

COURT OF APPEAL

MARGARET McMURDO P

**Appeal No 4890 of 2015
QCAT No 207 of 2014**

SHANE GOODWIN

Appellant

v

JAMES VICTOR ROBERTSON

JOCELYN LILLY ROBERTSON

Respondents

BRISBANE

FRIDAY, 13 NOVEMBER 2015

THE PRESIDENT: The applicant lodged an application for leave to appeal on 8 May 2015, from a decision of Senior Member Stilgoe sitting as the QCAT Appeals Tribunal, QCATA, on 14 August 2014; so the matter was well out of time. On 18 May 2015, the applicant applied for a stay of QCATA's orders. He requested it be heard urgently on an ex parte basis. Justice Philippides quite properly directed that the applicant would need to serve the application on the respondents before the application could be listed, and Mr Goodwin was advised of this by the registry on 18 May 2015.

On 28 May this year, the registry forwarded to the parties the timetable, directing that the applicant's outline and list of authorities be lodged on 15 June 2015; the respondents' outline by 6 July 2015; the index to the record book on 27 July 2015; and the record book by 10 August 2015.

On 28 May 2015, a representative from KF Solicitors indicated that that firm was acting on behalf of the respondents, and on 25 June, she indicated that the respondents had not been served with any material.

The registry sent a letter on 8 July 2015 to the applicant, telling him that his outline of argument had not been filed in time; it was overdue; and he was given a further two weeks to file the outline, and warned that if it wasn't filed, the matter would be referred to the court.

On 19 and 20 August, he faxed two letters and copies of a medical certificate, indicating that he was unwell from 18 July until 31 August 2015. The medical certificate stated that he was suffering from anxiety and extreme mental stress related to problems with extended family dysfunction.

On 24 August 2015, the registry sent a letter to the parties advising that if the applicant's outline was not filed by 4 pm on 7 August 2015, the matter would be listed for mention. On 1 September 2015, the applicant faxed a letter, accompanied by a further medical certificate, advising he would be unfit to conduct work/school/usual activities from 1 July 2015 to 15 September 2015. That medical certificate was from a different doctor, and this time stated that he and his family had had recurrent URTIs, which I understand to be "upper respiratory tract infections" and flu; that he had laryngitis and tracheitis, with only limited response to therapy so far.

On 7 October, the registry wrote to the applicant and the respondents advising that the matter would be listed for mention to consider whether the matter should be struck out for want of prosecution if an outline wasn't received by 21 October 2015. On 29 October 2015, the registry wrote to the parties informing them that if the applicant's outline of argument was not received by the registry by 1 pm on Wednesday 11 November 2015, the matter would be listed at 9.30 am today for mention for failing to comply with the registry's directions and failing to prosecute the appeal, and that it might be struck or another order made and that he might have costs orders made against him.

In the circumstances, with the history that I have set out, the applicant has been given every opportunity to pursue his appeal rights, such as they are. There has been a lengthy delay on his part. The medical certificates faxed to the registry do not provide an explanation for him not completing his obligations and, in the circumstances, the only appropriate orders are that the application for leave to appeal, the application for an extension of time and the application for a stay are all dismissed with costs for want of prosecution.

A transcript is to be made of this hearing and placed on the file.