

SUPREME COURT OF QUEENSLAND

CITATION: *CAR & Anor v Department of Child Safety* [2010] QCA 49

PARTIES: **CAR**
(first applicant)
CAS
(second applicant)
v
DEPARTMENT OF CHILD SAFETY
(respondent)

FILE NO/S: Appeal No 1179 of 2010
DC No 101 of 2010

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: Judgment delivered 23 February 2010
Further Order delivered 12 March 2010

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Muir and Fraser and Chesterman JJA
Judgment of the Court

ORDER: **The application for an order for costs is refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF THE COURT – COSTS – where the Court allowed the appellants’ appeal – where the appellants claimed “ongoing costs” including the cost or value of the appellants’ own labour in litigating the appeal – whether “costs” include a non-lawyer’s own time expended in preparing and conducting litigation

Uniform Civil Procedure Rules 1999 (Qld), r 766(1)(d)

Cachia v Hanes (1994) 179 CLR 403; [1994] HCA 14, followed

CAR & Anor v Department of Child Safety [\[2010\] QCA 27](#), cited

COUNSEL: The applicants appeared on their own behalf
P Munro (*sol*) for the respondent

SOLICITORS: The applicants appeared on their own behalf
Crown Law for the respondent

- [1] **THE COURT:** On 23 February 2010 the Court allowed the appellants' appeal against a decision of the Children's Court: *CAR & Anor v Department of Child Safety* [2010] QCA 27. When judgment was delivered the appellants, who represented themselves throughout, applied for costs fixed at \$510 for transport and photocopying costs incurred in pursuing their appeal. They also indicated that they wished to pursue a more substantial claim for other costs. The parties were given leave to make written submissions as to costs within 14 days of 23 February 2010.
- [2] The written submissions lodged by the appellants and those lodged for the Department state that the Department has agreed to pay and that it has in fact paid the appellants the claimed sum of \$510 for transport and photocopying costs. Neither party seeks any order in that respect so that it is unnecessary for this Court to consider that part of the appellants' claim for costs.
- [3] The Department opposes the appellants' additional claim for "ongoing costs". The appellants' written submissions explain this additional claim as follows:
1. Emotional damage (pain and suffering)
 2. Psychological damage (pain and suffering)
 3. Criminal negligence
 4. Negligence
 5. Duty of care
 6. Time spent labouring on Appeal process."
- "FINANCIAL COSTS INCURRED AND ONGOING COSTS:
TOTAL: approximately \$12 510.
- The true ongoing costs are yet to be determined upon legal advice."
- [4] UCPR rule 766(1)(d) empowers the Court to make the order as to the costs of an appeal that the Court considers appropriate. The "costs" spoken of in that and similar statutory provisions are given by way of an indemnity, or partial indemnity, for professional legal costs actually incurred by a litigant in bringing or defending litigation: see *Cachia v Hanes* (1994) 179 CLR 403. None of the items claimed by the appellants is of that character. As to item 6 in particular, in *Cachia v Hanes* the High Court decided that "costs" did not include a non-lawyer's own time expended in preparing and conducting litigation.
- [5] By letter addressed to the Court of Appeal dated 11 March 2010 the appellants sought a further hearing of their application for costs. That application should be refused. When judgment was delivered in the appeal, the Court directed that the parties file written submission as to the costs of the appeal "in accordance with Practice Direction No 1 of 2005". The direction made it clear that any submission was to be made in writing and the appellants did not then seek a further oral hearing. The appellants have not identified any arguable basis for the additional "costs" they seek and nor is there any ground for taking the exceptional course of allowing a further oral hearing about costs.
- [6] The appellants' application for an order for costs is refused.