[2016] QCA 41

COURT OF APPEAL

FRASER JA
MORRISON JA
MARTIN J

CA No 130 of 2015
CA No 131 of 2015
DC No 4644 of 2014

THE QUEEN

v

BAN, Hajnal Dalia **Applicant**

BRISBANE

MONDAY, 29 FEBRUARY 2016

JUDGMENT

FRASER JA: The applicant has filed an application for leave to appeal from a decision of a judge of the District Court refusing an extension of time for her to appeal to the District Court from a decision by a magistrate. It's necessary first to mention some of the background of the decision before I identify the particular issues which have been agitated by the applicant and the responses to them.

The background is set out in the District Court decision which is cited as [2015] QDC 123. On 9 August 2014, the applicant was served with a notice to appear in the Magistrates Court on 8 September 2014, accused of an offence of obstructing police. The applicant telephoned the Magistrates Court on 8 September 2014 advising that she was sick, and that she sought an

adjournment for two weeks. On that basis the matter was adjourned until 15 September 2014. The applicant then sent an email to the Magistrates Court on 12 September 2014 requesting a further adjournment on the grounds of ill health but without furnishing a medical certificate. She did not supply any other evidence to justify the adjournment.

When the applicant failed to appear on 15 September 2014 the magistrate proceeded to hear the matter *ex parte* in the way authorised by s 142A of the *Justices Act* 1886. The magistrate found the applicant guilty and imposed a fine of $250 for the breach, which involved obstructing a police officer. No conviction was recorded. The matter was referred to the State Penalties Enforcement Registry. The applicant in the District Court did not dispute that she received a notice of conviction and that she did not seek a rehearing under s 142A(12) of the *Justices Act* within the time limited of two months after the determination by the magistrate.

Subsequently, on 27 November 2014, the applicant filed a notice of appeal under s 222 of the *Justices Act* together with a notice of application for extension of time for filing the notice of appeal and other documents. The District Court judge pointed out that the notice of appeal was well out of time, as was acknowledged by the applicant in her application for an extension of time. His Honour applied the principles set out in *R v Tate* [1999] 2 Qd R 667 and refused the application for an extension of time. In *R v Tate* the court explained that in considering whether or not to extend time in a criminal appeal:

> "The court will examine whether there is any good reason shown to account for the delay and consider overall whether it is in the interests of justice to grant the extension."

The District Court judge analysed the reasons for the delay in seeking to appeal to the District Court which had been advanced by the applicant. The judge concluded that the applicant had failed to provide a good explanation for the delay in filing the notice of appeal.

Secondly, the judge turned to the question whether it was in the interests of justice to grant an extension of time. The judge referred to the extensive and detailed submissions made by the applicant concerning her arguments about the suggested invalidity of s 142A of the *Justices Act*, substantially based on the proposition that it offended the principle in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51. Ultimately, however, the judge did not express

a view or decide the application with reference to the correctness or otherwise of those submissions. Rather, the judge concluded that the validity or otherwise of s 142A(4) was irrelevant in an application for an extension of time because in such an application the applicant was required to demonstrate that the conviction resulted in an injustice or potential injustice. As the judge observed, the applicant had made no attempt to do that in any of the voluminous material upon which she relied. She had not placed anything before the court to show or suggest that a miscarriage of justice had occurred.

The judge further observed that even if the applicant's appeal was successful, the inevitable outcome would be that the matter would be remitted to the Magistrates Court for rehearing. Thus the judge concluded that, as the applicant had not placed material before the court demonstrating that her conviction resulted in an injustice, the only inference open was that upon a rehearing the same outcome would result.

Ms Ban put her argument for error in that reasoning process upon the footing that the District Court judge was wrong to apply the principles in *R v Tate*. Ms Ban argued that this was shown to be wrong by reference to decisions of the High Court and other decisions to similar effect. The first decision, which Ms Ban submitted exemplified other decisions, was *Anti-Cancer Council (Vic) v State Public Services Federation* (1991) 33 AILR 108. Ms Ban set out what she submitted was a quote from the decision:

> "Not to grant leave in such circumstances would mean that there could be an application for a prerogative writ to the High Court in a situation where an appeal bench of this commission has not had the opportunity to consider a jurisdictional question on its merits. Such a position is undesirable."

