

SUPREME COURT OF QUEENSLAND

CITATION: *Nursing and Midwifery Board of Australia v HSK* [2019] QCA 272

PARTIES: **NURSING AND MIDWIFERY BOARD OF AUSTRALIA**
(appellant)
v
HSK
(respondent)

FILE NO/S: Appeal No 13319 of 2018
Appeal No 603 of 2019
QCAT No 200 of 2018

DIVISION: Court of Appeal

PROCEEDING: Appeal *Queensland Civil and Administrative Tribunal Act – Further Order*

ORIGINATING COURT: Queensland Civil and Administrative Tribunal at Brisbane – [2018] QCAT 355; [2018] QCAT 418 (Sheridan DCJ)

DELIVERED ON: 26 November 2019

DELIVERED AT: Brisbane

HEARING DATE: 28 May 2019

JUDGES: Morrison and McMurdo JJA and Boddice J

ORDER: **The appellant is to pay the respondent’s costs of the appeal and of that application, to be assessed on the standard basis.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – POWERS OF COURT – COSTS – where the Court of Appeal ordered that the appellant’s appeal be dismissed – where no order was made as to the costs of that appeal as neither party sought costs in their written outlines of argument – where, after publication of the Court’s reasons, the respondent filed written submissions seeking orders that the appellant pay the respondent’s costs of and incidental to the appeal, and of an application for leave to appeal which had been filed by the appellant but not pressed at the hearing of the appeal, on a standard basis – whether costs should be awarded

BHP Coal Pty Ltd v O & K Orenstein & Koppel AG (No 2) [2009] QSC 64, cited
Oshlack v Richmond River Council (1998) 193 CLR 72; [1998] HCA 11, cited
Sequel Drill & Blast Pty Ltd v Whitsunday Crushers Pty Ltd

(No 2) [\[2009\] QCA 239](#), cited

COUNSEL: S A McLeod QC, with C Wilson, for the appellant
G W Diehm QC for the respondent

SOLICITORS: Minter Ellison Lawyers for the appellant
Hall Payne Lawyers for the respondent

- [1] **MORRISON JA:** I have read the reasons of Boddice J and agree with those reasons and the order his Honour proposes.
- [2] **McMURDO JA:** I agree with Boddice J.
- [3] **BODDICE J:** On 26 July 2019, this Court published reasons and ordered that the appellant's appeal be dismissed. No order was made as to the costs of that appeal as neither party sought costs in their written outlines of argument.
- [4] Since publication of the Court's reasons, the respondent filed written submissions seeking orders that the appellant pay the respondent's costs of and incidental to the appeal, and of an application for leave to appeal which had been filed by the appellant but not pressed at the hearing of the appeal. The respondent submits those costs should be assessed on the standard basis.
- [5] The appellant opposes an order for costs. Not only was an order for costs not sought by the respondent in her written outline of argument, the appellant submits there is good reason for the Court to order that each party bear its own costs.
- [6] The appeal was pressed, in the public interest, by an appellant with prescribed regulatory functions and a statutory responsibility for the protection of the public.
- [7] Generally, costs will follow the event.¹ Special or exceptional circumstances must arise to justify departure from that rule.²
- [8] In determining whether it is appropriate to depart from the general rule, a relevant consideration is whether a litigant has properly brought proceedings to advance a legitimate public interest with no private gain and in order to contribute to the proper understanding of the law in question.
- [9] Whilst the appeal in the present proceedings raised for consideration the power of a review body ensuring a jurisdiction which has as a component public interest factors, the appeal and application for leave to appeal were filed for the purposes of advancing a statutory construction which was found not to arise from a consideration of the legislation.
- [10] There are no circumstances warranting a conclusion that the successful respondent should be denied the benefit of the general rule that costs follow the event.
- [11] The Court further orders:

The appellant is to pay the respondent's costs of the appeal and of that application, to be assessed on the standard basis.

¹ *Sequel Drill & Blast Pty Ltd v Whitsunday Crushers Pty Ltd (No 2)* [2009] QCA 239 at [3].

² *Oshlack v Richmond River Council* (1998) 193 CLR 72; *BHP Coal Pty Ltd v O & K Orenstein & Koppel AG (No 2)* [2009] QSC 64 at [7]-[8].