

# SUPREME COURT OF QUEENSLAND

CITATION: *Goodwin v Goodwin* [2006] QCA 503

PARTIES: **ELMA AGNES GOODWIN**  
(applicant/respondent)  
**v**  
**SHANE CHRISTOPHER GOODWIN**  
(respondent/appellant)

FILE NO/S: Appeal No 7645 of 2006  
SC No 4675 of 2005

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Orders delivered ex tempore on 28 November 2006  
Reasons delivered on 1 December 2006

DELIVERED AT: Brisbane

HEARING DATE: 28 November 2006

JUDGES: Williams and Jerrard JJA and Philippides J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the orders made

CATCHWORDS: REAL PROPERTY – PARTITION OF LAND – STATUTORY TRUST FOR SALE OR PARTITION – QUEENSLAND – where trustees appointed under s 38 of the *Property Law Act* 1974 (Qld) for the sale of land which the appellant and his wife co-owned with the respondent as tenants in common – whether there was any evidence before the court which enlivened discretion not to appoint trustees - whether there was a binding contract for the respondent to sell her share of the land to the appellant – where the appellant appeals against the refusal of a trial judge to stay an order made on 19 January 2006, rather than appealing the order of 19 January 2006 itself  
*Property Law Act* 1974 (Qld), s 38, s 228  
*Goodwin v Goodwin & Anor* [2004] QCA 50; Appeal No 9057 of 2003, 27 February 2004, cited  
*Goodwin & Anor v Goodwin & Ors* [2005] QCA 117; Appeal Nos 672 & 1502 of 2005, 19 April 2005, cited

COUNSEL: No appearance for the appellant  
L A Stephens for the respondent

SOLICITORS: No appearance for the appellant  
Ryan Lawyers for the respondent

- [1] **WILLIAMS JA:** I agree with Jerrard JA.
- [2] **JERRARD JA:** In this appeal Shane Goodwin, by a notice of appeal filed 8 September 2006, appealed orders of Mackenzie J made 11 August 2006 refusing an application to stay an order of Muir J made 19 January 2006. Mr Goodwin, who is a self represented litigant, did not appear when the matter was called on, although it was clear from the documents on the court file that he was well aware of the date for hearing. He had in fact faxed documents to the Registry on the day of the appeal, to do with his request for an adjournment. Also, on the day listed for hearing of the appeal, Mr Goodwin filed an application for an extension of time within which to appeal the order of Muir J, which had been completely executed and carried into effect before 11 August 2006, and which Mr Goodwin had not previously appealed.
- [3] Mackenzie J did not give specific reasons for his order of 11 August 2006 refusing the application to stay, but did explain to Mr Goodwin during the hearing that there could be no basis for an order for a stay, as the order of Muir J had been carried into effect. In Mackenzie J's pithy phrase, "I can't unscramble that egg".<sup>1</sup> The appeal from the order refusing the stay, when there was no appeal against the order made by Muir J, already executed, was pointless. Mr Goodwin sought to correct that by his "door of the Court" application to challenge Muir J's order.
- [4] The orders Muir J made on 19 January 2006 relevantly declared that a purported transfer of Lot 1 on RP 171459 and Lot 1 on Crown Plan RL 5781 in the County of Mackenzie, Parish of Windora ("the land"), by Shane Christopher Goodwin and Kerri Gayle Goodwin to Shannon Jade Goodwin, purportedly effected by instrument of transfer dated 11 September 2003, was void. His Honour directed that the Registrar was to cancel the registration of that transfer and correct the register accordingly. Those orders, made on the application of Elma Goodwin, were the result of steps taken by Mr Goodwin to frustrate orders made in the District Court at Kingaroy on 12 September 2003 by Robertson DCJ, appointing trustees for sale of the land, on the application of Elma Goodwin. She is the registered owner of a three fifths share in it as tenant in common with Mr Goodwin and his wife Kerri Gayle Goodwin, who are the registered owners of a two fifths share, apparently held between them as joint tenants.
- [5] This appeal was the third time that Mr Goodwin had brought proceedings in this Court in efforts to prevent the carrying into effect of the order by Robertson DCJ appointing those trustees for sale. The first appeal was in *Goodwin v Goodwin & Anor* [2004] QCA 50, in which this Court dismissed an appeal against those orders made on 12 September 2003. That judgment was published on 27 February 2004. The second appeal was in *Goodwin & Anor v Goodwin & Ors* [2005] QCA 117, in which this Court dismissed an application for an extension of time within which to appeal against an order made by Robertson DCJ on 2 April 2004, refusing Mr Goodwin's application for a stay of the orders made on 12 September 2003. That application dismissed on 2 April 2004 was pressed before Robertson DCJ although the appeal against the orders made on 12 September 2003 had already been dismissed by this Court on 27 February 2004.
- [6] The reasons for judgment in the second appeal were published on 19 April 2005. Those reasons record that the oral submissions made on the second appeal revealed

