

Reid v Reid [2007] NTSC 7

PARTIES: STEPHEN JAMES REID

v

JACQUELINE KICONCO REID

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO: JA 2 of 2006 (20410580)

DELIVERED: 12 February 2007

HEARING DATES: 8 May 2006

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

JUSTICES ACT – Justices appeal – leave to appeal against restraining orders under the Domestic Violence Act – appeal on grounds that applicant was not given adequate direction as a self-represented litigant and did not receive a fair trial – notice of appeal not filed within time set out under s 171(2) of the Justices Act – grounds for failure to file the notice of appeal within time not made out – leave to appeal refused.

Domestic Violence Act
Justices Act s 171(2)

REPRESENTATION:

Counsel:

Appellant: S Reid (self represented)
Respondent: F Davis

Solicitors:

Appellant: Self represented
Respondent: F Davis

Judgment category classification: B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Reid v Reid [2007] NTSC 7
No 2 of 2006 (20410580)

IN THE MATTER OF the *Justices Act*

AND IN THE MATTER OF an appeal
against restraining orders made in the
Court of Summary Jurisdiction at Darwin
under the *Domestic Violence Act*

BETWEEN:

STEPHEN JAMES REID
Applicant

AND:

JACQUELINE KICONCO REID
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 12 February 2007)

Introduction

- [1] This is an application for leave to appeal against two restraining orders that were made by the Court of Summary Jurisdiction under the Domestic Violence Act on 28 July 2004. It is necessary for the applicant to obtain leave to appeal as the notice of appeal was filed in this court on 6 January 2006 which is more than 16 months after the time specified by s 171(2) of the Justices Act for the filing of a notice of appeal.

[2] Appeals against restraining orders made by the Court of Summary Jurisdiction under the Domestic Violence Act are governed by the Justices Act. Section 171(2) of the Justices Act provides that every appeal shall be instituted within one month from the time of the order appealed against. Provided that where the court is of opinion that, by reason of the remoteness from the seat of the court of the place at which the order was effected or made, an extension of the time within which notice of appeal from the order may be given is reasonable, the court may extend that time for such further period, not exceeding 3 months, as the court thinks fit. Section 165 of the Justices Act provides that the Supreme Court may dispense with compliance with any condition precedent to the right of appeal, as prescribed by the Justices Act, if, in the court's opinion, the appellant has done whatever is reasonably practicable to comply with the Justices Act.

The history of the application for leave to appeal

[3] The history of the proceeding is as follows. At all times the applicant has been self represented. On 28 July 2004 following a summary hearing the Court of Summary Jurisdiction made two restraining orders against the applicant. First, that for a period of three months from 28 July 2004 the applicant shall not assault or threaten to assault Jacqueline Reid. Secondly, that for a period of three months from 28 July 2004 the applicant shall not behave in an offensive and provocative manner towards Jacqueline Reid.

The restraining orders expired on 28 October 2004. The applicant told the court that after the restraining orders expired Jacqueline Reid made two more applications for restraining orders which were contested by the applicant. The first application for a further restraining order was dismissed and the second application was withdrawn. On 6 January 2006 the applicant filed a notice of appeal in the Supreme Court. He did not file an application for leave to appeal. On 26 April 2006 the matter came before Riley J for an adjournment application. His Honour refused the applicant's application to adjourn the appeal and his Honour informed the applicant that it would be necessary for him to seek leave to appeal and that he should put his argument in writing. On 8 May 2006 the applicant's application for leave to appeal was heard in the Supreme Court.

- [4] The applicant's sole ground of appeal is that he did not receive a fair hearing because the stipendiary magistrate who heard the application for the restraining orders in the Court of Summary Jurisdiction failed in his duty to give the applicant adequate direction as a self-represented litigant and he was extremely hostile to the applicant.

