

Step v NTA [2007] NTSC 21

PARTIES: STEP, ANTHEA KANDAPUMA
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION

FILE NO: LA 14 of 2005 (20214852)

DELIVERED: 27 March 2007

HEARING DATES: 15 & 16 March 2007

JUDGMENT OF: SOUTHWOOD J

APPEAL FROM: Decision of Mr H Bradley CSM made on 13 March 2006

CATCHWORDS:

COSTS – Recovery of costs - appeal against decision of the Local Court – successful litigant in person – out of pocket expenses - gratuitous assistance by father – appeal dismissed

Practice and procedure - application to strike out appeal – incompetent, frivolous and vexatious grounds – application dismissed

Cachia v Hanes (1991) 23 NSWLR 304; *Harvey v Phillips* (1956) 95 CLR 235; *Rowan v Cornwall* (No 6) [2002] SASC 234; *Secretary, Department of*

Foreign Affairs and Trade v Boswell (1992) 111 ALR 553; *Spies v Commonwealth Bank of Australia* (1991) 24 NSWLR 691, applied

Griffith v Kerkemeyer (1977) 139 CLR 161; *Scott v Northern Territory of Australia & Ors* [2004] NTCA 14; *Re Tyson*; *Tyson v Webb* (1906) 7 SR (NSW) 91, cited

REPRESENTATION:

Counsel:

Appellant:	V Step (the appellant's father with leave of the Supreme Court)
Respondent:	I Morris

Solicitors:

Appellant:	Nil
Respondent:	Halfpennys

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

Step v NTA [2007] NTSC 21
No LA 14 of 2006 (20214852)

BETWEEN:

STEP, ANTHEA KANDAPUMA
Appellant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 27 March 2007)

Introduction

- [1] On 15 and 16 March 2007 I heard four matters involving the parties to this appeal. First, I heard an amended application for leave to appeal in Supreme Court proceeding No LA 13 of 2006 (20214852). The appellant sought leave to appeal against a cost order made by Mr Bradley CSM by consent in Local Court proceeding No 20214852, which was an application that was filed by the appellant for victims assistance in the Local Court (the application for crimes victims' assistance). Mr Bradley CSM ordered that the respondent pay the appellant's reasonable costs of the application for crimes victims' assistance, costs to be taxed in default of agreement. The costs order was made by consent of the parties and in accordance with

clause 3 of a written consent agreement signed by the appellant and the solicitors for the first, third, fourth, fifth and sixth respondents to the application for crimes victims' assistance.

- [2] Secondly, I heard an application, which was filed by the respondent in this appeal, to strike out the notice of appeal on the basis that the appeal was incompetent. The application to strike out the appeal was filed on 4 December 2006. The application first came before me on 11 December 2006 and subsequently on 19 January 2007, 30 January 2007 and 15 March 2007.
- [3] Thirdly, I heard the appeal in this proceeding. The appeal was commenced by notice of appeal filed by the appellant on 10 April 2006. The appellant appeals against the decision Mr Bradley CSM made on 13 March 2006. His Honour disallowed the appellant's appeal against a decision of the taxing officer made on 29 September 2005 disallowing the following items of cost that were set out in the appellant's taxable bills of costs and various amendments and addenda thereto which were filed in the application for crimes victims' assistance in the Local Court:

Bill of costs

NR	DATE	SERVICE	PROVIDER	AMOUNT (\$)
44	22/07/04	Collection of summons	Va'clav Step	79.00
53	10/08/04	Filing of affidavit	Va'clav Step	79.00
66	29/11/04	Filing and serving applications and affidavits	Va'clav Step	109.00
75	25/02/05	Filing applications	Va'clav Step	79.00

81	04/03/05	Collecting, mailing and service of summons	Va'clav Step	129.00
90	30/03/05	Filing of applications and summons	Va'clav Step	79.00
91	31/03/05	Service of application and Notice to Inspect, filing of affidavits and collecting summons	Va'clav Step	109.00
96	01/04/05	Service of application and Notice to Inspect	Va'clav Step	109.00
100	08/04/05	Service of affidavits	Va'clav Step	109.00
101	12/04/05	Filing of affidavits	Va'clav Step	79.00
102	05/05/05	Filing of Consent Agreement	Va'clav Step	79.00
		TOTAL		1118.00

