

# HIGH COURT OF AUSTRALIA

STEWARD J

---

IN THE MATTER OF AN APPLICATION BY  
MR NOOTKAMP FOR LEAVE TO ISSUE OR FILE

[2026] HCASJ 14  
*Date of Judgment: 15 May 2026*  
P7 of 2026

## ORDER

- 1. The application of 17 February 2026 for leave to issue or file a proposed application for a constitutional or other writ is dismissed.*

### Representation

The applicant is unrepresented



1 STEWARD J. On 29 January 2026, Jagot J directed the Registrar to refuse to  
issue or file the applicant's proposed application for a constitutional or other writ  
dated 23 January 2026 ("the Proposed Application") without the leave of a Justice  
of this Court first had and obtained, pursuant to r 6.07.2 of the *High Court Rules*  
*2004* (Cth) ("the Rules").

2 By an ex parte application filed on 17 February 2026 pursuant to r 6.07.3  
of the Rules, the applicant now seeks that leave. The applicant relies upon a  
supporting affidavit also filed on 17 February 2026. The applicant is self-  
represented.

### **Background**

3 The Proposed Application relates to proceedings involving the applicant  
and the applicant's former partner ("the mother") which have been ongoing since  
January 2019. The proceedings generally concern parenting arrangements for their  
children and their financial relationship.

4 It is necessary to refer to one particular event which figures in the Proposed  
Application. In 2021, the applicant was arrested by the police after breaching a  
conduct agreement order ("the CAO") (in effect, a restraining order by agreement  
but without admission<sup>1</sup>) and accepted, after being shown CCTV footage, that he  
had breached that order. He was released without charge 30 minutes after the  
arrest, because the police considered that there was no reasonable prospect of  
successfully prosecuting the breach. In 2023, he commenced an action in the  
Magistrates Court of Western Australia against the mother for the tort of wrongful  
imprisonment, premised upon an allegation that the mother had directly and  
intentionally induced him to breach the CAO ("the Civil Action"). He sought  
damages for loss of reputation and humiliation as a result of his arrest. The Civil  
Action was dismissed on 8 July 2024.

5 On 8 October 2024, following a trial in the Family Court of Western  
Australia, the primary judge delivered judgment and made final orders. Those  
orders included that the children live with the mother, that the two youngest of the  
four children spend only supervised time with the applicant until they are each  
15 years old and thereafter only spend time with him according to their respective  
wishes, and that the applicant be restrained by injunction in various particulars.  
The primary judge also found that the Civil Action had been commenced for a  
collateral purpose, and accepted expert evidence that the applicant had perpetrated

---

1 *Restraining Orders Act 1997* (WA) s 10H.

family violence against the mother, to which the children were vicariously exposed.<sup>2</sup>

6 On 7 May 2025, the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction (Christie, Schonell and Berry JJ) dismissed an appeal by the applicant from the final orders of the primary judge.<sup>3</sup> On 4 September 2025, this Court (Gordon and Beech-Jones JJ) refused an application for special leave to appeal the judgment of the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction.<sup>4</sup>

### Proposed Application

7 By the Proposed Application, the applicant would seek, inter alia, a writ of certiorari to "quash" the primary judgment and to "remit the matter back to the Family Court of Western Australia for determination according to law". Moreover, the applicant seeks an extension of the time limited by r 25.02.2 within which to make the Proposed Application. The primary judge is named as the first defendant, and the mother is named as the second defendant.

8 The grounds of the Proposed Application are:

- "(a) Jurisdictional Error: Findings made for an improper purpose and/or total absence of primary evidence; [the primary judge] exceeded the jurisdiction of the Family Court of Western Australia by making conclusive findings ... regarding the [applicant's] 'collateral purpose' in initiating separate civil proceedings. These findings were material to the final orders because they:
  - (i) Formed the primary basis for a finding of 'Family Violence' by characterising the legitimate exercise of legal rights in a civil tort for false imprisonment was for another purpose.
  - (ii) Adversely determined the [applicant's] credit and character, directly resulting in more restrictive parenting arrangements, restraints and financial orders than would have otherwise been ordered.

---

2 *Nootkamp & Brulja* [2024] FCWA 230.

3 *Nootkamp & Brulja (No 2)* [2025] FedCFamC1A 78.

4 *Nootkamp v Brulja* [2025] HCADisp 178.

3.

