy says that this is a case where I should exercise my discretion under r 14.13 to award costs under the HCR.[4] He submits that the legal and factual issues were complex in nature, being defamation proceedings with several affirmative defences. He relies on an offer to settle he made in July 2023 for $175,000, half the amount then claimed. He contends that High Court costs are justifiable because of Ms Cai's conduct of the defence. He points to Ms Cai's denial of posting the Facebook comments or having any knowledge of the person that did. He also says there is no evidence that Ms Cai cannot afford the costs and that she did not protest the jurisdiction of the Court.

[13] I do not find any of those matters persuasive:

(a) The District Court would have been capable of dealing with the legal and factual complexity of this defamation claim. I observe that the facts were very confined.

(b) I have already taken into account Ms Cai's conduct in awarding more than nominal damages.

(c) The offer Mr Murphy made was well in excess of the amount I awarded and I do not consider Ms Cai can be criticised for not engaging with it.

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3 *Murphy v Cai* [2024] NZHC 1242 at [75].

4 David Bullock and Tim Mullins *The Law of Costs in New Zealand* (1st ed, Lexis Nexis, 2022) at [3.52]–[3.53].

(d) The defendant does not have some onus to show she cannot afford to pay costs in the High Court.

(e) The absence of a protest to jurisdiction is irrelevant. The High Court has jurisdiction.

[14] I therefore apply District Court costs. The same daily recovery rate of $500 applies to a self-represented litigant as in the High Court. However, the time allocation is less. I find that Mr Murphy would have been entitled to $4,625 in costs at the District Court. This differs from the calculation Mr Murphy provided for District Court costs as he applied the steps relating to interlocutory applications. I have substituted the claimable steps for a simplified trial[5] under the District Court Rules 2014:

(a) preparation for a simplified trial: $625

(b) appearance at hearing: $4000

[15] Mr Murphy claims $2050 in costs under the HCR, but again, he applied steps relating to an interlocutory application, not a trial. The analogous steps for a trial would have amounted to $5250. Given the operation of r 14.13, Mr Murphy's claim for costs is capped at what he would have received in the District Court, being $4,625.

Disbursements

[16] As for filing, scheduling and hearing fees, these total $4,610 in the District Court as follows:

(a) filing fee for statement of claim: $200

(b) scheduling fee: $900

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5 Under the District Court Rules 2014, trials are classified as short, simplified and full trials, in order of ascending complexity. The time allocations for each differ, with short trials attracting the lowest allocations and full trials the highest. I am of the view that if the trial had proceeded in the District Court, it would have been classified as a simplified trial.

(c) hearing fee for each half day of the hearing after the first ($1,170 x 3): $3,510

[17] The fees in [17(a)] and [17(b)] were the fees payable prior to 1 July 2024. At that date, the District Courts Fees Regulations 2009 were amended to impose higher rates in respect of certain steps, including the filing fee for statement of claim and the scheduling fee. Although the scheduling fee was paid late, after 1 July 2024, thus attracting the higher District Court rate, this should not have any consequence for the defendant.

[18] Mr Murphy claims document service fees of $1,196 for four service fees. Ms Cai accepts that Mr Murphy may claim a fee for serving the proceedings initially. However, she says that she provided an address for service in the statement of defence filed on 30 June 2023. Accordingly, I disallow all but the first service fee and a service fee for 3 October 2024 which relates to service of a subpoena.

[19] I order costs of $4,625.00 and disbursements of $5,190.10 made up as follows:

Costs:	
As a self-represented litigant for steps from 1 September 2024 at $500 per day at the District Court for the time allocated	$4,625.00
Disbursements:	
Filing fee	$200.00
Scheduling fee	$900.00
Each day of the hearing after the first day	$3,510.00
Document service fees:	
28 May 2023	$218.50
3 October 2024	$276.00
Courier expenses	$55.30
Travel expenses	$30.30
TOTAL	**$9,815.10**

Anderson J