

SUPREME COURT OF QUEENSLAND

CITATION: *Goodwin & Anor v Goodwin & Ors* [2005] QCA 117

PARTIES: **SHANE CHRISTOPHER GOODWIN**
(plaintiff/applicant/first respondent)
KERRI GAYLE GOODWIN
(plaintiff/second respondent)
v
ELMA AGNES GOODWIN
(first defendant/first respondent/applicant)
THOMAS MICHAEL SULLIVAN and
LIONEL JAMES DAVIDSON (TRUSTEES)
(second defendants/second respondents)

ELMA AGNES GOODWIN
(applicant/respondent/applicant)
v
SHANE CHRISTOPHER GOODWIN
(first respondent/first appellant/first respondent)
KERRI GAYLE GOODWIN
(second respondent/second appellant/second respondent)

FILE NO/S: Appeal No 672 of 2005
Appeal No 1502 of 2005
DC No 4 of 2003
DC No 8 of 2003
SC No 11053 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time/General Civil Appeal
Application to Strike Out

ORIGINATING COURT: District Court at Maroochydore
Supreme Court at Brisbane

DELIVERED ON: 19 April 2005

DELIVERED AT: Brisbane

HEARING DATE: 11 April 2005

JUDGES: Williams and Keane JJA and Helman J
Judgment of the Court

ORDER: 1. **In Appeal No 672 of 2005:**
(a) The application by Shane Christopher Goodwin for an extension of time within which to appeal is dismissed
(b) Shane Christopher Goodwin is to pay the costs of the respondents to this application with costs to be assessed on the standard basis

(c) the trustees have leave to deduct these costs so assessed from the share of the proceeds of the sale of the land otherwise payable to Shane Christopher Goodwin and Kerri Gayle Goodwin and pay the same to the solicitors acting for the respondents

2. In Appeal No 1502 of 2005:

(a) the application by Elma Agnes Goodwin to strike out the notice of appeal is granted and the notice of appeal is struck out

(b) Shane Christopher Goodwin is to pay the costs of the applicant with costs to be assessed on the standard basis

(c) the trustees have leave to deduct the costs so assessed from the share of the proceeds of the sale of the land otherwise payable to Shane Christopher Goodwin and Kerri Gayle Goodwin and pay the same to the solicitors acting for Elma Agnes Goodwin

3. It is further ordered that:

(a) Shane Christopher Goodwin and Kerri Gayle Goodwin, their servants and agents are restrained from making any further application in Supreme Court proceedings No 11053 of 2004 or Kingaroy District Court proceedings No 4 of 2003 and No 8 of 2003 and restrained from taking any further steps, including the issuing of any new proceedings in any Queensland Court, against Elma Agnes Goodwin or the trustees in or arising out of or concerning the allegations in Supreme Court proceedings No 11053 of 2004 or Kingaroy District Court proceedings No 4 of 2003 and No 8 of 2003 without the prior leave of a judge of the trial division of the Supreme Court.

(b) Shane Christopher Goodwin is to pay the costs incurred by Elma Agnes Goodwin and the trustees in seeking this order.

(c) These costs are to be assessed on the standard basis and the trustees have leave to deduct the costs so assessed from the proceeds of the sale of the land otherwise payable to Shane Christopher Goodwin and Kerri Gayle Goodwin and pay the same to the solicitors acting for the trustees and for Elma Agnes Goodwin.

CATCHWORDS: APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - QUEENSLAND - TIME FOR APPEAL - EXTENSION OF TIME - WHEN REFUSED - where appellants provide no satisfactory explanation for delay - where appeal has no merit - whether extension of time should be granted

APPEAL AND NEW TRIAL - APPEAL - PRACTICE AND PROCEDURE - QUEENSLAND - POWERS OF COURT - OTHER MATTERS - where appellants are part owners of land - trustees appointed by court to carry out sale of land - where appellants dispute power of trustees to sell the land - where application made to strike out notice of appeal - notice

of appeal concerned an interlocutory order - whether appeal should be struck out

PROCEDURE - SUPREME COURT PROCEDURE - QUEENSLAND - JURISDICTION AND GENERALLY - GENERALLY - appellants had previously commenced a number of court actions against respondents - allegations in each proceeding substantially the same - where application made by respondents seeking an order that the appellants be prohibited from instituting further proceedings concerning those allegations without obtaining leave of the court - whether court should exercise inherent power and grant application

Constitution of Queensland Act 2001 (Qld), s 58
Vexatious Litigants Act 1981 (Qld)

von Risefer v Permanent Trustee Co Pty Ltd & Ors [2005]
QCA 109; Appeal No 7913 of 2004, 15 April 2005, applied

