

SUPREME COURT OF QUEENSLAND

CITATION: *Re Application by Geoffrey James Bird* [2015] QSC 100

PARTIES: **RE APPLICATION BY GEOFFREY JAMES BIRD**

FILE NO/S: 1987 of 2015

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 30 April 2015

DELIVERED AT: Brisbane

HEARING DATE: 13 April 2015

JUDGE: Martin J

ORDER: **Application refused.**

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the applicant was declared a vexatious litigant – where the applicant seeks leave to institute a proceeding against the Public Guardian and others for a writ of habeas corpus and other matters in respect of and on behalf of another person – whether the proposed application is a vexatious proceeding

Guardianship and Administration Act 2000, s 119
Vexatious Litigants Act 1981, s 3
Vexatious Proceedings Act 2005, s 11, s 12, s 16

Ex parte Persse [1828] 1 Molloy 219
Lohe v Bird [2004] QSC 023

COUNSEL: Applicant appeared in person

SOLICITORS: Applicant appeared in person

[1] On 27 February 2004 the applicant was declared a vexatious litigant pursuant to s 3 of the *Vexatious Litigants Act 1981*.¹

[2] The effect of that order is preserved by s 16 of the *Vexatious Proceedings Act 2005* (“the Act”). As a result, the applicant must, if he wishes to institute a proceeding, apply to the court for leave under s 11 of the Act. The applicant seeks such leave.

¹ *Lohe v Bird* [2004] QSC 023.

The Vexatious Proceedings Act 2005

[3] The relevant parts of the Act for the purposes of this application are:

11 Application for leave to institute a proceeding

- (1) This section applies to a person (*the applicant*) who is—
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland; or
 - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that—
 - (a) lists all occasions on which the applicant has applied for leave under—
 - (i) this section; or
 - (ii) before the commencement of this section, the *Vexatious Litigants Act 1981*, section 8 or 9; and
 - (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section; and
 - (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on any person unless—
 - (a) an order is made under section 13(1)(a); and
 - (b) the copy is served in accordance with the order.
- (5) The Court may dispose of the application by—
 - (a) dismissing the application under section 12; or
 - (b) granting the application under section 13.
- (6) The applicant may not appeal from a decision disposing of the application.

12 Dismissing application for leave

- (1) The Court must dismiss an application made under section 11 for leave to institute a proceeding if it considers—

- (a) the affidavit does not substantially comply with section 11(3); or
 - (b) the proceeding is a vexatious proceeding.
- (2) The application may be dismissed even if the applicant does not appear at the hearing of the application.

Schedule Dictionary

vexatious proceeding includes—

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued without reasonable ground; and
- (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

The orders sought if leave is granted

[4] The applicant proposes, if leave is granted, to issue proceedings against Kevin Martin (the Public Guardian), Ian Maynard (described as Director-General, Queensland Health Department) and Finn Pratt (described as Secretary, Department of Social Services). The following orders are sought against all or some of those people:

- (a) A peremptory writ of habeas corpus ad subjiciendum addressed to the respondents for the release of Elizabeth Jane Rickleman from their custody and control;
- (b) A declaration that Elizabeth Jane Rickleman is not mentally incapacitated;
- (c) A declaration that the enduring guardian document made by Elizabeth Jane Rickleman in Tasmania in 2007 is legally valid and effective in Queensland as an enduring power of attorney for personal matters and as an advance health directive;
- (d) A declaration that the enduring power of attorney made by Elizabeth Jane Rickleman in Tasmania in 2008 is legally valid and effective in Queensland;
- (e) A declaration that Elizabeth Jane Rickleman is not subject to any valid guardianship, administration or involuntary treatment order;
- (f) An order that the order of the Guardianship and Administration Tribunal of 9 December 2004 concerning Elizabeth Jane Rickleman is from this day quashed;
- (g) An order that Kevin Martin, Queensland Public Guardian, his successors in office, and their employees and delegates, are permanently restrained from involvement in the affairs of Elizabeth Jane Rickleman, without the leave of the Supreme Court, granted on the application of the Queensland Attorney-General after one months'

notice of the application to Elizabeth Jane Rickleman and Geoffrey James Bird;

