

CITATION: *Edwards v O'Donnell* [2013] QCATA 18

PARTIES: Allan Shane Edwards
(Applicant/Appellant)
v
Shana Claire O'Donnell
(Respondent)

APPLICATION NUMBER: APL325-12

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Richard Oliver, Senior Member**
David Paratz, Member

DELIVERED ON: 30 January 2013

DELIVERED AT: Brisbane

ORDERS MADE: **1. Leave to extend time allowed.**
2. Leave to appeal refused.

CATCHWORDS: MINOR CIVIL DISPUTE – claim for damages arising from motor vehicle accident – whether hearing can proceed on a minor civil dispute – minor debt claim – findings of fact not disturbed

Queensland Civil and Administrative Tribunal Act 2009, ss 12(4)(d), 28, 28(3)(b), 28(3)(d), 32, 142(3)(a), 143(3), 143(5)(a), 143(5)(a)

Dearman v Dearman (1908) 7 CLR 549
Fox v Percy (2003) 214 CLR 118

APPEARANCES and REPRESENTATION (if any):

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

REASONS FOR DECISION

Richard Oliver, Senior Member

- [1] In this matter the Appeal Tribunal consisted of Mr Paratz, QCAT Member and me. I have had the benefit of reading his reasons in draft. I agree with his reasons, and his conclusions, and the order he proposes.

David Paratz, Member

- [2] The Tribunal sitting at Cleveland Magistrates Court on 9 August 2012 ordered that Mr Edwards pay to Ms O'Donnell the sum of \$1,465.16 on or before 14 September 2012.
- [3] The matter concerned a motor vehicle accident which occurred on 8 February 2012.
- [4] On 2 October 2012, Mr Edwards filed two applications. One is an application to extend or shorten a time limit or for waiver of compliance with procedural requirement; the other is an application for leave to appeal or appeal.
- [5] In his application to waive compliance, Mr Edwards submitted that:
- He had wished to appeal the decision. He sought a statement of reasons but mistakenly lodged a partially completed request for leave to appeal form;
 - He believed he had fulfilled the requirements and did not take any further action. The limitation period for requesting reasons and for lodging a leave to appeal form expired;
 - He suffers from bi-polar disorder and depression/anxiety disorder, and is on a number of listed medications;
 - He is on a disability support pension;
 - As a result of his conditions, medications and other factors, Mr Edwards does not completely understand the procedural requirements, and mistakenly believed that had submitted the correct forms to QCAT;
 - There is no prejudice for the potential respondent;
 - The delay is a short one;
 - It is in the interests of justice that Mr Edwards be able to appeal his case.
- [6] Section 143(3) of the QCAT Act provides that an application for the Appeal Tribunal must be filed in the registry within 28 days after the relevant day. Section 143(5)(a) defines the relevant day as being the day the person is given written reasons for the decision being appealed against.
- [7] Section 122(2) of the QCAT Act provides that a party to a proceeding may, within 14 days after the decision takes effect under s 127, request that the Tribunal give written reasons for the decision.

- [8] Mr Edwards did not apply for written reasons within 14 days, and filed his application to appeal about 7 weeks after the decision was given.
- [9] Under s 61 of the QCAT Act the Tribunal may extend a time limit if to do so would not cause prejudice or detriment to another party.
- [10] There is no evidence that Ms O'Donnell would suffer prejudice or detriment if the appeal time were extended. Her claim is for damages.
- [11] Having regard to Mr Edwards' personal situation, his confusion in completing the correct form, and the application for leave being only about 3 weeks out of time, I consider it appropriate to extend the time limit for him to seek written reasons, and to allow him to seek leave to appeal, and that to do so would not cause prejudice or detriment to Ms O'Donnell.
- [12] I therefore allow the application to extend time.
- [13] Mr Edwards has applied for leave to appeal the decision, on these grounds:
- (1) The tribunal erred at law as the respondent incorrectly filed a claim for a liquidated debt, but brought a claim for motor vehicle liability to the tribunal. The tribunal proceeded to hear the claim for motor vehicle accident liability. The appellant was thus not prepared to defend the case on that basis. The respondent failed to prove a liquidated debt existed and therefore was not entitled to orders in her favour.
 - (2) The tribunal erred at law by allowing the respondent's support person to correct her evidence during questioning from the tribunal, creating an apprehension of bias and impartiality.
 - (3) The tribunal erred at fact by failing to consider the respondent's diagrams indicated she had taken a direct collision course with the appellant's vehicle and was thus responsible for the collision.
 - (4) The tribunal erred at fact by placing undue weight on irrelevant evidence of the respondent.
- [14] Ms O'Donnell has lodged a submission in response to the application to extend time; and both parties have lodged submissions in relation to the application for leave to appeal.
- [15] The Tribunal has jurisdiction under s 12(4)(d) of the QCAT Act for a claim for damage to property arising out of the use of a vehicle. The procedures of the Tribunal are very flexible under s 28, having regard to acting fairly and according to the substantial merits of the case.
- [16] The original application of Ms O'Donnell was filed on 27 April 2012 on Form Number 3 (version 2) entitled '*Application for minor civil dispute – minor debt*'. In that application she claims the amount of \$1,648.80 plus filing fee of \$95.00, a total of \$1,743.80.
- [17] In the details of her application, Ms O'Donnell refers to statements of witnesses, quotes for repair, photos of damage to car accident scene, letters of demand, legal advice and correspondence from Mr Edwards.

