

SUPREME COURT OF QUEENSLAND

CITATION: *MAV v ABA* [2007] QCA 380

PARTIES: **MAV**
(plaintiff/appellant)
v
ABA
(defendant/respondent)
ATTORNEY-GENERAL OF QUEENSLAND
(amicus curiae)

FILE NO/S: Appeal No 10078 of 2006
DC No 457 of 2005

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time / General Civil Appeal –
Further Order

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 9 November 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Jerrard JA, Cullinane and Jones JJ
Separate reasons for judgment of each member of the Court,
each concurring as to the orders made

FURTHER ORDERS: **1. The order of the Court pronounced on 13 April 2007 be varied by deleting –**
“4. The State of Queensland as intervener is to pay the appellant’s costs of the appeal to be assessed on the standard basis.”
and substituting –
“4. The respondent pay the appellant’s costs of the appeal to be assessed on the standard basis.
5. That the respondent be granted an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973 (Qld)*.”

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – AMENDING VARYING AND SETTING ASIDE – CORRECTION UNDER SLIP RULE – where unopposed appeal in respect of criminal compensation successful – where the respondent was granted an indemnity certificate pursuant to s 15 *Appeal Costs Fund Act 1973 (Qld)* – where the State of Queensland was erroneously named as intervener instead of amicus curiae – where costs were awarded against

the State of Queensland – whether there should be an amendment to the costs order

Appeal Costs Fund Act 1973 (Qld), s 15

Uniform Civil Procedure Rules 1999 (Qld), r 388, r 667

Queensland Pork P/L v Lott [2003] QCA 271; Appeal No 204 of 2003, 4 July 2003, considered

R v Jones; ex parte Zaicov [2002] 2 Qd R 303; [2001] QCA 442, applied

SOLICITORS: Purcell Taylor for the appellant
No appearance for the respondent
C W Lowe for the Crown Solicitor as amicus curiae

- [1] **JERRARD JA:** I have had the advantage of readings the reasons of Jones J and agree with those reasons and the orders that His Honour proposes.
- [2] **CULLINANE J:** I agree with the orders proposed by Jones J on the issue of costs in this matter.
- [3] **JONES J:** On 20 July 2007 this Court ordered that the State of Queensland, as intervener, is to pay the appellant’s costs of appeal to be assessed on the standard basis.
- [4] By an application dated 22 October 2007, the State of Queensland drew the Court’s attention to the fact that it did not seek to intervene on the appeal but rather appeared as amicus curiae. See transcript at page 2 line 30. That being the case there was no basis upon which a cost order could be made against the State.
- [5] The order was clearly made on the basis of the Court’s erroneous perception of the status of the State of Queensland and needs to be corrected. The error is of a kind which can appropriately be dealt with pursuant to r 388 of the *Uniform Civil Procedure Rules 1999* (Qld) which relevantly provides that the Court “on application by a party or on its own initiative, may at any time correct the mistake or error”. The error is of a kind which falls within the embrace of that rule. *Queensland Pork P/L v Lott* [2003] QCA 271.
- [6] The applicant relies also upon r 667 of UCPR given the circumstances that on the hearing of the appeal the respondent did not appear to oppose and the appellant was successful and was entitled to an order for costs. *R v Jones; ex parte Zaicov* [2002] 2 Qd R 303 at para [4]. The appellant consents to the variation in the order as proposed by the applicant.
- [7] In the circumstances the previous order must be set aside. The applicant has referred to examples where unopposed appeals in respect of criminal compensation have succeeded on a question of law, an indemnity costs certificate under s 15 of the *Appeal Costs Fund Act 1973* (Qld) have been granted.
- [8] That, in my view, is the proper course to follow in this case.
- [9] I would therefore order that the order of the Court pronounced on 13 April 2007 be varied by deleting –

“4. The State of Queensland as intervener is to pay the appellant’s costs of the appeal assessed on the standard basis.”

and substituting –

“4. The respondent pay the appellant’s costs of the appeal to be assessed on the standard basis.

5. That the respondent be granted an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973* (Qld).”