COURT OF APPEAL

MUIR JA
CHESTERMAN JA
McMEEKIN J

Appeal No 5671 of 2010
SC No 4624 of 2010

LILLE KOSTESKA	**Appellant**
and	
MAGISTRATE WEBBER	**First Respondent**
and	
REGISTRAR K J BROWN	**Second Respondent**
and	
R S DILLON	**Third Respondent**

BRISBANE

DATE 09/11/2010

JUDGMENT

MUIR JA: The appellant seeks an adjournment of her appeal. She does so on a number of grounds. She informs the Court that she had an accident on the 2nd or 3rd of November which, in effect, has shaken her up. She spoke of problems with her former husband in relation to a domestic violence application. She also made the point that she has no legal representation.

She submitted, in effect, because of her current psychological difficulties resulting from the first two matters mentioned that she had difficulty in presenting her case. She has produced no medical or other evidence-----

APPLICANT: Excuse me-----

MUIR JA: -----to support her contentions. She appeared to have no difficulty in making the points that she wanted to make.

In that regard, she was content to speak of abstract matters such as justice and to look at the events of five or so years ago rather than turning to the issues relevant to the determination of this appeal.

The matters with which this appeal is concerned are of considerable antiquity. The appellant has had many years within which to consider her position and she has been active in litigating in Courts including the Supreme Court, the Magistrates Court and the Federal Magistrates Court to protect her position. She has obviously devoted a great deal of time and energy to the preparation of written submissions.

I am unable to accept that if the appellant wished to do so she would not be able to advance any further points she wished to make in support of her appeal. However, perusal of the outlines of argument does not encourage the view that the appellant would have anything relevant, useful or constructive to add to her outlines of argument.

To grant the adjournment would be to perpetrate an injustice to the third respondent. The third respondent has had this matter hanging over his head now for in excess of five years. There comes a time when litigation must be determined and, as the High Court of Australia has recently made plain, the interests of the public and the litigants alike are best served by the speedy determination of litigation.

There would be nothing useful to be served by granting an adjournment and accordingly I would refuse the application.

CHESTERMAN JA: I agree.

McMEEKIN J: I agree.

APPLICANT: Excuse me, Sir, can I speak?

MUIR JA: On 11 July 2005, the Registrar of the Magistrates Court in Beenleigh entered a default judgment in favour of the third respondent in the sum of $2,977.05. The third respondent had claimed against the appellant $1,868.35 damages for injuries suffered by the third respondent as a result of the appellant's negligently causing a motor vehicle accident and for costs and interest. An application to set aside the default judgment was dismissed on 14 September 2006.

A sequestration order against the appellant's estate was made in the Federal Magistrates Court on 21 March 2007. The appellant commenced various proceedings in the Federal Magistrates Court, including three applications for orders of review on 29 January 2010. Two were against the Registrar of the Federal Magistrates Court; another was against the appellant's trustee in bankruptcy. The fate of these proceedings is unknown but it can be assumed safely that the appellant's Federal Court proceedings did not meet with success.

On 6 May 2010, the appellant filed an application for a statutory order of review under which she sought to review the decision of the Registrar on 11 July 2005 to grant the default judgment and a decision on 28 April 2005 of a Magistrate, ordering substituted service of the claim and statement and claim. The application was dismissed with costs by a Judge of the trial division of this Court on 17 May 2010 when the appellant was ordered to pay the third respondent's costs of a cross-application to dismiss the appellant's judicial review application.

The primary Judge dismissed the application for statutory order review for the following reasons:

a) Section 18 of the *Judicial Review Act* 1991 (Qld) ("the Act") provides that it does not affect the operation of an enactment mentioned in Schedule 1, Part 1. Section 43 of the *Magistrates Court Act* 1921 (Qld) is there mentioned. It relevantly provides that:

> "(1) … all judgments and orders made by a Magistrates Court shall be final and conclusive.
>
> (2) Except as provided by this Act, or by or pursuant to any other Act now in force or hereafter to be passed, a judgment given by a Magistrates Court, or an action brought before it or depending therein, shall not be removed by appeal, motion, writ of error or certiorari or otherwise into any other Court.";

b) Neither of the decisions the subject of the application were ones to which the Act applied: they were of a judicial rather than a administrative character;

c) The decisions were reviewable by appeal under other legislation and it was appropriate to dismiss the appellant's application under section 13 of the Act which relevantly provides that if an application is made under section 20 to 22 or 43 of the Act to the Court and provision is made by law under which the applicant is entitled to seek a review of the matter by another court, tribunal, authority or person; the Court is to dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

d) The application is stale, having been made about five years after the subject decisions.

