

# SUPREME COURT OF QUEENSLAND

CITATION: *Robertson v Vlahos & Anor* [2011] QCA 94

PARTIES: **GERALDINE FOOI-FONG ROBERTSON**  
(applicant)  
v  
**ANASTASI VLAHOS**  
(first respondent)  
**LESLEY JOY VLAHOS**  
(second respondent)

FILE NO/S: Appeal No 13213 of 2010  
SC No 12451 of 2008

DIVISION: Court of Appeal

PROCEEDING: Application for Stay of Appeal

ORIGINATING COURT: Supreme Court of Brisbane

DELIVERED EX TEMPORE ON: 11 May 2011

DELIVERED AT: Brisbane

HEARING DATE: 11 May 2011

JUDGE: Chesterman JA

ORDER: **1. Application for stay refused.**  
**2. Cost of the application be costs in the appeal.**

CATCHWORDS: CRIMINAL LAW – STAY OF APPEAL – where the applicant claims the respondents breached their contract – where the applicant seeks damages – where the applicant seeks a stay of the appeal proceedings until further proceedings are completed in the Magistrates Court – whether a stay of the appeal should be granted

COUNSEL: The applicant appeared on her own behalf  
M J Byrne QC for the respondent

SOLICITORS: The applicant appeared on her own behalf  
TLG Lawyers for the respondent

**CHESTERMAN JA:** The applicant, Mrs Robertson, was the plaintiff in an action in the Supreme Court which was struck out by Justice Margaret Wilson on 12 November last year.

Mrs Robertson's claims against Mr and Mrs Vlahos for a breach of contract, she claims a substantial amount of damages against them, alleging that, pursuant to a contract, they took possession of four of her valuable dogs which she had for breeding purposes, through which were pregnant and would have given birth to litters of puppies which themselves were valuable.

There is a dispute between the parties as to the circumstances in which Mr and Mrs Vlahos got possession of the dogs. It is their case that they surrendered them to an inspector, an officer of the RSPCA who took them because they had been mistreated together with another hundred dogs also seized by the RSPCA because they had been improperly looked after.

The circumstances in which Mr and Mrs Vlahos gave the dogs to the RSPCA was the subject of evidence in a proceeding in the Magistrates Court held in 2008. That proceeding was the subject of an appeal and two applications for leave to appeal, one to this Court and one to the High Court of Australia.

The result of the proceedings is that the Magistrate's finding as to the circumstances that the dogs were taken was upheld. Justice Wilson took the view that that evidence made Mrs Robertson's claim against Mr and Mrs Vlahos untenable and her Honour struck out the claim.

Mrs Robertson appeals against that decision but seeks to have the appeal stayed or adjourned until further proceedings are completed in the Magistrates Court. They are due to be held next month and they concern a large number of claims of animal cruelty against Mrs Robertson.

She wishes to have the appeal delayed until she has another chance to cross-examine Mr and Mrs Vlahos who are expected to be witnesses in the Magistrates Court prosecution.

It should be noted that Mrs Robertson has already cross-examined Mr and Mrs Vlahos on their evidence which they gave in the earlier hearing.

Mrs Robertson claims that she recently was given information in connection with the prosecution that is to commence next month and that strengthens her case against Mr and Mrs Vlahos. Whether that's so or not it doesn't seem to me to affect the proper prosecution of the appeal.

If there is, in fact, new evidence which would support the pleading that has been struck out Mrs Robertson can seek leave to put that evidence before the Court of Appeal when her appeal is heard. That may lead to a reconsideration of Justice Wilson's order. It may not, of course. It depends upon the evidence which I have not reviewed in any detail.

What Mrs Robertson wants is an adjournment of the appeal until she can have a thorough investigation of the facts in the upcoming prosecution and it seems to me something which she as litigant is not entitled to.

The respondents have a judgment in their favour. It seems to me that they are entitled to the prosecution of the appeal in the ordinary course. As I think I mentioned during the course of the hearing, an appeal is expected to be - an appeal could be heard in July.

For those reasons I think that the application for the stay should be refused. Mr Byrne, do you have an application?

MR BYRNE: If any costs can just be made costs in the cause.

**CHESTERMAN JA:** Very well. I order that the cost of this application be costs in the appeal. Thank you.