

# SUPREME COURT OF QUEENSLAND

CITATION: *Plath v Plath & Anor* [2020] QCA 141

PARTIES: **IRA PLATH**  
(appellant)  
v  
**ALEXIS DUDLEIGH PLATH**  
(first respondent)  
**CHEYENNE KELSEY PLATH**  
(second respondent)

FILE NO/S: Appeal No 4853 of 2019  
DC No 1352 of 2017

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: District Court at Brisbane – [2019] QDC 42 (Ryrie DCJ)

DELIVERED ON: 26 June 2020

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Morrison and McMurdo and Mullins JJA

ORDER: **The application for the grant of an indemnity certificate is refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN REFUSED – where the unsuccessful respondents applied for an indemnity certificate upon the basis that the appeal succeeded on a question of law – where the appeal was by way of rehearing – where the respondents pursued a factual outcome which was glaringly improbable and contrary to compelling inferences – whether indemnity certificate should be granted  
*Appeal Costs Fund Act* 1973 (Qld), s 15  
*Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22, cited

COUNSEL: The appellant appeared on his own behalf  
A B Fraser for the respondents

SOLICITORS: The appellant appeared on his own behalf  
Bell Dixon Butler Lawyers for the respondents

[1] **THE COURT:** The unsuccessful respondents to this appeal have applied for an indemnity certificate under s 15 of the *Appeal Costs Fund Act* 1973 (Qld), upon the basis that the appeal has succeeded on a question of law.

- [2] It is unnecessary to restate the reasons for which this appeal was unanimously allowed.<sup>1</sup> It is sufficient to say that the trial judge made findings of fact, which were sought by the respondents, and which this Court held were glaringly improbable, and that her Honour did not find facts in the appellant's favour, which this Court found were compelling inferences.<sup>2</sup>
- [3] Section 15 provides that a certificate may be granted where an appeal against a decision of a court on a question of law succeeds. It is submitted for the respondents that the appeal succeeded on a question of law, because whether a particular inference can be drawn from facts found by a trial court is a question of law. It is argued that this Court has concluded that the evidence did not reasonably admit of different conclusions.<sup>3</sup>
- [4] The respondents' submission is not sufficiently directed towards the terms of s 15. That provision is engaged only where the appeal is of a certain kind, namely where it is an appeal on a question of law. This appeal was brought pursuant to s 118(2) of the *District Court of Queensland Act 1967* (Qld). By s 118(8), an appeal from the District Court in its original jurisdiction is by way of rehearing. Although there are different meanings to be attached to the word "rehearing",<sup>4</sup> it is well established that this is a rehearing of the kind which had occurred in *Fox v Percy*,<sup>5</sup> and what was said by the High Court in that case governs the determination of such an appeal. In short, it is the obligation of this Court to "give the judgment which in its opinion ought to have been given in the first instance", whilst observing the "natural limitations" that exist in the case of any appellate court proceeding wholly or substantially on the record.<sup>6</sup> In every appeal by way of rehearing, a judgment of the appellate court is required both on the facts and the law.<sup>7</sup>
- [5] So whilst an appeal such as this must be decided by a rehearing conducted according to legal principles, it is not an appeal "on a question of law".
- [6] In any event, if this were a case for which there was a power to grant an indemnity certificate, it would be wrong to exercise the power in circumstances where the respondents, at the trial and in this Court, pursued a factual outcome which was glaringly improbable and contrary to compelling inferences.
- [7] The application for the grant of an indemnity certificate will be refused.

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<sup>1</sup> *Plath v Plath & Anor* [2020] QCA 43.

<sup>2</sup> *Plath v Plath & Anor* [2020] QCA 43 at [63].

<sup>3</sup> Citing *Halsbury's Laws of Australia* at [325-11340] and *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 at 355.

<sup>4</sup> *Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd* [1976] HCA 62; (1976) 135 CLR 616 at 620-621.

<sup>5</sup> (2003) 214 CLR 118; [2003] HCA 22.

<sup>6</sup> *Ibid* at [23].

<sup>7</sup> *Ibid* at [29].