

**COURT OF APPEAL**

**MUIR JA**

**Appeal No 5629 of 2012  
SC No 8861 of 2009**

**BETTY JUNE BLACKGROVE and ANOR**

**Applicant**

**v**

**ROBERT JOHN WEST & ORS**

**Respondent**

**BRISBANE**

**THURSDAY, 9 MAY 2013**

**JUDGMENT**

**MUIR JA:** On 29 May 2012, McMurdo J ordered that \$100,000 be paid by the first respondent, Mr Robert West, to Mr Michael Klatt, solicitor, to be held by him on trust for the second applicant, Mr Keith West, according to the terms of the will of the late Ms Doris Jean West. His Honour further ordered that \$100,000 be paid by the first respondent, Mr Robert West, to the first applicant, Ms Betty Blackgrove, according to the terms of the will. These orders were not, I think, complied with, at least literally.

On 22 August 2012, Fraser J made further orders in this matter. He ordered that:

“1. As soon as reasonably practicable:

- a. The first Appellant [Robert West] do what is necessary on his part, to permit a director of MDRN Pty Ltd (ABN 44 136 054 405) trading as McCarthy Durie Lawyers to be made a joint signatory to the account maintained with Westpac

Banking Corporation in the name of the *'Estate of the late Doris Jean West'*, having BSB No. 034-070, Account No. 44-7719 (the Account); and

b. The First and Second Appellants [the second appellant being Joy West] deposit or cause to be deposited, the sum of Seventy Five Thousand Seven Hundred and Sixty One dollars and Seventy-Six cents (\$75,761.76), to the Account.

2. No monies are to be withdrawn from or transferred out of the Account until further order of the Court or with the written consent of each of the Appellants and the Respondents.”

The costs of and incidental to that application were reserved. On the trial of the proceeding *McMurdo J* found against the appellants, Mr Robert West and Mrs Joy West. The appellants appealed and were successful only to the extent of having the cross-order set aside. The \$75,761.76 was the amount of the costs ordered to be paid by the appellants to the respondents to the appeal.

Plainly, as the obligation to pay those costs has gone, the appellants are entitled to those moneys. As for the orders made by *McMurdo J*, it is deposed to and not contested that \$200,000 was already held in the Westpac Bank at Cleveland in the account of the estate of the late Doris Jean West at the time of *McMurdo J*'s orders. The order made by *Fraser JA*, effectively, operated as a stay. In determination of the appeal, there can be no doubt, having regard to the determination of *McMurdo J* which was upheld on appeal, of the entitlement of Ms Blackgrove to payment of the sum of \$100,000 in terms of the order of 29 May 2012.

...

**MUIR JA:** I digress for the moment to refer to written submissions provided today by Mr Robert West, who informed me, and I accept, that he appears on his own behalf and on behalf of his wife, Mrs Joy West. Mr West labours under a sense of grievance, and he does not accept that the matter was properly decided at first instance, on appeal, or, for that matter, by the High Court in refusing special leave to appeal. He has intimated that he wishes to seek further avenues of redress. That is his prerogative. In the course of his written submission, he

queried rhetorically, “How can the judges of the Court of Appeal be expected to give an unbiased determination on our case when they are scrutinised by their supervisor’s husband?”

The reference to the supervisor is to the President of the Court of Appeal, the wife of McMurdo J. The submission, which includes an allegation of the existence of apprehended bias, betrays an ignorance of the manner in which the judicial system of this state, and, indeed, of the country, operates. The President of the Court of Appeal, or the Chief Justice, for that matter, has no power, direct or indirect, over the way in which any judge carries out his or her judicial duties. Neither a president nor a chief justice “scrutinises” the work of a judge or the way in which the judge performs his or her judicial obligations. Judicial independence is a long-established reality in the courts of this country.

The only way in which judges are answerable for the performance of their judicial function is through the appellate process. That applies also to senior judges in the judicial hierarchy, such as presidents of courts of appeal and chief justices. Indeed, it frequently occurs that the appeals against the decisions of a chief justice are determined by the appellate division of the court headed by that chief justice, and lead, not infrequently, to the reversal of the chief justice’s decision. In considering what a fair-minded lay-observer might or might not reasonably apprehend, the authorities make plain that regard must be had to the way in which the courts and those on the courts perform their respective functions, including the strongly entrenched and fierce independence of judicial officers.

I have a draft order before me. It includes a proposed order that if the first respondent, that is, Mr Robert West, refuses to comply with the order, then a nominated person be authorised to sign all documents and undertake all actions necessary to give effect to the other proposed orders. I do not intend, at present, to make that order. I would hope that common sense would prevail. A failure to comply with an order of the court is contempt of court, punishable as such. I do not intend, by that observation, to levy any threat to Mr Robert West. I would hope that whatever further avenues he wishes to explore, he at least will accept that this phase of his attempts to obtain redress has ended with the refusal of special leave to the High Court.

In case there is any difficulty with the orders being carried out, I will substitute for paragraph 4 the words “The parties have liberty to apply”. In paragraph 1, after “first respondent”, I will insert the word “forthwith”. For the above reasons, I order in terms of the draft.