HIGH COURT OF AUSTRALIA

JAGOT J

RAPALLINO PLAINTIFF

AND

THE FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA DIVISION 1 & ORS DEFENDANTS

[2025] HCASJ 49
Date of Judgment: 17 December 2025
M90 of 2025

ORDERS

1. *Pursuant to rr 25.09.1 and 13.03.1 of the* High Court Rules 2004 (Cth) *respectively the application for a constitutional or other writ filed on 12 November 2025 and the interlocutory application for a stay filed on 28 November 2025 respectively be determined without listing the application for hearing.*

2. *Pursuant to each of r 28.01.2(c) and (d) of the* High Court Rules 2004 (Cth) *the application for a constitutional or other writ filed on 12 November 2025 is summarily dismissed.*

3. *Pursuant to each of r 28.01.2(c) and (d) of the* High Court Rules 2004 (Cth) *the interlocutory application for a stay filed on 28 November 2025 is summarily dismissed.*

Representation

The plaintiff is unrepresented

No appearance for the first and second defendants

Submitting appearance for the third defendant

1 JAGOT J. These reasons for judgment explain why I have concluded that an order should be made under r 28.01.2(c) and (d) of the *High Court Rules 2004* (Cth) summarily dismissing the application for a constitutional or other writ filed on 12 November 2025 ("the constitutional writ application") and the application for a stay pending determination of the constitutional writ application filed on 28 November 2025 ("the stay application"). I have also decided that orders should be made under rr 25.09.1 and 13.03.1 of the *High Court Rules 2004* (Cth) respectively that the constitutional writ application and the stay application respectively be determined without listing the application for hearing.

2 Rule 28.01.2(c) and (d) of the *High Court Rules* provides that if a proceeding generally, or any claim in a proceeding, "is an abuse of process" or has "no reasonable prospect of success" the Court or a Justice "may stay the proceeding or a claim made in the proceeding or may give judgment in the proceeding or in relation to a claim made in the proceeding". By r 28.01.3(b) the Court or a Justice may make such an order "of the Court's or the Justice's own motion after notice has been given by the Registrar to each plaintiff or applicant". In this case, the Registrar gave such notice to the plaintiff on 8 December 2025 and invited the plaintiff to file such further material as the plaintiff saw fit in respect of the making of an order summarily dismissing the constitutional writ (and, therefore dismissing the interlocutory application) on the basis that the proceeding is an abuse of process and has no reasonable prospect of success. The plaintiff filed a further affidavit in response to this notice.

3 In respect of r 28.01.2(c) of the *High Court Rules*, the class of potential abuses of process is not closed. Abuse of process is "capable of application in any circumstances in which the use of a court's procedures would be unjustifiably oppressive to a party or would bring the administration of justice into disrepute".[1] Further, "[a]lthough the categories of abuse of procedure remain open, abuses of procedure usually fall into one of three categories: (1) the court's procedures are invoked for an illegitimate purpose; (2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or (3) the use of the court's procedures would bring the administration of justice into disrepute".[2]

4 In respect of r 28.01.2(d) of the *High Court Rules*, for a proceeding to have no reasonable prospect of success it need not be hopeless or doomed to fail, irrespective of the presence or absence of an express statement to that effect in the provision empowering summary dismissal. It has been said, however, that in every case the "power to order summary or final judgment is one that should be exercised

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1 *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 at 518-519 [25].

2 *Rogers v The Queen* (1994) 181 CLR 251 at 286.

with great care and should never be exercised unless it is clear that there is no real question to be tried" and the "test to be applied has been expressed in various ways, but all of the verbal formulae which have been used are intended to describe a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way".[3]

5 The constitutional writ application seeks writs of prohibition and certiorari against orders of the Federal Circuit and Family Court of Australia ("FCFCOA"), associated declaratory relief, and extensions of time as required to do so, as follows: (1) parenting orders made 15 December 2023; (2) parenting orders made 19 March 2024; (3) orders made in *Dekker & Rapallino* [2024] FedCFamC1F 462; (4) orders made in *Dekker & Rapallino (No 2)* [2024] FedCFamC1F 726; (5) orders made in *Rapallino & Dekker* [2025] FedCFamC1A 18; (6) orders made in *Rapallino & Dekker (No 2)* [2025] FedCFamC1A 25; (7) orders made in *Rapallino & Dekker (No 3)* [2025] FedCFamC1A 60; (8) orders made in *Rapallino & Dekker (No 4)* [2025] FedCFamC1A 62; and (9) decisions of Judicial Registrar Thomas (FCFCOA Division 1 – Appellate Division) on 6 November 2024, 19 March 2025, and 20 March 2025.

6 The grounds on which the writs are sought are said to be: (1) denial of procedural fairness and suppression of evidence; (2) actual and apprehended bias; (3) constructive failure to exercise jurisdiction; (4) legal unreasonableness and misapplication of law; (5) appellate failure to conduct a real review; (6) punitive and disproportionate indemnity costs orders; (7) administrative obstruction and Registrar irregularities; (8) failure to consider relevant material evidence; and (9) abuse of power/misconduct and other jurisdictional errors.

