

SUPREME COURT OF QUEENSLAND

[2002] QSC 372
File No S372 of 2002

BETWEEN:

ELIZABETH JANE RICKLEMAN

First Applicant

AND:

GEOFFREY JAMES BIRD

Second Applicant

AND:

ROBERT FRANK HARPUR RICKLEMAN

First Respondent

AND:

MARGOT ELIZABETH RICKLEMAN

Second Respondent

AND:

JAMES VINCENT COCKERILL, ADULT GUARDIAN

Third Respondent

AND:

PUBLIC TRUSTEE

Fourth Respondent

MOYNIHAN J – REASONS FOR JUDGMENT

DELIVERED ON: 1 November 2002

HEARING DATE/S: 12 September 2002

ORDER: Application dismissed.

Order:

1. That pursuant to Rule 772 of the UCPR the Second Applicant gives security in the sum of five thousand dollars (\$5,000.00) for the prosecution without delay and for any costs of the Court of Appeal may award to the First and Second Respondents in the Second Applicant's Appeal No 5108 of 2002.

2. That pursuant to Rule 772 of the UCPR the Second Applicant gives security in the sum of five thousand dollars (\$5,000.00) for the prosecution without delay and for any costs of the Court of Appeal may award to the Third Respondent in the Second Applicant's Appeal No 5108 of 2002.
3. Until such security is given the appeal is stayed.
4. That Pursuant to Rule 95 of the UCPR the Third Respondent or his delegate be appointed Litigation Guardian for the First Applicant, Ms Elizabeth Rickleman for the purposes of the First Applicant's appeal in the Court of Appeal No 5108 of 2002 and for the purposes of Mr Geoffrey Bird's application number S372 of 2002.
5. That the Second Applicant pay the First, Second and Third Respondent's costs of and incidental to this application to be assessed.

CATCHWORDS:

Litigation Guardian – where Adult Guardian seeks to be appointed as Litigation Guardian pursuant to UCPR 95 for purpose of an appeal of an earlier decision – consideration of when a Litigation Guardian may be appointed – whether Litigation Guardian should be appointed in this case – whether it should be the Adult Guardian or the Applicant Mr Bird.

COSTS – SECURITY FOR COSTS – where respondent seeks security for costs from the applicant – considerations relevant to an application for security for costs

Uniform Civil Procedure Rules s93(1), 95

Pratt v Dickson (2000) QSC 314; considered

Natcraft Pty Ltd & Anor v Det Norske Veritas & Anor; applied

COUNSEL:

Mr G. Bird (in person) for the applicants

Ms M Cassidy for the respondents

SOLICITORS:

Applicant self represented

Crowley & Greenhalgh for the Respondents

- [1] The following is a sufficient but incomplete account of the proceedings with which I am concerned. These applications are brought in an action instituted by Elizabeth Jane Rickleman and Geoffrey James Bird against Rickleman's mother and father together with the Adult Guardian and the Public Trustee. The relationship between Bird and Elizabeth Rickleman has led to a number of applications in various courts. The Adult Guardian was appointed guardian in respect of Elizabeth Rickleman and the Public Trustee who has been appointed administrator of her estate. The originating application sought to suspend the decision of the Guardianship and Administration Tribunal and appoint Geoffrey James Bird as guardian and administrator of Elizabeth Rickleman.
- [2] I have dealt in reasons published separately with Bird's objection for my hearing the matter on ground of actual or apprehended bias. I note that a similar application was made and dealt with Fryberg J in his reasons of 7 February 2002.
- [3] In the applications I am concerned with, Bird seeks orders that the operation of paras 2, 3 and 4 of an order made by Fryberg J on 10 May 2002 be suspended. Those paragraphs remitted the subject matter of the originating application to the Guardianship and Administration Tribunal and made costs orders against Elizabeth Rickleman and Bird.
- [4] Bird also seeks orders essentially designed to pre-empt orders sought or foreshadowed that the Adult Guardian be restrained as acting guardian for Elizabeth Jane Rickleman and that the Public Trustee be restrained from acting as administrator of her estate and that there should be no order for security for costs.
- [5] The Rickleman and Adult Guardian respondents seek an order for security of costs in respect of an appeal by Bird against the order of Fryberg J and costs.
- [6] There is an application by the Adult Guardian that he or his delegate be appointed the Litigation Guardian of Elizabeth Jane Rickleman pursuant to UCPR 95 for the purpose of her appeal against the order of Fryberg J and for the purpose of Bird's application no 372 of 2000. So far as the application for security for costs is concerned, Bird's position is essentially he can provide it. He says that it is unnecessary to appoint a Litigation Guardian.
- [7] Elizabeth Jane Rickleman is not a party to Bird's application and declined an opportunity to appear on its hearing. Exhibit 2 indicates that she supports Bird's position.
- [8] A convenient but by no means exhaustive chronology of these and associated proceedings, which have generated large volumes of paper, is available in the

