

PARTIES: MICHAEL CHURCHILL

v

ST. JOHN'S COLLEGE

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
exercising TERRITORY
JURISDICTION

FILE NO: LA23/97 (9605555)

DELIVERED: 6 November 1998

HEARING DATE: 4 November 1998

JUDGMENT OF: THOMAS J

REPRESENTATION:

Counsel:

Appellant/Respondent: J. Tippett

Respondent/Applicant: S. Smith

Solicitors:

Appellant/Respondent Ward Keller Lawyers

Respondent/Applicant Hunt & Hunt Lawyers

Judgment category classification: C

Judgment ID Number:

Number of pages: 4

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

No. LA23/97 (9605555)

BETWEEN:

MICHAEL CHURCHILL
Appellant

AND:

ST. JOHN'S COLLEGE
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 6 November 1998)

The appeal from the Work Health Court in this matter was heard on 9 and 10 June 1998 and the parties notified that reasons for judgment in the matter would be handed down at 10.00am on 4 November 1998.

Subsequent to the parties being notified that the reasons for judgment in respect of the appeal from the Work Health Court were prepared and ready to hand down, I received a summons from solicitors for the respondent seeking, amongst other things, that the proceedings be stayed and that the Court should receive further evidence. The application on summons was supported by an affidavit deposed to by Mr Steven Smith, solicitor for the respondent, on 30 October 1998.

I arranged, through my Associate, to list the respondent's application for a stay of proceedings at 9.00am on Wednesday 4 November 1998 and heard the application at that time.

On the morning of the hearing of the application for stay of proceedings, I read the affidavit of Steven Smith sworn 30 October 1998, so that I would have some knowledge of the basis for the application. I did not read the attachments to Mr Smith's affidavit or the full details of the supporting material. I was aware that the basis of the application was that solicitors for the respondent were alleging certain matters relevant to the credit of the appellant. Mr Smith deposed to the fact that this information had not come into the possession of solicitors for the respondent until after the conclusion of the hearing of the appeal from the Work Health Court.

The affidavit of Mr Smith sworn 30 October 1998 was not formally tendered. However, both Mr Smith, counsel for the respondent, and Mr Tippett, counsel for the appellant, were in agreement that the affidavit of Mr Smith primarily addressed issues relevant to the credit of the appellant.

Mr Tippett, counsel for the appellant, opposed the respondent's application for a stay of proceedings in respect of the appeal. Mr Tippett's essential submission was that the ground of the application to stay further proceedings was for the purpose of introducing fresh evidence relevant to the credit of the appellant. In Mr Tippett's submission, the learned stipendiary magistrate in the Work Health Court, had stated in his reasons for decision

that the credit of the worker (appellant) had been impugned. The appeal from the Work Health Court was on matters of law and in Mr Tippett's submission the evidence that the respondent's solicitors were seeking to introduce, could take the matter no further. Mr Tippett further submitted that solicitors for the respondent could well have waited until after the reasons for judgment on the appeal from the Work Health Court were handed down and then if necessary, sought to have the fresh evidence put before the Court of Appeal on an appeal from this Court.

Mr Smith, on behalf of the respondent, agreed that he could have sought to introduce the fresh evidence after the reasons for judgment on appeal from the Work Health Court were handed down. He submitted that having come into possession of the information concerning the appellant he considered he was under a duty to bring these matters to the attention of the Court as soon as possible. Mr Smith further submitted that it was not appropriate to just wait until the reasons for judgment were handed down before taking some action to bring these matters to the attention of the Court.

At the conclusion of the submissions on the application to stay the proceedings, I adjourned the application to 10.00am 6 November 1998 for decision.

I agree with the submission of Mr Tippett, counsel for the appellant (worker), that in view of the findings made by the learned stipendiary magistrate the further evidence relating to the credit of the appellant will not

advance these proceedings any further. In my decision on the appeal, I have accepted in the course of my reasons for judgment the findings of the learned stipendiary magistrate on the issue of the impugned credit of the appellant.

Accordingly, I refuse the respondent's application to stay the proceedings.

Although I have read the affidavit of Mr Smith sworn 30 October 1998, it was delivered to my chambers after I had prepared my reasons for judgment on the appeal and it has had no affect on my decision in respect of the appeal. If the affidavit material had in any way affected my decision then clearly the appellant should be afforded an opportunity to respond to the matters contained therein. As it did not, I see no reason to take the matter further.

Accordingly, I propose now to hand down my reasons for judgment in respect of the appellant's appeal from the Work Health Court.

For the reasons which I now publish, in a separate judgment, the order of the Court is that the appellant's appeal is dismissed.

The parties are at liberty to apply on the issue of costs in respect of the appeal from the Work Health Court and the application to stay the proceedings.
