



Transcript of Proceedings

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Date: 18 November, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MACKENZIE J

No BS8717 of 2003 and No BS9621 of 2003

JOHN DOUGLAS TURNER

Plaintiff

and

MICHAEL NOEL OSBORNE

Respondent

BRISBANE

..DATE 13/11/2003

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

It is plain enough however that it is not desirable that there be a risk of conflicting decisions or a piecemeal approach to the issue. The Supreme Court proceedings of course presumably could be expanded by an appropriate pleading to include all of the properties which are said to be the subject of the claim in the proceedings.

It is - I think - plain enough from the way that the matter has developed that the question of which of the respective Courts should deal with the matter is a fundamental issue. That raises as one issue whether the case is attracted to the jurisdiction of the Family Court in its accrued jurisdiction. In that regard the authorities of *re Wakim ex parte McNally* 1999, 198 Commonwealth Law Reports 511, *Warby and Warby* 2001, 28 Family Law Reports 443, *Finlayson against Finlayson and Gillum* 2002 Family CA898 and my own decision in *Foley and Farquarson* 2003 QSC021, are of relevance. There is of course no application before me today to transfer the proceedings to the Family Court. And there is also today no dispute that the money should continue to be held in trust pending the outcome of the proceedings - whatever they maybe.

The only issue is whether I should give directions about progressing the Supreme Court proceedings. I have decided that it is premature to do that at this point. The main reason is that the question of joinder of Mr Turner in the Family Court proceedings is yet to be definitively determined. It is said that it is a matter of right. I have also been told that the decision of the Registrar is to be the subject

of a further hearing by a Judge. I am not told precisely when
but I am told that it is expected to be heard soon.

Given the issue of whether the Registrar acted in the belief
that the whole ambit of matters determining rights to property
would be dealt with in the Supreme Court proceedings as
presently constituted, the effect of any mistaken belief in
which the Registrar acted will presumably have to be resolved
if that was the case and the evidence is different. The
question will be what effect that has? If Mr Turner is
joined, there may still be a question of the accrued
jurisdiction to deal with this particular claim which may have
to be determined and perhaps the issue of transfer of the
present proceedings in this Court to the Family Court or
alternatively the expansion of the Supreme Court proceedings
to deal with the whole of the properties which are said to be
in issue.

It is for those reasons principally that I have decided that
it would be premature to make directions with a view to
progressing the Supreme Court proceedings.

...

HIS HONOUR: It's premature to make directions. Mr Hay has
pointed out that his instructions are and his submission is
that if I were disinclined to make the directions, the
injunction should be removed. It was submitted that there is
no suggestion that if the respondent were to suffer

irreparable harm if the injunction was not lifted and that if
the respondent was vindicated, he could be compensated by way
of payment from the applicant. It is said also that Mr
Osborne has said that he is impecunious and that therefore his
undertaking as to damages is worthless.

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The case is fairly obviously one that should be dealt with as
expeditiously as possible but unfortunately since the
jurisdiction is now arguably split between two Courts, or at
least able to be decided by either the Family Court or this
Court, a decision will ultimately have to be made as to where
it is to be most expeditiously dealt with. It seems to me
that since that issue may well be resolved fairly promptly it
is probably desirable to maintain, in respect of the money,
the restraint which has existed since Justice Mullins' order.

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So the order that I will make is that order two of Justice
Mullins' order of the 16th of October 2003 be varied by
deleting all the words following the word "order" and
substituting the words "until further order" in lieu thereof.
With regard to costs I will reserve costs as I indicated
earlier.

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