[2009] WASCA 123

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA
TITLE OF COURT	**:**	THE COURT OF APPEAL (WA)
CITATION	**:**	GLEW -v- THE GOVERNOR OF WESTERN AUSTRALIA [2009] WASCA 123
CORAM	**:**	PULLIN JA NEWNES JA
HEARD	**:**	26 JUNE 2009
DELIVERED	**:**	16 JULY 2009
FILE NO/S	**:**	CACV 20 of 2009
BETWEEN	**:**	WAYNE KENNETH GLEW Appellant AND THE GOVERNOR OF WESTERN AUSTRALIA Respondent

ON APPEAL FROM:

Jurisdiction	**:**	SUPREME COURT OF WESTERN AUSTRALIA
Coram	**:**	HASLUCK J
Citation	**:**	GLEW -v- THE GOVERNOR OF WESTERN AUSTRALIA [2009] WASC 14
File No	**:**	CIV 2107 of 2008

Catchwords:

Appeal - Dismissal under *Supreme Court (Court of Appeal) Rules 2005* (WA), r 43(2)(g)(i) - Appeal has no prospect of success - Turns of own facts

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 G T W Tannin SC & Ms S Keighery

Solicitors:

Appellant	:	In person
Respondent	:	State Solicitor for Western Australia

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

Attorney General v Shaw [2004] WASC 280
Attorney-General (WA) v Marquet (2003) 217 CLR 545
Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007] WASCA 289
Glew v Shire of Greenough [2006] WASCA 260
Glew v Shire of Grennough [2007] HCATrans 520
Glew v The Governor of Western Australia [2009] WASC 14
Port MacDonnell Professional Fishermens Association v South Australia (1989) 168 CLR 340
Re Shaw (2001) 4 VR 103
Shaw v Attorney General for the State of Western Australia [2005] WASC 149
Shaw v Jim McGinty in his capacity as Attorney General [2006] WASCA 231
The Attorney-General for the State of Victoria v Shaw [2007] VSC 148

1 **PULLIN JA**: I agree with Newnes JA.

2 **NEWNES JA**: The appellant has been required to show cause why this appeal should not be dismissed under r 43(2)(g)(i) of the *Supreme Court (Court of Appeal) Rules 2005* (WA). That rule permits the court to dismiss an appeal if none of the grounds of appeal has a reasonable prospect of succeeding.

Background

3 The appellant appeals against a decision of Hasluck J striking out the appellant's statement of claim and dismissing the action on the ground that it disclosed no reasonable cause of action and was scandalous, frivolous and vexatious.

4 The writ of summons was filed on 3 September 2008. It was indorsed with a statement of claim. In the statement of claim, the appellant alleged that certain Acts did not conform with the prescribed manner and form provisions of s 73(2)(g) of the *Constitution Act 1889* (WA) and are therefore invalid. The Acts in question were the *Australia Acts (Request) Act 1985* (WA) and the *Australia Act 1986* (Cth) (together, the *Australia Acts*), the *Electoral Amendment and Repeal Act 2005* (WA) (the *One Vote One Value Act*) and the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* (WA) (the *AARCLP Act*).

5 The appellant alleged that, on 1 January 2004, the Governor, the Attorney-General and the Parliament of Western Australia unlawfully and illegally enacted the *AARCLP Act*, which purported to remove the Crown and Monarch from all legislation within Western Australia, without the formal referendum consent required under s 73(2)(g) of the *Constitution Act*.

6 The appellant pleaded that, by purporting to do so, the Parliament of Western Australia, with the apparent consent and agreement of the courts of the State of Western Australia and of the Commonwealth, in effect, created an illegal State and fractured the Commonwealth.

7 The appellant pleaded that the office of Governor has been altered by the substitution of the Governor for the Monarch and Sovereign in the *AARCLP Act*. The appellant pleaded that the *AARCLP Act* 'has created [a] breach of allegiance being treason and misprision of treason'.

8 The appellant sought declarations that the Acts referred to were void and of no effect. He also sought an injunction, pursuant to s 73(6) of the *Constitution Act*, to enforce the provisions of s 73(2)(g) of that Act, and an injunction to prevent the state election scheduled for 6 September 2008.

9 Following service of the writ, the solicitors for the respondent applied for orders, pursuant to O 20 r 19(1) of the *Rules of the Supreme Court 1971* (WA), that the statement of claim be struck out, the action be dismissed, and there be judgment for the respondent, on the ground that the statement of claim disclosed no reasonable cause of action and was scandalous, frivolous and vexatious.

10 The respondent's application came on for hearing on 4 December 2008. After hearing argument, the primary judge reserved his decision.

11 I should mention that at the hearing the primary judge refused to receive from the appellant a DVD containing submissions by a Mr Brian Shaw, on the ground that Mr Shaw was not a party to the proceeding and it was open to the appellant to advance any relevant submissions. I should also mention that in 2004, Mr Shaw was made the subject of orders under the *Vexatious Proceedings Restriction Act 2002* (WA): ***Attorney General v Shaw*** [2004] WASC 280; ***Shaw v Attorney General for the State of Western Australia*** [2005] WASC 149; ***Shaw v Jim McGinty in his capacity as Attorney General*** [2006] WASCA 231. Mr Shaw has also been declared a vexatious litigant in Victoria: ***The Attorney-General for the State of Victoria v Shaw*** [2007] VSC 148.

