SUPREME COURT OF QUEENSLAND

CITATION:	*Chapman v State of Qld* [2003] QCA 172
PARTIES:	**NOREEN MARY CHAPMAN** (plaintiff/applicant) **v** **STATE OF QUEENSLAND** (defendant/respondent)
FILE NO/S:	Appeal No 1759 of 2003 SC No 6929 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension of Time/General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	2 May 2003
DELIVERED AT:	Brisbane
HEARING DATE:	27 March 2003
JUDGES:	de Jersey CJ, White and Atkinson JJ Judgment of the Court
ORDER:	**Application refused with costs**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – where applicant was self-represented at trial and lacked knowledge of legal procedure – where applicant claims she was misled by trial judge – where applicant disagrees with trial judge's acceptance of evidence led by the defendant – whether an appeal would be plainly hopeless. *Queensland Trustees Limited v Fawckner* [1964] Qd R 153, cited *Ford v La Forrest* [2001] QCA 455; [2002] 2 Qd R 44, cited *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344, cited
COUNSEL:	The applicant appeared on her own behalf D K Boddice SC for the respondent
SOLICITORS:	The applicant appeared on her own behalf Minter Ellison for the respondent

[1] **THE COURT:** The applicant, Noreen Chapman, has applied for an extension of time to appeal the decision that her proceedings taken against the State of Queensland in the Trial Division of the Supreme Court be dismissed. That decision was given on 17 December 2002.

[2] The grounds on which an extension of time was sought in which to file an appeal are set out in an affidavit filed by the applicant as follows:

> "(a) My bad and serious health problems and severe stress.
> (b) No finance or assets left.
> (c) No knowledge of "procedures".
> (d) No faith or trust in legal representatives.
>
> I did not submit a lot of my documents as I followed the Judge's orders. I was misled the first day of the trial."

[3] A notice of appeal is required pursuant to r 748(a) of the *Uniform Civil Procedure Rules* to be filed within 28 days after the date of the decision appealed from. The principles to be applied in determining whether or not to extend time to appeal are well settled: see *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344 at 348-349. In this case, the plaintiff who represented herself at trial, had the advantage of an explanation from the learned trial judge after judgment was delivered that if she wished to appeal she must follow the rules regarding appeal and comply with those rules. Nevertheless an applicant who has suffered severe ill health and lacked knowledge of the proper procedures would be likely to be granted a short extension of time in which to appeal, particularly where no prejudice has been suffered by the respondent. However, the court will not grant leave unless it is positively satisfied that it is proper so to do. In determining whether it is proper to grant the extension, it is appropriate to consider the merits of the substantive application: see *Queensland Trustees Limited v Fawckner* [1964] Qd R 153 at 163-164. An extension of time will not be granted if the court considers the appeal to be plainly hopeless: see *Ford v La Forrest* [2002] 2 Qd R 44 at 45.

[4] In the judgment given at first instance, her Honour made the following relevant findings of fact. The applicant was prescribed Cardizem CD 240mg capsules by Dr Steven Coverdale at the Nambour General Hospital on 6 June 1996. She had previously been taking Cardizem 60mg. On 23 June, the applicant's husband filled the prescription at the hospital's pharmacy and the pharmacy wrongly dispensed Veracaps SR 240mg capsules instead of the Cardizem capsules which had been prescribed.

[5] The applicant, once she had completed the Cardizem 60mg tablets, commenced taking the Veracaps by taking one capsule on each of 24, 25 and 26 June 1996. On 27 June 1996, she was admitted to the hospital suffering severe chest pains. She then sued the defendant which conducts the Nambour General Hospital claiming damages for personal injury as a result of the negligent dispensing of the wrong capsules. Her Honour correctly characterised the issue to be determined in the proceeding as whether the plaintiff suffered the damage alleged as a consequence of this negligent act on the part of the defendant.

[6] Her Honour carefully considered all of the evidence including the expert evidence. Her Honour accepted that the evidence was overwhelmingly against it being likely

that the heart attack which the applicant suffered on 27 June 1996 was due to her taking Veracaps for three days and not taking Cardizem. Both medications are aimed at doing the same thing and no difference could be anticipated from taking one rather than the other. The expert opinion was that the most likely cause of the applicant's myocardial infarction on 27 June was the progressive nature of her underlying coronary disease associated with factors such as family history, hypertension, high cholesterol, hyperlipidemia and smoking.