COUNSEL: Shane Christopher Goodwin appeared on his own behalf
No appearance for Kerri Gayle Goodwin
L A Stephens, with N P Hiscox, for Elma Agnes Goodwin

SOLICITORS: Shane Christopher Goodwin appeared on his own behalf
No appearance for Kerri Gayle Goodwin
G J Buckley & Associates (Laidley) for Elma Agnes Goodwin

[1] **THE COURT:** A number of applications, which were heard together, have arisen from litigation between Mr Shane Christopher Goodwin ("Mr Goodwin") and his wife, on the one hand, and Mr Goodwin's mother, Elma Agnes Goodwin ("Mrs Goodwin"), and trustees for the sale of a farm property at Windera ("the land") appointed on the application of Mrs Goodwin. The applications may be summarized as follows:

- (a) in Appeal No 672 of 2005 there is an application by Mr Goodwin, filed on 27 January 2005, for an extension of time within which to appeal against a judgment of Robertson DCJ delivered on 2 April 2004. By that judgment, Robertson DCJ refused Mr Goodwin's application for a stay of the judgment given by his Honour on 12 September 2003 whereby his Honour made orders for the appointment of trustees for the sale of land pursuant to the provisions of s 38 of the *Property Law Act 1974 (Qld)*. It emerged from Mr Goodwin's oral submissions at the hearing that he actually wishes to appeal against the orders made by Robertson DCJ striking out the claim by Mr Goodwin against Mrs Goodwin and the trustees in matter No 8 of 2003 in the Kingaroy District Court which, in the view of Robertson DCJ, sought to relitigate issues decided in the judgment of 12 September 2003;
- (b) in the same matter there is an application by Mrs Goodwin, filed on 10 March 2005, to strike out Mr Goodwin's application for an

extension of time on the grounds, inter alia, that it is an abuse of the process of the court;

- (c) Appeal No 1502 of 2005 concerns an appeal filed by Mr Goodwin and his wife on 24 February 2005 against the orders of Wilson J, issued on 27 January 2005, adjourning an application by Mrs Goodwin seeking the removal of caveats lodged in respect of the land by Mr Goodwin. As well as the actual adjournment, Wilson J also ordered that Mrs Goodwin notify Mr Goodwin's wife of the adjourned date for the hearing of the application. It is the validity of this order that Mr Goodwin and his wife appear to dispute in their notice of appeal. There is also an application in this appeal by Mrs Goodwin that the notice of appeal be struck out on the grounds that, inter alia, the appeal is an abuse of the process of the court. It should be noted that Mrs Goodwin's application in relation to the caveats has since been heard and that the orders sought by her were granted by Holmes J on 17 February 2005;
- (d) In both matters Mrs Goodwin and the trustees have also applied for an order that Mr Goodwin and his wife be restrained from filing any further appeals, applications or proceedings in or arising out of the matters already litigated between them without an order for leave first being obtained from the Court of Appeal.

- [2] The last mentioned application is in the nature of a "cri de coeur" by Mrs Goodwin and the trustees who have become, quite understandably, desperate to bring to an end Mr Goodwin's refusal to act in conformity with the orders of the courts in relation to the sale of the land. Before dealing with the applications it is necessary to set out a brief history of the proceedings in which the parties have become embroiled.

Background

- [3] Mrs Goodwin is the registered owner of a three-fifths share in the land as tenant in common with Mr Goodwin and his wife who are the registered owners of a two-fifths share in the land.
- [4] By initiating proceedings numbered 4 of 2003 in the District Court at Kingaroy on 10 June 2003, Mrs Goodwin sought an order for the appointment of trustees for the sale of the land pursuant to the provisions of s 38 of the *Property Law Act 1974* (Qld). On 12 September 2003, Robertson DCJ made orders appointing trustees for sale of the property.
- [5] Since then, Mr Goodwin has applied himself to frustrating the proposed sale by making applications for a stay of the proceedings, by an appeal to the Court of Appeal and by commencing separate proceedings; all of which have been decided against him and in favour of Mrs Goodwin and the trustees. In this regard:
 - (a) on 10 October 2003, Mr Goodwin and his wife filed a notice of appeal from the order of Robertson DCJ of 12 September 2003;
 - (b) on 20 October 2003, Mr Goodwin and his wife lodged a caveat claiming an equitable interest as purchaser of the land under a contract of sale allegedly constituted by two letters dated 1 November 1995 and a further letter dated 14 December 1995;
 - (c) on 24 December 2003, Mr Goodwin and his wife commenced an action by claim and statement of claim number 8 of 2003 filed in the

