

PARTIES: PRYCE, Leonard David

v

VINE, Bradley

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY EXERCISING TERRITORY
JURISDICTION

FILE NO: 56 of 1996

DELIVERED: Alice Springs, 2 May 1997

HEARING DATES: 22 April 1997

JUDGMENT OF: MARTIN CJ

CATCHWORDS:

Criminal law - Appeal - Jurisdiction, practice and procedure -
Adjournment, stay of proceedings or order restraining proceedings
- Stay of proceedings - Abuse of process - Criminal prosecution
entitling an award of compensation not for that reason alone an
abuse of process.

Justices Act (NT) 1928, ss64, 68 and 69.
Criminal Code (NT) 1983, s21.

Williams v Spautz (1991) 174 CLR 509 at p526, distinguished.

REPRESENTATION:

Counsel:

Appellant: Mr M Fox
Respondent: Mr G Georgiou

Solicitors:

Appellant: DPP
Respondent: NT Legal Aid Commission

Judgment category classification: B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No. 56 of 1996

BETWEEN:

LEONARD DAVID PRYCE
Appellant

AND:

BRADLEY VINE
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 2 May 1997)

This appeal concerns the exercise of power in a Court of Summary Jurisdiction to stay proceedings on the grounds they are an abuse of that Court's process.

On 28 March 1996, a Senior Sergeant of police at Alice Springs, stated on oath, in writing, that the appellant on 22 December 1995 unlawfully damaged a door to the value of \$250. The door was external to a Housing Commission flat tenanted by Ms Caroline Straun.

Mr Vine entered a plea of not guilty, and the trial commenced before that Court on 2 August 1996. Ms Straun gave evidence as to the relevant events. In brief, she and Mr Vine had been in a de facto relationship, living together at the flat. They had separated and he had moved out of the flat about four months prior to 28 March. On that evening an argument took place between them at the flat, Mr Vine was ordered out, and in the course of his leaving he punched the door causing a hole to be made in it. There was some other damage related to a lock.

In cross-examination Ms Straun confirmed that she made a statement to police on 24 February 1996. She said that in the intervening three months Mr Vine had promised to make restitution, but that had not happened, and she, having decided he had no intention of doing anything about it, determined to “press charges”.

In answer to a question from the presiding Magistrate, she confirmed that she decided to “lay charges” because she could see no other way of getting him to pay for the damage. That was the reason she complained to the police. His Worship expressed his concern that Ms Straun resorted to criminal proceedings, instead of civil, to force Mr Vine to pay. After hearing submissions from the prosecutor and counsel for Mr Vine and reviewing some authorities, his Worship expressed the view that the Court had power to stay the proceedings which he regarded as being an abuse of its process. He proceeded to make an order to that effect. He expressly said that he regarded the proceedings as having been used by Ms Straun, not by the police, for a

collateral purpose, that is, to recover the funds. He suggested Ms Straun go to the Small Claims Court. He made an order purporting to discharge Mr Vine.

It seems to have been assumed that Ms Straun had a cause of action against Mr Vine for the damage to the door, notwithstanding she was not the owner of it. There was no evidence that she had paid for the repairs or had reimbursed the Housing Commission for the damage under a legal obligation arising from her occupancy of the flat or otherwise.

If both parties appear before a Court of Summary Jurisdiction the Court shall proceed to hear and determine the matter of the complaint (s64 *Justices Act* (NT) 1928) and if the defendant pleads not guilty, the Court is obliged to proceed to hear the complainant and the defendant and their respective witnesses and any other evidence adduced (s68). When the parties and their evidence has been heard, the Court is to consider and determine the whole matter (s69). None of these provisions contemplate the Court acting as his Worship did here, and there is nothing else in the *Justices Act* touching upon the issue. The *Criminal Code* (NT) 1983 provides in s21 that a Judge or Justice of the Peace (which expression includes a Magistrate (s1)), in any proper case, may order that proceedings brought before him be stayed on the grounds that they are vexatious or harassing and thereupon they shall be stayed.

It is unclear as to whether an abuse of process of the Court, properly understood, falls within the boundaries of what is vexatious or harassing. I

need not explore that in detail. Nor is it necessary that I examine whether the Court of Summary Jurisdiction has inherent power to stay proceedings.

Decisions based upon legislation elsewhere, such as *Grassby v R* (1988) 168 CLR 1, may not be applicable in the Territory. There is a detailed discussion on the South Australian position, similar to the Territory, in *R v O'Loughlin; Ex parte Ralphs* (1971) 1 SASR 219. The issue was not argued in this case.

The outcome of the appeal is clear on other grounds. This case must be distinguished from others, such as *Williams v Spautz* (1991) 174 CLR 509 relied upon by counsel for the respondent. There the informant was a lecturer seeking to exert pressure upon a university to reinstate him or agree to a favourable settlement for wrongful dismissal. Here, whatever may have motivated Ms Straun to complain to the police, it was a policeman who in the ordinary course made the complaint and prosecuted it. There is no evidence to suggest that he acted otherwise than in the ordinary course of his duties and particularly no evidence that he was even aware that Ms Straun's objective was to secure compensation for the damaged door. Further, it seems that in *Williams v Spautz* the High Court at p526 adopted a limitation on the notion of abuse of process based upon observations in *King v Henderson* (1898) AC 720 at p731:

“The purpose of a litigant may be to bring the proceedings to a successful conclusion so as to take advantage of an entitlement or benefit which the law gives to a litigant in that event”.

Leaving aside the important fact that Ms Straun was not “the litigant”, even had she been, the criminal prosecution of Mr Vine which may have

entitled her to an award of compensation, would not for that reason alone be an abuse of process under this heading.

The appeal is allowed. The order staying proceedings and discharging Mr Vine are quashed. The matter is remitted to the Court of Summary Jurisdiction to be dealt with according to law.
