

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *St Clair v Genetic Testing Laboratory Aust Pty Ltd*
[2020] QCATA 102

PARTIES: **ANNA ST CLAIR**
(applicant/appellant)

v

**GENETIC TESTING LABORATORY AUST PTY
LTD T/AS EASY DNA**
(first respondent)

MANDY HUGHES
(second respondent)

STEPHEN FORD
(third respondent)

APPLICATION NO/S: APL096-19

ORIGINATING APPLICATION NO/S: MCDO695-18 Brisbane

MATTER TYPE: Appeals

DELIVERED ON: 30 June 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS: **Application for leave to appeal refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where the applicant paid for DNA testing – where the tests confirmed a lineage connection – where the results were rejected by the applicant – where the applicant applied in the Tribunal for recovery of the costs of the tests from the testing laboratory – where the claim was dismissed – where the applicant sought leave to appeal – where no grounds of appeal reasonably disclosed in the application for leave to appeal

Pickering v McArthur [2005] QCA 294

REPRESENTATION:

Applicant: Self-represented

Respondents: Self-represented by G Taylor

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

REASONS FOR DECISION

- [1] The applicant ('St Clair') engaged the first respondent ('GTL') to conduct DNA testing.
- [2] St Clair was involved in court proceedings in the United Kingdom contesting her stepmother's will which left considerable assets to a nephew of the deceased. She disputed the nephew's claim that he was the nephew of the deceased. To that end she engaged GTL to conduct DNA testing of the nephew. The DNA testing substantiated the nephew's lineage claim and the court upheld his claim on the basis in large part of the DNA testing.
- [3] St Clair commenced proceedings in the Tribunal to recover the costs she had paid for the DNA testing claiming that the testing had been conducted negligently. She also sought a declaration that the DNA testing was invalid.
- [4] The matter was heard before an Adjudicator on 12 February 2019. The Adjudicator dismissed her claim.
- [5] St Clair wants to appeal that decision.
- [6] Given this is an appeal from a decision made in the Tribunal's minor civil dispute jurisdiction, leave to appeal must first be obtained before any appeal proceeds.¹
- [7] Leave to appeal will usually only be granted where an appeal is necessary to correct a substantial injustice to the appellant and where there is a reasonable argument that there is an error to be corrected.²
- [8] Many self-represented parties misunderstand the appeal process and its function. Rather than identify an error in the proceedings below and attempt to have it corrected on appeal, the appeal (or here the required precursor application for leave to appeal) is seen as simply an opportunity for another hearing. That seems to be case with the application at hand.
- [9] There are no sensible grounds of appeal set out either in the application for leave to appeal or appeal or in supporting submissions filed with the application. Her grounds of appeal as noted in her application for leave to appeal are as follows:
 - a. I was unable to counter the defence allegation that no concrete evidence of negligence been submitted
 - b. I was unable to correct the deceptive statement made by the defence that three separate tests had been undertaken
 - c. I was unable to counter the (untrue) statement made by the defence that Aster Clinic had collected the DNA from Aaron King in Dubai

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 142(3)(a)(i) ('QCAT Act').

² *Pickering v McArthur* [2005] QCA 294.

- d. Finally, I was unable to point out a significant new factual error lodged by the defence. The defendant's name: Easy DNA has been replaced by another name: GTLDNA in the paperwork I received with the tribunal's decision.

[10] Her grounds of appeal seem rather to be a critique as to why she failed in the proceedings before the learned Adjudicator. They certainly do not identify error on the part of the learned Adjudicator.

[11] Attached to the application for leave to appeal are documents which she claims evidence the negligence of GTL. But the documents concerned consist of duplicate copies of material already filed in the proceedings below and which were made available to the learned Adjudicator in reaching his decision.

[12] The learned Adjudicator said this about St Clair's claim:

Ms St Clair's assertions about how, in particular, the initial DNA test was conducted littered with assumptions, suppositions, possibilities, fraudulent activity accusations, conclusions based on possibilities, conspiracy theories, bribes, allegations of interception and substitution of samples, collusion and the like. However, in all the voluminous material provided by Ms St Clair there is not a shred of hard evidence to back up the supposed negligence. Ms St Clair accused IB DNA of being disorganised, Easy DNA of being poorly organised, chaotic, not following protocols and regularly and having a pattern of covering up negligence.

No evidence was produced to back up these wild assertions. Ms St Clair's narrative was at times confused, convoluted and erratic. On the other hand, at least three DNA tests were conducted by Easy DNA in response to Ms St Clair's continued accusations about supposed irregularities in the DNA testing process. Easy DNA have gone above and beyond the call of duty to be absolutely certain that the test results are accurate. As stated, they are authentic, correct results collected under the laws and tested by a highly accredited laboratory.

The onus was always on Ms St Clair to prove, by production of hard evidence, that the DNA tests were, for whatever reason, flawed, and she has failed to do so. That being the case, the application is dismissed in its entirety.³

[13] As mentioned by the learned Adjudicator, St Clair filed a large amount of material with her application for minor civil dispute. She attached 128 pages consisting of emails, DNA test reports and extensive personal comment. Principally her assertions were that a "chain of custody" for the DNA testing was breached. Her assertions about breach entirely lack supporting evidence. They were expressly denied by Ms Harris, the second respondent, writing on behalf of GTL in an email of 6 October 2015.

[14] As applicant the onus was on St Clair to show a failure on the part of GTL to exercise due care and skill and she failed to do that.

[15] Because of St Clair's numerous complaints about the outcome of the original DNA testing, GTL, of its own volition and at its own expense, conducted further DNA tests on two subsequent occasions both of which confirmed the initial results. The DNA results were obtained for use in and accepted by the London court. If they

³ Reasons for decision transcript, page 3-4.

were to be challenged that was the jurisdiction and appropriate forum to do that, not the Tribunal, an inferior court of record here in Australia.

- [16] GTL sought leave to adduce fresh evidence. It is not necessary to consider that application because there is no reasonable argument presented by St Clair that the learned Adjudicator erred below.
- [17] The application for leave to appeal is refused.
- [18] I might add, other than seeking recovery of the cost of the DNA testing, the initial relief sought was in any case far outside the jurisdiction of the Tribunal.