Stewart v Netball Northern Territory [2012] NTSC 79

PARTIES:	STEWART, Donna
	v
	NETBALL NORTHERN TERRITORY
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	88 of 2012 (21233397)
DELIVERED:	10 October 2012
HEARING DATE:	28 September 2012
DECISION OF:	OLSSON AJ

CATCHWORDS:
Originating motion for urgent interim relief – Fairly arguable plaintiff case – Interim orders made – Issue of costs – Whether Rule 63.18 applicable – Whether circumstances warranted order as to costs – Order that costs be costs in the cause.

Supreme Court Rules r 63.18

TTE Pty Ltd v Ken Day Pty Ltd [1992] 2 NTLR 143*; Woodleigh Nominees v Casey* [1996] NTSC 79*, followed.*

REPRESENTATION:
Counsel:

Plaintiff:	T Liveris
Respondent:	N Aughterson

Solicitors:

Plaintiff:	Withnalls
Respondent:	De Silva Hebron

Judgment category classification:	C
Judgment ID Number:	Ols1208
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Stewart v Netball Northern Territory [2012] NTSC 79

No. 88 of 2012 (21233397)

BETWEEN:

DONNA STEWART

Plaintiff

AND:

NETBALL NORTHERN TERRITORY

Respondent

CORAM: OLSSON AJ

REASONS FOR DECISION

(Published 10 October 2012)

Introduction

[1] The plaintiff initiated these proceedings by originating motion filed in the Darwin Registry on 6 September 2012.

[2] The matter came before me in Darwin on the same day as a matter of urgency.

[3] The proceedings were brought pursuant to sections 39 and 109 of the *Associations Act (NT*) and the associated jurisdiction of the Court. The originating motion alleged breaches of the respondent association's

Constitution in relation to a purported termination of her membership of the respondent and her appointment as assistant coach. She sought interim orders as follow:

(1) That the respondent reinstate the plaintiff's membership of Netball Northern Territory;

(2) That the respondent allow the plaintiff to travel with the Territory Storm Netball Northern Territory team to the triple header match in the Australian Capital Territory from 7 to 9 September 2012; and

(3) That the plaintiff and the respondent proceed to resolve the dispute in accordance with Clause 22 of the respondent's Constitution.

[4] Having heard counsel for the parties I ordered that the plaintiff's membership status with the respondent as at 25 August 2012 be preserved until further order or agreement between the parties and that the respondent be restrained from asserting that the plaintiff has been terminated as an assistant coach until further order.

[5] For reasons expressed at the time, I made no order in relation to the triple header match in the Australian Capital Territory. The question of costs was reserved for further consideration.

[6] The proceedings again came before me by video link at Alice Springs at the behest of the plaintiff, who sought a formal order as to the costs of the proceedings. Having heard counsel for the parties I ordered that the costs of

the proceedings to date be costs in the cause. I reserved the right to publish considered reasons for that order should it be desirable to do so.

[7] The present reasons are published pursuant to that reservation.

The relevant background facts

[8] It is not in dispute that the plaintiff was at all material times a member of the respondent Association and that, on or about 15 June 2012, the respondent appointed her as an assistant coach of the Territory Storm Australia Netball League Team. By a letter received on or about that date she was allocated a triple header match to be played in the Australian Capital Territory on 7 to 9 September 2012.

[9] On or about 30 August 2012 the solicitors for the respondent sent a letter to the plaintiff in which, *inter-alia*, it alleged defamatory conduct on the part of the plaintiff which was said to constitute a breach of the Constitution of the respondent and its Territory Representative Code of Conduct.

[10] The letter went on to advise the plaintiff that "In accordance with Clause 10 (3) the Management Team on 26 August 2012 by way of a Special General Meeting revoked your membership 'as it deems fit'. By virtue of you being revoked as a member of Netball NT, your contract dated 24 June 2012 as Assistant Coach to the 2012 Australia Netball League Territory Storm Team is hereby terminated as it is a condition of Contract that you are a current affiliated member of Netball NT."

[11] The plaintiff asserts that she was never notified of any intention to conduct a Special General Meeting on 26 August 2012. It is her stance that the purported revocation of her membership of the respondent Association and consequent termination of her contract as assistant coach were invalid because the actions of the respondent did not comply with relevant provisions of its Constitution and she was not accorded natural justice.

[12] When the proceedings initially came before me I was satisfied that the plaintiff had an arguable case as to the above matters. Having regard to the then circumstances as they stood, I considered that, pending any ongoing proceedings or processes to resolve the substantial issues arising between the parties, it was appropriate to make formal orders of an interim nature as already recited.

[13] I was not prepared to make an order concerning the triple header match in the Australian Capital Territory because it was impractical to finally resolve the substantive issues prior to the conduct of that match and also because the participation of the plaintiff in the match appeared to be essentially a matter of detailed internal management.

[14] Affidavits recently filed in these proceedings indicated that there had been subsequent negotiations between the parties but that these had not led to a resolution of all issues between them at this time.

[15] It appears that one sticking point was the issue of the costs of these proceedings. Hence the hearing by video link on 28 September 2012.

Submissions by the parties

[16] In essence, the respondent contended that, having regard to the provisions of Rule 63.18 of the Supreme Court Rules concerning interlocutory applications, each party ought to bear her or its own costs of the proceedings to date, absent exceptional circumstances justifying the making of an order to some contrary effect[1].

[17] That rule is expressed in the following terms:

"Each party shall bear his own costs of an interlocutory or other application in a proceeding, whether made on or without notice, unless the court otherwise orders."

[18] It seems to me to be a moot point as to whether what has occurred to date literally falls within the ambit of Rule 63.18. The orders made were of an interim nature, as sought by the originating process itself. In my opinion these were not pursuant to a typical interlocutory "application in a proceeding" as obviously envisaged by Rule 63.18.

[19] The proceedings were necessarily brought to preserve the former status quo as a matter of urgency so that the constitutional validity of the conduct of the respondent could be determined, either within the ongoing hearing of those proceedings or by some other process pursuant to the *Associations Act (NT)*.

[1] TTE Pty Ltd v Ken Day Pty Ltd [1992] 2 NTLR 143; Woodleigh Nominees v Casey [1996] NTSC 79

[20] Whether Rule 63.18 is, technically, applicable or not the fact of the matter is that the plaintiff had a fairly arguable constitutional issue as to the validity of what had been done and was precipitated by the manner in which the respondent had purported to act without prior notice to seek to preserve her status and rights as a matter of considerable urgency.

[21] This was not a “run-of-the-mill” interlocutory application of the nature contemplated by the Rule. It was an exceptional first review of the substantive relief sought by the plaintiff.

[22] As Thomas J commented in *Woodleigh* the object of Rule 63.18 is to discourage unnecessary applications and promote agreement. The application for interim relief in this case was by no means unnecessary and was prompted by an urgent need to preserve fundamental status. Agreement was not a practical possibility in the circumstances. It was in no sense potentially oppressive as to costs in the circumstances.

[23] If the parties fail to reach an ultimate resolution of the issues between them by negotiation then those issues will need to be resolved either by ultimate decision of this court or in some other manner envisaged by the Constitution of the respondent Association.

Conclusion

[24] In all of the circumstances I considered that the appropriate order to be made was that the costs of the proceedings to date ought to be costs in the cause. In such a situation costs will quite reasonably and properly follow the event, unless otherwise ordered.
