

SUPREME COURT OF QUEENSLAND

CITATION: *Byrne v Public Trustee of Qld & Anor* [2008] QSC 102

PARTIES: **CHRISTOPHER PAUL BYRNE**
(appellant)
THE PUBLIC TRUSTEE OF QUEENSLAND
(first respondent)
GERARD KELLY
(second respondent)

FILE NO/S: BS3445/2008

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 29 May 2008

DELIVERED AT: Brisbane

HEARING DATE: 23 May 2008

JUDGE: Martin J

ORDER: Declare that this proceeding has not, for want of jurisdiction, been properly started. Strike out the “notice of appeal” filed on 16 April 2008.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - GENEREAL PRINCIPLES - WHERE APPEAL LIES – ERROR OF LAW – where notice of appeal contained no error of law.

PROCEDURE — QUEENSLAND — PRACTICE UNDER RULES OF COURT — where applicant seeks a declaration that a proceeding for which an originating process has been issued has not, for want of jurisdiction, been properly started.

Anti-Discrimination Act 1991, s 217(1)
Guardianship and Administration Act 2000, s 12
Uniform Civil Procedure Rules r 16(a)

Azzopardi v Tasman UEB Industries Limited (1995) 4 NSWLR 139
Clements v IIAC (2003) 131 FCR 28
Craig v South Australia (1995) 184 CLR 163
Gray v Comcare (2004) 139 FCR 41
Lombardo v FCT (1979) 40 FLR 208
Minister for Aboriginal Affairs v Peko Wallsend (1986) 162

CLR 24

COUNSEL: C J Murdoch for the first and second respondents (applicants)
Mr Byrne appeared for himself.

SOLICITORS: Mark Crofton Official Solicitor for the first and second
respondents

- [1] This is an application by the first and second respondents for a declaration pursuant to r 16(a) of the *Uniform Civil Procedure Rules* that a notice of appeal filed by the appellant on 16 April 2008 has not, for want of jurisdiction, been properly started.

History

- [2] On 1 April 2008 Mr Rangiah, sitting as a member of the Anti-Discrimination Tribunal, ordered that a complaint made by Christopher Paul Byrne (“Byrne”) against the first and second respondents be dismissed. His reasons can be found at [2008] QADT 6. Byrne had alleged that the first and second respondents had discriminated against him on the basis of his impairment, namely a psychiatric illness – bipolar disorder.
- [3] In 2003 the Guardianship and Administration Tribunal (GAAT) appointed administrators for Byrne in financial matters. Those persons later applied to GAAT for leave to withdraw and on 23 April 2004 GAAT ordered that the Public Trustee of Queensland be appointed as administrator for Byrne for all financial matters. The second respondent (“Kelly”), an employee of the Public Trustee, was the person charged with administering those matters. That order, having been made pursuant to s 12 of the *Guardianship and Administration Act* 2000, necessarily involved a finding that Byrne was not capable of understanding the nature and effect of decisions about financial matters or was not capable of freely and voluntarily making decisions about financial matters.
- [4] The complaint made by Byrne arose out of his relationship with the Public Trustee. The major part of Byrne’s complaint concerned a proposal by the Public Trustee to sell his residence in order to pay mounting debts. The mortgagee had been threatening to take possession of the property and exercise its power of sale. It was refusing to negotiate another repayment plan. Byrne was quite concerned about the proposal sale and vigorously opposed it.
- [5] The part of the complaint which, Byrne said, attracted the protections of the *Anti-Discrimination Act* 1991 was that the Public Trustee had discriminated against him by refusing to take any legal action on his behalf against insurance companies and a firm of solicitors. Byrne maintained that the first owed him substantial amounts of money and the second was liable to pay him damages.
- [6] Mr Rangiah was satisfied that the decision not to pursue legal proceedings against the insurance companies and the solicitors was made bona fide in what the Public Trustee and Mr Kelly perceived to be the best interests of Byrne. Mr Rangiah expressed the view that, had the Public Trustee been administering the financial affairs of a person without Mr Byrne’s incapacity, the same decision not to pursue proceedings would have been made as it would have been in the best interests of the

person. He went on to find that Byrne had not made out a case that the Public Trustee had discriminated against him.

- [7] There were other allegations made by Byrne against Kelly and each of those was found not to have been proved.

Notice of appeal

- [8] On 16 April this year Byrne filed a “Notice of Appeal” against the decision of Mr Rangiah in which he sought that that decision be quashed pursuant to s 218(a) of the *Anti-Discrimination Act* 1991 and that the matter be remitted to the Tribunal for rehearing.

- [9] The grounds stated in the notice are unrelated to either Byrne’s initial complaint or the decision of the Tribunal. They refer, amongst other things, to Byrne’s will, persons who are said to be beneficiaries under the will, the views of the Prime Minister about freedom of information provisions, and assertions of actions of some people amounting to perverting the course of justice and perjury.

Requirements for matters of appeal

- [10] Section 217(1) of the *Anti-Discrimination Act* 1991 provides:
 “A party to a proceeding before the tribunal may appeal to the Supreme Court against a tribunal decision on a question of law.”
- [11] A question of law can arise in the following circumstances:
- (a) when construing statutory provisions (see *Azzopardi v Tasman UEB Industries Limited* (1995) 4 NSWLR 139 at 156-7);
 - (b) when determining whether facts which have been fully found fall within the provision of a statute (see *Hope v Bathurst City Council* (1980) 144 CLR 1 at 7).
 - (c) when considering whether a consideration which was taken into account was irrelevant (see *Gray v Comcare* (2004) 139 FCR 41 at paragraph 11);
 - (d) when considering whether a relevant consideration that the decision maker was bound to take into account was not taken into account (see *Craig v South Australia* (1995) 184 CLR 163 at 179; *Minister for Aboriginal Affairs v Peko Wallsend* (1986) 162 CLR 24 at 39);
 - (e) when determining whether a conclusion of fact is supported by any evidence (see *Lombardo v FCT* (1979) 40 FLR 208 at 210);
 - (f) when considering whether procedural fairness has been denied to a party (see *Clements v IAC* (2003) 131 FCR 28 at paragraphs 8 and 66).

Conclusion

- [12] The notice of appeal in this matter is: difficult to follow, diffuse and unrelated to the matter that was decided by Mr Rangiah. It does not raise a question of law with respect to anything contained within the reasons for the decision of the Tribunal. As such, it is not a notice of appeal in accordance with the *Anti-Discrimination Act* and so it is appropriate to declare that this proceeding has not, for want of jurisdiction, been properly started and I strike out the “Notice of Appeal” filed on 16 April 2008.

[13] The applicants do not seek an order for costs and no order is made.