affidavit of Phillipa Whitman filed on 5 September 2002 and it is unnecessary to repeat it in these reasons.

- [9] It is impossible to usefully summarise Mr Bird's argument in support of his application and I won't attempt to do so. In so far as those arguments are in writing, they are on the file, in so far as they were oral they have been transcribed. I have considered them in light of the material contained in the various affidavits.
- [10] Notwithstanding Mr Bird's submission that the decision in the application for security for costs not be reserved because that would allow "improper pressure" to be brought onto the Judge, I regarded it as proper to take time to look in more detail at the material which had been placed before me. I should note that I am not aware of any pressure improper or otherwise ought to bear on me in respect of any aspect of the document.
- [11] I do not intend to canvass every aspect of the matters canvassed in the written and oral submissions and in the material, rather try to identify some material of which is in my view indicative of the basis of my deposition of the proceedings.
- [12] It is convenient to deal first with the application for the appointment of a Litigation Guardian. *Uniform Civil Procedure Rule 93(1)* was considered by Mullins J in *Pratt v Dickson* (2000) QSC 314. Relevantly for present purposes a Litigation Guardian may be appointed when a person is not capable of making the decision required of the Litigation Guardian for conducting proceedings. Fryberg J thought the material before him probably prima facie disclosed the need for appointment but that the matter ought to be left to the Guardianship Tribunal, hence his remitter of the matter. That consideration has been overtaken by the appeal and these proceedings.
- [13] The evidence of Dr Taemets, which has the limitation that he has not seen Ms Rickleman for some time as a consequence of his ceasing to act as her practitioner, in the context of complaint apparently made about his involvement supports the conclusion that a Litigation Guardian ought to be appointed.
- [14] In a letter dated 11 September 2002 to Ms Phillipa Whitman he said:
". . . her illness fluctuated and when unwell she would be, I think, disadvantaged in her ability to make decisions. She would be unable to give instructions on legal matters and would require assistance in understanding legal advice and proceedings. Even in her more lucid periods, I feel legal consultations with an unbiased trusted person would be necessary".
- [15] Accepting for the purpose that Mr Bird regards himself as acting in Ms Rickleman's interests not of his precipitation to today, the material before me or the history of the dispute provides a basis for being confident this is so.

[16] Mr Bird points to the fact that Ms Rickleman is not before the court, as I have indicated, she had that opportunity and apparently chose not to avail herself of it.

[17] He points to the fact, as relied on before Fryberg J, in his affidavit sworn 7 May 2002, that;

“Miss Rickleman, the first appellant, suffers from schizophrenia and bipolar disorder, but is from all outward appearances a completely normal person, and . . . I believe has full decision making capacity”.

[18] The statement is self serving and he is beyond his competence to judge. As I have indicated I doubt his being dispassionate or objective.

[19] Before Fryberg J, Bird submitted that he should be appointed Litigation Guardian although His Honour described his position on Ms Rickleman’s impairment as a little obscure for reasons which he detailed and which are unnecessary to repeat.

