

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Clements v Phillips* [2023] QIRC 319

PARTIES: **Clements, Chandra**
(Applicant)

v

Phillips, Darren
(Respondent)

CASE NO.: AD/2021/67

PROCEEDING: Application in existing proceedings

DELIVERED ON: 8 November 2023

MEMBER: Merrell DP

HEARD AT: On the papers

ORDER: **The Applicant's application in existing proceedings, filed on 30 August 2023, is dismissed.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – MOTIONS, INTERLOCUTORY APPLICATIONS AND OTHER PRE-TRIAL MATTERS – OTHER MATTERS – Applicant was a complainant in a complaint to the Queensland Human Rights Commission alleging unlawful discrimination and other unlawful conduct in contravention of the *Anti-Discrimination Act 1991* – complaint referred to the Queensland Industrial Relations Commission – prior to conciliation before the Queensland Industrial Relations Commission, the Respondent made an application in existing proceedings for leave to be represented by a lawyer – the Applicant opposed the Respondent's application for legal representation on certain grounds including matters connected with her health condition – in published reasons for decision, the Queensland Industrial Relations Commission referred to the Applicant's health condition – subsequent application made by the Applicant for those reasons for decision

to be 'redacted' on certain grounds – no evidence filed in support of the reasons for the Applicant's application – the reasons for decision for rejecting the Respondent's application for legal representation were published in February 2022 and no application was made by the Applicant at that time that her health condition should not be published in the reasons for decision – the discretionary power of the Queensland Industrial Relations Commission is to direct that a document be modified before publication, not after publication – Applicant's application refused

LEGISLATION:

Industrial Relations Act 2016, s 530

Industrial Relations (Tribunals) Rules 2011, r 97

CASES:

Clements v Phillips [2022] QIRC 052

Reasons for Decision

- [1] Ms Chandra Clements ('the Applicant'), made a complaint to the Queensland Human Rights Commission ('QHRC') alleging, that between July 2020 and 18 December 2020, she had been the subject of unlawful discrimination on the basis of her sex and family responsibilities, and that she was the subject of unlawful requests for information. On 24 December 2021, the QHRC referred the complaint to this Commission. The Applicant's complaint was referred to me for conciliation.
- [2] Prior to the conciliation conference being convened, Mr Darren Phillips ('the Respondent'), pursuant to s 530(1)(c) of the *Industrial Relations Act 2016*, made an application in existing proceedings for leave to be granted to him to be represented by a lawyer in the proceeding. The Applicant opposed the Respondent's application for legal representation. One of the grounds the Applicant opposed that application was that she had been diagnosed with a particular health condition and Mr Phillips, being represented by a lawyer, would impose a significant power imbalance which she could not overcome considering her injuries.
- [3] By decision dated 23 February 2022, I made an order dismissing the Respondent's application for legal representation but only for the purposes of the conduct of a conciliation conference.¹ In the course of giving reasons for my decision, I summarised the Applicant's grounds for opposing the Respondent's application for legal representation, which included reference to the Applicant's health condition ('the reasons for decision'). My reasons, and the order I made, were published on the Supreme Court Library website in February 2022.

¹ *Clements v Phillips* [2022] QIRC 052.

- [4] The matter has subsequently been referred to Industrial Commissioner Power for final determination.
- [5] By application filed on 30 August 2023, the Applicant applies for the reference, in the reasons for decision to the Applicant's health condition, to be '... redacted' ('the Applicant's application'). The Applicant, in her application, gives a number of reasons in support of her application to so redact the reasons for decision.
- [6] I subsequently made a Directions Order for written submissions to be filed and served by the Applicant and the Respondent in respect of the Applicant's application. Only the Applicant has filed written submissions.
- [7] For the reasons that follow, I dismiss the Applicant's application.

There is no proper basis upon which to grant the Applicant's application

- [8] There are a number of reasons why there is no proper basis to grant the Applicant's application.
- [9] First, despite the form used by the Applicant for her present application ('Form 4 – Application in existing proceedings'), which notes that an applicant may file an affidavit in support of the application, the Applicant did not, when filing her present application, or at any time since, file an affidavit which contains evidence that may tend to support the bases upon which she applies for the reasons for decision to be modified. All I have before me are the written submissions made by the Applicant.
- [10] Secondly, in giving my reasons for decision in dismissing the Respondent's application for legal representation, I referred to the express grounds given by the Applicant in her submissions opposing the Respondent's application. This included the Applicant's health condition. It must have been apparent to the Applicant, at the time she filed those submissions (on 15 February 2022), that reference would be made to her submissions in my reasons for decision, including the submissions the Applicant made about her health condition. The Applicant did not, at that time, raise any of the reasons she now raises for the reasons for decision not to refer to her health condition. The reasons for decision have been published on the Supreme Court Library website since February 2022. In fact, when the decision was released to the parties by email on 23 February 2022, the parties were advised: 'Please note, the decision is a released copy only and may be amended prior to publishing on the Supreme Court Library website.' The Applicant did not, at that time, raise any of the reasons she now raises for the reasons for decision to be modified.
- [11] Thirdly, while r 97(3)(b) of the *Industrial Relations (Tribunals) Rules 2011* confers discretion on the Commission to modify a document in a way that does not affect the essence of the document, that discretion can only be exercised prior to the document's publication.

Conclusion

[12] For the reasons I have given, there is no proper basis to grant the Applicant's present application.

Order

[13] I make the following order:

The Applicant's application in existing proceedings, filed on 30 August 2023, is dismissed.