



Transcript of Proceedings

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Date: 9 March, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 94 of 2004

AFSANEH ZUREK

Applicant

and

ANDREW MATTHEW ZUREK

Respondent

CAIRNS

..DATE 08/03/2004

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.

HIS HONOUR: On the 16th of February 2004 the respondent, Andrew Zurek, lodged a caveat over land registered in the name of his former wife, Afsaneh Zurek, and described as Lot 31 on Registered Plan 733906, County of Nares, Parish of Cairns.

By this application, Afsaneh Zurek seeks to remove that caveat. The applicant was formerly married to the respondent. She is now the sole registered owner of the land. She came to be so as a consequence of a consent order of the Family Court pronounced on the 31st of July 2001 which altered the property interests of the parties. The order included terms that the respondent transfer his half share of the property at 14 Greenhills Road, Kuranda to the applicant.

The applicant was to remove and have released various mortgages over the property which obligated the respondent. In addition, the orders provided for the alteration of other property interests and went on to deal with matters concerning the custody of children.

By virtue of its scope, that order was suggestive of an intention that it be a final determination of property rights. In compliance with that order, the subject land was transferred to the applicant on or before the 31st of August 2001 and the respondent was released from his previous obligations under the mortgages.

The respondent, in his affidavit today, claims that there was a further agreement not included in the terms of the order.

That arrangement was for the payment to him of the sum of \$29,000 and a division of household furniture. Why that arrangement could not have been included in the terms of the Family Court order is not explained. Between August 2001 and August 2002 the respondent claims he sought to have the terms of that arrangement fulfilled, but the applicant through her solicitors failed to comply.

On the 19th of August 2002 the respondent wrote to the applicant, seeking a review of the financial arrangements. As part of that review, reference was made to the above arrangement which is the subject of what appears to be an agreement in writing dated the 27th of March 2001. See part of Exhibit "ANZ1".

Whether such an agreement was taken into account in the Family Court proceedings is not a matter for me to determine in these proceedings. Perhaps the matter can be re-litigated in the Family Court setting, as was envisaged in a letter written by the respondent on the 1st of October 2001. But what is clear on the material before me is the nature of the dispute. It is a claim for money and personal property.

I am satisfied that the claim does not support a right to lodge a caveat. The respondent had the opportunity in Family Court proceedings to secure the performance of the Family Court orders which may or may not have created an interest in the land, but this was not done. The items referred to, money

and household furniture, do not have any connection with the
land.

Going beyond my assessment that there is no caveatable
interest, even if I were incorrect in that assessment, the
question of whether caveat should be removed involves a
consideration of the balance of convenience. See Re Burman's
caveat (1994) 1 Qd. R 123; Re Jorss' caveat (1982) Qd. R 458.

This application was brought on as an urgent matter on
Thursday, the 4th of March 2004. Mr Zurek sought and was
granted an adjournment at that time to enable him to seek
legal advice. The urgency was explained that the applicant
needs to have this land available for increase in security for
a business which she proposes to buy. The last day for the
notification for finance for the purchase of that business is
today. It is for that reason that the application was
adjourned to this day on the clear understanding that it would
be finalised today.

Mr Zurek has indicated that the evidence which he has provided
by affidavit filed today is all that he wished to provide. It
seems to me that if he wishes to pursue his claims in respect
to those matters of where he claims he has some right, they
could be done in Family Court proceedings or perhaps in new
proceedings commenced in another Court. By the making of this
order, removing the caveat, he will not be denied any
opportunity to pursue those claims if he is so advised, but
the applicant should not be deprived of the opportunity to go

about her business in the normal way by the presence of these
claims which, as I have said in my view do not support a
caveatable interest.

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My orders will therefore be that:

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1. the application is allowed;
2. the caveat over the property, Lot 31 on Registered Plan
Number 733906, County Nares, Parish Cairns, being
dealing number 707477739, be removed.

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HIS HONOUR: I order that the respondent pay the applicant's
costs, including reserved costs, to be assessed on the
standard basis.

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