

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

[2004] QSC 83

FRYBERG J

No 11202 of 2003

STATE OF QUEENSLAND

Applicant

and

WAYNE MALCOLM FEWINGS

Respondent

BRISBANE

..DATE 13/04/2004

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application by the State of Queensland for an order pursuant to section 38(1)(c) of the Criminal Proceeds Confiscation Act 2002 that a named person attend on a date to be fixed, written notice of which is to be served on him, for examination before the Registrar of the Court. The application is made in the context of there having been a restraining order made on 4 December 2003 against Wayne Malcolm Fewings.

The application seeks to have Timothy Andrew Stillwell examined on the basis that there is evidence that Stillwell was a person who purchased drugs from Fewings. The evidence showing that there is ground for thinking that Stillwell would know any of the information referred to in the subsection to which I have referred is very thin. It is contained in a transcript of a conversation recorded with Fewings by a covert police officer and suggests no more than that Stillwell had a number of dealings with Fewings.

At most, that suggests that his knowledge of Fewings' affairs, the subject matter of an order under paragraph (i), would be very limited. However, I am, by a narrow margin, persuaded that it is sufficient for me to exercise the discretion conferred by section 37 of the Act to make an order of the type described in section 38(1)(c)(i).

There is no authority cited to me but it is unclear to me whether an order under paragraph (c), if made at all, should be made in relation to all of the paragraphs (i) through to

(iii). As presently advised, I see no reason why those paragraphs should not be read disjunctively.

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In my view, admittedly a tentative view since the issue has not been canvassed in a contested hearing, it seems that an order may be made in relation to any one or more of those subparagraphs but that to obtain an order it is necessary that there be evidence disclosing some ground for thinking that the person to be examined has some knowledge of the nature described in paragraphs (i) to (iii).

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Being satisfied in the present case only in relation to paragraph (i), I will make an order that Timothy Andrew Stillwell attend on a date to be fixed, written notice of which is to be served on him, for examination before the Registrar of the Court about the affairs of Wayne Malcolm Fewings and further order that costs be reserved.

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I have amended the draft to reflect those terms and, so amended, there will be an order in accordance with the draft initialled by me and placed with the papers.

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