

SUPREME COURT OF QUEENSLAND

CITATION: *CAR & CAS v Department of Child Safety* [2010] QCA 165

PARTIES: **CAR & CAS**
(applicants)
v
DEPARTMENT OF COMMUNITIES (CHILD SAFETY SERVICES)
(respondent)

FILE NO/S: Appeal No 5773 of 2010
DC No 631 of 2010

DIVISION: Court of Appeal

PROCEEDING: Mention

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: Orders delivered ex tempore on 18 June 2010
Further order and reasons delivered on 25 June 2010

DELIVERED AT: Brisbane

HEARING DATE: 18 June 2010

JUDGES: McMurdo P, Chesterman JA and Atkinson J
Judgment of the Court

ORDERS: **Delivered ex tempore 18 June 2010**
1. Application for leave to appeal is struck out.
Delivered 25 June 2010
2. The Court directs the Senior Deputy Registrar (Appeals) not to accept any application for leave to appeal or notice of appeal from the applicants in relation to the orders of his Honour Judge Shanahan made in the Childrens Court of Queensland on 6 May 2010.

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE LEGISLATION – CHILDREN IN NEED OF PROTECTION – PROCEEDINGS RELATING TO CARE AND PROTECTION – APPLICATIONS – Childrens Court constituted by a magistrate made orders ending Chief Executive of respondent Department's interim entitlement to custody of child KVS – respondent Department appealed magistrate's orders then filed notice of discontinuance – applicants did not consent to discontinuance – Childrens Court constituted by a District Court judge struck out respondent Department's appeal

making no order as to costs – whether applicants can appeal to this Court

Child Protection Act 1999 (Qld), s 117(2)

CAO v Dept of Child Safety & Ors [\[2009\] QCA 169](#), followed

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

Dept of Communities (Child Safety Services) v CAR & Anor [\[2010\] QCA 105](#), cited

KAA & Anor v Schemioneck & Anor (No 2) [\[2007\] QCA 449](#), followed

SBD v Chief Executive, Department of Child Safety [2008] 1 Qd R 474; [\[2007\] QCA 318](#), followed

COUNSEL: The applicants appeared on their own behalf
J W Selfridge for the respondent

SOLICITORS: The applicants appeared on their own behalf
Court Services Unit, Department of Communities (Child Safety Services) acting as agent for Crown Solicitors Office for the respondent

- [1] **THE COURT:** The applicants, CAR and CAS, filed an application in the registry of this Court on 3 June 2010 seeking leave to appeal from orders made by his Honour Judge Shanahan in the Childrens Court of Queensland on 6 May 2010. Judge Shanahan struck out an appeal brought by the respondent to the present application, the Department of Child Safety, and, as the applicants were self-represented, his Honour made no order as to costs. On 18 June 2010, this Court struck out that application, indicating it would publish its reasons for doing so later. These are those reasons.
- [2] It is immediately apparent that this application is irregular as the orders from which the applicants seek leave to appeal were orders which favoured them so that any appeal would be nonsensical. But the application is misconceived for another reason. As we shall explain shortly, there is no right of appeal from Judge Shanahan's orders. That is why the registry staff referred the application to this Court for directions as to how to deal with it. Accordingly, this Court directed the registry to inform the parties that the matter would be listed for mention on 18 June 2010. The registry emailed the respondent Department and sent a letter by express post to the applicants on 10 June 2010 informing them of the mention.
- [3] On 17 June 2010, the applicants informed the registry by telephone that, due to financial difficulties and illnesses, they would not be attending the court hearing on 18 June 2010. They requested that the matter be delisted. The Court did not accede to their request. The registry staff suggested that the applicants appear by telephone. The applicants reluctantly agreed to that suggestion, but later telephoned the registry and stated that they could not appear by telephone because they would not be able to hear the judges. They again requested the matter be delisted. Their request was again denied. Under protest, they ultimately agreed to appear by telephone. At the hearing, they challenged the right of this Court to bring the matter

on before it and argued that each member of the Court should not sit on any hearing of their application.

- [4] No member of the Court considered that there was any reason to require recusal.
- [5] The applicants were informed of the hearing on 18 June 2010 well in advance. The fundamental difficulties with the application mean that the applicants will not be assisted by any adjournment of it. For reasons which we shall explain, the interests of justice require that the application be struck out at this preliminary stage, before the community, through the courts, and the respondent Department are put to any further pointless expense in respect of it. For those reasons, the applicants' request for an adjournment was refused.
- [6] The applicants in their application for leave to appeal ask for the following orders:
- "(1) Apply for a leave to appeal.
 - (2) This Court to make further evidence available and allow to be produced as if denied, such new and fresh evidence would have a catastrophic effect upon the Appellants' case.
 - (3) This Court to order the Orders and transcripts and decision by Judge Shanahan DCJ.
 - (4) Judge Shanahan DCJ orders to be set aside.
 - (5) This Court to overrule 6 May 2010; set aside orders. Appellants to use further evidence that is new and fresh.
 - (6) Appeal to be allowed.
 - (7) Appellants request Magistrate Criland unlawful and illegal orders 9 April 2010 below be stayed pending the determination of the Appeal.
 - (8) Permanent custody of the child ([KVS]) to be granted to the Appellants; immediately.
 - (9) Appellants' additional new and fresh evidence to be allowed.
 - (10) Decision of Magistrate Ryan to be restored.
 - (11) Decision of Department of Child Safety to be overturned; all.
 - (12) Stay of the decision of Judge Shanahan DCJ.
 - (13) As stipulated in the Child Safety Act the family meeting and court ordered conference to be held.
 - (14) All Court Orders and initial complaints for these matters pertinent to the Appellants' case to be allowed.

