

SUPREME COURT OF QUEENSLAND

CITATION: *DBO v GBA & Ors* [2017] QCA 228

PARTIES: **DBO**
(applicant)
v
GBA
(first respondent)
RAY
(second respondent)
DBP
(third respondent)

FILE NO/S: Appeal No 2220 of 2017
QCAT No 394 of 2016

DIVISION: Court of Appeal

PROCEEDING: Application for Leave *Queensland Civil and Administrative Tribunal Act*

ORIGINATING COURT: Queensland Civil and Administrative Tribunal Appeal Tribunal at Brisbane – [2017] QCATA 18 (Senior Member Stilgoe)

DELIVERED EX TEMPORE ON: 10 October 2017

DELIVERED AT: Brisbane

HEARING DATE: 10 October 2017

JUDGES: Gotterson and Morrison JJA and Jackson J

ORDERS: **1. The applications for leave to adduce further evidence filed on the 18th of August 2017 and 5th of October 2017 respectively are refused.**

2. The application for leave to appeal is refused.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHO MAY EXERCISE RIGHT – UNSUCCESSFUL PARTY – where a member of the Queensland Civil and Administrative Tribunal (“QCAT”) appointed the respondents as administrators of the applicant and respondents’ mother for all financial matters – where the decision authorised the respondents to permit the applicant to continue to reside in a property at less than market rent – where the applicant’s application to the QCAT Appeal Tribunal for leave to appeal

the decision was refused – where the applicant applied to this court for leave to appeal from the QCAT Appeal Tribunal’s decision on the ground that he was an eligible person to appeal pursuant to s 163(1) of the *Guardianship and Administration Act 2000* because he was an active party to the original proceeding – whether leave to appeal should be granted

Guardianship and Administration Act 2000 (Qld), s 163
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 150

COUNSEL: The applicant appeared on his own behalf
 The respondents appeared on their own behalf

SOLICITORS: The applicant appeared on his own behalf
 The respondents appeared on their own behalf

JACKSON J: On 26 October 2016, a member of QCAT decided to appoint the respondents jointly and severally as administrators of ADG for all financial matters. The appointment was made until further order. I will call that decision the original decision.

The original decision also authorised the administrators to permit the applicant to continue to reside in ADG’s house at less than market rent, being \$100 per week, subject to the applicant continuing to maintain the property and grounds.

ADG is the mother of the applicant and the respondents.

On 22 November 2016, the applicant applied for leave to appeal the original decision to the appeal tribunal at QCAT. As stated, his ground of appeal was that he could not afford to pay rent to live at the house.

On 9 December 2016, the applicant wrote to QCAT further setting out his grounds of appeal, including that he had no prior notice to the hearing of the original decision to authorise the administrators to permit him to continue to reside in the house for a rental of \$100 per week.

On 14 December 2016, the appeal tribunal of QCAT constituted by a senior member directed that the applicant file an application for leave to appeal or appeal together with supporting material sufficient to establish that he should be an eligible person to appeal pursuant to s 163(1) of the *Guardianship and Administration Act 2000*.

On 10 January 2017, the applicant wrote a further letter to QCAT, explaining the situation as he saw it, and setting out substantive grounds for the appeal, but not addressing the matters directed on 14 December 2016.

On 31 January 2017, the applicant made a written submission to QCAT contending that he was an eligible person because he was named in the Tribunal's original decision and was sent a copy of the original decision, together with an appeals information notice for his reference.

On 6 February 2017, the appeals tribunal of QCAT decided that it would refuse leave to appeal. The applicant was not otherwise an eligible person. The reasons of the appeal tribunal for refusing leave to appeal were that there was no reasonable argument that the original decision was attended by error and the decision authorising the administrators to permit the applicant to reside at the house for a rental of \$100 was not a matter that warranted the appeal tribunal's intervention.

On 3 March 2017, the applicant applied to this court for leave to appeal from the appeal tribunal's decision to refuse leave to appeal. The reason justifying a grant of leave was identified as being that the applicant was an eligible person to appeal to the appeal tribunal because he was an active party to the original decision.

On 18 August 2017, the applicant applied for leave to adduce further evidence in this court, as contained in an affidavit filed on 17 August 2017.

On 21 September 2017, the applicant filed an affidavit in support of the application for leave to adduce further evidence.

In my view, this first application for leave to adduce further evidence should be refused. The affidavits did not contain evidence of further facts, but expanded arguments as to why the original decision should not have been made. Much of them was repetition.

On 5 October 2017, the applicant filed a second application for leave to adduce further evidence and a further affidavit in support of that application.

In my view, the second application for leave to adduce further evidence should also be refused. In part, it was much like the first application. An additional proposed subject matter was to raise a question as to whether the member of QCAT who made the original decision and the senior member of QCAT who made the decision to refuse leave to appeal from the original decision were validly appointed. The basis was that the applicant had searched the Queensland Government Gazette to look for notification of their appointments at the relevant times and had not found any. However, the appointments in question are made by the Governor in Council under the *QCAT Act*. They are not required to be notified by a Gazette. So the absence of notification in the Gazette does not prove any invalidity in the appointments.

Unless he were granted leave to appeal under s 163(3)(a)(viii) of the *Guardianship and Administration Act 2000*, the applicant was not an eligible person within the meaning of s 163(1) who was entitled to appeal the original decision to the appeal tribunal of QCAT.

In refusing that leave, the appeal tribunal reasoned that the applicant did not submit that his siblings were inappropriate appointees as administrators. His submissions focused only on the financial implications of the authority to permit him to continue to reside in the house at a rental of \$100 per week, and the reasons why he considered that to be unfair.

Second, the appeal tribunal considered that no appeal was necessary to correct a substantial injustice, because a decision to charge the applicant rent of \$100 per week was not a substantial injustice that warranted the appeal tribunal's intervention.

It appears from the respondent's submissions on this application that the question of the applicant paying rent to continue to reside in the house was raised by the tribunal during the course of the hearing for the original decision. The applicant had been given notice of the hearing of the application for the appointment of the respondents as guardians and administrators of ADG. He did not attend the hearing. Before the hearing, it's not suggested that either the applicant or the respondents were apprised of the need for authority for them as administrators of ADG's financial matters to enter into a conflict transaction to permit him to continue to reside in the house at less than market rental.

Nevertheless, there is no reason in the material put before this court or that was put before the appeal tribunal to conclude that the decision to authorise the administrators to enter into a conflict transaction with the applicant to permit him to reside in the house at a rental of \$100 per week effected a substantial injustice.

The applicant complains that he had lived in the house with ADG, his mother, since the 1990's, rent free. That does not entitle him to continue to do so when his mother no longer lives there. The applicant complains also, in effect, that the house is not his mother's house, because it is part of his father's estate. But there was no evidence before the appeal tribunal or this court in support of that contention.

In circumstances where his mother no longer lives there, and in the absence of strong evidence suggesting that the applicant is entitled to continue to reside in the house without paying rent, there was no basis in the evidence before the appeal tribunal to conclude that the order authorising the administrators to permit the applicant to continue to reside in the house at a rental of \$100 per week, being less than a market rent, was wrongly made so as to cause a substantial injustice.

I would not grant leave to appeal, as is required under s 150(3) of the *Queensland Civil and Administrative Tribunal Act 2009*. First, the applicant has not identified the question of law on which any appeal would be brought. Second, there will be no substantial injustice to the

applicant if the decision of the appeal tribunal dismissing the application for leave to appeal to the appeal tribunal is not set aside.

GOTTERSON JA: I agree.

MORRISON JA: I also agree.