- (h) An order that Ian Maynard, Director-General, Queensland Health Department, his successors in office, and their employees and delegates, are permanently restrained from providing psychiatric treatment to Elizabeth Jane Rickleman without her consent or the consent of her attorney for personal matters or the consent of a guardian appointed by the Supreme Court;
- (i) An order that Finn Pratt, Secretary, Department of Social Services, his successors in office for administering the Australian Government's social security scheme, and their employees and delegates, are permanently restrained from paying social security for the benefit of Elizabeth Jane Rickleman into any bank account other than a bank account in her name that she may from time to time nominate or revoke, or into bank accounts of organizations providing services to Elizabeth Jane Rickleman that she may from time to time nominate or revoke;
- (j) An order that the Queensland Civil and Administrative Tribunal is permanently prohibited from exercising jurisdiction under the Guardianship and Administration Act 2000 or the Powers of Attorney Act 1998 in relation to Elizabeth Jane Rickleman or Geoffrey James Bird; and
- (k) An order that the court file for this proceeding and past proceedings in which Elizabeth Jane Rickleman or Geoffrey James Bird were parties be closed to public inspection and be subject to inspection only by the parties or pursuant to an order of the Court made after an application of which one month's notice has been given to Elizabeth Jane Rickleman and Geoffrey James Bird;

and the following interim orders:

- (l) An order that the applicant has leave to serve copies of the originating application and affidavits in this proceeding and this order by registered mail on the Queensland Adult Guardian, the Director-General, Queensland Health Department, the Queensland Crown Solicitor, the Queensland Attorney-General, and the Australian Government Solicitor, and that this will be sufficient service on the respondents;
- (m) An order that the respondents must appear before the Court on ----- 2015 at Brisbane in person or by lawyer and show cause as to why the applicant should not be granted leave to bring this application;
- (n) An order that the applicant is granted leave to bring this application;
- (o) An order that Elizabeth Jane Rickleman is joined to the proceeding as second applicant;
- (p) A writ of habeas corpus ad subjiciendum addressed to the respondents for the immediate appearance of Elizabeth Jane Rickleman;
- (q) An order pursuant to Section 3 of the Habeas Corpus Act 1816 that Elizabeth Jane Rickleman is released on bail from the custody and

control of the respondents upon her undertaking to appear at future hearings in the proceeding except the call-over from which she is excused from attending;

- (r) An order that the Secretary, Department of Social Services, and his employees and delegates are restrained until further order from having a payment nominee appointed for Elizabeth Jane Rickleman;
- (s) An order that the Queensland Adult Guardian is restrained until further order from bringing a domestic violence proceeding against Geoffrey James Bird or continuing such a proceeding;
- (t) An order that Geoffrey James Bird until further order is to be treated as attorney for personal matters and health care for Elizabeth Jane Rickleman;
- (u) An order that the Queensland Adult Guardian shall pay the future court costs of Geoffrey James Bird for this proceeding on an indemnity basis;
- (v) An order that the cause is to be placed in the list of civil cases to be called over and heard in the civil sittings of the Court, to be heard by Justice-----; and
- (w) An order that the parties have liberty to apply for further orders without further need for leave under the Vexatious Proceedings Act 2005;

The grounds advanced in support of the orders sought

[5] In the originating application Mr Bird has set out the following as the grounds he advances in support of the orders he would seek if leave were to be granted.

