[2018] QCA 366

COURT OF APPEAL

HOLMES CJ
MORRISON JA
PHILIPPIDES JA

IN THE MATTER OF AN APPLICATION FOR ADMISSION AS A LEGAL PRACTITIONER BY JASON WILLIAM KING

BRISBANE

THURSDAY, 13 DECEMBER 2018

JUDGMENT

[1] **HOLMES CJ:** The applicant seeks admission as a legal practitioner. Section 31(1) of the *Legal Profession Act* 2007 (Qld) provides that a person is suitable for admission to the legal profession only if he or she is a fit and proper person to be admitted. In deciding that question, the court is required to consider the suitability matters set out in s 9 of the Act, and any other matters that the court considers relevant. Among the suitability matters are whether the applicant is currently of good fame and character, and whether the person has been convicted of an offence in Australia. In the present case, the Legal Practitioners Admissions Board has certified that the applicant is a fit and proper person for admission, subject to full disclosure; but, it remains for the court to determine whether it considers that the applicant is a fit and proper person to be admitted.

[2] This is the third application for admission by the applicant, a former police officer. In early 2016, he applied for admission in the Australian Capital Territory. In the process of doing so, he disclosed that he had been convicted in Western Australia in March 2012

of an offence of aggravated stalking of his former girlfriend, who had moved to that State, with intent to intimidate, contrary to s 338(e)(1) of the Western Australian *Criminal Code* 1913 (WA). He pleaded guilty to the charge, and was fined and placed on a two year bond. He filed three affidavits in respect of the ACT application, the last two in response to requests from the ACT Admissions Board for information. In the course of doing so, he provided the Statement of Material Facts relied on in the Western Australian Magistrates Court. The Board asked him directly whether the stalking charge had resulted from there being a protection order in place; he swore in an affidavit that:

> "There never was a protection order or any type of domestic violence order in place."

[3] In fact, he had been the subject of a 72 hour restraining order, which had expired just before his last contact with his former partner.

[4] About a week after his last affidavit was filed in the ACT, the applicant filed a further application for admission, this time in Queensland. Again, he disclosed the stalking conviction, but he did not mention his ACT application for admission. Because of apparent inconsistencies between what was alleged in the Statement of Material Facts, the affidavits filed in the ACT, which the Queensland Board had obtained, and the affidavits filed in the Queensland application, the matter was set down for hearing by me as a single Judge in the trial division, in order to make a finding of fact as to whether the applicant had complied with his duty of candour to the court.

[5] The relevant judgment is *Re: King* [2017] QSC 15. In it, I found that there were significant differences in the versions that the applicant gave as between the ACT and Queensland affidavits, which he had not satisfactorily explained. A particular instance was that in his first ACT affidavit, he acknowledged that in January 2012 when he travelled to Western Australia where the complainant had moved, she ended the relationship and asked him to leave her property. In later versions, again sworn on oath, he said that nothing of that kind had occurred.

[6] I rejected the applicant's account given in later versions, which was that there had been a sudden and inexplicable breakdown in the relationship, which became apparent only when the restraining order was served on him. His failure to disclose the restraining order to the ACT board and another statement as to how he procured the Statement of Material Facts were disingenuous. The failure to mention the ACT application when he applied for admission in Queensland suggested a desire to offer an improved version of events. I rejected accounts by him in various affidavits which constituted, in my finding, an effort to suggest he was innocent of the stalking, or to minimise the extent of his offending. I concluded that the applicant had failed to meet his duty of candour.

[7] Subsequent to the making of that finding in February 2017, the applicant filed a further affidavit in April 2017, in which he attributed the discrepancies between his versions to lacking professional experience in preparing affidavits, and relying on his memory. He claimed that his version of the events reflected his belief that he was being candid and open. He asserted that he had always accepted his guilty plea and

> "plead [sic] guilty in all affidavits."

[8] That is not actually so; as is recorded in my judgment (at [16]), in his last ACT affidavit, he said that looking at the Statement of Material Facts, he realised he should not have pleaded guilty. However, the applicant did not ultimately pursue that application for admission, and it was dismissed without any suitability finding in October 2017.

