

SUPREME COURT OF QUEENSLAND

CITATION: *Re Sebasio (No. 2)* [2020] QSC 312

PARTIES: **GLEN THOMAS SEBASIO**
(applicant)
v
CHELLA GOLDWIN
(respondent)

FILE NO/S: BS No 10388 of 2019

DIVISION: Trial

PROCEEDING: Costs

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 7 October 2020

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Callaghan J

ORDERS: **1. The respondent is ordered to pay the applicant's costs of the proceedings from 24 April 2020 to be assessed on the standard basis, and excluding the costs of notification of proceedings to Margaret Cowley in the affidavit of Jamie Lee Strauss dated 16 July 2020.**

2. Save to the extent that the costs of the applicant are actually recovered from the respondent, the applicant's costs of the proceeding are to be paid from the estate of Thomas Sebasio on the indemnity basis.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – GENERALLY – OTHER MATTERS – where applicant succeeded in application for probate – where respondent unsuccessful – where respondent self-represented – where respondent rejected offer of compromise – whether costs should be awarded on an indemnity or standard basis

Campbell (Donald) & Co v Pollack [1927] AC 237, cited
Bhagat v Royal and Sun Alliance Life Assurance Australia Ltd [2000] NSWSC 159, cited
Latoudis v Casey (1990) 170 CLR 534 at 542, cited
Mowen v Rockhampton Regional Council [2018] QSC 44, cited
Oshlack v Richmond River Council (1998) 152 ALR 83, cited
Scriven v Queensland Rural Industry Development Authority

(No 2) [2019] QSC 263

COUNSEL: AB Fraser for the applicant
The respondent represented herself

SOLICITORS: McCullough Robertson for the applicant
The respondent represented herself

- [1] After delivering my reasons in this matter I invited the parties to provide written submissions as to costs.
- [2] The applicant's submission is straightforward. He has succeeded in obtaining a grant of probate and seeks his costs on an indemnity basis, or alternatively, on the standard basis.¹ He submits, in the first instance, that these should be paid by the respondent. He is well placed to make that submission, given his complete success and the fact that an offer of compromise was rejected by the respondent.²
- [3] The respondent's submissions are made, again, without the benefit of any of the legal representation that she so badly needed (and still needs). They are lengthy, and in essence fall under three headings.
- [4] She has provided an account of the work she is now doing in Aboriginal communities. Her stories are compelling and her commitment is admirable. Her father would no doubt be pleased and proud of the work she is doing. Legally, however, it can have no relevance to the question of costs.
- [5] Further, the respondent pleads her personal circumstances and in particular her impecuniosity. It is open to sympathise, but such sympathy can have no legal effect in this context.
- [6] The respondent also reiterates her motivation for the position that she adopted during the hearing and insists that she was at all times reflecting her father's wishes. Her sincerity can be accepted, but it informed an approach that was legally misguided.

¹ Applicant's submissions as to costs at [14].

² Affidavit of Chella Goldwin [CFI-9] at [35] - [46] and exhibit M; Affidavit of Paige Edwards affirmed 13 August 2020 at [3] - [4].

- [7] The Court has an absolute and unfettered discretion to award costs.³ They are not awarded by way of punishment of the unsuccessful party but to “indemnify the successful party against the expense to which he or she has been put by reason of the legal proceedings”.⁴
- [8] Self-represented litigants warrant special consideration which extends to the factors relevant to an award of indemnity costs.⁵ The conduct of the respondent in this case, in particular the rejection of the offer of compromise, would tend to lead to orders of that nature for legally represented parties.⁶
- [9] Nevertheless, each case stands on its own, and taking into account Ms Goldwyn’s lack of representation I decline to make such an order. That is not enough, however, to displace the ordinary rule as to costs.⁷ As emphasised by Wilson J, “the Court’s discretion must be determined on fixed principles ... according to rules of reason and justice, not according to private opinion ... benevolence ... or sympathy”.⁸
- [10] In the result, the respondent is ordered to pay the applicant’s costs of the proceedings from 24 April 2020 to be assessed on the standard basis, and excluding the costs of notification of proceedings to Margaret Cowley in the affidavit of Jamie Lee Strauss dated 16 July 2020 as to that issue.
- [11] Save to the extent that the costs of the applicant are actually recovered from the respondent, the applicant’s costs of the proceeding are to be paid from the estate of Thomas Sebasio on the indemnity basis.

³ *Campbell (Donald) & Co v Pollack* [1927] AC 237 at 811 -812 per Viscount Cave LC;

⁴ *Latoudis v Casey* (1990) 170 CLR 534 at 542 per Mason CJ; *Oshlack v Richmond River Council* (1998) 152 ALR 83 at [66] per McHugh J.

⁵ See generally the discussion of McMeekin J in *Mowen v Rockhampton Regional Council* [2018] QSC 44 at [9]-[14].

⁶ *Bhagat v Royal and Sun Alliance Life Assurance Australia Ltd* [2000] NSWSC 159 at [13] per Hodgson CJ.

⁷ *Ibid*;

⁸ *Scriven v Queensland Rural Industry Development Authority (No 2)* [2019] QSC 263 at [18] citing *Williams v Lewer* [1974] 2 NSWLR 91 at 95 per Rath J.