The amendments to the Bill of Costs

NR	DATE	SERVICE	PROVIDER	AMOUNT
2A	02/10/02	Filing of the Application for Assistance	Va'clav Step	79.00
17A	29/05/03	Filing of affidavits	Va'clav Step	79.00
21A	03/06/03	Filing of affidavit	Va'clav Step	79.00
21B	10/06/03	Filing of the Amended Application	Va'clav Step	79.00
23B	13/06/03	Serving on respondent Nr 6	Va'clav Step	79.00
23C	17/06/03	Serving on respondent Nr 5	Va'clav Step	79.00
25A	19/06/03	Filing of proof of service on the respondents Nr 5 and 6	Va'clav Step	79.00
25B	19/06/03	Serving on respondent Nr 4	Va'clav Step	79.00
25C	24/06/03	Serving on respondent Nr 2	Va'clav Step	79.00
26A	31/07/03	Filing of proof of service	Va'clav Step	79.00
26B	28/08/03	Serving on respondent Nr 3	Va'clav Step	79.00
26C	28/08/03	Filing of proof of service on the respondent Nr 3	Va'clav Step	79.00
28A	28/11/03	Ordering transcript	Va'clav Step	79.00
29A	11/12/03	Collecting transcript	Va'clav Step	79.00

31A	18/12/03	Collecting and serving application	Va'clav Step	79.00
31B	22/01/04	Ordering transcript	Va'clav Step	79.00
31C	27/01/04	Serving application on R 2	Va'clav Step	79.00
33A	29/01/04	Serving application on R 1,3,4,5,6	Va'clav Step	79.00
33B	29/01/04	Filing of proof of service	Va'clav Step	79.00
37B	09/02/04	Filing and serving of affidavits, filing proof of service of affidavits	Va'clav Step	79.00
38A	16/02/04	Collecting transcript, filing application	Va'clav Step	79.00
38B	09/03/04	Ordering transcript	Va'clav Step	79.00
41A	30/03/04	Collecting transcript, filing affidavit	Va'clav Step	79.00
41B	15/04/04	Serving Notice to Produce on NT	Va'clav Step	79.00
42A	23/04/04	Filing application	Va'clav Step	79.00
42B	30/04/04	Collecting and serving application, filing proof of service and supporting affidavits	Va'clav Step	79.00
42C	25/05/04	Serving and filing Notices to Dispute Facts	Va'clav Step	79.00
46A	29/07/04	Filing proof of service of Summons to Telstra	Va'clav Step	79.00
55A	12/08/04	Filing application	Va'clav Step	79.00
55B	17/08/04	Inspecting and copying Summons to Telstra	Va'clav Step	79.00
55C	26/08/04	Collecting and serving application, filing proof of service	Va'clav Step	79.00
55D	26/08/04	Collecting and serving application, filing proof of service	Va'clav Step	79.00
55E	07/09/04	Ordering transcript	Va'clav Step	79.00
61A	13/10/04	Collecting transcript	Va'clav Step	79.00
66A	30/11/04	Filing proof of service	Va'clav Step	79.00
84A	14/03/04	Filing proof of service	Va'clav Step	79.00
84B	14/03/04	Filing proof of service	Va'clav Step	79.00
96A	06/04/05	Filing proofs of service	Va'clav Step	79.00
96B	08/04/05	Filing affidavit	Va'clav Step	79.00
		TOTAL		3081.00

Addendum to the Bill of Costs

NR	DATE	SERVICE	PROVIDER	AMOUNT (\$)
105	12/07/05	Serving Summons for Taxation	Va'clav Step	79.00
109	26/07/05	Filing and serving of Notice of Addendum to the Bill of Costs	Va'clav Step	109.00
		TOTAL		188.00
		GRAND TOTAL of the Bill of Costs and Addendum to the Bill of Costs		4387.00

- [4] Fourthly, I heard the cross appeal. The notice of cross appeal was filed by the respondent on 26 April 2006. The respondent cross appeals against the decision of Mr Bradley CSM made on 13 March 2006 allowing the appellant's appeal against the taxing officer's decision in respect of certain cost items that were set out in the appellant's bills of costs. Mr Bradley CSM allowed the appellant to recover both items 57 and 58 in full in the sum of \$1391.50 and Mr Step's time and travel expenses in the amount of \$300, representing the reasonable costs of serving each of the respondents to the application for crimes victims' assistance in the Local Court with the originating process. Items 57 and 58 were disbursements being for the costs of four psychiatric reports that were obtained by the appellant from two psychiatrists.
- [5] All of the four matters were heard together by the consent of the parties. At all times the appellant was represented by her father, Mr Va'clav Step, who

was given leave on 11 December 2006 to appear on her behalf. He is not a lawyer. Mr Morris, of counsel, appeared for the respondent.

