

SUPREME COURT OF QUEENSLAND

CITATION: *Robertson v Hollings & Ors* [2009] QCA 303

PARTIES: **GERALDINE FOOI-FONG ROBERTSON**
(applicant/respondent)
v
BETTINA HOLLINGS (IMAGINATION TELEVISION LIMITED)
(respondent/not a party to the applications)
RSPCA QUEENSLAND INC
(respondent/first applicant)
STATE OF QUEENSLAND
(respondent/second applicant)
CHIEF EXECUTIVE, DEPARTMENT OF PRIMARY INDUSTRY AND FISHERIES
(respondent/not a party to the applications)

FILE NO/S: Appeal No 7936 of 2009
SC No 2263 of 2009

DIVISION: Court of Appeal

PROCEEDING: Applications to Strike Out

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 9 October 2009

DELIVERED AT: Brisbane

HEARING DATE: 2 October 2009

JUDGES: Keane and Fraser JJA and Cullinane J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Respondent's notice of appeal struck out as against the applicants**
2. Respondent to pay the costs of the applicants of their applications to strike out the notice of appeal

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – OTHER MATTERS – where primary judge struck out respondent's amended statement of claim but not her cause of action – where respondent appealed against that decision – where respondent produced further amended statement of claim – where applicants seek to strike out respondent's notice of appeal – whether notice of appeal should be struck out

Uniform Civil Procedure Rules 1999 (Qld), r 5, r 149, r 171, r 371, r 747

Banque Commerciale SA, en Liq v Akhil Holdings Ltd (1990) 169 CLR 279; [1990] HCA 11, cited

Gould and Birbeck and Bacon v Mount Oxide Mines Ltd (In liq) (1916) 22 CLR 490; [1916] HCA 81, cited

COUNSEL: R G Fryberg for the first applicant
E J Longbottom for the second applicant
The respondent appeared on her own behalf

SOLICITORS: Clayton Utz for the first applicant
Crown Law for the second applicant
The respondent appeared on her own behalf

- [1] **KEANE JA:** In January and February 2008 the RSPCA seized a number of animals from Mrs Robertson's unlicensed breeding and kennel facility at Buccan. The animals were forfeited pursuant to the *Animal Care and Protection Act 2001 (Qld)* by order of the Magistrates Court. Mrs Robertson has appealed to the District Court against that decision. That appeal has not yet been determined.
- [2] Mrs Robertson has also commenced proceedings in the Supreme Court against a number of persons, including the RSPCA and the State of Queensland, claiming damages for various forms of misconduct by those persons. Mrs Robertson represents herself in these proceedings. She has experienced difficulty in delivering a statement of claim which pleads her case in conformity with the requirements of r 149 of the *Uniform Civil Procedure Rules 1999 (Qld)* ("the UCPR").
- [3] On two occasions different judges of the Trial Division of the Supreme Court allowed Mrs Robertson an opportunity to replead her case. Ultimately, a judge of the Trial Division of the Supreme Court struck out Mrs Robertson's amended statement of claim which had been delivered on 6 July 2009. The learned primary judge said:

"There are many problems with the document when measured against the requirements of the rules in respect of pleadings.

As is well known, they are that the pleading be as brief as the nature of the case permits, and contain a statement of all the material facts on which the party relies, but not the evidence by which the facts are to be proved. The document must not simply allege all the evidence, but must specifically plead any relief a party claims. And their function is to state with sufficient [clarity] the case that must be met to ensure that the basic requirements of procedural fairness are met, that a party should have the opportunity of meeting the case against him or her and incidentally to define the issues for decision.

It is common that self-represented litigants do not understand the importance or purpose of pleadings. And it is said that in circumstances where a litigant is unable to formulate a sensible cause of action to enliven the jurisdiction of the Court, the Court has no option but to strike out the pleadings in their entirety. When one analyses this pleading, it is apparent that it is a mishmash of

allegations not coherently expressed in the form required to plead the possible causes of action that may arise. It appears that the previous pleading before Dutney J focused on a cause of action in defamation, but a limitation of time issue existed there, which explains the nature of the order made by his Honour.

