[2014] WASCA 93

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA
TITLE OF COURT	**:**	THE COURT OF APPEAL (WA)
CITATION	**:**	GLEW -v- ATTORNEY GENERAL (WA) [2014] WASCA 93
CORAM	**:**	NEWNES JA MURPHY JA
HEARD	**:**	17 APRIL 2014
DELIVERED	**:**	17 APRIL 2014
PUBLISHED	**:**	2 MAY 2014
FILE NO/S	**:**	CACV 22 of 2014
BETWEEN	**:**	WAYNE KENNETH GLEW Appellant AND ATTORNEY GENERAL (WA) Respondent

ON APPEAL FROM:

Jurisdiction	**:**	SUPREME COURT OF WESTERN AUSTRALIA
Coram	**:**	MASTER SANDERSON
Citation	**:**	ATTORNEY GENERAL (WA) -v- GLEW [2014] WASC 100
File No	**:**	CIV 2538 of 2013

Catchwords:

Practice and procedure - Whether grounds of appeal have any reasonable prospect of success - *Supreme Court (Court of Appeal) Rules 2005* (WA), r 43(2)(g)(i) - Appeal dismissed

Legislation:

Supreme Court (Court of Appeal) Rules 2005 (WA), r 43(2)(g)(i)

Result:

Appeal dismissed

Category: B

Representation:

Counsel:

Appellant	:	In person
Respondent	:	Mr A J Sefton & Ms M Georgiou

Solicitors:

Appellant	:	In person
Respondent	:	State Solicitor for Western Australia

Case(s) referred to in judgment(s):

Attorney General (WA) v Glew [2014] WASC 100
Glew v Shire of Greenough [2007] HCATrans 520

1 **JUDGMENT OF THE COURT**: This is an appeal against an order of the master, made on 12 February 2014, under s 4 of the *Vexatious Proceedings Restriction Act 2002* (WA). In substance, the master prohibited the appellant from instituting any proceedings, as defined in the Act, unless he first obtains the leave of a court or tribunal: ***Attorney General (WA) v Glew*** [2014] WASC 100.

2 As has been his custom, the appellant appeared in person both at first instance and in this court.

3 On 17 April 2014, we dismissed the appeal on the basis that none of the grounds of appeal had a reasonable prospect of success. We said we would provide reasons for our decision later. These are the reasons.

Background

4 The appeal comes before the court on a registrar's notice to attend to consider two matters. One is for the appellant to show cause why the appeal should not be dismissed pursuant to r 43(2)(g)(i) of the *Supreme Court (Court of Appeal) Rules 2005* (WA), on the basis that none of the grounds of appeal has a reasonable prospect of success. The other is an application, dated 18 March 2014, by the appellant for an order in the following terms:

> All decisions of all State Courts involving Wayne Kenneth Glew and Kylie June Glew be set aside until the hearing of this appeal or it be moved to the High Court.

5 Notwithstanding the objection of the appellant, we considered it appropriate to deal first with the notice to the appellant to show cause why the appeal should not be dismissed, as the appellant's application would necessarily fall away if the appeal were dismissed.

6 It is unnecessary to canvass the master's reasons for decision in any detail. As the master noted, the appellant has an entrenched belief that the Parliament of this State has no power to enact legislation, and the courts of this State do not have jurisdiction to administer the law, because neither institution accords with the provisions of either or both of the *Constitution Act 1889* (WA) and the *Commonwealth Constitution*. Over the years, the appellant has advanced various arguments in support of those propositions in a number of legal actions in which he has been involved. When, inevitably, his arguments have failed at first instance he has taken the matter on appeal. He has done so although the same arguments have been emphatically rejected, time and again, by every court to which they have been put.

7 The master referred, without attempting to be exhaustive, to seven different proceedings since 2006 in which those same propositions have been advanced by the appellant. In each case, the appellant failed at first instance and on appeal to this court. On one occasion, the appellant pursued, unsuccessfully, an application for special leave to appeal to the High Court: ***Glew v Shire of Greenough*** [2007] HCATrans 520.

8 The master found that the appellant was a vexatious litigant and made the order referred to above.

9 The appellant appealed against that decision by an appeal notice filed on 28 February 2014.

The grounds of appeal

10 The appellant relies on the following grounds of appeal:

1. Master Sanderson was wrong in law and fact when he refused to abide by the challenge to his ability to constitute a court as he has not been selected by and sworn in by the Governor in Council as required by the State of Western Australia Constitution and a decision of the High Court of Australia No HCA 9 of 1991 which states 'a Master must be sworn in by the Governor'.

2. Master Sanderson was wrong in law and fact when he decided he could ignore the fact that the State of Western Australia Constitution as being used in the State of Western Australia since Federation was a fraud with 32 sections missing and was not the correct Constitution put in place with Letters patent by Queen Victoria on January the 1st 1901 that the appellant tried to show him, He dismissed it as a nonsense.