- “(a) The Queensland Civil and Administrative Tribunal, at its hearing on 5 November 2013 concerning a review of the purported guardianship order for Elizabeth Jane Rickleman, and in making preliminary orders, erred in the following respects:
 - (i) The tribunal exceeded its jurisdiction, by not properly hearing from Ms Rickleman, in that it did not take into account the written submissions that Ms Rickleman caused to be prepared and submitted to the tribunal on her behalf, or the views that she asked that Mr Bird present verbally on her behalf;
 - (ii) The tribunal exceeded its jurisdiction, by not giving Mr Bird a reasonable opportunity to provide the tribunal with evidence of the powers of attorney appointing him as Ms Rickleman's attorney;
 - (iii) The tribunal exceeded its jurisdiction, by not hearing from Mr Bird and not taking his submissions into account, despite his common law right to be heard as Ms Rickleman's de facto husband and as her attorney;
 - (iv) The tribunal exceeded its jurisdiction, by taking into account evidence from Dr Hugh Levien even though it had refused to issue

him with a subpoena and make him available for cross-examination;

- (v) The tribunal exceeded its jurisdiction, by taking into account an irrelevant consideration, namely the personal opinion of Dr Hugh Levien that Ms Rickleman is mentally incapacitated;
 - (vi) The tribunal exceeded its jurisdiction, by not adhering to the rules of procedural fairness, by purporting to continue the purported guardianship order even though Ms Rickleman did not have representation by a competent lawyer of her choice;
 - (vii) The proceeding was affected by fraud, in that the medical report prepared by Dr Hugh Levien is based on facts that are not personally known to Dr Levien and that he does not reasonably believe to be true;
 - (viii) The tribunal exceeded its jurisdiction by not providing in its reasons an explanation as to how it arrived at the conclusions that Dr Hugh Levien is a credible witness or that Mr Bird is a negative influence on Ms Rickleman; and
 - (ix) The tribunal has displayed bias towards Ms Rickleman and Mr Bird by stating in its reasons without any justification that Mr Bird intended that Ms Rickleman would become pregnant and would sue members of her family, and by preventing Mr Bird from handing a Melbourne Cup betting slip to Ms Rickleman, that he had bought for her at her request;
- (b) The Mental Health Review Tribunal, at its review of the purported involuntary treatment order for Elizabeth Jane Rickleman on 21 January 2015, erred in the following respects:
- (i) The tribunal exceeded its jurisdiction, by not properly hearing from Ms Rickleman, in that it did not take into account Mr Bird's affidavit, or allow Mr Bird to present Ms Rickleman's case, as requested by Ms Rickleman;
 - (ii) The tribunal exceeded its jurisdiction by not providing Ms Rickleman with reasons for its decision;
 - (iii) The tribunal exceeded its jurisdiction, by not properly hearing from Mr Bird, even though the tribunal knew that Mr Bird was Ms Rickleman's de facto husband and attorney and wished to be heard;
 - (iv) The tribunal exceeded its jurisdiction, by taking into account an irrelevant consideration, namely, the personal opinion of Dr Hugh Levien that Ms Rickleman does not have the capacity to refuse psychiatric treatment;
 - (v) The tribunal exceeded its jurisdiction, by not adhering to the rules of procedural fairness, by purporting to confirm the purported involuntary treatment order, even though Ms Rickleman did not have representation by a competent lawyer of her choice; and

- (vi) The proceeding was affected by fraud, in that the medical report prepared by Dr Hugh Levien is based on facts that are not personally known to Dr Levien and that he does not reasonably believe to be true; and
- (c) The Secretary, Department of Social Services has continued the appointment of the Public Trustee of Queensland as payment nominee for Elizabeth Jane Rickleman since 2003, notwithstanding there was not an administration order in effect for one year or that the Public Trustee was not doing an acceptable job of managing Ms Rickleman's affairs.

