

JURISDICTION : DISTRICT COURT OF WESTERN AUSTRALIA
IN CIVIL

LOCATION : PERTH

CITATION : LAUGHTON -v- MARSH [2018] WADC 172

CORAM : STEVENSON DCJ

HEARD : 21 NOVEMBER 2018

DELIVERED : Ex tempore

PUBLISHED : 11 DECEMBER 2018

FILE NO/S : APP BUN 1 of 2017

BETWEEN : ANDREW LAUGHTON
Appellant

AND

SHARYL MARSH
First Respondent

JAMES GLYNN MARSH
Second Respondent

ON APPEAL FROM:

Jurisdiction : MAGISTRATES COURT OF WESTERN
AUSTRALIA

Coram : MAGISTRATE PONTIFEX

File Number : BUN/GCLM/316 of 2015

Catchwords:

Civil procedure - Practice and procedure - Appeal from registrar's order -
Litigant in person - Non-compliance with order to pay security for costs -
Dismissal of proceedings

Legislation:

District Court Rules 2005 (WA), r 15, r 61

Result:

Appeal dismissed
Appellant pay respondent's costs

Representation:

Counsel:

Appellant : In person
First Respondent : Mr I Morison
Second Respondent : Mr I Morison

Solicitors:

Appellant : Not applicable
First Respondent : Morison Legal
Second Respondent : Morison Legal

Case(s) referred to in decision(s):

Glew v Frank Jasper Pty Ltd [2010] WASCA 87

STEVENSON DCJ: [This judgment was delivered extemporaneously on 21 November 2018 and edited from the transcript.]

I have had the opportunity to consider in full every document that has been filed in this court since the inception of the substantive appeal itself by the appellant (Mr Laughton), by his appeal notice filed on 23 January 2017.

The appeal notice seeks to appeal from a decision made in the Magistrates Court at Bunbury on 17 August 2016. The appeal itself, like almost every other step in these proceedings, is out of time and Mr Laughton requires leave to extend time.

The respondents are represented by Mr Morison. The respondents have filed a notice of intention to appear to the substantive appeal.

Before I deal with the extended interlocutory history of the matter, I will go straight to the purpose of the hearing today. It is concerned with an appeal notice originally filed by Mr Laughton on 6 July 2018 and subsequently purported to be amended by a further appeal notice filed on 2 November 2018. The first appeal notice I will refer to as the 'original appeal notice'. The second appeal notice I will refer to as the 'amended appeal notice'.

The reason for this appeal is because on 30 October 2017, Principal Registrar Melville made an order that Mr Laughton within 28 days pay \$13,000 into court by way of security for costs, and that in the meantime all further proceedings be stayed. The order was pronounced when Principal Registrar Melville delivered his reasons for decision in writing on 30 October 2017. At that time, both Mr Morison and Mr Laughton were present.

It follows that Mr Laughton was informed and fully cognisant of the requirement of the order that he pay into this court the sum of \$13,000 as security for the respondents' costs as a condition precedent to the continuation of these proceedings. To date Mr Laughton has not complied with that order. No appeal was lodged against Principal Registrar Melville's decision at the time.

On 24 May 2018, on application by the respondents, Deputy Registrar Harman made an order dismissing Mr Laughton's appeal in

this court by reason of Mr Laughton's non-compliance with the order made by Principal Registrar Melville on 30 October 2017.

This is the hearing of an appeal from that decision, being the order made by Deputy Registrar Harman on 24 May 2018 whereby he made the following orders:

- (1) The appeal be dismissed.
- (2) The appellant pay the respondents' costs of the appeal to be taxed.
- (3) The appellant pay the respondents' costs of the application.

In effect, this appeal is the third appeal in the history of the matter since the decision of the Magistrates Court on 17 August 2016. In each case, Mr Laughton requires leave to extend time by reason of his delay in the proceedings at the relevant step. It is now almost exactly one year since the payment of the \$13,000 was due and it still has not been paid into court by Mr Laughton.

The principles which govern this appeal are found in r 15 of the *District Court Rules* 2005 (WA) which provides that, if a party is dissatisfied with a decision of a registrar, the party may appeal to a judge. The appeal must be commenced within 10 days after the date of the decision or such longer period as the judge may allow. The appeal does not operate as a stay of proceedings unless a judge orders otherwise.