It is difficult to tease out from the document attacked in this case, what the precise causes of action now pleaded are, although they appear to include negligence and nuisance, trespass, defamation, breach of fiduciary duty, theft, misfeasance, perhaps of public office, invasion of privacy and assault. Unfortunately for the plaintiff, however, she has been unable to express the allegations she makes in a way that would be comprehensible either to the defendants or to a Court required to try the action.

It is a typical case which, in my view, meets the description of one where the plaintiff has been unable to formulate a sensible cause of action, and where I have no option but to strike out the pleadings in their entirety."

- [4] It should be noted that his Honour did not terminate Mrs Robertson's action. She has delivered a further amended statement of claim which she presumably contends complies with the requirements of the law, but whether the action should be allowed to proceed on the basis that this is a sufficient pleading is not a matter which arises in the proceeding before this Court. The proceeding which is before this Court arose because Mrs Robertson filed a notice of appeal against the orders striking out her statement of claim and refusing her leave to replead.

The application to this Court

- [5] The RSPCA and the State of Queensland have now applied to this Court to have Mrs Robertson's notice of appeal struck out pursuant, inter alia, to r 371(2) of the *Uniform Civil Procedure Rules 1999* (Qld) ("the UCPR") because the notice of appeal did not comply with the requirements of the UCPR in relation to the content of a notice of appeal. In this regard, r 747(1)(b) of the UCPR requires that a notice of appeal must state "briefly and specifically the grounds of appeal".
- [6] It was said that the original notice of appeal did not comply with r 747(1)(b) of the UCPR in that it did not state "briefly and specifically the grounds of appeal" so as to articulate an arguable basis for the appeal. Not only did the notice of appeal not comply with r 747(1)(b) of the UCPR, but it could properly be characterised as frivolous and vexatious. That characterisation was justified by the presence in the original notice of appeal of nonsensical assertions such as "the UCPR are not law" and that Mrs Robertson was in danger of being declared a vexatious litigant if she commenced a further action. The UCPR are, indisputably, the law; and Mrs Robertson is not obliged to commence a further action: her original action remains on foot.
- [7] In its original state Mrs Robertson's notice of appeal would inevitably have been struck out. Before the hearing in this Court Mrs Robertson abandoned her original grounds of appeal, and purported to deliver an amended notice of appeal.

Leave to amend the notice of appeal

[8] This document reads relevantly as follows:

"The Appellant amends her grounds by substituting a completely new set of grounds for the original grounds

- 1a. His Honour erred in that his Order denies the Appellant Natural Justice in that the Statement of Claim could not reasonably be struck out in its entirety without giving the Plaintiff leave to reframe it.
 - a. The Second Respondent did not provide any valid grounds for the striking out of the Appellant's statement of claim.
 - b. The Appellant's statement of claim being struck out because of defects is not a ground for striking out completely and not giving leave to reframe it.
 - c. That the Second Respondent did not provide the Appellant with grounds in their Application caused the Appellant hardship in advocating her cause before the Court.

- 2a. His Honour erred in dismissing completely the Appellants statement of claim. The only valid ground for striking out a statement of claim completely are that pleadings:-
 - a. may prejudice or delay the fair trial of the action;
 - b. is scandalous, frivolous or vexatious;
 - c. is an abuse of process of the court; or
 - d. does not disclose a reasonable cause of action or defence;

The Second Respondent did not plead or support any of these grounds.

- 3a. His Honour erred when he concluded the Appellant had been given ample opportunity to prepare the Statement of Claim in the prescribed manner.
 - a. The Appellant is self represented and as such should not be penalised because she is self represented and has to not only organise her case, but also learn how to present it to the satisfaction of the Court.
 - b. His Honour, when comparing the first Statement of Claim with the last statement of claim could and should have concluded that the Appellant was making progress in preparing her pleadings such that they would or could be satisfactory for the Court when given another opportunity.

- c. His Honour Dutney J gave advice to the Appellant that the Statement of claim should be organised by the causes of action and cover the elements of the particular cause of action. He generalised that a pleading has three parts and gave the example of contract law. There was a contract, the contract was breached, the breaching of the contract resulted in losses and damage and then did not give the Appellant an opportunity to replead the Claim and Statement of Claim to this advice."