[7] In support of her application for leave to extend time, the applicant has filed a 10 page handwritten document which she describes as her outline of argument, an application, an affidavit as to her reasons for seeking extension of time, and an affidavit to which is exhibited a copy of the order made by the learned trial judge, the reasons for judgment and her proposed notice of appeal. The grounds of appeal are said to be:

> "(1) No knowledge of procedures;
> (2) No trust in legal representatives;
> (3) Mislead by the judge, conflict of interest also;
> (4) Numerous inaccurate evidence submitted and given;
> (5) The judge's decision from 1 to 64 should be entirely dismissed."

[8] Essentially, the first and second grounds of appeal appear to be that the applicant had no trust in legal representatives and represented herself even though she had no knowledge of procedures. The applicant represented herself at trial and was given appropriate information by the trial judge as to the procedures adopted at the trial. This ground would not be sufficient to justify an appeal.

[9] The next ground of appeal appears to be that the applicant was misled by the judge and that the judge had a conflict of interest. In her written application to the Court of Appeal, this appears to have been characterised as "I was mislead [sic] by the judge and did not submit most of my evidence". In fact, at the end of the defendant's case, over the objection of the defendant, the learned trial judge gave the applicant the opportunity overnight if she thought she had been prejudiced to bring in all documents that she had wanted to put in and had not put in, and the court would spend "as long as it takes" to go through them one by one and see if the documents were admissible. That procedure was followed on the following day. This ground of appeal is entirely without merit.

[10] As to the alleged conflict of interest, the applicant submitted orally that the learned trial judge disclosed at the trial that both she and her husband knew a solicitor who had previously advised Mrs Chapman and who was no longer acting for Mrs Chapman after a disagreement between them. The solicitor was called as a witness and, as Mrs Chapman now complains, the judge asked him a number of questions. There was no basis on which the learned trial judge could or should have disqualified herself.

[11] The next ground of appeal is described as "numerous inaccurate evidence submitted and given". At best, this seems to be a complaint that the applicant did not agree with the evidence presented by the defendant. That evidence was tested by cross-examination and considered rigorously by the trial judge who made proper findings on the basis of the evidence before her. There is nothing in this ground of appeal

which would suggest that the decision made by the learned trial judge was in any way in error.

[12] The applicant's outline of argument addresses the fifth ground of appeal exhaustively and is a paragraph by paragraph criticism of the judgment of the learned trial judge. It is not necessary to refer to it in detail. Much of this criticism was reiterated in her oral submissions. It suffices to say that it either misunderstands the nature of what is said in the judgment, or introduces irrelevant material or unsupported accusations and what is called new evidence which is either irrelevant or could have been obtained before trial. The applicant also complains that her Honour refused, quite properly in our view, to consider documents supplied to the judge but not to the defendant after the decision was reserved and before judgment was handed down.

[13] The applicant also handed up a document during the hearing of her application which contains a mixture of submissions, assertions, objections to the jurisdiction of this court, and other irrelevant material. It was of no assistance in the determination of this application.

[14] The principal dispute the applicant has with the decision is that the learned trial judge accepted the evidence given by the defendant's witnesses both as to the events which occurred and the expert evidence as to the difference in effect of the two drugs. The applicant also complains about the expert pharmacological evidence given by Dr Brown which the judge found to be very informative and of great assistance. The applicant submits that had she not dismissed her legal representatives, Dr Brown would have been her expert witness. The difficulty for the applicant in this submission is that, as an expert, Dr Brown is bound to give, as he apparently did, disinterested evidence. Whether or not he had been called by the plaintiff or defendant would have made no difference to the opinion on which the judge was able to rely that "the plaintiff changing from Cardizem to Veracaps on 24 June 1996 would have caused no effect at all, because the drugs are interchangeable".

[15] As there is in our opinion no prospect of success on an appeal, there would be no purpose served by granting an extension of time. We would refuse the application with costs.