

HIGH COURT OF AUSTRALIA

FRENCH CJ,
HAYNE, BELL, GAGELER AND KEANE JJ

RHIANNON GRAY BY HER TUTOR KATHLEEN
ANNE GRAY

APPELLANT

AND

COREY RICHARDS

RESPONDENT

Gray v Richards [No 2]
[2014] HCA 47
14 November 2014
S111/2014

ORDER

1. *Mr Richards pay Ms Gray's costs of the appeal to this Court.*
2. *Set aside orders 2 and 3 of the Court of Appeal of the Supreme Court of New South Wales made on 28 March 2014 and, in their place, order that:*
 - (a) *Mr Richards pay Ms Gray's costs of the appeal to the Court of Appeal, excluding the costs associated with Mr Richards' challenge to the primary judge's judgment as to costs dated 13 April 2012;*
 - (b) *the cross-appeal to the Court of Appeal be dismissed;*
 - (c) *there be no order as to costs in relation to the cross-appeal to the Court of Appeal; and*
 - (d) *Mr Richards pay Ms Gray's costs of the proceedings at first instance except for half of Ms Gray's costs from 19 August 2011 to 8 December 2011.*

On appeal from the Supreme Court of New South Wales

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Gray v Richards [No 2]

Procedure – Costs.

1 FRENCH CJ, HAYNE, BELL, GAGELER AND KEANE JJ. On 15 October 2014, the Court allowed Ms Gray's appeal in part and made consequential orders¹. The Court also directed the parties to make written submissions as to the orders for costs which should be made in relation to the proceedings in this Court and in the courts below.

2 The disposition of costs is within the general discretion of the Court. Ordinarily, that discretion will be exercised so that costs are awarded to the successful party, but other factors may have a significant claim on the discretion of the Court². The disposition which is ultimately to be made in any case where there are competing considerations will reflect a broad evaluative judgment of what justice requires.

Costs in this Court

3 As is apparent from the reasons for judgment in the appeal to this Court, Ms Gray enjoyed a substantial degree of success on the appeal. Although each party was successful on one of the two issues argued before the Court, the appeal resulted in Ms Gray recovering 82 per cent of the amount of damages in dispute. While Mr Richards was successful on one issue, the substantial success enjoyed by Ms Gray is sufficient to warrant an order in her favour in respect of her costs of the appeal to this Court having regard to two additional factors: first, Ms Gray was obliged to appeal in order to remedy the substantial disadvantage she had suffered as a result of the decision of the Court of Appeal; and secondly, it was not unreasonable to agitate the issue on which she was unsuccessful in that the primary judge had upheld this aspect of her claim.

Costs in the Court of Appeal

4 The consequence of this Court's determination of the appeal is that Mr Richards has maintained his success on only one of the four grounds of appeal he agitated in the Court of Appeal. The costs order made in Mr Richards' favour must be set aside. Given the substantial success enjoyed by Ms Gray in this Court, there is good reason to dispose of the costs in the Court of Appeal on the same basis.

1 *Gray v Richards* [2014] HCA 40.

2 *Stewart v Atco Controls Pty Ltd (In liq) (No 2)* (2014) 88 ALJR 811 at 812 [4]; (2014) 311 ALR 351 at 352; [2014] HCA 31.

French CJ
Hayne J
Bell J
Gageler J
Keane J

2.

5 The outcome of the appeal to this Court also has implications for the elaborate order in respect of the costs at first instance which was made by the Court of Appeal.

Costs at first instance

6 The primary judge had ordered that Mr Richards pay Ms Gray's costs of the proceedings up to and including the trial, except for half of Ms Gray's costs from 19 August 2011 to 8 December 2011. That exception related to Ms Gray's failure on a subsidiary issue, which did not affect the level of her ultimate success.

7 In the submissions filed on her behalf, Ms Gray accepted that she should not recover half her costs from 19 August 2011 to 8 December 2011. Accordingly, that order should be made.

Orders

8 The following orders should be made:

1. Mr Richards pay Ms Gray's costs of the appeal to this Court.
2. Set aside orders 2 and 3 of the Court of Appeal made on 28 March 2014 and, in their place, order that:
 - (a) Mr Richards pay Ms Gray's costs of the appeal to the Court of Appeal, excluding the costs associated with Mr Richards' challenge to the primary judge's judgment as to costs dated 13 April 2012;
 - (b) the cross-appeal to the Court of Appeal be dismissed;
 - (c) there be no order as to costs in relation to the cross-appeal to the Court of Appeal; and
 - (d) Mr Richards pay Ms Gray's costs of the proceedings at first instance except for half of Ms Gray's costs from 19 August 2011 to 8 December 2011.