Alternatively, the proceeding will be an application for leave to appeal and an appeal from the decisions of the Queensland Civil and Administration Tribunal and the Mental Health Review Tribunal on the above-mentioned grounds seeking the following orders:

- (a) An order granting an extension of time for making the appeal;
- (b) An order granting leave to appeal;
- (c) An order that the appeal be allowed;
- (d) An order that the purported orders currently in force be set aside;
- (e) A declaration that Elizabeth Jane Rickleman is not mentally incapacitated;
- (f) A declaration that the enduring guardian document made by Elizabeth Jane Rickleman in Tasmania in 2007 is legally valid and effective in Queensland as an enduring power of attorney for personal matters and as an advance health directive; and
- (g) A declaration that the enduring power of attorney made by Elizabeth Jane Rickleman in Tasmania in 2008 is legally valid and effective in Queensland.”

The requirements of the Act

- [6] Section 12 of the Act requires that the court must dismiss an application for leave to institute a proceeding if it considers:
 - (a) the affidavit filed with the application does not substantially comply with s 11(3); or
 - (b) that proceeding is a vexatious proceeding.
- [7] The term “vexatious proceeding” includes the matters set out in the excerpt from the Dictionary, above.
- [8] On the material filed, the affidavit does appear to substantially comply with s 11(3). On an application such as this, the court will generally not be in a position to know about matters such as court proceedings that might have involved the applicant before the commencement of s 11 of the Act for example.

- [9] The issue that arises in this application, as it does in many such applications, is whether or not the proposed proceeding is a vexatious proceeding. The affidavit filed by the applicant in support of the application contains 692 paragraphs over 91 pages and a further 155 pages of exhibits and annexures.

Is the proposed proceeding a vexatious proceeding?

- [10] If permitted, the applicant would seek a wide variety of orders against the three proposed respondents. They include:
- (a) An order in the nature of habeas corpus;
 - (b) Orders concerning the guardianship of Elizabeth Rickleman;
 - (c) Orders restraining each of the respondents from exercising statutory duties without leave of a court;
 - (d) Seeking to prohibit the Queensland Civil and Administrative Tribunal from exercising its jurisdiction; and
 - (e) Other interim orders.
- [11] Most of the matters the subject of this application have been dealt with in QCAT or the Mental Health Review Tribunal since 2009.
- [12] In 2009 Ms Rickleman became subject to an involuntary treatment order. According to the statement of reasons of the Mental Health Review Tribunal of 17 July 2012, Ms Rickleman had “displayed florid psychosis believing she was pregnant with Jesus Christ and distressed that the delivery was imminent ... [she] also expressed grandiose persecutory delusions”.
- [13] In the Tribunal’s reasons of July 2012, reference was made to Mr Bird:
- “Ms Rickleman said that Mr Bird was her former partner and that she did not want to appoint him as her allied person or have him attend the hearing. ... She said she had, in fact, been waiting in another room with the Case Manager in order to avoid contact with Mr Bird who was in the reception area of the service.”
- [14] The Tribunal also noted:
- “Ms Rickleman can be vulnerable to exploitation and misadventure when she is unwell due to her disinhibition and disorganisation.”
- [15] Mr Bird insists that he has standing in this matter because, among other things, he is Ms Rickleman’s de facto husband. He gives reasons for that assertion but they are in conflict with the statements recorded as having been made by Ms Rickleman by the Mental Health Review Tribunal. In any event, Mr Bird acknowledges in his affidavit:
- “135. It might be argued that I am not Ms Rickleman’s de facto husband, since she has a friend, Mr Frank Austin, who lives at Heston [sic] Lodge. Mr Austin is 13 years older than Ms Rickleman and I.

...

137. This is like in Solzhenitsyn's *The Gulag Archipelago*, where he described the enslavement of women political prisoners. I believe this was done so the Adult Guardian could argue that I am not Ms Rickleman's de facto husband, and that the Tribunal does not have to consult me.

138. Arguably Ms Rickleman has two de facto husbands, Mr Austin and myself, and we both have a right to be consulted by the Tribunal."

