

CITATION: *Fisher v Tobin* [2016] QCAT 92

PARTIES: Gavin Darrell Fisher
(Applicant)
V
Christopher Tobin
Bronwyn Mae Tobin
(Respondents)

APPLICATION NUMBER: NDR190-15

MATTER TYPE: Other civil dispute matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Dr Cullen, Member**

DELIVERED ON: 14 April 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The Application is dismissed in accordance with s 48(1)(a) of the *Queensland Civil and Administrative Tribunal Act 2009*; and**
- 2. The Applicant is precluded from filing another proceeding, or a part of a proceeding, of the same kind as that commenced in NDR190-15 without first obtaining leave of the President or Deputy President of the Tribunal.**

CATCHWORDS: Dismissal of application by Tribunal – Where party fails to attend compulsory conference – where applicant has caused disadvantage to respondents – applicant must obtain leave from the President or Deputy President before commencing any future proceeding arising out of the same circumstances.

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 48, s 49

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

REASONS FOR DECISION

Mr Fisher's Second Tree Dispute against his neighbours

[1] This is the second dispute commenced by the Applicant, Gavin Darrell Fisher, against his neighbours, Christopher Tobin and Bronwyn Mae Tobin, in the Tribunal. Both disputes were applications for tree disputes, commenced within the neighbourhood disputes area of the Tribunal's jurisdiction.

[2] In the first dispute, NDR058-15, commenced on 1 April 2015, Mr Fisher sought that his neighbours remove 2 trees located near the boundary of these 2 suburban homes. On 22 April 2015, Mr Fisher withdrew his application, as he said that:

Resolution of this dispute and agreement regarding the trees mentioned in the application has been achieved between Gavin and myself. We no longer require the services or intervention of QCAT. A withdraw of the Application will be forthcoming.

[3] In the second dispute, NDR190-15, filed less than one-year later on 9 February 2016, Mr Fisher sought removal of further trees, claiming interference with the use and enjoyment of his land. Mr Fisher provided no detail about the specifics of the interference, save for the following:

Tree roots are coming in our property and going under house slab and stopping sunlight to our house all so [sic] leaves from their trees.

Response of the Neighbours

[4] Mr and Mrs Tobin then provided a comprehensive response to Mr Fisher's application, explaining that:

- Mr Fisher did not serve them with a copy of the Application; they had to obtain it from the tribunal;
- Mr Fisher did not engage in any "meaningful communication or attempt to engage any of the available free mediation services, just straight to a QCAT application";
- They had, in the past, removed trees at Mr Fisher's request, for purposes of being good neighbours.

[5] The frustration expressed in Mr and Mrs Tobin's response is palpable.

Management of the Application by QCAT

[6] The Tribunal then scheduled a Directions Hearing, and required that Mr Fisher file and serve evidence, including expert evidence, in relation to his

claim that the tree roots in question had either caused, or were likely to cause, serious damage to his land or property within the next 12 months.

- [7] Although Mr Fisher did provide the Tribunal with a hand-written note in which he alleged that Mr and Mrs Tobin were not '*good neighbours*,' he did not provide any expert evidence, nor any evidence of the sort that might actually assist the Tribunal in ultimately resolving the dispute.
- [8] The Tribunal then required that the parties attend a Compulsory Conference mediation, with a Tribunal Member, at the Maroochydore Courthouse on 11 April 2016. The parties live in close proximity to the Maroochydore Courthouse, and the location was selected by the Tribunal for their convenience.

Mr Fisher ordered to attend mediation in person

- [9] Mr Fisher filed an application in the Tribunal seeking leave to attend the Compulsory Conference remotely. On 26 February 2016, Senior Member Brown refused that application, and ordered that the parties attend the Compulsory Conference '*in person*'.
- [10] On 6 April 2016, the Tribunal Case Manager contacted the parties to advise them that the Compulsory Conference would proceed at 10.30 am on the day scheduled. The notes on the file reflect that Mr Fisher advised the Case Manager that he would be attending by phone. The Case Manager explained that his application to attend remotely had previously been refused, and that if he did not attend in person, the Compulsory Conference would proceed without him. Mr Fisher replied, '*So be it.*'
- [11] The Compulsory Conference then proceeded as scheduled, with Mr and Mrs Tobin, and the Tribunal Member who had travelled from Brisbane to Maroochydore for the Compulsory Conference, in attendance. As foreshadowed by him, Mr Fisher did not attend. Given that he had been ordered to attend, and was clearly aware of the risk of not attending, it is clear that the Tribunal had afforded him with procedural fairness, as is required.

Mr Fisher's failure to attend causes disadvantage to Mr and Mrs Tobin

- [12] In not attending, Mr Fisher has put both the Tribunal, as well as the Respondents, to considerable inconvenience. Mr and Mrs Tobin have been denied the opportunity to have a facilitated discussion to try and understand the nature of the complaints made about their trees. They have taken time out of their own schedules to attend, as Respondents, a proceeding initiated by Mr Fisher.
- [13] Further, the management of matters through the Tribunal process is financed through public money. The Tribunal has expended resources in sending a legally qualified Member of the Tribunal to travel from Brisbane to attend a conference at a location more suitable to the parties. The State of Queensland will have funded the travel expenses of the Member, the

time expended by the Member, the resources necessary to provide a venue, and the time spent by the registry staff in managing the matter. The time expended by the Tribunal on this occasion could have been expended on hearing another matter. Whilst litigants in the Tribunal may have private legal rights, the exercise of those private rights (regardless of merit) comes at public expense.

- [14] For reasons such as this, section 48 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) provides (relevantly) that:

48 Dismissing, striking out or deciding if party causing disadvantage

(1) This section applies if the tribunal considers a party to a proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding, including by—

(a) not complying with a tribunal order or direction without reasonable excuse; or

...

(g) failing to attend mediation or the hearing of the proceeding without reasonable excuse.

(2) The tribunal may—

(a) if the party causing the disadvantage is the applicant for the proceeding, order the proceeding be dismissed or struck out...

The Tribunal dismisses Mr Fisher's Application

- [15] Here, I consider that Mr Fisher has both failed to comply with the Tribunal's Order of 26 February 2016 refusing his request to attend the Compulsory Conference remotely, as well as failing to attend without reasonable excuse.

- [16] As this is the second application commenced within a one-year time frame by Mr Fisher arising out of the same circumstances, it is further appropriate that he obtain leave of the President, or Deputy President, of the Tribunal before he starts another proceeding relating to the matters raised in NDR190-15. This will conserve the valuable resources of the Tribunal in ensuring that public money is not expended in pursuit of Mr Fisher's private interests unnecessarily. Further, it will ensure that the Respondents in this matter are not required to respond to a third application without good cause.¹

Orders

1. The Application is dismissed in accordance with s 48(1)(a) of the *Queensland Civil and Administrative Tribunal Act 2009*; and
2. The Applicant is precluded from filing another proceeding, or a part of a proceeding, of the same kind as that commenced in NDR190-15

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 49.

without first obtaining leave of the President or Deputy President of the Tribunal.