---

<sup>1</sup> At volume 1 of the appeal record, page 35.

that Mr Goodwin also wanted to appeal against orders made by Robertson DCJ on 2 April 2004, dismissing or striking out a claim made by Mr Goodwin against Elma Goodwin and the trustees, in matter number 8 of 2003 in the Kingaroy District Court. In that matter Mr Goodwin and his wife claimed against Elma Goodwin and the trustees that the trustees had not been validly appointed. An application for an extension of time within which to file a notice of appeal against that decision was also dismissed with costs, in the second appeal.

- [7] Also on that second appeal, this Court struck out, as without merit or utility and as an abuse of process, an appeal against orders made in the Supreme Court by Wilson J on 27 January 2005, adjourning an application by Elma Goodwin seeking the removal of caveats lodged in respect of the land by Mr Goodwin. Holmes J, as Her Honour then was, had later granted that application by Elma Goodwin, on 17 February 2005; but neither Mr Goodwin nor his wife appealed the order by Holmes J ordering the removal of caveats. Instead, they appealed the earlier orders of Wilson J adjourning that application, so by the time that appeal was heard, the effect of the interlocutory order had been exhausted. For that reason that appeal was struck out. That striking out order was certainly sufficient notice to Mr Goodwin that appeals like the present one against Mackenzie J's dismissal of the stay, without an appeal against the order sought to be stayed, are pointless and an abuse of process.
- [8] In the first appeal, McPherson JA recorded in his judgment that Mr Goodwin had not appeared when the matter was called on three times at the listed hour, and that Mr Goodwin had been sporadically communicating with the Registry wanting the appeal adjourned to some date in the future, to a date to suit his convenience. McPherson JA added:
- “He has a record of similar behaviour at past hearings and a record also of evading service of documents in this matter when the other party wished to effect service on him. He has also complained, though not in the form of material by affidavit, that the appeal is causing him stress; but, since it is his appeal, that may fairly be regarded as a self inflicted wound.”
- [9] That last observation is relevant to some statements Mr Goodwin made to Mackenzie J on the application for the stay, when His Honour inquired as to why Mr Goodwin had left some affidavits, which Mr Goodwin said were relevant, in Mr Goodwin's car. Mr Goodwin said that that was because he was depressed.<sup>2</sup> On this appeal, Mr Goodwin had also corresponded with the Registry up to the hearing date, in an effort to vacate it. His early correspondence on the topic of another date for hearing complained that he was not consulted about the date which was fixed, but he did not explain why he could not attend and argue the appeal. His more recent correspondence enclosed a medical certificate, dated 24 November 2006, advising he was being treated for laryngitis and an upper respiratory tract infection, and was thus unable to attend to “his usual occupation.” Although he has been a constant litigant in recent years, that is not sensibly described as his usual occupation, and the certificate says nothing about incapacity to attend or perform in a court.

---

<sup>2</sup> At volume 1 of the appeal record, page 49.

- [10] In the second appeal, the judgment of the court included the observation that since 12 September 2003, Mr Goodwin has applied himself to frustrating the proposed sale, by a variety of applications and, (at [14]) that:
- “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 realised 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 attempt to justify his intransigent refusal to recognise Mrs Goodwin’s rights.”
- [11] The opinions this Court expressed in that paragraph resulted in orders being made restraining Mr Goodwin and his wife from making any further applications in the Kingaroy District Court proceeding No 4 of 2003 (Elma Goodwin’s application for orders appointing trustees for sale of the land), No 8 of 2003 (the claim by Mr Goodwin and his wife that the trustees had not been validly appointed), or in Supreme Court proceedings No 11053 of 2004 (the application by Elma Goodwin for the removal of caveats lodged by Mr Goodwin and his wife, and for an injunction against their lodging further caveats without leave of the court); and this Court also ordered that Mr Goodwin and his wife be 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.
- [12] The judgment in the second appeal also records that at the conclusion of the hearing of that appeal (on 11 April 2005), Mr Goodwin had told the court that he had executed a transfer of his interest in the land to his son. The judgment of this Court proceeds:
- “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.”<sup>3</sup>
- [13] Mr Goodwin relied in his written submission on this appeal, on the fact that in truth the purported transfer of both his interest and his wife’s interest to his son Shannon Jade Goodwin, purportedly executed on 11 September 2003, was lodged for registration on 6 April 2005 and registered on 11 April 2005. This Court had not been appraised of that last fact before giving the judgment on 11 April 2005 in the second appeal. Nothing follows from that; on 9 June 2005 Elma Goodwin applied for orders setting aside that transfer and for orders vesting the property in and transferring it to the trustees for sale. That was the application heard by Muir J, whose orders Mr Goodwin now belatedly seeks to appeal. His application for an extension of time, made in his extensive written submission on the hearing of this appeal against Mackenzie J’s order, did not give any description of his proposed

---

<sup>3</sup>

At [7] in the reasons for judgment in *Goodwin & Anor v Goodwin & Ors* [2005] QCA 117.

grounds of appeal against Muir J's orders. Nor did he give any explanation or reason for not earlier appealing that order, within time.

