HIGH COURT OF AUSTRALIA

EDELMAN J

BECKFORD PLAINTIFF

AND

THE FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA AND THE JUDGES AND JUSTICES THEREOF & ORS DEFENDANTS

[2024] HCASJ 33
Date of Judgment: 29 July 2024
M39 of 2024

ORDER

1. *The applications filed on 10 May 2024 and 24 July 2024 are dismissed without hearing.*

Representation

The plaintiff is unrepresented

Submitting appearances for the first, second and third defendants

1 EDELMAN J. The plaintiff (a pseudonym) is a party to family law proceedings in the Federal Circuit and Family Court of Australia (Division 2) concerning parenting orders related to one of the plaintiff's daughters. In one of his affidavits, the plaintiff describes these proceedings by a matter number as MLC 2438/2023. It appears from the plaintiff's affidavit material that the mother of the plaintiff's daughters is the other party to that proceeding. The mother is listed as the second defendant to this proceeding but she has submitted to any order of this Court save as to costs. The other defendants are named as the Federal Circuit and Family Court of Australia and the Judges and Justices thereof (the first defendant) and the Independent Children's Lawyer (the third defendant). They have also submitted to any order of this Court save as to costs.

2 In the plaintiff's application for a constitutional or other writ filed on 10 May 2024, the plaintiff seeks, among other orders: (i) a writ of prohibition prohibiting the first defendant from further proceeding with the final hearing of MLC 2438/2023; (ii) a writ of mandamus requiring the first defendant to consider and determine MLC 2438/2023 according to law; and (iii) a writ of certiorari to quash (a) various orders made by Judge Bender in the Federal Circuit and Family Court of Australia (Division 2) on 23 January 2024, (b) a decision of an Appellate Judicial Register to reject a Notice of Appeal that the plaintiff sought to file on 20 February 2024, and (c) the orders made by Justice Austin in the Federal Circuit and Family Court of Australia (Division 1 Appellate Jurisdiction) on 15 April 2024.

3 Rule 25.09.1 of the *High Court Rules 2004* (Cth) provides that an application for a constitutional or other writ may be dismissed without being listed for a hearing on the ground that the application does not disclose an arguable basis for the relief sought or is an abuse of process of the Court. An abuse of process "encompasses an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable"[1] or, in other words, "manifestly hopeless".[2] For the reasons that follow, the application is manifestly hopeless and is an abuse of process. It should be dismissed without being listed for hearing and orders made under rr 25.09.1 and 25.09.2 of the *High Court Rules*.

4 The proceeding MLC 2438/2023 was scheduled for final hearing on 13 May 2024. In response to an enquiry from the Court seeking further information, including information that might address whether the hearing had been completed, on 24 July 2024 the plaintiff filed an affidavit and an interlocutory application for additional relief. It appears that the proceeding in MLC 2438/2023 did not take place as scheduled for 13 May 2024. The additional relief now sought by the plaintiff includes: (a) that the first defendant relist MLC 2438/2023 for a

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1 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

2 *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 246-247 [73].

new compliance and readiness hearing; (b) that a trial management hearing be held prior to the final hearing; and (c) that the compliance and readiness hearing, the trial management hearing and the final hearing of MLC 2438/2023 be heard by a Judge or Justice other than Judge Bender.

5 It is unclear why the plaintiff has brought his 10 May 2024 application for a constitutional or other writ in the original jurisdiction of this Court. In the usual course, a party who is aggrieved by an interlocutory decision can, if no interlocutory appeal is available, bring an appeal from any judgment where the final orders are affected by error in the interlocutory decision.[3] An appeal to this Court from any final judgment founded upon error in an interlocutory decision is also available, following a grant of special leave to appeal.[4] An attempt to circumvent the established appeal process by an application in the original jurisdiction of this Court will usually be an abuse of process.[5]

6 Even taking into account the plaintiff's status as an unrepresented litigant, the basis for the relief which the plaintiff seeks in this Court is confused and difficult to follow. It appears that the plaintiff has a variety of complaints about the procedure, process and orders made leading up to the hearing of proceeding in MLC 2438/2023 which was scheduled for 13 May 2024. But large parts of the plaintiff's affidavit are directed towards allegations against the mother rather than identification of any jurisdictional error that could attract the relief that he seeks in this Court. The plaintiff alleges that "the judgment of the immediately preceding family law proceeding was obtained by fraud and/or perjury" but it is unclear how that allegation, even if established, means that any jurisdictional error arose, or would arise, in proceeding MLC 2438/2023.