12 On 30 January 2009, the primary judge delivered judgment on the application: ***Glew v The Governor of Western Australia*** [2009] WASC 14. His Honour found that the statement of claim disclosed no reasonable cause of action and was frivolous and vexatious. His Honour ordered that the statement of claim be struck out, the action be dismissed, there be judgment for the respondent, and the appellant pay the respondent's costs.

The findings of the primary judge

13 The primary judge found that the validity of the *Australia Acts* had been upheld by the High Court in ***Port MacDonnell Professional Fishermen's Association v South Australia*** (1989) 168 CLR 340 and ***Attorney-General (WA) v Marquet*** (2003) 217 CLR 545 and that the appellant's contention that s 73(2)(g) of the *Constitution Act* required a referendum for their enactment had no legal merit.

14 His Honour found that s 73(2)(g) of the *Constitution Act* did not require a referendum for the enactment of the *One Vote One Value Act* or the *AARCLP Act* and that those Acts had been validly enacted. Moreover, the Court of Appeal had upheld the validity of the latter Act in ***Shaw v McGinty***. (The appellant in that case was Mr Brian Shaw, to whom I referred earlier). There was therefore no legal merit in the challenges to those Acts.

15 The primary judge concluded that the appellant's claims had no legal merit and should be struck out on that ground. His Honour went on to say that in circumstances where the claims were without merit and where they followed a pattern of unsuccessful litigation in which the appellant had participated or taken an interest, the claims were frivolous and vexatious and should be struck out on that basis also.

The appeal

16 The appellant lodged an appeal against that decision on 17 February 2009. Under the *Supreme Court (Court of Appeal) Rules* the appellant's case was required to be filed by 25 March 2009. On 8 April 2009, the appellant filed an application (dated 24 March 2009) for an extension of time in which to file the appellant's case. On 15 May 2009, this court ordered that the appeal be dismissed unless the appellant's case was filed by 4 pm on 22 May 2009. The appellant filed the appellant's case on 22 May 2009, together with 10 affidavits. The affidavits were rejected by the Court of Appeal office, no leave having been granted, or sought, to adduce additional evidence on the appeal.

17 There are 42 grounds of appeal. I do not consider any useful purpose would be served by attempting to canvass the grounds of appeal. Many of them are, as the respondent submitted, incomprehensible. Others assert incorrect or irrelevant legal propositions and a number of them are scandalous and offensive.

18 In that context, I note that various grounds of appeal allege that some members of the Supreme Court are subject to criminal charges which are awaiting grand jury hearings. Those assertions appear to be references to summonses issued by Mr Shaw in the Magistrates Court at Melbourne in November 2006. On 15 December 2006, those charges were struck out after they were taken over by Commonwealth Director of Public Prosecutions and withdrawn. The Supreme Court of Victoria subsequently described the charges as vexatious proceedings instituted without any reasonable ground and doomed to failure: ***Attorney-General for the State of Victoria v Shaw***, [59]. The references to grand jury

proceedings appear to relate to attempts by Mr Shaw to file grand jury applications under s 354 of the *Crimes Act 1958* (Vic). It is clear that those applications have no prospect of success: see ***Re Shaw*** (2001) 4 VR 103, 112 - 113; ***Attorney-General for the State of Victoria v Shaw***, [33] - [40], [62].

19 On the hearing of the appeal, the appellant chose not to advance any substantive oral argument, being content merely to assert that the primary judge could not lawfully hear the respondent's application and the members of this court could not hear the appeal, because they were 'a judge in their own cause'. The appellant did not explain the utility of his appeal in the light of that submission.

20 The appellant's written outline of submissions did not advance the matter. It consisted, without any explanation as to their relevance, of the reproduction of a number of provisions of the *Crimes Act 1914* (Cth), *Criminal Code Act 1995* (Cth), *Crimes Act 1958*, *Judiciary Act 1903* (Cth), *Commonwealth of Australia Constitution Act* (Cth), and miscellaneous other legislation, extracts from *Black's Law Dictionary* and, from *The Bible*, extracts from the books of Exodus and Zechariah, the second epistle of Paul to the Corinthians, the epistle of James and the gospel according to St Matthew.

21 In any event, it is clear that the appeal is entirely without merit. The primary judge was, with respect, plainly correctly, for the reasons he gave, in finding that the statement of claim disclosed no reasonable cause of action and was scandalous, frivolous and vexatious. No other finding was open.

22 I should also point out that the appellant's challenge to the validity of the *AARCLP Act* follows similar, unsuccessful, challenges to it in ***Glew v Shire of Greenough*** [2006] WASCA 260 and ***Glew Technologies Pty Ltd v Department of Planning and Infrastructure*** [2007] WASCA 289. An application to the High Court for special leave to appeal against the former decision was dismissed: ***Glew v Shire of Grennough*** [2007] HCATrans 520 (6 September 2007).

23 The appellant needs to understand that he cannot simply revisit in other guises issues that have been decided against him. The persistent reagitation 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.

Conclusion

24 I would dismiss the appeal. The appellant must pay the respondent's cost of the appeal to be taxed. The respondent did not seek an order for indemnity costs on this occasion.