[2013] QCA 239

COURT OF APPEAL

FRASER JA
MORRISON JA
MARGARET WILSON J

CA No 301 of 2012
DC No 14 of 2010

BRIDGES, Mark Andrew **Applicant**

v

FORCIER, John Anthony **Respondent**

BRISBANE

THURSDAY, 29 AUGUST 2013

JUDGMENT

FRASER JA: The applicant was convicted in the Magistrates Court at Gladstone of offences against the *Transport Operations (Marine Pollution) Act* 1995 and the *Transport Operations (Marine Safety) Act* 1995, and regulations made under that Act. The applicant appealed against conviction to the District Court. The applicant then required an application for an extension of time to bring that appeal. In a judgment given on 16 October 2012, a judge of the District Court ordered that the applicant's application for an extension of time within which to appeal be dismissed, and ordered the applicant to pay the respondent's costs, of and incidental to the appeals to that Court to be assessed.

Subsequently, on 13 November 2012, the applicant filed an application for leave to appeal to the Court of Appeal. That application was brought pursuant to s 118(3) of the *District Court*

of Queensland Act 1967. Contrary to r 85 of the *Criminal Practice Rules* 1999 (Qld) the applicant did not serve the application for leave to appeal as soon as practicable on the respondent to the application, or at all. Nor has the applicant appeared in support of his application for leave to appeal, and nor has he filed the outline of argument in support of the application required by the Practice Direction. The Magistrate gave detailed reasons for the convictions. Those reasons were reviewed comprehensively by the District Court judge, who affirmed the findings of fact by the Magistrate upon which the convictions were based, as well as reviewing the Magistrate's legal conclusions and affirming them.

Under s 119 of the *District Court of Queensland Act*, the Court of Appeal has power to draw inferences of fact from facts found by the judge or jury, or from admitted facts, or facts not disputed. But there is a proviso that where the appeal is not by way of rehearing, such inferences shall not be inconsistent with the findings of the judge or jury. The proposed appeal by the applicant is not one by way of rehearing, because it is an appeal from the District Court exercising its appellate jurisdiction. See s 118(8), which provides that an appeal from the District Court in its original jurisdiction is by way of rehearing.

On the face of it, the application for leave to appeal seeks to challenge the findings of fact made by the Magistrate and affirmed in the District Court. No question of law was identified or articulated in the application for leave to appeal. The proposed appeal is distinctly unpromising, and, as I have said, is not supported by appearance or outline of argument. In these circumstances, the appropriate exercise of discretion is to refuse the application for leave to appeal. I would so order.

MORRISON JA: I agree.

MARGARET WILSON J: I agree with what the presiding Judge has said. I would add that, in my view, it would be open to the Court to dismiss the application for leave to proceed for want of prosecution, in the circumstances.

I note that that under rule 775 of the UCPR, failure to prosecute an appeal, including non-compliance with a practice direction about filing and serving an outline of argument, is a circumstance in which the Court can dismiss the appeal for want of prosecution.

It seems to me that the Court clearly has a similar inherent power with respect to an application for leave to appeal in its criminal jurisdiction.

FRASER JA: The order of the Court is that the application for leave to appeal is dismissed.

...

FRASER JA: The second order of the Court is that the applicant pay the respondent's costs of the application for leave to appeal.