The applicant's argument for an extension of time

- [5] The applicant informed the court of the following matters. At the time the restraining orders were made by the Court of Summary Jurisdiction he was suffering from a medical condition that incapacitated him from time to time and required him to undergo surgical and other medical procedures. He was

admitted to hospital on 17 May 2004. He was required to undergo keyhole surgery and he was still suffering from pain in his kidneys when he appeared before the Court of Summary Jurisdiction on 28 July 2004 as his condition had not been fully diagnosed. The applicant had retained a solicitor, Ms Marguerite Boehm, to act for him in relation to various family matters. He retained her services in April 2004. However, the applicant said that Ms Boehm told him that she did not appear in matters arising under the Domestic Violence Act. It was a simple matter that he could do for himself. He accepted her advice and he was self represented when he appeared before Mr Gillies SM on 28 July 2004. However, immediately after the Court of Summary Jurisdiction made the restraining orders on 28 July 2004 the applicant telephoned Ms Boehm and he told her that he was not happy with the outcome of the domestic violence proceedings. He did not accept that he was a perpetrator of domestic violence. The applicant told the court that Ms Boehm told him that she thought the result was a good result. She said that usually such orders were made for a much longer period than 3 months. Although he was not happy the applicant accepted Ms Boehm's advice and he did not instruct her to file an appeal against the orders made by the Court of Summary Jurisdiction.

- [6] The applicant did nothing for the three month period that the restraining orders remained in force because he and Ms Reid reconciled their differences. Ms Reid lived with him for most of that time. They started living together about three days after the orders were made. He did not wish

to engage in any further litigation during this period as he was trying to salvage his marriage for the sake of his child.

- [7] The applicant's attempt at reconciliation with his wife was unsuccessful and their marriage broke down again in about August 2004. The marriage had irretrievably broken down by about 10 November 2004. As a result of the break down of his marriage the applicant attended a Lone Fathers meeting in November or December 2004. He told those in attendance at the meeting that domestic violence orders were being used in lots of ways against him. He was advised he could appeal out of time against the orders and that he should contact the Darwin Community Legal Service. The applicant did so in about December 2004. He telephoned them from Jabiru. He was told by whomever he spoke to at the Darwin Community Legal Service that it was a requirement that a party file a notice of appeal against a domestic violence order within 28 days of the order being made but that you could obtain special leave to appeal.
- [8] The applicant told the court that he did not file a notice of appeal after he had received advice from the Darwin Community Service in November or December 2004 until 6 January 2006 because of his ill health. He said that between November 2004 and February 2005 he spent three weeks in hospital in Perth and he was also bed ridden for a considerable period of that time. He underwent exploratory surgery on 24 November 2004 and he only worked for about three and a half months during 2005. He last underwent surgery in February 2006.

[9] The applicant also told the court that the reason he is pursuing the appeal in spite of the fact that the restraining orders have expired is that the orders adversely impact upon his employment prospects because they impact upon his ability to retain and renew certain licenses. However, his evidence in this regard was very vague, non-specific and lacking in detail.

[10] Having considered the whole of the appellant's evidence I find that the applicant's ill health did not prevent him from filing a notice of appeal or an application for leave to appeal during the three months that the restraining orders remained in force. Nor was the applicant's ill health such as to prevent him filing a notice of appeal or an application for leave to appeal throughout the whole of 2005. The applicant was involved in other litigation during 2005.

The respondent's argument

[11] The respondent forcefully argued that the applicant was vexatiously pursuing the application for leave to appeal for collateral purposes. For the reasons set out below it is unnecessary to consider the respondent's argument in any detail.

Conclusion

[12] Taking the applicant's argument at its highest it fails to establish any basis upon which leave to appeal should be granted under the relevant provisions of the Justices Act. The applicant's failure to file the notice of appeal within one month from 28 July 2004 had nothing to do with any reason of

remoteness from the court nor has the applicant done everything reasonably practicable to comply with the provisions of the Justices Act. The applicant did not file a notice of appeal within the time stipulated by s 171(2) of the Justices Act because he accepted his solicitor's advice about the outcome of the domestic violence application and because he wanted to try and reconcile his marriage for the sake of his child. He elected not to pursue the appeal until after his marriage had irretrievably broken down. In the circumstances leave to appeal is refused.

[13] I am also of the opinion that the applicant did receive a fair hearing in the Court of Summary Jurisdiction. Although the presiding magistrate had a somewhat idiosyncratic style, he informed the appellant of the nature of the proceeding and the manner in which the hearing would proceed; he informed the applicant of the substantive issues; and he gave him a fair opportunity to cross examine Ms Reid and to present his own case.

Orders

[14] The application for leave to appeal out of time is refused and the applicant's notice of appeal is struck out.

[15] I will hear the parties as to costs.
