



Transcript of Proceedings

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Date: 24 May, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WILSON J

No BS 2734 of 2004

KVH

Applicant

and

SMC

Respondent

BRISBANE

..DATE 14/05/2004

ORDER

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HER HONOUR: There is an originating application before the Court filed by the applicant on 25 March 2004 seeking property adjustment orders between him and his former de facto spouse, the respondent.

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The matter has come before me this morning on an application for directions. The first matter raised was whether the proceeding had properly been commenced by originating application and whether, in any event, there ought to be a direction for the delivery of pleadings.

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I have had the advantage of considering the decision of Justice Muir in *KYT v ISC*, No BS 374 of 2004, 10 March 2004. I respectfully agree with his Honour that this is a case properly commenced by way of originating application.

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In the present case the Court has before it the originating application, an affidavit by each of the parties setting out the financial circumstances of the relationship and statements of financial circumstances prepared by the parties.

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This is a matter of sufficient complexity for me to conclude that it would be more efficiently conducted if there were points of claim and point of defence filed. It is not my intention that there should be the preparation of further documents restating evidence. What I have in mind are succinct documents in the nature of pleadings.

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A further contentious issue was that of alternative dispute resolution. Both parties submitted that there should be a form of ADR. The applicant submitted that it should be case appraisal while the respondent submitted that it should be mediation.

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In support of case appraisal, the applicant's solicitor submitted that to date the respondent had been uncooperative in negotiation, that case appraisal would result in a written opinion which the parties could consider and use in any further negotiations, and further that there would be cost consequences if either party chose not to accept the decision of the case appraiser.

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In support mediation, the respondent's counsel submitted that because the issues are primarily issues of fact, mediation would be more appropriate. She submitted further that the decision of the case appraiser would not advance the matter necessarily; that what was required was prompt negotiation.

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I am persuaded that this matter ought, if possible, to proceed to a prompt resolution. I consider that a skilled mediator should be able to assist the parties to appreciate their respective strengths and weaknesses. In all of the circumstances, I think mediation would be a more appropriate form of ADR.

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The directions I give are as follows:

1. That the applicant file and serve points of claim by 21 May 2004. 1
2. That the respondent file and serve points of defence by 28 May 2004. 10
3. That both parties undertake and complete disclosure by 4 June 2004.
4. That the parties exchange any expert evidence on which they intend relying at trial by 2nd July 2004. 20
5. That if the parties are unable to agree upon the resolution of the issues on which the experts have expressed opinions, there should be a conference of experts on or before 9 July 2004 for the purpose of identifying matters in relation to which the experts agree and matters in relation to which they disagree and the experts should prepare and sign a joint statement summarising such issues. The experts should provide copies of that statement to the solicitors for each of the parties. 30 40
6. I direct the parties after receipt of the experts' joint statement (if any) to attend, participate in and act reasonably and genuinely in a mediation to be conducted at a time to be agreed or in the absence of agreement not later than 6 August 2004. 50

7. The mediator is to be selected by the parties or in the absence of agreement appointed by the Court. 1

8. Copies of all documents filed in this proceeding, of the respective expert reports, of the joint statement of experts, and of any other documents relevant to the mediation, are to be the subject of a list agreed by the parties by one week prior to the commencement of the mediation. 10

9. The period of mediation is fixed at one day. 20

10. The parties are to negotiate a fee with the mediator. If they are unable to do so, then the mediator's fees are to be fixed by the Court. 30

11. The parties are to pay the following percentages of the mediator's costs: applicant 50 per cent, respondent 50 per cent. Such fees are to be paid to the mediator at the time nominated by him. 40

12. If the mediation has not been completed by 20 August 2004, the parties must provide a report to the Registrar of the Court setting out the circumstances of the matter.

13. The mediator is to be informed of the appointment by service of a copy of this order. 50

14. This application is to be adjourned to a date to be fixed.

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15. The parties should have liberty to apply on three days' notice in writing.

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