



HIGH COURT OF AUSTRALIA

15 August 2018

NOBARANI v MARICONTE
[2018] HCA 36

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales, holding that a new trial should be granted to the appellant on the basis that he was denied procedural fairness in the conduct of a trial involving the respondent's claim for probate of a will in solemn form.

The appellant was unrepresented. He claimed an interest in challenging a will made in 2013 ("the 2013 Will"), which left the whole of the estate to the respondent. The appellant filed two caveats against a grant of probate without notice to him. The respondent brought proceedings for orders that the caveats cease to be in force ("the caveat motion"). The respondent also filed a summons for probate of the 2013 Will and a statement of claim, in which the appellant was not named as a defendant. Although the appellant was served with the statement of claim and filed an appearance, he was not directed to take any steps in the proceedings. His preparation was essentially limited to the caveat motion, which was listed for hearing. At a directions hearing, it was explained to the appellant that the trial would be limited to determination of the caveat motion. Three clear business days before the trial, at a further directions hearing, the trial judge told the appellant that the trial would be of the claim for probate and directed that the appellant be joined as a defendant. At trial, the appellant's defence was in disarray. His applications for adjournments were refused. The trial judge delivered judgment orally, granting probate of the 2013 Will in solemn form. The appellant was ordered to pay costs.

A majority of the Court of Appeal dismissed the appellant's appeal, but for different reasons. Ward JA concluded that, although the appellant had been denied procedural fairness, that denial did not deprive him of the possibility of a successful outcome. Emmett AJA concluded that the appellant did not have an interest in challenging the 2013 Will.

By grant of special leave, the appellant appealed to the High Court. The appellant argued that the Court of Appeal erred in not ordering a retrial. The respondent argued that there was no denial of procedural fairness, and, if there was, there was no substantial miscarriage of justice by reason of any such denial.

The Court unanimously held that the appellant had an interest in challenging the 2013 Will and he was denied procedural fairness. The denial of procedural fairness arose from the consequences, and effect on the appellant, of altering the hearing, at short notice, from a hearing of the caveat motion to a trial of the claim for probate. The denial amounted to a "substantial wrong or miscarriage" because the appellant was denied the possibility of a successful outcome.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*