- [9] Mrs Robertson may rely on these amended grounds only if this Court grants leave to amend the notice of appeal. The RSPCA and the State of Queensland opposed the grant of leave. There are strong reasons why leave to appeal should not be granted.
- [10] It is apparent from ground 2 of the proposed amended notice of appeal that Mrs Robertson has little appreciation of the obligation upon a party who seeks to embroil her fellow citizens in litigation to formulate her claims in a comprehensible fashion. In *Gould and Birbeck and Bacon v Mount Oxide Mines Ltd (In liq)*,¹ Isaacs and Rich JJ explained that the rules as to pleadings ensure the basic requirement of procedural fairness in civil litigation.² Pleadings serve the values of fairness and rationality in adversarial litigation. It is for that reason that r 171 of the UCPR authorises a court to strike out a pleading which "has a tendency to prejudice or delay the fair trial of the proceeding".
- [11] As to grounds 1 and 3 of the amended notice of appeal, litigation is not a learning experience. The courts do not permit litigants, even unrepresented litigants, to prosecute claims which cannot proceed fairly to the other parties. It is no doubt unfortunate for Mrs Robertson that she does not have the benefit of competent legal advice and representation; but her misfortune in this regard does not license her to proceed unconstrained by the rules according to which adversarial litigation is conducted.
- [12] While some forms of dispute resolution may sensibly be regarded as having a therapeutic function,³ that is not the case with respect to civil lawsuits conducted in the adversarial system regulated by the UCPR. By virtue of r 5(3) of the UCPR, "[i]n a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way." The obligation impliedly undertaken by a party to litigation under the UCPR is not an obligation merely to use one's best endeavours however inadequate those efforts might be.
- [13] Judge Learned Hand, one of the greatest of modern judges, is quoted as having said: "After now some dozen years of experience I must say that as a litigant I should dread a lawsuit beyond almost anything else short of sickness and death."⁴ Litigation in the superior courts is expensive, time consuming and extremely stressful for litigants. These negative aspects of the adversarial system of civil

¹ (1916) 22 CLR 490 at 517.

² See also *Banque Commerciale SA, en Liq v Akhil Holdings Ltd* (1990) 169 CLR 279 at 286. It is this fundamental requirement which explains and informs the specific provisions of the UCPR in respect of pleadings.

³ Cf Michael King, Arie Freiberg, Becky Batagol and Ross Hyams, *Non-Adversarial Justice* (2009).

⁴ David Capper, "Maintenance and Champerty in Australia – Litigation in Support of Funding!", (2007) 26 *Civil Justice Quarterly* 288, 290 – 291.

justice are minimised and rendered tolerable by the rules which ensure that the process is conducted in accordance with irreducible minimum requirements of fairness and rationality. The amended statement of claim which the learned primary judge struck out did not meet these basic requirements.

- [14] That having been said, it must be understood that the orders made by the learned primary judge left Mrs Robertson's action on foot. These orders left it up to her to produce a statement of claim which conforms with the rules if she can. That is the real question which must now be addressed; and that question is not one for this Court in the first instance. To allow the amendments to the notice of appeal sought by Mrs Robertson to permit her appeal to proceed would be pointless: it would not be of any real benefit to her and it would be a waste of the Court's time as well as a waste of time and money for the other parties to the proceedings.
- [15] It would be quite wrong for this Court to promote the furtherance of a pointless appeal by allowing the amendments to the notice of appeal to stand. Justice and mercy both require that leave to amend the notice of appeal be refused and the notice of appeal be struck out.

Orders

- [16] Mrs Robertson's notice of appeal should be struck out as against the State of Queensland and the RSPCA.
- [17] Mrs Robertson should pay the costs of the State of Queensland and the RSPCA of their applications to strike out the notice of appeal.
- [18] **FRASER JA:** I agree with the reasons of Keane JA and with the orders proposed by his Honour.
- [19] **CULLINANE J:** I agree with the reasons of Keane JA in this matter and the orders he proposes.