[16] In the reasons for a decision of QCAT of 5 November 2013, the following appears:

"Mr Bird claims to be attorney for Ms Rickleman. There is no evidence before this Tribunal today to show despite Mr Bird's claims that he is in fact an attorney in Queensland for Ms Rickleman. The only documents that have been made available to this tribunal in all of the iterations of these hearings over the years were an enduring power of attorney and an advance health directive dated the 24th and 28th September both of which were declared invalid by this Tribunal by order on the 9th December 2004."

[17] The following appears in the reasons in relation to the material placed before the Tribunal by Mr Bird :

"There was a quite outrageous proposal that a menopausal woman of 53 with acute renal failure who is incontinent should be undergoing in vitro fertilisation and surrogacy with Mr Bird in the United States to produce children for him. Ms Rickleman said she never consented to that. Yet the document that has been signed by Ms Rickleman and prepared by Mr Bird proposes exactly that."

[18] The Tribunal went on to say:

"We simply do not believe that the material purported to be filed by Ms Rickleman and signed by Ms Rickleman was written, understood or developed by Ms Rickleman in any way. We simply believe that all the material has been filed, 23 pages of one and 15 pages of the other, are Mr Bird's views, and that Ms Rickleman simply signs them to keep the peace. She says she trusts him. That trust is in our view misplaced."

[19] The decision of 5 November 2013 of QCAT continued the appointment of the Adult Guardian for a further five years. The Tribunal declared that Mr Bird was not an active party pursuant to s 119 of the *Guardianship and Administration Act 2000*.

[20] None of the material filed by Mr Bird demonstrates that he has the standing to bring this application.

[21] Mr Bird does not explain, if he has standing, why the decisions of which he complains were not appealed.

[22] The grounds he advances in support of, for example, the claim for a writ of habeas corpus do not demonstrate any unlawfulness which would support the issue of the writ.

[23] He seeks orders such as:

“An order that the Queensland Civil and Administrative Tribunal is permanently prohibited from exercising jurisdiction under the Guardianship and Administration Act 2000 or the Powers of Attorney Act 1998 in relation to Elizabeth Jane Rickleman or Geoffrey James Bird”

This court has no jurisdiction to prevent a tribunal lawfully exercising its statutory powers.

[24] Mr Bird also seeks to bring this application for other reasons. He is particularly anxious to promote the idea that psychiatrists may not give expert evidence of matters relating to their area of expertise. He relies upon an 1828 decision – *Ex parte Persse*². He argues that the decision is authority for the proposition that the opinion of a medical practitioner that someone is mentally incapacitated is a personal opinion and not an expert opinion and is not admissible in evidence. He says, in his affidavit:

“[166] I am seeking that the Supreme Court follow the decision in *Ex parte Persse* [1828] 1 Molloy 219, and that the present case, *Bird v Martin* become a famous case that is cited throughout the British Commonwealth, including in Britain and Canada and even in India and Pakistan, and that results in thousands of people throughout the world being released from custody.”

[25] *Ex parte Persse* is not authority for the proposition advanced by Mr Bird. Even if it was, then it has been overtaken by the many authoritative decisions since then relating to the capacity of medical practitioners to give expert opinions.

Conclusion

[26] Mr Bird does not have the standing to bring this application. The material which he has exhibited to his affidavit shows that two tribunals have decided that he is acting in a way contrary to the interests of Ms Rickleman. Further, it has been held in earlier proceedings that he is not Ms Rickleman’s attorney and no appeal was brought from that decision. On the material available, that finding is well supported.

[27] Even if he had the authority to bring such an application he is seeking orders with respect to decisions for which the appeal periods have expired. No grounds were advanced for giving leave to appeal out of time.

[28] Mr Bird did not identify any reasonable grounds for his application. Much of what he wants to argue is based on grounds which could not even be described as tenuous. The relief sought and the arguments advanced are fanciful. The proposed application would be vexatious. The application is refused.

² [1828] 1 Molloy 219.