The position here, of course, is that the proceedings were effectively stayed in any event by the order made by Principal Registrar Melville on 30 October 2017. That was the object and purpose of requiring Mr Laughton to pay the \$13,000 into court by way of security for the respondents' costs. Plainly, the respondents ought not be put to further costs until that condition had been complied with for the continuation of the appeal.

In addition, for the purpose of this appeal, Mr Laughton was informed by letter from this court dated 18 October 2018 [folio 66], of the need to comply with r 61 of the *District Court Rules* in relation to the filing of written submissions. Mr Laughton has not complied with that rule which requires written submissions in support of the appeal to be filed at least two clear working days before the hearing.

The rule also requires the parties to file notice of any other documents or material that they seek to rely upon at least seven clear days before the hearing. In any event, it is sufficient to say that the rule was not complied with by Mr Laughton.

I accept that Mr Laughton is self-represented and I will say something about his position in that regard towards the end of these reasons for decision. I would, however, interpose that I fully appreciate the position he is in in those circumstances, particularly with respect to rules and the procedural rules that govern proceedings in this court.

On the basis that this is a new hearing with respect to the application by the respondents by chamber summons filed on 1 March 2018 that the substantive appeal be dismissed by reason of Mr Laughton's non-compliance with the orders made by the Principal Registrar on 30 October 2017 the following observations can be made. I also make findings consistent with these observations.

The matter came on for hearing initially before Deputy Registrar Hewitt in chambers on 26 April 2018. Mr Laughton appeared on that occasion by audio-link. Mr Morison appeared on behalf of the respondents noting, of course, that subsequently the respondents filed a notice of intention to abide by the court's decision in relation to the hearing of this appeal.

I infer that the chamber summons was not resolved on that occasion because the order made by Principal Registrar Melville on 30 October 2017 had not been sealed or extracted by the court. On that basis, Deputy Registrar Hewitt adjourned the hearing of the respondents' chamber summons to 24 May 2018 and gave Mr Laughton leave to again attend by audio-link. The purpose of the adjournment was fulfilled, and the orders Principal Registrar Melville made 30 October 2017 were sealed by the court and provided by Mr Morison to Mr Laughton.

At the same time, the court's letter providing the sealed copy of the orders was provided to Mr Laughton (this appears to be the document referred to in the second bullet point, under the heading 'Decision Details', on the first page of the amended appeal notice).

I reject Mr Laughton's purported explanation that his non-attendance on 24 May 2018 was because he interpreted the letter to be an indication or confirmation from the court that in some way (which is unspecified) the matter had been 'settled'. Further, he

therefore inferred, because he was not telephoned by the court on 24 May 2018, that there was no need to be concerned.

I accept his statement from the bar table that he was 'stressed' at the time and expecting the court to contact him on 24 May 2018. I accept his evidence that he did not make any attempt to contact the court when he was not contacted and that he did not take any steps immediately thereafter to ascertain the reason for not being audio-linked to the hearing.

In due course, having become aware that the original initiating appeal proceeding in the District Court had been dismissed by orders made by Deputy Registrar Harman on 24 May 2018, Mr Laughton filed the original appeal notice on 6 July 2018. It is difficult to discern the difference between the original appeal notice and the amended appeal notice because Mr Laughton has not marked up the second document in the way explained to him in the course of submissions.

It is agreed that the appeal should be heard and determined on the amended appeal notice which represents the final and best position of Mr Laughton for the purpose of the hearing. I also note, as Mr Morison (being an officer of the court) indicated today, there was no reference to the possibility of a springing order being made by Deputy Registrar Harman on 24 May 2018.

That was not a defect nor necessary in the circumstances by reason of the long non-payment of the money by Mr Laughton and the very plain and underlying position set out in various affidavits and other communications from Mr Laughton that he was unable to make the payment and effectively welcomed any delay in the proceedings. I raised with Mr Laughton the possibility of a springing order being made on the basis that payment be made within 48 hours.

That was met by further obfuscation and a plea for further time which, of course, would just create further delay in these proceedings. Ironically, it may be in the best interests of all parties, including Mr Laughton that the proceedings are brought to an end as they must inevitably beat some point in time. I am satisfied that there would be no proper purpose or utility, and it would not be in the interests of justice, for any further delay to be afforded for the payment to be the subject of a springing order.

There is nothing in the material before the court, including the statements of Mr Laughton, that gives the court any confidence that there is any prospect the payment would be made in the near future, or that there is any genuine or bona fide desire to progress the resolution of the appeal in this court. Reference to documents including the affidavit filed by Mr Laughton on 9 November 2017 only admit to a hope that he would be in a position at some future point in time as a result of 'delay' to make a payment.

