Minister for Health & Community Services v Little SM & Ors [2007] NTSC 69

PARTIES:	MINISTER FOR HEALTH AND COMMUNITY SERVICES v MELANIE LITTLE SM, TB, and EB
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA09/07 (9711099)
DELIVERED:	15 November 2007
HEARING DATES:	12 November 2007
JUDGMENT OF:	MARTIN (BF) AJ

CATCHWORDS:

Appeal against an order of the Family Matters Court – competency of appeal – whether order interlocutory or final – no appeal to lie from interlocutory order – appeal dismissed

Community Welfare Act 1983 (NT), s 43, s 49, s 50, s 62C and s 62ZA

Justices Act 1928 (NT) s 163 and s 177

Australian Postal Corporation v Forgie (2002) ALR 63; *Electricity Supply Association of Australia Ltd v Australian Competition and Consumer Commission* (2002)189 ALR 109; *Commissioner of Taxes v Tangentyere Council* (1992) 83 NTR 32, cited.

REPRESENTATION:

Counsel:

Appellant:	J Truman
Respondent:	M Heitmann

Solicitors:

Appellant:	Povey Stirk
Respondent:	Mark Heitmann

Judgment category classification:	C
Number of pages:	4

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Minister for Health & Community Services v Little SM & Ors [2007] NTSC 69
No. JA09/07 (9711099)

BETWEEN:

MINISTER FOR HEALTH AND COMMUNITY SERVICES
Appellant

AND:

MELANIE LITTLE SM
1st Respondent

TB
2nd Respondent

EB
3rd Respondent

CORAM: MARTIN (BF) AJ

REASONS FOR JUDGMENT

(Delivered 15 November 2007)

[1] On 15 November 2007, I ordered that the notice of appeal be struck out for reasons to be published.

[2] These are my reasons.

[3] The procedure to bring the issues in dispute between the Minister and second respondent (so called), an infant, was by way of a notice of appeal said to be pursuant to s 50 of the Community Welfare Act.

[4] The order sought to be impugned was made by a Magistrate sitting as the Family Matters Court. It was to the effect that the court had jurisdiction to conduct a review under s 49 of that Act. It was contended by the Minister before that court, that the order whereby the sole rights in relation to the custody of the child had been vested in the Minister had been transferred to the State of Victoria (s 62C) and registered there, such that the order ceased to have effect under s 62ZA. Counsel for the child contended otherwise on a number of grounds. The Minister sought to have the order made by the learned Magistrate quashed (Justices Act s 177(2)(c)). Counsel for the child filed a conditional appearance raising the question as to the competency of the notice of appeal. His Honour Justice Angel ordered that that question and the issues raised by the notice of appeal be heard together. That was done.

[5] That there is no right to appeal except as provided for by statute is trite. The right conferred by s 50 is limited to an order made under s 43(4) or s 49. The order the subject of these proceedings is not made under either of those provisions. The order that a review be conducted as to the circumstances of the child was not made under s 49. The review is to take place by operation of the section, not an order of the court. The court's responsibility is to ensure that the review takes place at a time and in the manner directed by the statute.

[6] In *Australian Postal Corporation v Forgie* (2002) ALR 63 (60 at 61), the Full Court of the Federal Court approved what was said by Finn J in

Electricity Supply Association of Australia Ltd v Australian Competition and Consumer Commission (2002)189 ALR 109 at 127 that the test as to whether a decision is made "under an enactment" required an answer to whether there be a "sufficient connection" between the text of the statute in question and the decision sought to be reviewed. That test is not met here.

[7] Further, the order is interlocutory, not final, in the sense employed in deciding whether an appeal lies from a particular order under s 163 of the Justices Act.

[8] I thought about whether the court should nevertheless consider the merits of the submissions going to the decision that the Family Matters Court retained jurisdiction to conduct the review, including, going to whether there was evidence of the registration of the original order in Victoria of a transfer of the order by the Minister. The court cannot now properly treat the appeal process instituted by the Minister as an application for prerogative or declaratory relief. Nor have circumstances arisen which would make it desirable for the court to express an extra-judicial opinion of the merits (per Kearney J *Commissioner of Taxes v Tangentyere Council* (1992) 83 NTR 32 at 36.

[9] I noticed, and brought to the attention of counsel in the course of the hearing, the parties as joined in the proceedings. There seems to be an amalgam of those who would properly be joined in an appeal and those who would properly be joined in proceedings under Rule 56 or for a declaration.

[10] In the former, the parties are those who were party to the proceedings from which the appeal is brought, for example, the complainant and defendant in summary criminal proceedings. So far as I am aware, the joining of the Magistrate, from whose decision an appeal is brought is not appropriate. Contra, in the other proceedings to which I have referred which may be brought to challenge such a decision or order and make orders directed to the Magistrate. For example, by way of prohibition.

[11] It is likely, I think, that in bringing forward authorities for consideration in this court insufficient regard has been paid to the distinction between the two procedures, the parties to be properly joined and the relevant considerations in deciding the outcome of the action.

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