

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : THE COURT OF APPEAL (WA)

CITATION : GLEW -v- CITY OF GREATER GERALDTON
[2012] WASCA 94

CORAM : NEWNES JA
MURPHY JA

HEARD : 23 APRIL 2012

DELIVERED : 23 APRIL 2012

PUBLISHED : 30 APRIL 2012

FILE NO/S : CACV 148 of 2011

BETWEEN : WAYNE KENNETH GLEW
Appellant

AND

CITY OF GREATER GERALDTON
Respondent

ON APPEAL FROM:

Jurisdiction : DISTRICT COURT OF WESTERN AUSTRALIA

Coram : BIRMINGHAM DCJ

File No : IND GE 2 of 2011, IND GE 3 of 2011

Catchwords:

Practice and procedure - Whether grounds of appeal have reasonable prospect of succeeding - *Supreme Court (Court of Appeal) Rules 2005 (WA)*, r 43(2)(g)(i) - Grounds of appeal repeat grounds dismissed in earlier cases - Appeal dismissed - Indemnity costs ordered

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 L D Hilton-Barber

Solicitors:

Appellant : In person
Respondent : Civic Legal Pty Ltd

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

Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007]
WASCA 289

Glew v Frank Jasper Pty Ltd [2010] WASCA 87

Glew v Shire of Greenough [2006] WASCA 260

Glew v Shire of Greenough [2007] HCATrans 520

Glew v The Governor of Western Australia [2009] WASCA 123

1 **JUDGMENT OF THE COURT:** This appeal arises out of two proceedings in the Magistrates Court in which summary judgment was entered for the respondent against the appellant. The appellant appealed to the District Court against the judgment in each proceeding. The appeals were dismissed by Birmingham DCJ. His Honour ordered the appellant to pay the respondent's costs of each appeal on an indemnity basis.

2 The appellant has lodged an appeal to this court against the decisions of the primary judge. On 19 March 2012, the Court of Appeal Registrar issued a notice to the parties to attend before the court to consider, among other things, whether the appeal should be dismissed under r 43(2)(g)(i) of the *Supreme Court (Court of Appeal) Rules 2005 (WA)* on the ground that none of the grounds of appeal have a reasonable prospect of succeeding.

3 On 23 April 2012, we dismissed the appeal. We said we would provide reasons for decision in due course. These are the reasons.

Grounds of appeal

4 The grounds of appeal are as follows:

1. The Magistrates and District Courts of Western Australia do not have lawful jurisdiction or lawful authority to administer law within the State of Western Australia or the Commonwealth of Australia since the unlawful establishment of the Commonwealth of Australia as a Corporation without authority of the people.
2. Legislatures [sic] of the Parliament of Western Australia purports to empower local Government to administer and to make by-laws via the Local Government Act 1995, to exercise power and Authority over Fee Simple (Freehold) Land.
3. The Courts have totally in law and fact disregarded the will of the people as expressed in the 1988 referendum.
4. Justice Birmingham [sic] was wrong in law and fact when he refused the [appellant] the right to put case law from the High Court into evidence.
5. Justice Birmingham [sic] was wrong in law and fact when he refused to abide by Chapter III of the Federal Constitution and declare the Magistrates Court Act of Western Australia to be invalid by transgressing the Constitution (Commonwealth).
6. Justice Birmingham [sic] was wrong in law and fact when he relied on the decision [in *Glew v Shire of Greenough* [2006] WASCA

260] when that decision was wrong in law and fact and contrary to the state and Federal Constitutions and Imperial Acts.

7. Justice Birmingham [sic] was wrong in law and fact when he failed to remove himself from the bench when it was explained to him that he was an employee of a corporation through a subsidiary company and not an officer of the crown.
8. Justice Birmingham [sic] was wrong in law and fact when he read out a decision to the court that he did not make or write.

Disposition of the appeal

5 A number of the grounds of appeal repeat, in substance if not precisely the same terms, grounds that have been advanced by the appellant, and rejected by this court, in previous cases. Grounds to the same effect as grounds 2 and 3 were rejected in *Glew v Shire of Greenough* [2006] WASCA 260 [21] - [25]; a ground to the same effect as ground 5 was rejected in *Glew Technologies Pty Ltd v Department of Planning and Infrastructure* [2007] WASCA 289 [12] and *Glew v Frank Jasper Pty Ltd* [2010] WASCA 87 [14] - [16]; and a ground to the same effect as ground 7 was rejected in *Glew v Frank Jasper* [17] as being frivolous and vexatious, as this ground is.

6 It is unnecessary to cover the same ground again. Those grounds are without merit and must be struck out. We would note, however, that in *Glew v The Governor of Western Australia* [2009] WASCA 123, this court said:

The appellant needs to understand that he cannot simply revisit in other guises issues that have been decided against him. The persistent reargitation of these issues is a waste of the time and resources of the court and puts the other party to significant expense and inconvenience. It cannot continue [23].

7 It is apparent that that admonishment has fallen on deaf ears.

8 That leaves grounds 1, 4, 6 and 8. Ground 1 is incomprehensible. It seems, however, that in effect the appellant seeks to run again arguments advanced in *Glew v Shire of Greenough* and rejected in that case at [16] - [20]. We cannot understand ground 4. Cases relied upon in argument are not evidence in the case.

9 Ground 6 is without substance. As the primary judge observed, he was bound by the decision of this court in *Glew v Shire of Greenough*. And as his Honour also observed, an application by the appellant for

special leave to appeal to the High Court against that decision was dismissed: *Glew v Shire of Greenough* [2007] HCATrans 520. Assertions that the decision in *Glew v Shire of Greenough* should not be followed by a lower court because it is wrong are devoid of merit and futile.

10 Ground 8 was not touched upon in the appellant's written submissions but in oral argument the appellant contended that the ex tempore reasons delivered by the primary judge must have been written by someone else during the course of the hearing and, by a means not explained, conveyed to his Honour to deliver. We do not understand the argument. The reasons his Honour gave constitute the reasons that he (correctly) dismissed the appeal. The ground of appeal is without substance.

11 The grounds of appeal have no prospect of success. Some regurgitate grounds that have been dismissed by this court before and the rest are manifestly hopeless. The appeal is an abuse of process and it is an appropriate case for an order that the appellant pay the respondent's costs on an indemnity basis.

Conclusion

12 For those reasons we ordered that:

1. the appeal be dismissed; and
2. the appellant is to pay the respondent's costs of and incidental to attending on the registrar's notice to attend, to be taxed on an indemnity basis so that the respondent is fully indemnified for its costs except insofar as the costs may have been unreasonably incurred or are unreasonable in amount.