- [14] The orders made by Muir J on 19 January 2006 on that application ordered that the trustees be joined as parties to the proceedings, and declared that the purported transfer to Shannon Jade Goodwin was void. The Registrar was directed to cancel the registration and correct the register accordingly. The learned judge also prohibited either Mr Goodwin, his wife, or his son Shannon, from lodging or attempting to lodge any instrument in respect of the said land in the Land Registry without the leave of the court. The order correcting the registration was the order for which a stay was sought before Mackenzie J, by an application filed 17 May 2006, and which was heard after the registration was corrected on 15 May 2006 to show Elma Goodwin, Mr Goodwin and his wife as the registered owners, and heard after the land was vested in the names of the trustees for sale on 25 May 2006.
  
- [15] Muir J had allowed Elma Goodwin's application to set aside the purported transfer to Shannon Goodwin, because His Honour considered the transfer was a sham, in that it was never intended to affect the interest of Mr Goodwin or his wife. The judge held it was entered into merely to erect a facade which would allow Shannon Goodwin to hold himself out as having an interest in the land. That conclusion was unavoidable when the learned judge had regard, as the judge did, to the number and variety of proceedings in which Mr Goodwin participated after 11 September 2003, conducting himself and the proceedings on the basis that he, his wife, and Elma Goodwin were the sole persons who had interests in the subject land. The learned judge also considered that conduct by Mr Goodwin and his wife, in those proceedings, estopped them from asserting that their son had obtained an interest in the land by the transfer. The judge was also satisfied fraud was established, because the object of the purported transfer was to cheat Elma Goodwin, and thwart the trustee. Finally, the judge thought the transfer was voidable under s 228 of the *Property Law Act 1974* (Qld). Mr Goodwin has not shown any reason or basis for overturning any of those conclusions.
  
- [16] Apart from the deficiency that by the time the application for a stay was heard the order had been executed, the application for a stay was also deficient in being brought only by Mr Goodwin, whereas both his wife and son were obviously relevant parties, one as transferor and the other as transferee in the transfer set aside. The trustees, whom Muir J had ordered be joined as parties to the proceedings to set aside the transfer to Shannon Jade Goodwin, should also have been joined as parties to the application for a stay and to this appeal.
  
- [17] Mr Goodwin's written arguments in support of his purported appeal against Mackenzie J's refusal of a stay are generally incoherent, as are those seeking an extension of time to appeal Muir J's orders. He also applied to this Court on the date of hearing of the appeal for a stay of the orders by Muir J. Where they can be understood, his written arguments either advance quotations from the Bible or contain gratuitous insults, and do not show grounds for a stay, or an extension, or any reason why either of the orders of Muir J or Mackenzie J should be overturned.
  
- [18] On the second appeal this Court ordered that Elma Goodwin's assessed costs, and those of the trustees seeking the orders protecting Elma Goodwin and the trustees from further vexatious and abusive proceedings by Mr Goodwin, be deducted from the proceeds of the sale of the land otherwise payable to Mr Goodwin and his wife,

and to be paid to the solicitors acting for the trustees and for Elma Goodwin. A similar order should be made against Mr Goodwin in respect of the costs of this appeal in Elma Goodwin's favour. The proceedings were a waste of her money, and that must have been obvious to Mr Goodwin. Nevertheless, he persisted.

- [19] Elma Goodwin could give thought to an application, in which the trustees for sale and Mr Goodwin's wife are joined as parties, so that they are bound by the result, for like orders in respect of all unpaid costs ordered in her favour already in the multitude of unsuccessful efforts by Mr Goodwin and his wife to frustrate the orders for sale. It should not be her share of the proceeds of sale of the land which is expended on wasteful proceedings, or by proceedings she is forced to bring, but the share held by Mr Goodwin and his wife.
- [20] The Court has already made orders dismissing the appeal and the two applications (for a stay and an extension of time) filed on the day of the appeal. The orders Muir J made were fully justified by the reasons he gave, and in the absence of any coherent ground of attack on them, there was no merit in any extension of time or stay. The Court also made costs orders, as sought by counsel for Elma Goodwin, and undertook to publish these reasons.
- [21] **PHILIPPIDES J:** I agree with the reasons of Jerrard JA and with the orders proposed.