- (15) All complaints initiating the Department of Child Safety intervention and litigation to be produced from Western Australia, South Australia and Queensland.
- (16) All paperwork, documents, affidavits, letters and exhibit material filed in the Courts by the Appellants and Respondent before Magistrate Ryan in the revocation be produced and allowed due to the nature of it being new and fresh evidence.
- (17) All orders, transcripts, documents and material pertaining to the Appellants' four biological children's child protection matters in Western Australia, South Australia and Queensland be produced and allowed due to the nature of it being fresh and new evidence.
- (18) All material relevant to the Appellants' matters in Western Australia, South Australia and Queensland to be allowed.
- (19) All witnesses provide evidence in person or video link-up instead of by telephone.
- (20) All excerpts, quotes, references and statements from all transcripts to be allowed.
- (21) All parties be present ie. Magistrate Ryan, Judge Shanhan and Dick DCJ, Department of Child Safety (Toowoomba North).
- (22) All Appellants' letters of complaint to various bodies and agencies and their subsequent replies to be allowed.
- (23) Voluntary tape recordings 26 February 2010 before Judge Dick and photographs as evidentiary material and new and fresh evidence to be allowed.
- (24) Untranscribed recordings of all hearings including mentions and unrevised transcripts of prior proceedings pertaining to this matter and other matters to be allowed.
- (25) Open Court to be allowed.
- (26) Support people to be allowed.
- (27) **Absolute** independent body to be appointed to monitor the Appellants' care of the child [KVS]; to dissolve any concerns of the Court and the Department of Child Safety (Toowoomba North).
- (28) The Department of Child Safety (Toowoomba North) and Judge Shanahan DCJ to reimburse the Appellants for all legal costs related to the child's ([KVS]) child protection matter.

The Department of Child Safety (Crown) and Judge Shanahan DCJ pay all the C and CAS, the Appellants

We request further costs for damage pertaining pain and suffering; yet to be decided. However the true ongoing costs are yet to be determined upon legal advice.

and

Such further orders and directions as should be necessary to give effect of the decision of this Honourable Court."

- [7] The applicants have been frequent litigators with the respondent Department throughout this year over their daughter, KVS. We shall set out some of that litigation history. On 8 January 2010, Magistrate Ryan made orders concerning KVS in the Toowoomba Childrens Court, one of which was to effectively end the Chief Executive of the respondent Department's interim entitlement to custody of KVS. That same day, the Department made an oral ex parte appeal application to the Childrens Court constituted by a District Court judge, his Honour Judge Martin. Judge Martin set aside Magistrate Ryan's orders and instead ordered that the Chief Executive of the respondent Department have interim custody of KVS until the next hearing date in the Toowoomba Childrens Court on 26 February 2010.
- [8] On 8 February 2010, the applicants filed in this Court's registry an application to extend time to appeal from Judge Martin's order. On 23 February 2010, this Court granted the applicants an extension of time to appeal from Judge Martin's orders, allowed that appeal, set aside Judge Martin's orders and instead ordered:
- (a) that Magistrate Ryan's orders refusing the respondent Department's application for an interim temporary custody order of KVS be stayed;
 - (b) that temporary custody of KVS be granted to the Chief Executive of the respondent Department;
 - (c) that the applicant father not have any contact direct or indirect with KVS and the applicant mother not have any contact direct or indirect with KVS other than in the presence of a person approved by the Department;
 - (d) and that orders (a), (b) and (c) were to remain in force until 4.00 pm Friday 26 February 2010 or until such other time as may be ordered in the Childrens Court, being a time which is no later than the determination of the Department's appeal to the Childrens Court constituted by a District Court judge.

This Court also granted the respondent Department an extension of time until 4.00 pm on 26 February 2010 within which to file a notice of appeal in the Childrens Court constituted by a District Court judge from Magistrate Ryan's orders.¹

- [9] Accordingly, the respondent Department filed a notice of appeal from Magistrate Ryan's orders in the Childrens Court constituted by a District Court judge on 25 February 2010 together with an urgent application seeking interim directions.

¹ See *CAR & Anor v Department of Child Safety* [2010] QCA 27.