7 Dealing with the orders made by Judge Harnett in the family law jurisdiction of the FCFCOA ("the Division 1 Court") in *Rapallino & Dekker* [2025] FedCFamC1A 18, Aldridge, Gill and Strum JJ in the appellate jurisdiction of the Division 1 Court ("the Full Court of the Division 1 Court") dismissed the plaintiff's appeal concerning final property orders made on 11 July 2024. Their Honours, in joint reasons, said that while the plaintiff "set out numerous complaints in relation to the judgment, the scope of error that the grounds were directed to was difficult to define". Further, that "[w]here the grounds were purportedly of legal error, they relied on the manner of application of the principle, at no point identifying that the primary judge failed to comprehend or express correct legal principle" and "[w]here the grounds alleged error in fact, the grounds lacked either a correct identification of the finding made, or where the finding was correctly identified, failed otherwise to demonstrate how the finding was not correct on the

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3 *Spencer v The Commonwealth* (2010) 241 CLR 118 at 131-132 [24], quoting *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 at 99 and *Batistatos v Roads and Traffic Authority (NSW)* (2006) 226 CLR 256 at 275 [46]. See, to the same effect, *Fernan and Mina* [2025] HCASJ 50 at [2]-[4].

evidence presented. Where the purported error of fact was raised to establish bias, the appellant failed to demonstrate why it should be concluded that the purported error was the product of bias."[4] Their Honours concluded that:[5]

> "The [plaintiff] has failed, either on any individual allegation, or on the case as seen as a whole, in her serious allegation that the primary judge acted with actual bias. There is no matter, or collection of matters that are suggestive that the primary judge acted other than impartially.
>
> Insofar as the grounds otherwise suggested legal or factual error by the primary judge, the [plaintiff] has at each point failed to demonstrate error."

8 Thereafter, in *Rapallino & Dekker (No 3)* [2025] FedCFamC1A 60 Judge Aldridge dismissed the plaintiff's application to stay a costs determination and for leave to re-open saying the application was "completely misconceived" as "[t]he appeal has been heard and dismissed. The court that heard the appeal no longer has any matter before it save as to costs. The substantive litigation was terminated by the order of dismissal on 12 February 2025. There has been no application for leave to appeal to the High Court, not that such an application would grant this court jurisdiction to hear the present application." Judge Aldridge ordered the plaintiff to pay indemnity costs noting that the plaintiff was "well aware that there are difficulties with running meritless applications. The primary difficulty with the present application is that, as emerges from the affidavit in support, what the [plaintiff] is really seeking to do is to relitigate issues that were determined by the primary judge and upheld on appeal. That is not a permissible course of conduct."[6]

9 Thereafter again, in *Rapallino & Dekker (No 4)* [2025] FedCFamC1A 62 Aldridge, Gill and Strum JJ in the Full Court of the Division 1 Court ordered the plaintiff to pay indemnity costs of an appeal on the basis that the appeal was "wholly unmeritorious and wholly unsuccessful".[7]

10 The constitutional writ application does no more than repeat the assertions dismissed as wholly unmeritorious by the Full Court of the Division 1 Court and otherwise merely asserts error by that Court which could not found the granting of the constitutional writs sought particularly in circumstances where the plaintiff could have applied for special leave to appeal against the orders of the Full Court of the Division 1 Court but has not done so. The plaintiff is attempting to by-pass

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4 *Rapallino & Dekker* [2025] FedCFamC1A 18 at [3], [6].

5 *Rapallino & Dekker* [2025] FedCFamC1A 18 at [65]-[66].

6 *Rapallino & Dekker (No 3)* [2025] FedCFamC1A 60 at [4], [5] and [18].

7 *Rapallino & Dekker (No 4)* [2025] FedCFamC1A 62 at [23].

the requirements to seek and obtain special leave to appeal by the filing of the constitutional writ application. The plaintiff is attempting to do so without providing any cogent basis on which to surmise that the Full Court of the Division 1 Court was other than wholly correct in its dismissal of all of the plaintiff's claims and well within a reasonable exercise of discretion to order the plaintiff to pay indemnity costs for her repeated failed applications. Nothing in any of the material filed for the plain suggests to the contrary. Accordingly, the constitutional writ application involves an abuse of process and also has no reasonable prospect of success. It follows that the stay application is also an abuse of process and has no reasonable prospects of success. Both applications are to be summarily dismissed.

11 The orders made are:

(1) Pursuant to rr 25.09.1 and 13.03.1 of the *High Court Rules 2004* (Cth) respectively the application for a constitutional or other writ filed on 12 November 2025 and the interlocutory application for a stay filed on 28 November 2025 respectively be determined without listing the application for hearing.

(2) Pursuant to each of r 28.01.2(c) and (d) of the *High Court Rules 2004* (Cth) the application for a constitutional or other writ filed on 12 November 2025 is summarily dismissed.

(3) Pursuant to each of r 28.01.2(c) and (d) of *the High Court Rules 2004* (Cth) the interlocutory application for a stay filed on 28 November 2025 is summarily dismissed.