- District Court at Kingaroy against Mrs Goodwin and the trustees asserting that the trustees had not been validly appointed;
- (d) by application filed on 14 January 2004, Mr Goodwin and his wife applied to the District Court for a stay of the order of 12 September 2003 pending appeal. This application was adjourned to be brought on before Robertson DCJ. Mr Goodwin and his wife did not persist with that application, but filed another application on 22 January 2004 in the District Court for a stay of Robertson DCJ's order. This application was heard by Brabazon DCJ on 29 January 2004. The application for a stay was dismissed;
 - (e) on 18 February 2004, Mr Goodwin applied to a single judge of the Court of Appeal for a stay of the order of Robertson DCJ pending appeal. His wife was not a party to this application. The application was heard on 18 February 2004 by Davies JA. The application for a stay was dismissed;
 - (f) the appeal by Mr Goodwin and his wife was dismissed by the Court of Appeal on 27 February 2004. In that decision, the Court rejected the argument that the letters dated 1 November 1995 and 14 December 1995 constituted an enforceable contract of sale which might create an equitable interest in Mrs Goodwin's interest in the land in favour of Mr Goodwin and his wife;¹
 - (g) on 23 March 2004, Mrs Goodwin and the trustees applied for summary judgment in the District Court action number 8 of 2003 commenced by Mr Goodwin and his wife. They also brought on the application of 14 January 2004 to seek dismissal of that application. Both applications came before Robertson DCJ on 2 April 2004. His Honour ordered that both action number 8 of 2003 and the application filed by Mr Goodwin and his wife on 14 January 2004 be dismissed with costs;
 - (h) Mr Goodwin lodged a further caveat on the land on 4 June 2004;
 - (i) Mr Goodwin lodged a further caveat on the land on 13 September 2004 to prevent a transfer of the land to the trustees so that they might proceed with the sale of the property in accordance with the judgment of Robertson DCJ. It appears from the notations on the copy of the lodgement form that has been provided to us that it is possible that the lodgement of this caveat may have been rejected;
 - (j) on 19 October 2004, Mr Goodwin brought an application in the District Court seeking to have the orders of 12 September 2003 set aside on the ground that they were obtained by a fraud. This application was heard by McGill DCJ who dismissed Mr Goodwin's application on 19 October 2004;
 - (k) on 16 February 2005, one of Mr Goodwin's children, Shannon Jade Goodwin, lodged a caveat preventing the transfer of the property to the trustee;
 - (l) on 17 December 2004, Mrs Goodwin applied for the removal of the caveats and for an order enjoining Mr Goodwin and his wife from lodging further caveats on the land. This application first came before Wilson J on 27 January 2005 but was adjourned until a later date. The application was finally determined by Holmes J who, as we

¹ *Goodwin v Goodwin & Anor* [2004] QCA 50; Appeal No 9057 of 2003, 27 February 2004 at [10], [11] and [16].

have already noted, granted Mrs Goodwin's application on 17 February 2005.

Mr Goodwin's application for an extension of time

- [6] Mr Goodwin has provided no satisfactory explanation for his delay in seeking to appeal. More importantly, the submissions he has put before this Court amount to little more than a restatement of what he considers to be his major grievances about the appointment of trustees for the sale of the land, and it is clear that the appeal itself has no merit. Mr Goodwin has previously appealed against the order for the appointment of the trustees for the sale of the land and that appeal was dismissed.²
- [7] At the conclusion of the hearing Mr Goodwin informed the Court that he had executed a transfer of his interest in the land to his son. This transfer has not been registered. Mr Goodwin remains the legal owner of his share in the land. Any arrangements between himself and his son have no effect on the operation of the orders for sale of the land which have been made.
- [8] Mr Goodwin's application for an extension of time to file a notice of appeal in Appeal No 672 of 2005 should be dismissed with costs.
- [9] That makes it unnecessary to consider the application by Mrs Goodwin to strike out Mr Goodwin's application for an extension of time within which to appeal.

Appeal No 1502 of 2005

- [10] This appears to be an appeal against an interlocutory order, the effect of which has been exhausted. The appeal is without merit or utility and is an abuse of process. It should be struck out.

Protective orders

- [11] We turn then to consider Mrs Goodwin's application for orders restraining Mr Goodwin from making further applications in relation to the proceedings which have already been resolved against him.
- [12] In *von Risefer & Ors v Permanent Trustee Co Pty Ltd & Ors*³ Keane JA discussed the principles applicable to the making of orders restraining unduly persistent litigants from persisting in the vexation of other parties who have been successful in litigation between them. We do not propose to repeat that discussion. Rather, we will summarize the relevant principles as we understand them.
- (a) It has long been established that a court has power, as an aspect of its inherent jurisdiction to ensure that its processes are not abused, to restrain a party to proceedings from bringing further applications against the other party without first obtaining the leave of the court to do so.⁴
 - (b) This aspect of the court's inherent jurisdiction may be confined or expanded by statute.⁵

² See *Goodwin v Goodwin & Anor* [2004] QCA 50; Appeal No 9057 of 2003, 27 February 2004.