3. Master Sanderson was wrong in law and fact when he failed to see that the Letters Patent putting in place the Office of the Governor of Western Australia issued on 29th October 1900 by Queen Victoria was being ignored by the Parliament of Western Australia and therefore Western Australia did not have a lawful Governor.

4. Master Sanderson was wrong in law and fact when he failed to see that the Attorney General of Western Australia had not been selected by and been sworn in as an Officer of the Crown and could not sit in State Parliament because of provisions of Chapter 2 of the Commonwealth Constitution 1901.

5. Master Sanderson was wrong in law and fact when he removed the appellant from the Court and after adjourning the Court, went back into the Court and heard the case against the appellant contrary to section 51 ss 24 of the Commonwealth Constitution 1901.

6. Master Sanderson was wrong in law and fact when he denied me a trial by jury in relation to the Constitutional issues after I refused to allow him to deal with the issues in summary jurisdiction.

7. Master Sanderson was wrong in law and fact when he changed the affidavits of the appellant to submissions and then ignored them knowing that they contained several Constitutional issues that he was incapable of deliberating on even if he was a lawful Master of the Supreme Court because of Chapter 111 of the Commonwealth Constitution 1901.

8. Master Sanderson was wrong in law and fact when he ignored the affidavits of the appellant and he then became party to those offences.

9. Master Sanderson was wrong in law and fact when he ignored the affidavits of the appellant where it stated that all laws passed in the Commonwealth of Australia must comply with the Commonwealth Constitution 1901 and any laws passed contrary to the Commonwealth Constitution 1901 are therefore invalid.

10. Master Sanderson was wrong in law and fact when he failed to see that if the Governor signed a law that did not comply with the Commonwealth Constitution 1901 then the law does not bind the Crown and the law is invalid.

11 The written submissions in support of those grounds add nothing to them.

The disposition of the notice to show cause

12 No purpose would be served by traversing the grounds of appeal. Suffice it to say that they amply illustrate why the appellant was found to be a vexatious litigant. In substance, they simply repeat the same contentions, or variations of the same contentions, which the appellant has advanced over and over again, and which this court, among others, has rejected over and over again. They do not improve by repetition; they remain as devoid of legal merit as they were at the outset. None has the remotest prospect of success.

13 The point has long since been passed where the appellant's persistence in advancing these contentions could be put down to a lack of understanding of their absence of legal merit. It can now be attributed only to an obduracy which is impervious to reason and which is unlikely to diminish. The fact that in an appeal against the finding that he was a vexatious litigant the appellant has advanced the same sort of fallacious

contentions which caused that finding to be made in the first place bears that out. The order that the master made was entirely appropriate.

14 It remains only to mention two factual matters raised in the grounds of appeal which should be corrected.

15 In ground 5, the appellant alleges that the master removed him from the court and, after adjourning the court, the master then went back into court and heard the case against the appellant. Notwithstanding the (meaningless) reference to s 51(xxiv) of the *Commonwealth Constitution*, the clear implication is that the appellant was denied a reasonable opportunity to be heard in opposition to the application. That is not the case.

16 At the outset of the hearing before the master, the appellant asserted that the court had no jurisdiction to hear the application, contending that the State constitution was 'a fraud' and that every statute passed, and every judicial appointment made, in reliance upon it was 'forged' (ts 10). The master (rightly) rejected the argument and refused to allow the appellant to develop it further. The appellant persisted, in a belligerent fashion, in an attempt to pursue the argument and refused to resume his seat, to the point where the master said that he would have him removed from the court. At that point the appellant said he would remove himself because the case was 'a fraud … [and the master was] committing a fraud on [the] court' (ts 12). The master adjourned the court until the appellant had left and then resumed the hearing. In the light of the appellant's conduct, that was an appropriate course.

17 Grounds 7 and 8 allege, in a somewhat incoherent fashion, that the master 'changed the affidavits of the appellant to submissions and then ignored them'. That again is a distortion of what occurred. On 15 November 2013, in response to the application, the appellant filed an affidavit, sworn on 29 October 2013, to which was attached an earlier affidavit of the appellant sworn on 3 September 2013. At the hearing, the affidavit filed on 15 November 2013 was first mentioned by counsel for the Attorney General in the course of his submissions. At that stage, the appellant had left the court. Whilst noting that the affidavit was not in evidence, counsel for the Attorney General objected to it, arguing that its contents were in the nature of submissions rather than evidence. The master said he intended to treat it as a set of submissions.

18 The master was correct, if not indeed generous, to do so. The affidavit contained no admissible evidence but simply a further repetition

of the same assertions as to the constitutional invalidity of the legislature and courts of this State.

Conclusion

19 As none of the grounds of appeal has any prospect of success, we ordered that the appeal be dismissed. It was therefore unnecessary to consider the appellant's application.