Supreme Court proceeding No LA 13 of 2006

[6] On 15 March 2007 I dismissed the appellant's amended application for leave to appeal in Supreme Court proceeding No LA 13 of 2006. The appellant applied for leave to appeal against a costs order made by Mr Bradley CSM on 6 May 2005 in the application for crimes victims' assistance in the Local Court. The grounds of the application for leave to appeal in Supreme Court proceeding No LA 13 of 2006 were set out in an affidavit that was sworn by the appellant on 10 April 2006 and were developed by Mr Step in his oral and written submissions. In summary, the grounds of the application for leave to appeal were that the costs order, which was made by Mr Bradley CSM on 6 May 2005, was obtained either by mistake, duress or misrepresentation. Instead of the order made by Mr Bradley CSM on 6 May 2005 the appellant sought an order that the respondent pay the appellant's costs on an indemnity basis.

[7] I dismissed the application for leave to appeal in Supreme Court proceeding No LA 13 of 2006 because it was misconceived and there was no evidence of mistake, duress or misrepresentation. An application to set aside a consent order in the circumstances contended by the appellant must be made in a separate proceeding: *Harvey v Phillips* (1956) 95 CLR 235 at 243-244; *Spies v Commonwealth Bank of Australia* (1991) 24 NSWLR 691.

Handley JA stated at pp 696 to 697 of *Spies v Commonwealth Bank of*

Australia (supra) that:

At this point it is convenient to refer to the nature of the jurisdiction which has been invoked by the appellant's motion to set aside what is in substance a consent judgment. In *Harvey v Phillips* (1956) 95 CLR 235 at 243-244, the High Court said:

“... The question whether the compromise is to be set aside depends upon the existence of a ground which would suffice to render a simple contract void or voidable or to entitle the party to equitable relief against it, grounds for example such as illegality, misrepresentation, non-disclosure of a material fact where disclosure is required, duress, mistake, undue influence, abuse of confidence or the like. The rule appears rather from positive statements of the grounds that suffice ... but there is a dictum of Lindley LJ which is distinct enough ‘... nor have I the slightest doubt that a consent order may be impeached, not only on the ground of fraud but upon any grounds which invalidate the agreement it expresses ... To my mind the only question is whether the agreement on which the consent order was based can be invalidated or not. Of course if that agreement cannot be invalidated the consent order is good: *Huddersfield Banking Co Ltd v Lister* [1895] 2 Ch 273 at 280.”

See also *Deputy Commissioner of Taxation v Chamberlain* (1990) 26 FCR 221 at 230-231; 93 ALR 729 at 737-738 (reversed on appeal on other grounds).

However it is also established that the jurisdiction to set aside a consent order on such a ground should be invoked by a new action brought for that purpose and not by a motion in the original proceedings: see *Ainsworth v Wilding* [1896] 1 Ch 673 and *Kinch v Walcott* [1929] AC 482 at 494; compare *Phillips v Walsh* (1990) 20 NSWLR 206. This rule was described by the Privy Council as “alone consistent with convenient practice”: see *Kinch v Walcott* (at 494)....

The respondent's application to strike out the appeal

[8] The application to strike out the appeal was made on the alternative grounds that either the appeal was incompetent because the appellant had not pleaded an error of law or the appeal was frivolous and vexatious and could not possibly succeed. In my opinion the application to strike out the appeal should be dismissed. The appeal was based on an alleged error of law, namely the failure of Mr Bradley CSM to apply the principles enunciated by the New South Wales Court of Appeal *Cachia v Hanes* (1991) 23 NSWLR 304 at 321 to the out of pocket expenses of the appellant and it cannot be said that the appeal was unarguable.

[9] I have determined that I should consider both the appeal and cross appeal.