[9] The applicant applied for admission once more in March 2018. He provided a supporting affidavit, filed on 19 March 2018. It is a remarkable document. In it, the applicant swears once more to an exculpatory version of the events in Western Australia. For example, he says that there was no indication that the relationship with his former partner had ended when he visited her there in January 2012, and that he only realised the relationship was over when the restraining order was served upon him. This version is at odds with what he said in his ACT affidavit, and also with statements in evidence at the hearing before me, recorded in my judgment, that for his former partner:

"[T]o say it was over when I got to Perth was way off the mark;"

or in a qualification of that, that her demeanour on that occasion surprised him. The applicant also in this affidavit asserts that he pleaded guilty in the Magistrates Court, and accepted the statement of facts as presented; which is in contrast with the evidence he gave before me, where he claimed that he had said in the witness box that he did not agree with the account in the material statement of facts, but would plead guilty anyway (see [22] of the judgment). But more remarkably, the March 2018 affidavit goes on to say that the applicant accepts the correctness of the judgment findings and the statement of facts; in particular, that he accepts that his former partner ended the relationship on his arrival in Western Australia, that is, in January 2012, and that the relationship broke down in February 2012.

[11] The applicant gave evidence before us today, largely in relation to concerns raised by the Court about the content of this affidavit. He repeatedly expressed his appreciation of the need for candour, and expressed regret that he had not had professional help in preparing his affidavits. He explained that the stalking events were so long ago that his memory of them was impaired. He did not seem able to grasp that if that were the case, he should not have been swearing to them again in March 2018, or that there was a difficulty in swearing an exculpatory account on the one hand, and at the same time, for example, purporting to accept as a fact that his partner had ended the relationship in January 2012. He seemed not, in short, to grasp the necessity of making statements on oath truthfully and accurately on all occasions.

[12] The applicant relied on a further affidavit filed in November 2018, in which he says that he has undertaken a graduate certificate in ethics and legal studies, has learned the seriousness of meeting his duty of candour and annexed to which, he provides references. As I have already mentioned, the applicant has the qualified certificate of the Board, which had previously opposed his application when it was first made and the March 2018 affidavit was filed. Its reasons for ceasing that opposition are as follows:

> "That since the judgment was handed down, the applicant has had the opportunity to consider his position, has made clear statements acknowledging his lack of candour, accepted that his version of events differs from what is in the statement of material fact, accepting that he pleaded guilty on that basis, has belatedly come to some insight about his behaviour, has not repeated it and has completed the certificate in ethics, which evidences an intention to make good his previous failures of candour."

[13] The applicant's own barrister said in written submissions that he had learned from his mistakes, that he had completed the graduate certificate in ethics, that he was involved in the community, volunteering for an Asperger's network, that he'd been candid in explaining to others the reasons he had not been previously admitted, that he held a security providers licence and that he held a working with children card. Those submissions, I should say, were supported by affidavit material.

[14] The difficulty in accepting that these things should convince the Court that the applicant is now a fit and proper person for admission lies in, firstly, the extent and repetition of the lack of candour, which he has previously displayed in his dealings with the ACT board, in his dealings with the Queensland Board, in his affidavits filed in this court and, importantly, in giving evidence before me on oath in November 2016. It is not just a matter of his subsequent versions departing from the Statement of Material Facts (as the Board seems to have thought in giving the qualified certificate). It is that his sworn versions have differed between themselves, and sometimes internally in affidavits, and obviously cannot all be true. The more recent provision, in the March 2018 affidavit, of yet another self-justifying version of events, combined with a claimed acceptance of fault, provides no reassurance. And finally, the applicant did not seem, in giving evidence today, able to appreciate where the problems lay.

[15] The matters which are put on the applicant's behalf do not suffice to overcome those concerns and to discharge the onus which lies on him. I am not satisfied that the applicant is a fit and proper person for admission to the legal profession, and would dismiss his application for admission.

[16] **MORRISON JA:** I agree.

[17] **PHILIPPIDES JA:** I also agree.

[18] **HOLMES CJ:** The court finds that the applicant is not a fit and proper person for admission as a legal practitioner. The application for admission is refused.