

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Gormlie v Tamborine Pet Farmstay Pty Ltd* [2020]
QCATA 46

PARTIES: **HELEN GORMLIE**
(applicant/appellant)

v

TAMBORINE PET FARMSTAY PTY LTD
(respondent)

APPLICATION NO/S: APL188-19

ORIGINATING APPLICATION NO/S: MCDO246-18 Beenleigh

MATTER TYPE: Appeals

DELIVERED ON: 14 April 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS: **Leave to appeal refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where the appellant boarded dogs at the respondent’s kennels – where the appellant owed boarding fees after she removed her dogs – where the dogs became ill after leaving the kennels – where one dog died some weeks later – where the appellant was ordered to pay the outstanding kennel fees

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 142(3)(a)(i)

Pickering v McArthur [2005] QCA 294

REPRESENTATION:

Applicant: Self-represented

Respondent: Self-represented

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] Ms Hughes runs a boarding kennel for dogs under a corporate structure, Tamborine Pet Farmstay Pty Ltd ('Ms Hughes').
- [2] The appellant ('Ms Gormlie') owned two greyhound dogs, Gracie and Joybelle, and boarded them with Ms Hughes over a period of 41 days from 15 July 2018 to 25 August 2018.
- [3] Ms Gormlie claimed they lost weight at the kennels. She took them to a veterinary surgeon two days after she took them out of the kennels because they were ill. They were prescribed medication. Some weeks later Gracie died. It is unclear what the cause of death was, but perhaps heart failure. She was approximately 11 years old at the time according to details noted by Ms Hughes at the time of boarding.
- [4] Ms Gormlie claimed Ms Hughes provided her dogs with poor care. She blames Ms Hughes for Gracie's death. She owed Ms Hughes \$1,036 for the cost of boarding at the kennels when she took her dogs out but she refused to pay. Ms Hughes brought minor debt proceedings against her for the outstanding money and Ms Gormlie filed a separate consumer application against Tamborine Pet Farmstay Pty Ltd.
- [5] The matters were heard together by an Adjudicator on 30 May 2019. The Adjudicator dismissed Ms Gormlie's claim and ordered her to pay \$1,036 to Ms Hughes plus her filing fee of \$120.50.
- [6] Ms Gormlie wants to appeal that decision.
- [7] 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
- [8] 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
- [9] The grounds of appeal are scant and technically not sufficient to constitute grounds of appeal. This is not uncommon in the Tribunal with self-represented parties however.
- [10] In her application for leave to appeal Ms Gormlie first simply refers to a letter written by a local vet which she says was never meant to 'imply they could state nothing could have happened at the Tamborine Pet Farmstay that harmed Gracie'. Then she poses a question, 'why [Ms Hughes] had to bath Gracie'?
- [11] The comment about the local vet writing a letter probably refers to a letter from the veterinary surgery that treated the dogs after Ms Gormlie took back her dogs. In a letter dated 3 March 2019, the surgery Veterinary Services wrote to Ms Hughes saying they had treated the dogs two days after they left Ms Hughes kennels for diarrhoea. The letter went on:

The exact cause of the diarrhoea in both dogs was not determined with certainty and I was unable to give the owner firm advice in this regard. I would like to assure you that I did not give advice regarding the cause which could be interpreted as critical of the care they received in your kennels.

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

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

- [12] The letter seems very clear. The veterinary surgeon who treated the dogs could not attribute responsibility for the diarrhoea to the care of the dogs by Ms Hughes at the kennels.
- [13] The learned Adjudicator noted that there could have been a number of reasons why the dogs became sick after leaving the kennels. He accepted there was no evidence from the veterinary surgeon suggesting any link between the death of Gracie and the care at the kennels.
- [14] The learned Adjudicator also noted that he had not been presented with even a description of what symptoms the dogs exhibited to entitle Ms Gormley to claim they became sick after leaving the kennels.
- [15] There is no ground of appeal made out. The learned Adjudicator found no evidence of a link between Gracie's death from heart failure several weeks after she left the kennels and her boarding at the kennels. He asked Ms Gormlie what evidence she had to attribute blame to Ms Hughes and the kennels but she gave none. There was simply supposition on her part. The learned Adjudicator was entitled to conclude as he did that there was no evidence that Gracie died because of a failure of care given by Ms Hughes during Gracie's boarding at the kennels.
- [16] As to the second comment made by Ms Gormlie in her application for leave, posing a question why Ms Hughes had to bathe Gracie, this cannot sensibly be construed as a ground of appeal. It raises no allegation of error on the part of the learned Adjudicator. In so far as Ms Gormlie may be suggesting a chill caused Gracie's death, there was no evidence about this led below.
- [17] There are no prospects of successful appeal. Ms Gormlie points to no error on the part of the learned Adjudicator that needs to be corrected. Leave to appeal is refused.