The grounds of appeal and cross appeal

[10] The following grounds of appeal were pleaded in the notice of appeal:

1. On 2 October 2002, the appellant Anthea Step made the Application for Assistance Nr 20214852 under the Crimes (Victims' Assistance) Act in the Local Court at Darwin. The application was successful and Anthea Step was granted an Assistance Certificate in the sum of \$25,000.00.
2. The appellant Anthea Step was not represented by a solicitor, however, her father, Va'clav Step, was given leave to make submissions to the court on her behalf, because Anthea Step suffered mental injuries due to the crimes of the Respondents and her involvement in the proceeding could make her mental injuries worse. Va'clav Step also did for Anthea Step tasks like the photocopying printing, posting, faxing, filing, collecting and serving of documents in the proceeding.

3. On 3 June 2005 Anthea Step paid to Va'clav Step \$5031.00 for performing those tasks and for his travelling expenses. Anthea Step claims that she was entitled to be repaid by the Northern Territory the money she paid to Va'clav Step for his travelling expenses and for the time he spent on photocopying, printing posting, faxing filing, collecting and serving of documents in the proceeding as they are her out-of-pocket expenses.
4. The appellant Anthea Step relies generally on the common law principle that the litigant in person is entitled to be disbursed for his/her out-of-pocket expenses and specifically on [*Cachia v Hanes* (1994) 179 CLR 403]

[11] The appellant relies on the following statement of principle by Handley JA in *Cachia v Hanes* (supra) at 321 namely:

The total amount recoverable by a litigant in person should never be allowed to exceed what would have been recoverable if solicitors had been retained. *However there is no principle which requires the out of pocket expenses of a litigant in person to be restricted item by item to the amounts recoverable on taxation by solicitors. A litigant in person is entitled to employ agents to perform necessary work and to recover reasonable out of pocket expenses thus incurred. In this way a litigant in person can avoid loss of personal time and mitigate the effect of the rule that denies recovery fo such loss* [emphasis added].

If, as a matter of law, the out of pocket expenses recoverable by a litigant in person were restricted to the amounts recoverable by solicitors for doing the same work that litigant may be unable to have the work done by an agent except at a loss. Thus in the present case one can infer that it would not have been possible for the appellant to have engaged an agent such as a law stationer, courier service or mercantile agent, to file his notice of appearance at a fee of only \$8.60.

Overall the costs of a litigant in person properly recoverable on taxation should be much less than the amount that would have been recoverable if solicitors had been retained. There is therefore no reason why the appellant should not recover his actual out of pocket expenses properly and reasonably incurred although viewed in

isolation they exceed the amounts recoverable by a solicitor for the same work.

- [12] The decision of the New South Wales Court of Appeal in *Cachia v Hanes* (supra) was approved by the Full Court of the Federal Court of Australia in *Secretary, Department of Foreign Affairs and Trade v Boswell* (1992) 111 ALR 553.

Facts

- [13] On 2 October 2002 the appellant made an application for assistance under the Crimes (Victim's Assistance) Act in proceeding No 20214852 in the Local Court at Darwin. She made the application for assistance because she claimed that she suffered mental injuries as the result of a crime committed by Mr John Joseph Collins which caused the death of her mother. The application for crimes victims' assistance was filed by the appellant's solicitor.
- [14] At the time that the application for crimes victims' assistance was commenced the appellant was a juvenile and her father, Mr Va'clav Step, was appointed her litigation guardian. However, during the course of the proceeding in the Local Court the appellant reached the age of majority. Mr Step continued to appear on behalf of the appellant after she reached the age of majority.
- [15] After the application for crimes victims' assistance was commenced by the appellant in the Local Court an inquest was held into the death of her

mother. During the Inquest evidence emerged which may have suggested that the death of her mother was caused not only by Mr Collins but also by Police Officers Dean Andrew Goldstein, Stephen John Cook, Julianne Kay Hurley and Sally Anne Zylstra. As a result the appellant instructed her solicitor to add all four police officers as respondents to the application for crimes victims' assistance in the Local Court. However, a disagreement arose between the appellant and her solicitor and the appellant's solicitor ceased to act on her behalf in the application for crimes victims' assistance. The appellant was unable to retain any other solicitors to act on her behalf and her father, Mr Step, was given leave to appear in the Local Court on her behalf.

[16] On behalf of the appellant, Mr Step obtained leave from the Local Court to add the four police officers as the third, fourth, fifth and sixth respondents to the application for crimes victims' assistance. After the joinder of the four police officers as respondents the application for crimes victims' assistance became protracted because the four police officers vigorously defended the claim that was made against them by the appellant. Two common law proceedings on behalf of the appellant were also commenced in the Supreme Court. One of the proceedings was filed in 2003. The other was filed in 2004.