All of this is explained by Mr Laughton in relation to his personal circumstances, work circumstances and other matters personal to him. He has not produced any evidence in this court that he has made any payment or indeed attempted to make any payment which has been refused. I do accept that there is some material on the court file which indicates an inquiry was made as to whether money could be paid by credit card. As I understand it, approval was granted in that regard.

In any event, it does not matter because the position today, almost exactly 12 months after the order was due to be complied with, is that it still has not been complied with.

My finding that there is no purpose in possibly allowing the proceedings to be continued is fortified by reason of the lack of interest demonstrated by the extensive non-compliance and inaction by Mr Laughton to bring the appeal to a finality (even accepting of course that the matter is stayed pending the payment into court of the amount in issue).

Evidence of non-compliance is found in the failure to comply with r 61 *District Court Rules* which I have already mentioned notwithstanding a letter from the court to Mr Laughton with respect to the requirements in that regard.

The fact is 12 months has now elapsed and there is still ongoing non-compliance throughout the entire period. Leave also is required to be granted for the substantive appeal to be brought in any event. This is because of the delay from the decision in the Magistrates Court and when this appeal was commenced. That period was between 17 August 2016, the date of the Magistrates Court decision and 23 January 2017, the date that this appeal was initiated in this court.

There is also a need, as mentioned in the course of submissions, for leave to bring this appeal and also for leave to extend the time to

pay the funds into court, in any event, and for leave to appeal out of time from the original order made by Principal Registrar Melville 13 months ago.

The position is compounded by reason of the fact that the respondents now have filed a bill of costs which is listed for hearing in this court on 13 December 2018. I note that the sum sought is about \$16,000. Of course leave was required, or would have been required, to amend the original appeal notice in any event.

So hearing the matter again, and reconsidering the order which was originally sought by chamber summons by the respondents on 1 March 2018, for these reasons including in particular the still ongoing non-compliance with the order in question made on 30 October 2017 for the payment into court, in my view, this appeal must be dismissed.

For these reasons the appeal that is heard today in relation to the orders made by Deputy Registrar Harman on 24 May 2018 is dismissed.

There should be an order that Mr Laughton pay the respondents' costs of this appeal that was dismissed today but those costs will be minimal because the respondents have filed a notice of intention to abide, thereby indicating that they did not intend to participate in this appeal and therefore their costs would be, as I have said, minimal.

There will be leave in the circumstances, notwithstanding the notice of intention to abide, for any costs order which might be sought to include the attendance and audio appearance of Mr Morison today.

In my view, Mr Morison's attendance was appropriate and necessary, notwithstanding notice was not given on the occasion when Mr Morison was present. This is by reason of the fact that Mr Laughton should have provided this evidence to inform the court of the background and circumstances of the making of the order to which he has appealed.

I do take into account, having had the opportunity to read it, the transcript of 11 October 2018 at which time both Mr Laughton and Mr Morison appeared before Deputy Registrar Harman. Deputy Registrar Harman made it clear, even though there were no written reasons for decision that, in effect, the reason for the orders he made dismissing the substantive appeal was because of the ongoing

non-compliance which was, of course, sought by the respondents by their 1 March 2018 chamber summons.

I indicated at the outset that I am cognisant and very mindful of the fact that Mr Laughton is self-represented. I have refreshed myself by reference to the reasons for decision of Principal Registrar Melville delivered 30 October 2017 in relation to the relevant principles as they have been expressed by courts, in particular, that a court should always be careful to see that the rights of an unrepresented litigant have not been obfuscated by their own advocacy - as was noted by the Court of Appeal in *Glew v Frank Jasper Pty Ltd* [2010] WASCA 87 referred to in [11] of the learned principal registrar's judgment.

I have taken one last look at the matter. I have considered everything afresh. In my view, for those reasons and in the interests of justice, the respondents are entitled at some point in time to have legal proceedings against them concluded. For all of these reasons, it is appropriate for this appeal to be dismissed with the costs order that I have made.

Orders

1. The appellant's appeal notices filed on 6 July 2018 and 2 November 2018 in relation to the orders made by Deputy Registrar Harman on 24 May 2018 be dismissed.
2. The appellant pay the respondent's costs of this appeal.

I certify that the preceding paragraph(s) comprise the reasons for decision of the District Court of Western Australia.

MJ
ASSOCIATE TO JUDGE STEVENSON

11 DECEMBER 2018