The appellant seeks leave to appeal on grounds which may be summarised as follows:

a) Section 43 of the *Magistrates Court Act* is void, as beyond the power of the Queensland Parliament on the basis of the decision of the High Court of Australia in *Kirk & Another v Industrial Relations Commission of New South Wales* (2010) 239 CLR 531;

b) The default judgment of the Registrar was primarily an administrative rather than a judicial decision;

c) Although there was substantial delay in making application under the Act in respect of the subject decisions, the basis for that delay was that it was not until the decision in *Kirk* that the appellant knew or could reasonably have known that the decisions were able to be judicially reviewed;

d) The costs award of $2,000 "seriously compounded the massive injustice already done to [the appellant] by upholding a statutory provision … [which] was 'beyond the powers' of the State Legislature to enact";

e) It was impossible for the appellant to make payment of the moneys ordered to be paid by the Magistrates Court order, as the Crown has failed abjectly to make available an open circulation at face value sufficient quantities of "legal tender" to "meet the needs of the community".

Even if *Kirk* had the effect for which the appellant contends, the application she chose to make was one under the *Judicial Review Act*. Section 26 of that Act allows a limited time from the making of the relevant decision within which to make application for a statutory order of review in respect of the decision. The application is many years out of time. To permit the appellant, the applicant, rather, to re-agitate matters which took place in the Magistrates Court in 2005 would infringe the principle that the interests of the public and individual litigants alike are best served by finality in judicial determinations: *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 at 17-18. The third respondent is entitled to regard the Magistrates Court proceedings as having long been determined.

There is no substance in the argument based on *Kirk*. The vice in the legislation considered by the High Court in that case was that it purported to take from the State Supreme Court

power to grant relief on account of jurisdictional error. The Act does not do that, that is, the *Judicial Review Act*, and in any event, it was not claimed that any alleged error on the part of the Registrar or Magistrate was jurisdictional.

The appellant did not place any material before the primary Judge and there is no material before this Court which would suggest that the subject Magistrates Court decisions were wrong or tainted by error. If the appellant had any grounds for challenging the decisions she should have relied on them in the bankruptcy proceedings: perhaps she did so unsuccessfully. No error has been shown in the reasons of the primary Judge and it was open to him also to have dismissed the application under section 48 of the Act had he chose to do so.

For the above reasons I would order that the application for leave to appeal be dismissed. The third respondent seeks an order that the appellant pay the third respondent's costs of the application fixed in the sum of $1,798. The third respondent's outline of argument explained how that sum is made up. The claim appears reasonable and subject to any argument which the appellant may now wish to advance, I would also order that the appellant pay the third respondent's costs fixed at $1,798.

...

MUIR JA: The appellant, in order to resist the costs order, relied on an argument in her grounds of appeal which raised what she contended was the lack of money or legal money in the legal system. That is an argument which has been raised and dealt with many times in the past. It lacks substance. I would make the orders that I initially intimated.

CHESTERMAN JA: I agree with the order proposed by the presiding Judge and for the reasons given by his Honour.

It is no doubt a matter of regret that this case should have lasted so long, gone before so many Courts and cost so much, but the remedy for that was for the applicant to come to terms with the claim made against her in the Magistrates Court in 2004. It appears from her own

materials that she had no defensible claim causing damage to the respondent's motor vehicle. Be that as it may, the time to fight was then. What has happened since is without legal merit and as I say I agree with the order proposed by the presiding Judge.

McMEEKIN J: I too agree with those orders proposed by the presiding Judge.