# HIGH COURT OF AUSTRALIA

McHUGH ACJ
GUMMOW AND HEYDON JJ

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IN THE MATTER OF AN APPEAL BY
GAYE ALEXANDRA MARY LUCK APPELLANT

*In the matter of an appeal by Gaye Alexandra Mary Luck*
[2003] HCA 70
*4 December 2003*
M11/2001

**ORDER**

*Appeal struck out as incompetent.*

On appeal from the High Court of Australia

**Representation:**

The appellant appeared in person

**CATCHWORDS**

**IN THE MATTER OF AN APPEAL BY GAYE ALEXANDRA MARY LUCK**

Appeal against order refusing leave to issue process – Whether leave to appeal required – Where proposed action frivolous, vexatious or an abuse of process – Whether order final or interlocutory.

*Judiciary Act* 1903 (Cth), s 34(2)

1 McHUGH ACJ, GUMMOW AND HEYDON JJ. Ms Gaye Alexandra Mary Luck has filed an appeal against a decision of Gleeson CJ delivered on 30 November 2000. The notice of appeal is described as an ex parte appeal as of right. His Honour had refused to give Ms Luck leave to issue a writ of summons and statement of claim that had been the subject of a direction by Callinan J, made on 14 November 2000, under O 58 r 4(3) of the High Court Rules. The effect of the direction was that the Registrar could not issue the writ or statement of claim without the leave of a Justice.

2 The writ of summons that the appellant sought to issue named 32 defendants including judges of the High Court, the Supreme Court of Victoria and the Federal Court of Australia, the Attorney-General of the Commonwealth, medical officers and an unnamed telephonist employed by the Federal Police. Chief Justice Gleeson held that the statement of claim disclosed no cause of action against any defendant, a holding with which we entirely agree. Not only does the writ and statement of claim fail to disclose any recognisable cause of action against any individual defendant, but they seek to join as defendants in one action many people who have nothing in common except that the applicant claims that each of them has tortured her.

Leave to appeal is required

3 It is not necessary to discuss the merits of the claims in any detail because Ms Luck is seeking to appeal against an interlocutory order, a class of order that requires the grant of leave to appeal, and none had been granted. Section 34 of the *Judiciary Act* 1903 (Cth) provides:

> "(1) The High Court shall, except as provided by this Act, have jurisdiction to hear and determine appeals from all judgments whatsoever of any Justice or Justices, exercising the original jurisdiction of the High Court whether in Court or Chambers.
>
> (2) An appeal shall not be brought without the leave of the High Court from an interlocutory judgment of a Justice or Justices exercising the original jurisdiction of the High Court whether in Court or Chambers."

4 In making the order refusing leave to issue process, Gleeson CJ was exercising the original jurisdiction of the Court to control its own processes. The question then is whether the judgment from which Ms Luck has "appealed" is final or interlocutory. As McHugh, Kirby and Callinan JJ stated in *Bienstein v*

*Bienstein*[1], the usual test for determining whether an order is final or interlocutory is whether the order, as made, finally determines the rights of the parties in a principal cause pending between them. That question is answered by determining whether the *legal* effect of the judgment is final or not[2]. If the legal effect of the judgment is final, it is a final order; otherwise, it is an interlocutory order.

5 The order of Gleeson CJ refusing to grant leave to issue process was an interlocutory order. It did not finally determine Ms Luck's rights against the various defendants, if she has any such rights. An order refusing to grant leave after an O 58 direction has been made does not finally determine the legal rights of the parties. It does no more than refuse leave to serve the process, the subject of the direction, on the defendant or defendants. In this case, Callinan J made the direction that he did because the case was within O 58 r 4. On their face, the writ and statement of claim appeared "to be an abuse of the process of the Court or a frivolous or vexatious proceeding". The order of Gleeson CJ, therefore, refuses leave to serve documents that on their face are "an abuse of the process of the Court or a frivolous or vexatious proceeding".

6 For more than a century, courts, including courts of the highest authority, have consistently held that an order staying an action on the ground that it is frivolous, vexatious or an abuse of process is an interlocutory order[3]. In 1956 in *Hunt v Allied Bakeries Ltd*[4], Lord Evershed MR said:

> "After consulting with the Chief Registrar and looking at the case[s], and also after consultation with my colleagues, I am left in no doubt at all that, rightly or wrongly, orders dismissing actions – either because they are frivolous and vexatious, or on the ground of disclosure of no reasonable cause of action – have for a very long time been treated as interlocutory."

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**1** (2003) 195 ALR 225 at 230 [25].