- (b) Jurisdictional Error: Impermissible Collateral Attack; [the primary judge's] findings constituted an impermissible collateral attack on the proceedings of the Perth Magistrates Court. ...
- (c) Denial of Procedural Fairness: Lack of Notice; [the primary judge] failed to afford the [applicant] procedural fairness by making adverse findings of the [applicant's] application for the civil tort ... 'Family Violence' without providing the [applicant] notice that such characterisations were being considered. ...
- (d) Jurisdictional Error: Reversal of Legal Onus and absence of primary evidence - [the primary judge] effectively reversed the legal onus of proof [by] effectively compelling the [applicant] to 'prove a negative' ... without any primary evidence before any Court. ...
- (e) Error of Law on the Face of the Record; [the primary judge] made the aforementioned findings of fact on an incomplete record, on the basis of an opinion of another Judicial Officer in the absence of the primary evidence ..."

9 In support of the Proposed Application, the applicant's "core ... submission" is that the primary judge exceeded jurisdiction "by finding that the pursuit of a common law tort constituted 'Family Violence,' exceeding the statutory definition under Section 4AB of the *Family Law Act 1975*" and that the Proposed Application therefore raises "a matter of significant public importance: whether a Family Court judge has the jurisdiction to effectively 'overrule' the validity of a State Magistrates Court proceeding by re-characterising it as a criminal or violent act without a specific evidentiary basis".

### **Abuse of process**

10 The criteria governing the discretion to grant or refuse leave to issue or file a document under r 6.07.3 of the Rules are the same as those which inform the decision of the Registrar to seek direction from a Justice under r 6.07.1, meaning that such leave will ordinarily be refused where the document appears "on its face to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court".<sup>5</sup> The Court may determine applications for such leave without listing the application for hearing.<sup>6</sup>

11 The concept of abuse of process cannot be confined within closed categories, but should instead be understood as encompassing anything which is

---

5 *Re Young* (2020) 94 ALJR 448 at 451 [10]-[11]; 376 ALR 567 at 570.

6 *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570.

"an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable".<sup>7</sup>

### Consideration

12 The invocation of the original jurisdiction of this Court to circumvent the appeals process is on its face an abuse of process. As Edelman J explained in *Manikantan v Secretary, Department of Employment and Workplace Relations*, such "circumvention can include cases where the appeals process is not concluded and the issue can be litigated through the process", but may also include "cases ... where the appeals process has been exhausted and the issue was raised, or even could have been raised, during that process but an attempt is made to relitigate the case in original jurisdiction without good reason".<sup>8</sup>

13 By the Proposed Application, the applicant seeks to reagitate some of the same issues as those addressed below, in circumstances where the appeals process has been exhausted. Ground (c) of the Proposed Application in particular, by which the applicant alleges denial of procedural fairness by the primary judge, overlaps with several of the grounds of appeal in the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction that alleged denial of natural justice. The Proposed Application does not disclose any good reason for reconsideration of those questions.

14 To the extent that the issues raised in the Proposed Application are different from those which were raised in the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction, the applicant should not be allowed to raise them now. As the Full Court of this Court unanimously said in *Metwally (No 2) v University of Wollongong*:<sup>9</sup>

"It is elementary that a party is bound by the conduct of his case. Except in the most exceptional circumstances, it would be contrary to all principle to allow a party, after a case had been decided against him, to raise a new argument which, whether deliberately or by inadvertence, he failed to put during the hearing when he had an opportunity to do so."

---

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

8 *Manikantan v Secretary, Department of Employment and Workplace Relations & Ors* [2025] HCASJ 42 at [17]; *Dimitrov v Supreme Court of Victoria* (2017) 263 CLR 130 at 138-139 [19], citing *Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate* (2016) 91 ALJR 1 at 8 [22]; 338 ALR 360 at 367.

9 (1985) 59 ALJR 481 at 483; 60 ALR 68 at 71.

5.

15           The applicant had the opportunity to raise any issues with the primary judge on appeal, including in respect of findings as to the collateral purpose of the Civil Action, and as to the perpetration of family violence against the mother. The applicant has not demonstrated any "exceptional circumstances" in this case, and as such, should not now be allowed a further opportunity to challenge the final orders made by the primary judge by seeking a writ of certiorari and remittal to the Family Court of Western Australia. This conclusion is reinforced by the fact that the applicant first sought to file the Proposed Application in this Court in January 2026, over four years after the primary judgment was handed down in the Family Court of Western Australia in October 2021.

### **Disposition**

16           It follows that the Proposed Application would be an abuse of process if filed, and accordingly, should not be filed. The application filed on 17 February 2026 for leave to issue or file the Proposed Application is dismissed.