

CITATION: *Monck v Commonwealth of Australia*
[2018] NTCA 1

PARTIES: MONCK, Brendan Paul

v

COMMONWEALTH OF AUSTRALIA

TITLE OF COURT: COURT OF APPEAL OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL from SUPREME COURT
exercising Northern Territory
jurisdiction

FILE NO: No. AP 10 of 2017 (21560966)

DELIVERED: 26 February 2018

HEARING DATES: 26 February 2018

JUDGMENT OF: Grant CJ, Southwood J and Mildren AJ

APPEALED FROM: Master Luppino

CATCHWORDS:

CONSTITUTIONAL LAW – OPERATION AND EFFECT OF THE
COMMONWEALTH CONSTITUTION – THE POWER TO ACQUIRE
PROPERTY – TORTS – NEGLIGENCE – ESSENTIALS OF ACTION FOR
NEGLIGENCE – WHERE NERVOUS SHOCK OR MENTAL DISORDER

Whether Commonwealth owed duty of care to exercise powers under the
child support legislation so as not to cause nervous shock – child support
legislation a valid exercise of the Commonwealth’s legislative authority –
compulsory garnishment of moneys from bank account under child support
legislation not acquisition of property in the constitutional sense – statutory

responsibility to conduct investigations and exercise powers for the assessment and collection of child support levies not concomitant with a parallel common law duty of care to avoid causing nervous shock to persons who may be subject to that assessment and collection – application dismissed.

Iskander v Merparti Nusantara Airlines [2006] NTCA 3, *Laurie v Child Support Registrar* [2009] FamCAFC 183, *Luton v Lessels* (2002) 210 CLR 333, *Sullivan v Moody* (2001) 207 CLR 562, referred to.

REPRESENTATION:

Counsel:

Applicant:	Self-represented
Respondent	T Anderson

Solicitors:

Applicant:	Self-represented
Respondent	Australian Government Solicitor

Judgment category classification:	B
Number of pages:	3

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Monck v Commonwealth of Australia [2018] NTCA 1
No. AP 10 of 2017 (21560966)

BETWEEN:

BRENDAN PAUL MONCK
Applicant

AND:

COMMONWEALTH OF AUSTRALIA
Respondent

CORAM: GRANT CJ, SOUTHWOOD J and MILDREN AJ

EX TEMPORE REASONS FOR JUDGMENT

(Delivered 26 February 2018)

THE COURT:

- [1] The applicant seeks leave to appeal from the decision of the Master (now Associate Judge) delivered on 27 June 2017 dismissing his claim in negligence against the Commonwealth. The applicant's claim is, in essence, that the Commonwealth owed him a duty of care to exercise its powers under the child support legislation so as not to cause him nervous shock in the form of an aggravation of his pre-existing stress disorder. As Mildren J observed in *Iskander v Merparti Nusantara Airlines* [2006] NTCA 3 at [16], an applicant must show that the decision is wrong or at least arguably wrong.

- [2] There can be no doubt that the child support legislation is a valid exercise of the Commonwealth's legislative authority. The High Court has found that to be so in *Luton v Lessels* (2002) 210 CLR 333.
- [3] It is also the case that the compulsory garnishment of moneys from a bank account under the child support legislation is not an acquisition of property in the constitutional sense, for the reasons described in *Laurie v Child Support Registrar* [2009] FamCAFC 183. The law is not one for the acquisition of property as such, but is part of and incidental to a general regulatory scheme aimed at the adjustment of competing rights and liabilities.
- [4] That leaves the question of whether the Commonwealth, through the Child Support Agency, owed a common law duty of care to the applicant to exercise its powers under the legislation so as to ensure, as far as practicable, that the applicant did not suffer psychological injury.
- [5] The Child Support Agency has a public and statutory responsibility to conduct its investigations and exercise its powers for the assessment and collection of child support levies in the public interest. That responsibility is not concomitant with a parallel common law duty of care to avoid causing nervous shock to persons who may be subject to that assessment and collection, for the reasons detailed by the High Court in *Sullivan v Moody* (2001) 207 CLR 562 in relation to a different legislative scheme.

[6] That is the case even where the Child Support Agency exercises its powers mistakenly to assess and collect an amount not properly owed. In the event the Child Support Agency exercises its powers erroneously to give rise to a financial liability which does not properly subsist, the aggrieved person will no doubt have a cause of action for the recovery of the moneys; but that is an entirely different matter.

[7] The applicant has not demonstrated any error in the Master's decision.

Disposition

[8] The application is dismissed.
