

COURT OF APPEAL

McMURDO P
WILLIAMS J

Appeal No 9356 of 1999

ALAN GEORGE SKYRING Applicant (Applicant)

BRISBANE

..DATE 03/11/99

JUDGMENT

THE PRESIDENT: The applicant was declared a vexatious litigant under section 3 of the Vexatious Litigants Act 1981, "the Act", by White J on 5 April 1995. In 1997 Muir J refused the applicant's application under section 4 of the Act to revoke the order made by White J, noting that the applicant faced the problem that White J's declaration had been the subject of an unsuccessful appeal to the Court of Appeal. Muir J noted:

"Express reference was made in the reasons for judgment of Davies JA in the Court of Appeal to Her Honour's reasons and he expressed agreement with those reasons. No (sic) other members of the Court agreed."

In fact in the judgment delivered in *Skyring v. Kenneth Michael O'Shea*, Crown Solicitor, CA No 56 of 1995, 7 August 1995, Davies JA said:

"The same is true of the second appeal before this Court which is against an order declaring Mr Skyring to be a vexatious litigant. I have carefully looked at the reasons of the learned Judge who made the order and agree with her entirely. Time has long past when it is necessary to set out and reject once again the arguments of this appellant. The appeal in my view must be dismissed."

Moynihan and Fryberg JJ clearly and unequivocally expressed their agreement with the presiding Judge.

On 23 September 1999 the applicant then sought yet again to reopen the application before Muir J to have the declaration made by White J revoked on a number of bases.

The first was that the judgment from the decision of

White J was not upheld on appeal, because of the typographical error in Muir J's 1997 reasons for judgment.

In 1999 Muir J, hardly surprisingly, confirmed the words in his 1997 reasons were a typographical error and should read, "The other members of the Court agreed."

The applicant also submitted that in the Court of Appeal as the two appeals, *Skyring v. ANZ Banking Group Limited*, CA No 26 of 1995, and *Skyring v. Kenneth Michael O'Shea*, CA No 56 of 1995, were heard and judgment was given in respect of both appeals together, there was an ambiguity in the use of the expression by Moynihan and Fryberg JJ, "I agree."

It is clear there was no such ambiguity; the Court of Appeal was unanimous in its decision to dismiss the appeal, *Skyring v. Kenneth Michael O'Shea*, CA No 56 of 1995, with costs, and to strike out CA No 26 of 1995.

The other arguments put forward by the applicant below were yet another attempt to raise those same arguments which have been consistently held by this Court and by the High Court of Australia to be without merit and which resulted in

White J's declaration under section 4 of the Act. Muir J rightly refused the applicant's application.

I have perused the material filed by the applicant in this case. The applicant has failed to show any error on the

part of the learned Judge below or to demonstrate any merit in his application for leave to appeal. I would dismiss the application.

WILLIAMS J: I have perused all the material the applicant has placed before the Court and I can find therein nothing to justify the revocation of the declaration made by White J on 5 April 1995 pursuant to the Vexatious Litigants Act 1981. I agree with the order proposed by the President.

THE PRESIDENT: The order is the application is dismissed.