[17] On or about 11 March 2005 the appellant's application for crimes victims' assistance was resolved by way of a written consent agreement signed by the appellant and the solicitors for the first, third, fourth, fifth and sixth

respondents to the application for crimes victims assistance in the Local Court. The terms of the consent agreement were as follows:

The parties agree that:

1. An assistance certificate issue in the sum of \$25,000.00 to the [appellant].
2. Pursuant to s 13A(1) [of the Crimes Victims Assistance Act] the [appellant] repay to the [respondent] the lesser amount of:
 - 2.1 the amount of the assistance certificate being \$25,000; or
 - 2.2 such amount as the [appellant] may recover by way of damages for “nervous shock” against the defendants or any of them in Supreme Court proceedings 183 of 2003 and 131 of 2004.
3. The [respondent] pay the [appellant’s] reasonable costs to be taxed in default of agreement.

[18] On 6 May 2005 Mr Bradley CSM made orders in terms of the consent agreement in the Local Court. At some time after the commencement of the application for crimes victims’ assistance in the Local Court and prior to Mr Bradley CSM making the consent orders on 6 May 2005, the appellant and Mr Step agreed that the appellant would repay Mr Step for any money that he spent assisting her with her application for crimes victims’ assistance.

[19] The appellant’s costs of the application for crimes victims’ assistance could not be agreed between the parties, bills of costs were prepared by Mr Step on behalf of the appellant and the parties proceeded to taxation. On

12 August 2005 the taxing officer determined that the appellant's costs of the application for crimes victims' assistance were to be taxed on the standard basis of costs and she disallowed a number of items that were in the various bills of costs including the items set out in par 3 above. Those items represent various attendances by Mr Step which largely involved him travelling from Palmerston to Darwin to file or serve various documents on behalf of the appellant in the application for crimes victims' assistance. The amount of each costs item referred to in par 3 above was calculated on the following basis. The cost of Mr Step travelling the return trip from Palmerston to Darwin and back, which was determined as \$49 being the 79 kilometres distance of the round trip multiplied by 63 cents, plus the cost of Mr Step's time spent travelling from Palmerston to Darwin and back and the time actually spent serving the document, which was valued at \$15 per hour. So that if Mr Step took two hours to serve a document the cost item in the bill of costs was \$79. The 63 cents was a cost figure for work related motor vehicle expenses which was taken from method one at page 45 of Tax Pack 2005 published by the Australian Taxation Office.

[20] During his submissions to this court Mr Step very frankly and honestly admitted that there was no agreement between appellant and him that he could charge her at the rates referred to in par 19 above for doing the work referred to in the costs items set out in par 3 above. The only agreement between the appellant and Mr Step was that she would repay him for any money that he actually spent assisting her with her application for crimes

victims' assistance. The costs items set out in par 3 above appear to have been specifically prepared for cost recovery purposes as part of the process of taxation of costs.

[21] On 3 June 2005, which was after the respondent paid the appellant the sum of \$25,000, the appellant paid Mr Step the sum of \$15,103.90. A receipt signed by Mr Step dated 25 July 2005 was tendered during the hearing in this court. The receipt acknowledges that the sum of \$15,103.90 was paid by the appellant to Mr Step for the provision of services relating to photocopying, printing, posting, faxing, filing, collecting and serving documents and to repay money that was lent by Mr Step to the appellant for the purchase of medical reports, transport, office equipment and stationary needed to run the application for crimes victims' assistance.

[22] During the course of the application for crimes victims' assistance the appellant was examined by two psychiatrists and she obtained four psychiatric reports, two from each of the psychiatrists. The reports were obtained both for the purpose of reviewing the appellant's psychiatric condition and in order to make an application that Mr Step be reinstated as the appellant's litigation guardian after she reached the age of majority.

[23] After the appellant's bills of costs were taxed by the taxing officer on 12 August 2005, the appellant made an application that the taxing officer reconsider a number of the items that were disallowed by the taxing officer on 12 August 2005. On 29 September 2005 the taxing officer delivered her

decision about the reconsidered items of costs. She again disallowed the costs items set out in par 3 above and she only allowed the appellant the costs of two of the four psychiatric reports that she obtained. The appellant appealed the decision of the taxing officer that was delivered on 29 September to the Local Court. On 13 March 2006 Mr Bradley CSM decided the appellant's appeal from the taxing officer.