**2** *Carr v Finance Corporation of Australia Ltd [No 1]* (1981) 147 CLR 246 at 248, 256.

**3** *In re Page; Hill v Fladgate* [1910] 1 Ch 489; *Hunt v Allied Bakeries Ltd* [1956] 1 WLR 1326; [1956] 3 All ER 513; *Tampion v Anderson* (1973) 48 ALJR 11; 3 ALR 414. And see *Price v Phillips* (1894) 11 TLR 86.

**4** [1956] 1 WLR 1326 at 1328; [1956] 3 All ER 513 at 514.

7 The long line of cases to which Lord Evershed referred was confirmed in *Tampion v Anderson*[5], a decision of the Judicial Committee of the Privy Council on a petition for special leave to appeal against orders of the Supreme Court of Victoria. In *Tampion*, the Judicial Committee held that orders staying actions for defamation and misfeasance of office on the ground that they were frivolous, vexatious and an abuse of process were interlocutory orders. Lord Kilbrandon, giving the advice of the Judicial Committee, said[6] that "a consistent line of authority" left "no doubt" that such orders were interlocutory. His Lordship said[7] that the "matter is really put beyond doubt" by *Hunt*[8] and cited the above statement of Lord Evershed. When *Tampion* was decided, the Judicial Committee of the Privy Council was the final court of appeal for Australia for matters such as those involved in that case. Consequently, the advice of the Judicial Committee in *Tampion* was binding on all Australian courts including this Court.

8 Privy Council decisions no longer bind this Court. Moreover, no case in this Court has expressly decided that interlocutory orders include an order dismissing an action because it is frivolous, vexatious, an abuse of process or because it fails to disclose a reasonable cause of action. But a number of cases decided in this Court before and after *Tampion* are consistent with the view that an order falling within any of these categories is an interlocutory order. In *Pye v Renshaw*[9], the Court held that an order dismissing a suit if no amendment were made to the statement of claim within 21 days was an interlocutory order. In *Hall v Nominal Defendant*[10], the Court held that an order refusing an extension of time in which to sue was an interlocutory order. Taylor J referred[11] with evident approval to the rule, established in England, that an order striking out a claim on the ground that it was frivolous, vexatious or an abuse of process or that it disclosed no cause of action was interlocutory in nature. In *Carr v Finance*

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**5** (1973) 48 ALJR 11 at 12; 3 ALR 414 at 416.

**6** (1973) 48 ALJR 11 at 12; 3 ALR 414 at 416.

**7** (1973) 48 ALJR 11 at 12; 3 ALR 414 at 417.

**8** [1956] 1 WLR 1326; [1956] 3 All ER 513.

**9** (1951) 84 CLR 58 at 77.

**10** (1966) 117 CLR 423.

**11** (1966) 117 CLR 423 at 440.

*Corporation of Australia Ltd [No 1]*[12], the Court held that an order of the Supreme Court of a State refusing to set aside a judgment obtained upon the default of the defendant in delivering a defence was an interlocutory order. In *Bienstein*[13], the Court found that orders made by a single Justice (a) to dismiss an application to disqualify himself from hearing the application for removal, and (b) to remove particular causes pending in the Family Court into the High Court, were interlocutory orders.

9 Given the long established English rule, the decision in *Tampion* and our decisions in *Pye*, *Hall*, *Carr* and *Bienstein*, we see no valid reason for departing from the rule laid down in *Tampion*. An order is an interlocutory order, therefore, when it stays or dismisses an action or refuses leave to commence or proceed with an action because the action is frivolous, vexatious, an abuse of the process of the court or does not disclose a reasonable cause of action.

10 A Justice who makes an order made under O 58 r 4 does so because it appears that the process filed is frivolous, vexatious or an abuse of process. The order made by Callinan J was therefore an interlocutory order, as was the order of Gleeson CJ refusing leave to proceed.

11 Accordingly, the "appeal" filed was incompetent.

Application for leave would be refused in any case

12 Even if Ms Luck had sought leave to appeal against the decision of Gleeson CJ, we would have refused her application. An application for leave should establish both that the decision, the subject of the proposed appeal, is sufficiently doubtful to warrant a grant of leave and that it is in the interests of the administration of justice for this Court to hear it.

13 The writ of summons that Ms Luck attempted to file does not disclose a cause of action against any of the 32 defendants listed. A grant of leave would be futile because an appeal would have no prospect of success.

Order

14 The appeal is struck out as incompetent.

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**12** (1981) 147 CLR 246.

**13** (2003) 195 ALR 225.