³ [2005] QCA 109; Appeal No 7913 of 2004, 15 April 2005 at [14] - [25].

⁴ *Cocker v Tempest* (1841) 7 M & W 502 at 503 - 504, (1841) 151 ER 864 at 865; *Grepe v Loam* (1887) 37 Ch D 168; *Bhamjee v Forsdick (Practice Note)* [2004] 1 WLR 88 at 92 - 93; *Commonwealth Trading Bank v Inglis* (1974) 131 CLR 311 at 318 - 320.

⁵ *Commonwealth Trading Bank v Inglis* (1974) 131 CLR 311 at 320.

- (c) In Queensland, this jurisdiction has not been confined by the terms of the *Vexatious Litigants Act* 1981 (Qld) insofar as the court's inherent power is concerned not with the status of the litigant as a vexatious litigant subject to a general restriction on access to the courts, but with the protection of parties to pending litigation against continuing vexation. Further, s 58 of the *Constitution of Queensland Act* 2001 (Qld) does not diminish the court's inherent jurisdiction.
- (d) This aspect of the court's inherent jurisdiction extends to the protection of successful litigants from the commencement of fresh proceedings substantially related to the subject matter of proceedings which have already been resolved against that litigant.⁶
- (e) This Court's jurisdiction extends to restrain applications and proceedings in "anticipated but unidentified proceedings" in other courts in Queensland.⁷

[13] Of course this jurisdiction should be exercised only in cases where it is clear that a litigant is likely to continue the pursuit of hopeless litigation against parties who have been successful.

[14] In this case it is clear that Mr Goodwin is hell-bent on frustrating the orders of the courts for the sale of the land. It is also clear that he has no legitimate basis for his persistent refusals to accept the decisions of the courts which have sought to vindicate Mrs Goodwin's rights as a co-owner of the land or to permit the discharge by the trustees' of their obligations in relation to the sale of the property. The waste of legal costs, and the erosion of any value in the land which might be realized by the parties, should be prevented. Further, the resources of the courts should not be wasted in dealing with Mr Goodwin's irrational and incoherent attempts to justify his intransigent refusal to recognize Mrs Goodwin's rights.

Orders

[15] We would order that the application filed by Shane Christopher Goodwin in Appeal No 672 of 2005 for an extension of time within which to appeal be dismissed. Shane Christopher Goodwin is to pay the costs of the respondents to this application with costs to be assessed on the standard basis. We would also order that the trustees have leave to deduct these costs so assessed from the share of the proceeds of the sale of the land otherwise payable to Shane Christopher Goodwin and Kerri Gayle Goodwin and pay the same to the solicitors acting for the respondents.

[16] We would also order that the application by Elma Agnes Goodwin to strike out the notice of appeal in Appeal No 1502 of 2005 be granted. The notice of appeal is struck out. Shane Christopher Goodwin is to pay the costs of the applicant with costs to be assessed on the standard basis. We would also order that the trustees have leave to deduct these costs so assessed from the share of the proceeds of the sale of the land otherwise payable to Shane Christopher Goodwin and Kerri Gayle Goodwin and pay the same to the solicitors acting for Elma Agnes Goodwin.

[17] We would also order that Shane Christopher Goodwin and Kerri Gayle Goodwin, their servants and agents be restrained from making any further application in Supreme Court proceedings No 11053 of 2004 or Kingaroy District Court proceedings No 4 of 2003 and No 8 of 2003 and that they also be restrained from

⁶ *Hunter v Leahy* (1999) 91 FCR 214 at 221.

⁷ *Ebert v Venvil* (2000) Ch 484 at 497 - 498.

taking any further steps, including the issuing of any new proceedings in any Queensland Court, against Elma Agnes Goodwin or the trustees in or arising out of or concerning the allegations in Supreme Court proceedings No 11053 of 2004 or Kingaroy District Court proceedings No 4 of 2003 and No 8 of 2003 without the prior leave of a judge of the trial division of the Supreme Court. Shane Christopher Goodwin is to pay the costs incurred by Elma Agnes Goodwin and the trustees in seeking this order. These costs are to be assessed on the standard basis and the trustees have leave to deduct the costs so assessed from the proceeds of the sale of the land otherwise payable to Shane Christopher Goodwin and Kerri Gayle Goodwin and pay the same to the solicitors acting for the trustees and for Elma Agnes Goodwin.