These references are all directly in relation to a claim for damages arising from a car accident.

[18] In his '*Response to minor civil dispute – minor debt*' filed on 4 June 2012, Mr Edwards seeks the following orders:

- (1) The application be dismissed and the applicant's claim in respect of damage to her vehicle be denied.
- (2) This matter be referred to the Magistrates Court in Wynnum for adjudication.
- (3) This is a matter of a breach of the Transport Operations (Road Use Management) Act 1995.
- (4) There is no proof of "debt" owed to the applicant.

[19] In the reasons for the orders that Mr Edwards sets out, he canvasses the circumstances of the accident.

[20] There can be no doubt that Ms O'Donnell was making a claim for damages arising from a motor vehicle accident from the outset. Mr Edwards was clearly aware of that claim prior to the hearing, and had responded to it.

[21] I am satisfied that Mr Edwards had a reasonable anticipation, and was well aware, that the circumstances of the motor vehicle accident, and the resultant damages, would be considered and determined on the hearing of the matter.

[22] Under s 28(3)(d) of the QCAT Act, the Tribunal must act with as little formality and technicality and with as much speed as the requirements of this Act, and enabling Act or the rules and a proper consideration of the matters before the Tribunal permit.

[23] I consider it was open to the learned Adjudicator to hear the matter as a Minor Civil Dispute – Minor Debt in the circumstances. Mr Edwards was heard, and contested the facts of the motor vehicle accident. I am not satisfied that any detriment was caused to Mr Edwards by the procedure.

[24] Ms O'Donnell claimed that Mr Edwards was parked beside the kerb of the road, and then had reversed into her car as she was turning into the staff carpark of the Wynnum RSL. Her version was substantiated by a witness, Judith Moss.

[25] Mr Edwards claimed that Ms O'Donnell illegally raced across a traffic island outside of her workplace to enter the staff parking area, failed to give way to the right, and hit his vehicle.

[26] The damage to Ms O'Donnell's car was on the right hand side.

[27] The hearing lasted 45 minutes. Oral evidence was given by Ms O'Donnell, Mr Edwards and Mr Edwards' mother.

- [28] The learned Adjudicator made findings of fact after hearing the evidence. He took particular note of the statement of Ms Moss which was tendered, and noted that the allegation of Mr Edwards that his mother was almost hit by Ms O'Donnell, was not supported by his mother's evidence.
- [29] The learned Adjudicator also made findings as to the quantum of damage suffered by Ms O'Donnell.
- [30] The learned Adjudicator apportioned liability 90/10 against Mr Edwards, and made calculations accordingly.
- [31] I consider that the findings of the learned Adjudicator were open to him on the evidence before him.
- [32] Findings of fact by a Tribunal will not usually be disturbed on appeal if the facts inferred by the Tribunal, upon which the finding is based, are capable of supporting its conclusions, and there is evidence capable of supporting any inferences underlining it.¹
- [33] I do not propose to disturb the findings of fact of the learned Adjudicator.
- [34] Mr Edwards has claimed that the proceedings were not conducted fairly. The principal claim of unfairness or bias appears to be based upon the learned Adjudicator allowing Ms O'Donnell's support person to assist her.
- [35] The Tribunal is not bound by the rules of evidence (s 28(3)(b) QCAT Act), but must act fairly. It was open to the learned Adjudicator to allow the support person for Ms O'Donnell to participate in the adducing of evidence as he saw fit.
- [36] I have listened to the transcript of the hearing, and I cannot discern any overt or particular intervention or participation by the support person. At one point Mr Edwards can be heard to be making complaint to another person (presumably the support person) about some action of hers, but this was not of any consequence, and was under the observation of the learned Adjudicator.
- [37] I do not consider that Mr Edwards suffered any detriment by the involvement of the support person for Ms O'Donnell.
- [38] I am satisfied that the learned Adjudicator conducted the hearing fairly and without bias, and gave Mr Edwards the opportunity to comment and participate properly.
- [39] The learned Adjudicator asked Mr Edwards in the course of the hearing what he wanted to do about the request in his response for the matter to be transferred to the Magistrates Court, and Mr Edwards replied that he just wanted it over and done with. No issue therefore arises on this point.

¹ *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125-126.

- [40] Mr Edwards therefore has no grounds which are likely to succeed on an appeal.
- [41] Because this is an appeal from a decision of the Tribunal in its Minor Civil Dispute jurisdiction, leave is necessary under s 142(3)(a)(i) of the QCAT Act. Leave to appeal will ordinarily only be granted where there is some question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage; or, there is a reasonably arguable case of error in the primary decision and a reasonable prospect that the applicant would obtain further substantive relief. Another question sometimes asked is: is leave necessary to correct a substantial injustice to the applicant, caused by some error?
- [42] Having regard to my finding that Mr Edwards was given a fair hearing of which he had satisfactory due notice, and that I consider he has no realistic prospects of success, leave to appeal is denied and the application is refused.