

Phillips v Bahnert [1999] NTSC 86

PARTIES: JOHN FRANCIS PHILLIPS

v

GEOFFREY ROBERT BAHNERT

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: JA93 of 1997 (9621092)

DELIVERED: 23 August 1999

HEARING DATES: 16 July 1999

JUDGMENT OF: Thomas J

REPRESENTATION:

Counsel:

Appellant: B. Johns
Respondent: A. Fraser

Solicitors:

Appellant: B. Johns
Respondent: Office of the Director of Public
Prosecutions

Judgment category classification: C
Judgment ID Number: tho99019
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Phillips v Bahnert [1999] NTSC 86
No. JA93 of 1997 (9621092)

BETWEEN:

JOHN FRANCIS PHILLIPS
Appellant

AND:

GEOFFREY BAHNERT
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 23 August 1999)

- [1] This is an application by the appellant for costs of the appeal before the Supreme Court.
- [2] On 27 February 1998 this Court made an order pursuant to s 177 of the *Justices Act* that the appeal be allowed and the conviction in the Court of Summary Jurisdiction be quashed.
- [3] A further order was made that the matter be referred back to the Court of Summary Jurisdiction for rehearing.

- [4] When these orders were delivered on 27 February 1998, there was no application for costs.
- [5] Because no application for costs was made by the successful party at the time the decision on appeal was delivered, it is not fatal to the appellant's right to recover costs.

[6] Rule 63.04(1) of the *Supreme Court Rules* states as follows:

“The Court may exercise its power and discretion as to costs at any stage of a proceeding or after the conclusion of the proceeding.”

- [7] The right to apply for costs after the conclusion of the proceedings is not affected by the fact that on 25 June 1999, approximately 16 months after the order of the Court, a Notice of Change of Solicitor was filed on behalf of the appellant.
- [8] It is not in dispute that the matter was subsequently referred back to the Court of Summary Jurisdiction for hearing. It was completed on 2 June 1999 when Mr Lowndes SM (who was not the magistrate who presided at the original hearing) dismissed the charge against Mr Phillips.
- [9] The power in this Court to award costs is set out in s 177(2)(e) of the *Justices Act*:

“(2) Upon the hearing of the appeal the Supreme Court may –

(e) make such further or other order as to costs or otherwise as it thinks fit.”

[10] Costs are a matter for discretion. The usual practice of the Courts is for costs to follow the event (*Ritter v Godfrey* [1920] 2 KB 47 at 52, quoted with approval in *Donald Campbell & Co v Pollak* [1927] AC 732. See also *Gladstone Park Shopping Centre Pty Ltd v Wills* (1984) 59 ALR 109 and *Nikolaou v Papasavas, Phillips & Co* (1989) 166 CLR 394). Although costs are a matter of discretion the discretion must be exercised according to law. There should be good reason for departing from the established principle that a successful party is entitled to an order for costs.

[11] Counsel for the respondent argued that it was through no fault of the respondent that the Court found the appellant had not had a fair trial before the Court of Summary Jurisdiction.

[12] I do not consider it either necessary or appropriate to go into the issue of whether or not the respondent was at fault.

[13] The entitlement of a successful party to an order for costs is to compensate the successful party for the costs incurred in the appeal process. The purpose is not to punish the unsuccessful party.

[14] It may be that the conduct of the successful appellant is such that the Court would exercise a discretion against awarding the successful appellant an order for costs. That is not the position in this case.

[15] I consider the lack of fault or otherwise of the respondent is, in the circumstances of this case, not relevant to any determination on the issue of costs.

[16] Accordingly, I make an order that the respondent pay the appellant's costs of this appeal and the application for costs.