7 One of the plaintiff's complaints appears to concern an "Application in an Appeal" made by the plaintiff to review a decision of an Appellate Judicial Registrar by which the plaintiff's proposed Notice of Appeal had not been accepted for filing. The proposed Notice of Appeal appears to have concerned "procedural directions and rulings to facilitate the future determination of the [matter]" that were made by Judge Bender.[6] The Appellate Judicial Registrar refused to accept the proposed Notice of Appeal for filing, explaining that none of the orders of Judge Bender that the plaintiff sought to appeal was a "judgment". The plaintiff

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3 See *Federal Circuit and Family Court of Australia Act 2021* (Cth), s 26.

4 *Federal Circuit and Family Court of Australia Act 2021* (Cth), s 55(4)(a).

5 *Dimitrov v Supreme Court of Victoria* (2017) 263 CLR 130 at 138-139 [19]; *KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2021) 95 ALJR 666 at 669 [3]; 392 ALR 186 at 188.

6 *Beckford & Beckford* [2024] FedCFamC1A 57 at [11].

brought the "Application in an Appeal" before Austin J to review the decision of the Appellate Judicial Registrar.

8 The plaintiff complains that in reasons for decision on the "Application in an Appeal", Austin J erred in finding, consistently with the Appellate Judicial Registrar, that none of the orders of Judge Bender that the plaintiff sought to challenge was a "judgment". Austin J reasoned that the relevant orders of Judge Bender were not a judgment because they did not determine any legal right of the plaintiff.[7] It does not appear that Austin J, by this reasoning, was erroneously applying the common law meaning of judgment rather than the definition of judgment in s 7 of the *Federal Circuit and Family Court of Australia Act 2021* (Cth).[8] It is unnecessary in this Court to decide whether the relevant orders did affect any legal rights or amount to a "judgment" within s 7 of the *Federal Circuit and Family Court of Australia Act* because, even if it might be said that the decision of Judge Bender was a "judgment" within the definition in s 7, the plaintiff's submissions provide no basis for a conclusion that the asserted error of law was material and therefore jurisdictional. In any event, any jurisdictional error by Austin J could not be sufficient to support the relief sought by the plaintiff in his principal application filed on 10 May 2024.

9 Other complaints by the plaintiff seem to concern orders made by Judge Bender on 23 January 2024 at a compliance and readiness hearing (in proceeding MLC 2438/2023). Those orders included: (i) adjourning the matter to 13 May 2024 for final hearing; (ii) filing of affidavits by the plaintiff and witnesses to be called by the plaintiff by 28 March 2024; (iii) prohibiting parties from relying upon trial affidavits filed after the dates ordered without leave of the Court; (iv) filing and service by 6 May 2024 by each party and the Independent Children's Lawyer of various documents for trial; and (v) the plaintiff providing the Court with any current family violence order between the parties by 6 May 2024.

10 For a variety of reasons, including the plaintiff's reliance upon amendments to the *Family Law Act 1975* (Cth) that he says came into effect on 6 May 2024, the plaintiff appears to contest these discretionary case management orders as well as to make assertions based on comments made by Judge Bender during the compliance and readiness hearing which were said to have "dismissed several issues and contentions, [which] although historical, are very relevant to determine this [m]atter". The plaintiff, properly, did not allege that these comments are capable of establishing apprehended bias. They are not so capable. To the extent that the plaintiff's allegations of error can be discerned, all are related to matters

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7 *Beckford & Beckford* [2024] FedCFamC1A 57 at [11].

8 See *Onslow v Commissioners of Inland Revenue* (1890) 25 QBD 465 at 466; *Dunstan v Simmie & Co Pty Ltd* [1978] VR 669 at 670; *Australian Securities Commission v Macleod* (1994) 54 FCR 309 at 311-312.

prior to trial and involve the practice and procedure of the Court. None of the complaints provides even an arguable basis for a jurisdictional error.

11 Finally, the plaintiff also asserts a denial of procedural fairness by disregard of his written submissions "for the purposes of, and during, the compliance and readiness hearing" and an assertion that Judge Bender would disregard material historical facts "for final hearing purposes". None of the facts concerning these matters to which the plaintiff refers in any of his affidavit material is capable of establishing jurisdictional error by a breach of procedural fairness in order to support the relief sought in the plaintiff's application filed on 10 May 2024.

12 The plaintiff's 10 May 2024 application is manifestly hopeless and an abuse of process. It should be refused without being listed for hearing and orders made under rr 25.09.1 and 25.09.2 of the *High Court Rules*. The consequence of the refusal of this application as an abuse of process is that the further relief sought in the interlocutory application filed on 24 July 2024 must also be refused.