The argument of the appellant

[24] The argument of the appellant is relatively straight forward. On behalf of the appellant Mr Step submitted both orally and in his carefully prepared and detailed written submissions that he had been retained as the appellant's agent to attend to various matters on her behalf including the attendances referred to in the costs items set out in par 3 above. The appellant paid him for his attendances. The payment of such costs was an out of pocket expense of the appellant and as such it was recoverable from the respondent: *Cachia v Hanes* (supra) at 321.

[25] Mr Step also submitted that the costs of obtaining all of the psychiatric reports were reasonably incurred. They were obtained both for the purpose of the appellant's unsuccessful application that Mr Step be reappointed her litigation guardian after she had reached the age of majority and for the purpose of reviewing the appellant's psychiatric condition.

The arguments of the respondent

[26] Mr Morris made the following arguments on behalf of the respondent. First, the appellant did not incur any liability for the costs items referred to in par 3 above. The items are not out of pocket expenses. Mr Step was not retained as the appellant's agent. Secondly and alternatively, the costs items the subject of the appeal were not out of pocket expenses because they were Mr Step's costs of preparing the appellant's case in the crimes victim's assistance application in the Local Court. Mr Step had wrongly assumed the role of acting as if he was the appellant's legal representative. A litigant in person is not entitled to recover costs in the nature of preparation: *Scott v Northern Territory of Australia & Ors* [2004] NTCA 4. Mr Step could not charge the appellant for such work as to do so would be contrary to the Legal Practitioners Act which gives lawyers a monopoly in relation to such work. Thirdly, even if Mr Step was the appellant's agent, he could not charge her for the costs items which are the subject of the appeal as to do so would be contrary to the provisions of the Commercial and Private Agents Licensing Act. Fourthly, the appellant is not entitled to recover remuneration for any work that he did for the appellant while he was her litigation guardian: *Re Tyson; Tyson v Webb* (1906) 7 SR (NSW) 91. Finally, the costs items which are the subject of this appeal were not reasonably incurred. Other services were more cheaply available to the appellant.

[27] The \$300 allowed by Mr Bradley CSM on 13 March 2006 should have been disallowed for the reasons set out in par 26 above. The appellant's costs of obtaining all of the psychiatric reports should not have been allowed because a number of the psychiatric reports were obtained for the appellant's application that Mr Step be appointed her litigation guardian after she had obtained the age of majority, the appellant was unsuccessful in that application and Mr Bradley CSM had made an order that each party bear their own costs of that application.

Conclusion

[28] In my opinion, while the decision of Handley JA in *Cachia v Hanes* (supra) at 321 contains a correct statement of the applicable principles and should be followed by this court, the appeal should be dismissed. On Mr Step's own admission to this court he was not retained as the appellant's agent and the costs items which are the subject of the appeal are not part of the appellant's out of pocket expenses. The appellant did not incur a liability to pay the costs items which are the subject of the appeal. She only agreed to repay Mr Step any money that he spent assisting her with her claim for crimes victims' assistance. The claim for the costs items which are the subject of the appeal is a claim for costs of voluntary assistance in the nature of the principles set out in *Griffith v Kerkemeyer* (1977) 139 CLR 161 and such costs cannot be allowed: *Rowan v Cornwall* (No 6) [2002] SASC 234 at par 16 per Debelle J. The appellant is not entitled to recover costs for the voluntary assistance provided by her relatives. For the same reasons

the cross appeal against the \$300 representing the costs of Mr Step serving each of the respondents with the originating process should be allowed.

[29] Save to say that the respondent's argument based on the Commercial and Private Agents Licensing Act is without merit as Mr Step was not carrying on a business, it is unnecessary to determine the other arguments made by the respondent in relation to the appeal.

[30] In my opinion the cross appeal in relation to items 57 and 58 being cost items in relation to the costs of the psychiatric reports should be disallowed. The psychiatric reports were obtained for a dual purpose including a review of the appellant's psychiatric condition and it was not established that Mr Bradley CSM erred in law in this regard. The costs were reasonably incurred.

Orders

[31] I make the following orders:

1. The application to strike out the notice of appeal is dismissed.
2. The appeal is refused.
3. The cross appeal is allowed in part.
4. The decision of Mr Bradley CSM allowing the appellant costs in the sum of \$300 representing Mr Step's time and travel expenses in

serving each of the respondents with the originating process in the application for crimes victims' assistance is set aside.

[32] I will hear the parties further as to costs.