Ms Ban submitted that the case was authority for the proposition that leave should be granted in cases raising questions of jurisdiction. It is evident from the quote given by Ms Ban however, that the court was dealing with a situation where if leave were refused, the relevant decision sought to be challenged could be challenged by a different method, that is, by one of the prerogative writs in the High Court. The case has no application here because there is no question that the District Court, from whom the proposed appeal is sought to be brought, had jurisdiction in this case.

Ms Ban also referred the court to *Re Refugee Review Tribunal and Another; ex parte AALA* (2000) 204 CLR 82. This decision concerned a denial of procedural fairness by an officer of the Commonwealth which might have resulted in a decision being made in excess of jurisdiction in respect of which prohibition would issue under s 75(5) of the Constitution. For reasons which I have given in relation to the first decision upon which Ms Ban relied, it appears that this decision also has no particular relevance to the case we are presently considering.

R v Tate has been applied in countless applications of the present kind. In my opinion, it plainly applies in this case. Ms Ban, as I understood her submissions, did not mount any challenge or any real challenge to the decision of the District Court judge that she had failed to provide a good explanation for her delay in filing the notice of appeal to that court. Whilst she advanced extensive submissions concerning the validity or otherwise of s 142A(4) of the *Justices Act*, in my respectful opinion she has not put forward anything demonstrating arguable error in the decision of the District Court judge that, for the reasons earlier summarised, she had not shown that she had suffered an injustice as a result of the proceedings in the Magistrates Court.

Ms Ban raised a number of other arguments concerning, for example, her contention that in the Magistrates Court she had not been supplied with particulars of the charge against her, but she frankly acknowledged in this and in other respects that the matter had not been addressed by evidence in the District Court. For that reason alone it would not be appropriate for this court to grant leave to apply in relation to those arguments.

In the result I am not persuaded that there is an arguable error in the decision of the District Court to refuse the application for leave to extend time to file the notice of appeal to that court. The result is, in my opinion, that the court should order that Ms Ban's application for leave to appeal in CA No 131 of 2015 should be refused. That is the order I would propose.

MORRISON JA: I agree.

MARTIN J: I agree.

FRASER JA: The order of the court in that matter is that application number 131 of 2015 is refused.

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FRASER JA: In this matter, Ms Ban has applied for leave to appeal from a decision of a judge in the District Court ordering her to pay costs totalling $2,000 to the second and third respondents. Mr Hickey, for those respondents, has submitted that the appeal is incompetent because under s 118B of the *District Court of Queensland Act* such an appeal may be brought only by leave of the judge who made the order or, if that judge is unavailable, by another judge of the District Court. Ms Ban has frankly acknowledged that she cannot make a submission to the contrary. The appeal is incompetent and should be struck out. I would order that the application for leave to appeal be struck out.

MORRISON JA: I agree.

MARTIN J: I agree.

FRASER JA: The order of the court is that the application for leave to appeal in CA No 130 of 2015 is struck out.

Ms Ban has filed what is headed Amended Application in a Proceeding. Although it has that heading with the word "amended", as Ms Ban has submitted it purports, in fact, to be an interlocutory application in the applications CA 130 of 2015 and CA 131 of 2015. Those applications have been struck out and refused respectively. There is, therefore, no application in relation to which an interlocutory application could be pursued. There are also, with respect to Ms Ban, great difficulties in understanding the bases of the application or the jurisdiction of the court to make the orders which she applies for in the application. I would order that the application be struck out.

MORRISON JA: I agree.

MARTIN J: I agree.

FRASER JA: The second and third respondents seek their costs of each of applications CA No 130 of 2015 and CA No 131 of 2015 on the ground that they have been successful in

those applications; the applications having been struck out and refused respectively. Ms Ban opposes that order and seeks an order that each party bear their own costs. Her argument in support of that is that the applications were meritorious. However, the Court's decisions reveal that the costs issue must be decided on the basis that the applications were not meritorious. I would order that the applicant pay the second respondent's and the third respondent's costs of each of applications CA No. 130 of 2015 and CA No. 131 of 2015.

MORRISON JA: I agree.

MARTIN J: I agree.