[20] The Full Court of the Family Court noted in their reasons for judgment in relation to the two applications for security for costs by the Adult Guardian and Dr Frank and Mrs Margot Rickleman against Mr Bird on 6 September 2002, that:

“ It is never easy to predict whether or not an appeal is likely to be ultimately successful. Nevertheless, in this case . . . it is difficult to see that a challenge either to the decision to appoint the Adult Guardian – an independent, statutory officer charged with protecting the interests of disabled persons – as the next friend for the mother, or to the decision to refuse leave to Mr Bird – a stranger in blood – to intervene in the contact proceedings between the mother and her parents, would have any great likelihood of success. Further, it would seem, as Counsel for the Adult Guardian pointed out in her written submissions, that it would only be if Mr Bird could succeed in either being appointed as the mother’s next friend, or being permitted to intervene in the contract proceedings, that he could pursue his grounds of appeal which are directed to matters other than the appointment of the next friend or the refusal to permit him to intervene.

The question of bona fides (or otherwise) of the claims, which Mr Bird has pursued below and now seeks to pursue on appeal, is also a difficult matter. Whatever responsibility Mr Bird may consider he has personally for the mother and the child, we are of the view that from an objective viewpoint, his claims to be involved in their affairs, either as next friend or intervener, might be said to be somewhat remote (given that he is not a blood relative of the child, and that he apparently does not claim to be in the position of step-parent to the child or otherwise to have had the care of the child). Indeed having regard to the history of the litigation in this Court and the Supreme Court, and also to the independent nature of the Adult Guardian, his claims might be said to border on the vexatious”.

- [21] In my view, such considerations continue to apply.
- [22] The previous history of this dispute reveals that Bird is unlikely to be satisfied by any outcome other than what he would regard as complete success in any proceeding in respect of the matters in issue and that he will continue to pursue whatever remedies he conceives to be available.
- [23] As I have said, the considerations which led to Fryberg J remitting the matter to the Guardianship Tribunal have been overtaken by the appeal and the applications I am dealing with. I am satisfied that the Adult Guardian or his delegate should be appointed Litigation Guardian of Elizabeth Jane Rickleman.
- [24] I turn to consider the application for security for costs.
- [25] In the light of the considerations already canvassed perusal of the reasons of Fryberg J published on 10 May 2002 giving us occasion for confidence in Bird's prospects of successfully appealing from the order of Fryberg J. In so far as that may be concerning about Ms Rickleman's position she now has a Litigation Guardian.
- [26] The considerations relevant to an application for security of costs are conveniently summarised by Jerrard JA in *Natcraft Pty Ltd & Anor v Det Norske Veritas & Anor* [2002] QCA 241. Those considerations relevant here are:
- “▪ the appellants' prospects of success.
 - the financial position of the appellants. Where an appellant is without funds or assets this factor is important, and provides what this court has described as a “persuasive” reason for ordering security for costs. This is because that appellant would be unable to satisfy any order for costs made against the appellant should the appeal be unsuccessful (see *Banks* (supra) and *Ivory v Telstra Corp Ltd* (2001) QCA 490; Appeal no 4059 of 2001, 7 November 2001.
 - the fact an impecunious appellant, impecunious at trial, has already had a “day in court”: and lost on the merits. That circumstance increases rather than reduces the likelihood of exercise of discretion in favour of an order for security for costs (see *Ivory* (supra));
 - it is inappropriate to order an impecunious appellant to provide a greater security than is absolutely necessary (see Young CJ in *Commonwealth Bank of Australia v Eise* (1991) 6 ACSR 1.”

- [27] Applying those considerations here justifies making the order for security sought.
- [28] No basis has been shown for suspending Fryberg J's orders prior to the Appeal Division of the Court dealing with the matter. In any event I have said the remitter to the Adult Guardian has now to a degree been overtaken by subsequent events.
- [29] I therefore dismiss Bird's application and order.
6. That pursuant to Rule 772 of the UCPR the Second Applicant gives security in the sum of five thousand dollars (\$5,000.00) for the prosecution without delay and for any costs of the Court of Appeal may award to the First and Second Respondents in the Second Applicant's Appeal No 5108 of 2002.
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