On 26 February 2010, her Honour Judge Dick SC ordered: that orders 3(a), (b) and (c) above were to remain in force until the earlier in time of either the final determination of the respondent Department's appeal, or the order of the Childrens Court magistrate granting temporary custody to the Chief Executive; expediting the hearing of the appeal; dispensing with Practice Direction requirements; upon the Childrens Court magistrate granting temporary custody of KVS to the Chief Executive of the respondent Department, the magistrate might make whatever orders deemed fit in relation to the applicants' contact with KVS; and adjourning the respondent Department's appeal to a date to fixed.

- [10] The applicants filed an application in this Court for leave to appeal from Judge Dick's orders.
- [11] This Court dismissed their application on 7 May 2010: *Dept of Communities (Child Safety Services) v CAR & Anor.*² The Court noted that the applicants could not succeed because there was no appeal to this Court, or at all, from the decision of a Childrens Court constituted by a District Court judge determining an appeal from a Childrens Court constituted by a magistrate.³
- [12] Meanwhile, on 9 April 2010, acting Magistrate Cridland, in the Toowoomba Childrens Court, ordered that the application for a child protection order in respect of KVS be adjourned to Brisbane on 20 May 2010; gave interim custody of KVS to the Chief Executive of the respondent Department; and ordered that a social assessment report be prepared in respect of KVS. The applicants have appealed from Magistrate Cridland's orders under s 117(2) *Child Protection Act 1999* (Qld) to the Childrens Court constituted by a District Court judge. This appeal has not yet been determined.
- [13] As to the respondent Department's appeal from Magistrate Ryan's orders, on 22 April 2010 it filed a notice of discontinuance. The present applicants did not sign or consent to the notice of discontinuance. The matter, therefore, was listed on 6 May 2010 before Judge Shanahan, who, as we have noted earlier, struck the appeal out making no order as to costs. This brings the narrative back to where it began. The applicants have applied for leave to appeal from Judge Shanahan's orders.
- [14] As this Court explained to the applicants in their previous hearings before it this year,⁴ there is no appeal from orders made by a Childrens Court constituted by a District Court judge hearing an appeal from a Childrens Court constituted by a magistrate. That proposition is well established: see *CAR & Anor v Department of Child Safety*;⁵ *CAO v Dept of Child Safety & Ors*;⁶ *SBD v Chief Executive, Department of Child Safety*;⁷ *KAA & Anor v Schemioneck & Anor (No 2)*.⁸
- [15] That is not to say the applicants are denied access to the courts in respect of the important question of the custody of their daughter, KVS. The determination of the significant issue of whether a child protection order should be granted in respect of

² [2010] QCA 105.

³ Above at [17].

⁴ [2010] QCA 27 at [8] and [2010] QCA 105 at [17], [18].

⁵ [2010] QCA 27, [8].

⁶ [2009] QCA 169, [12].

⁷ [2008] 1 Qd R 474, [18]-[21]; [2007] QCA 318.

⁸ [2007] QCA 449, [21].

KVS remains to be determined in the Brisbane Childrens Court constituted by a magistrate. In the meantime, the Chief Executive of the respondent Department continues to have interim custody of KVS. That matter is next listed for mention in the Brisbane Childrens Court constituted by a magistrate on 16 July 2010.

- [16] Further, the applicants' appeal under s 117(2) *Child Protection Act 1999* (Qld) from Magistrate Cridland's interim order to the Childrens Court constituted by a District Court judge remains to be determined.
- [17] The applicants made oral submissions at the hearing before this Court. They spoke over the judges and, despite courteous requests from all judges to make relevant submissions on the question of the competency and utility of their application, they persistently refused to do so. Their offensive, abusive and unfocussed statements gave the Court no alternative but to ultimately terminate the telephone link.
- [18] In summary, the applicants simply have no right of appeal to this Court from Judge Shanahan's orders made in the Childrens Court constituted by a District Court judge sitting on an appeal from a Childrens Court constituted by a magistrate. It follows that their application had to be struck out. We further note that, in any case, it is impossible to understand what grievance they could have in respect of Judge Shanahan's orders which simply struck out an appeal filed by their adversary, the respondent Department. The applicants' futile and incompetent application from those orders to this Court was struck out to ensure that no further public resources were wasted on it. The applicants would be prudent to now focus their energy and efforts on the matters concerning KVS pending in the Childrens Court.
- [19] There is a further matter. The applicants stated that they would file another application in this Court's registry in respect of this matter. This would clearly be an abuse of process. The Court therefore directs the Senior Deputy Registrar (Appeals) not to accept any application for leave to appeal or notice of appeal from the applicants in relation to the orders of his Honour Judge Shanahan made in the Childrens Court of Queensland on 6 May 2010.

FURTHER ORDER:

The Court directs the Senior Deputy Registrar (Appeals) not to accept any application for leave to appeal or notice of appeal from the applicants in relation to the orders of his Honour Judge Shanahan made in the Childrens Court of Queensland on 6 May 2010.