

CITATION: *Braddock v NT of A and Organ* [2002] NTMC 01

PARTIES: PAUL BRADDOCK
v
NORTHERN TERRITORY OF AUSTRALIA
&
BERNARD JAMES ORGAN

TITLE OF COURT: LOCAL COURT (NT)

JURISDICTION: Crimes (Victim's Assistance) Act

FILE NO(s): 20020592

DELIVERED ON: 8th February 2002

DELIVERED AT: Darwin

HEARING DATE(s): 21 December 2001

JUDGMENT OF: Bradley CM

CATCHWORDS:

CRIMES VICTIMS ASSISTANCE

Appeal from decision of Judicial Registrar, whether extension of time should be granted.

Crimes (Victims Assistance) Act 1982 (NT) s5
Local Court Act 1989 (NT) s20

REPRESENTATION:

Counsel:

Applicant:	In person
1 st Respondent:	Mr Johnson
2 nd Respondent:	No appearance

Solicitors:

Plaintiff:	In person
1 st Respondent:	Priestleys
2 nd Respondent:	No appearance

Judgment category classification:	B
Judgment ID number:	[2002] NTMC 001
Number of paragraphs:	12

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20020592

[2002] NTMC 001

BETWEEN:

PAUL BRADDOCK
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
1st Respondent

BERNARD JAMES ORGAN
2nd Respondent

REASONS FOR JUDGMENT

(Delivered 8th February 2002)

Mr BRADLEY CM:

1. In this matter the applicant seeks to obtain a Court Certificate for Assistance arising from injuries said to have been sustained as a result of an alleged Criminal offence committed by the Second Respondent Bernard Organ on 4 March 1998. The Application for Assistance was filed on 5 December 2000 which is clearly more than the twelve months allowed by s 5 (1) of the *Crimes (Victims Assistance) Act* for bringing such applications. An application for extension of time was therefore made and originally heard by Judicial Registrar Fong Lim on the 8th of August 2001. The Application for Extension of Time was refused by the Judicial Registrar on the grounds that the applicant had” failed to provide to the Court a reasonable excuse” for the delay between being advised of his rights under the Act in May 1999 and 5 December 2000.

2. The applicant sought to appeal from this decision by filing a Form 25A application for an extension of time in which to appeal on 17 August 2001 and a Form 36A application also seeking an extension of time for a re-hearing on the 31st of August 2001. One or both of those applications were brought before His Worship Mr Loadman on 21 September 2001 and struck out of the basis of the failure of the applicant to appear. His Worship also noted that the application was “technically out of order anyway”. While it is true that the applications were not in the correct form it seems that the failure of the applicant to appear on that day was due to a fault on the part of the Court staff and this was not known by His Worship at the time. Leave had been granted on 10 September 2001 for the applicant to appear by telephone on the basis that he would supply the telephone connection number on or before the close of business on 19 September 2001. Although this was done by the applicant, the Court Staff were not made aware of it and so the necessary telephone connection was not made to allow the applicant to appear.
3. The order of His Worship Mr Loadman was therefore made under an honest misapprehension as to the facts. Had he known about the failure of court staff the matter might have been rectified or His Worship may have approached the matter differently.
4. The applicant, Mr Braddock, seeks redress for the inability to put his submissions to Mr Loadman. He has done so by filing an application under Rule 25 on 16 November 2001. The procedure is correct for an application for extension of time, an application for a re-hearing under section 20 under the *Local Court Act* and for an appeal against the order of the Judicial Registrar pursuant to Rule 4.04 of the *Local Court Rules*.
5. The form of words used on the application are “I’m re-appealing against the order that denied an extension of time in my Crimes Victims case”. In my view it is fair that this document be deemed sufficient to be incorporate

three applications arguably necessary to permit Mr Braddock to present his argument to the Court as to why he should have the benefit of the original order sought namely that he be granted an appropriate extension of time within which to apply for assistance. Mr Johnson for the First Respondent did not agree that his client was in any way prejudiced as to the application for a rehearing of the appeal. The Second Respondent, Mr Organ, was not served with the current application. Although he was served with the earlier applications he did not seek to appear in relation to them. I see no problem with proceeding with the current application in these circumstances on the basis that the Second Respondent's rights in relation to the primary application will be preserved if the application is now successful.

6. I consider that it is appropriate the applicant be allowed to present his case on the appeal from the decision of the Judicial Registrar. I do so on the basis that his failure to appear at the proceedings of the Court on 21 September 2001 was an error on the part of the court staff and no party would thereby be prejudiced. I am therefore prepared to order that the order of 21 September 2001 be set aside, pursuant to section 20 of the *Local Court Act* and that the proceeding be reheard.
7. The question which then falls for determination is whether the order of Judicial Registrar Fong Lim should be set aside and some other order made.
8. The *Crimes (Victims Assistance) Act* makes the following provisions as to time

“5 (1) A victim or, where the victim is an infant or the Court is satisfied the victim, because of injury, disease or physical or mental infirmity, is not capable of managing his or her affairs in relation to the application, a person who, in the opinion of the Court, is a suitable person to represent the interests of a victim, may, within 12 months after the date of the offence, apply to a Court for an assistance certificate in respect of the injury suffered by him as a result of that offence.

5 (3) The Court may, as it thinks fit, extend the period within which an application under this section may be made.”

9. I have considered the affidavit material lodged by the parties and the arguments put to me in submissions. Essentially the applicant said that although he knew about his rights some time in May 1999 (the date he received advice from Messrs Ward Keller, solicitors) he was unable to proceed for financial reasons and illness. He did not receive financial assistance from his union until late 2000 and that enabled him to file the application on the 5th of December 2000. He told me also in submissions that he was stressed out and not functioning properly. This is supported to some extent by psychiatric reports included in the material provided to the Court but those reports tend to show preoccupation with the event and conditions rather than an inability to deal with them. His psychiatric condition did not appear to me to be such as would necessary inhibit his ability to pursue the claim. Other material provided by the applicant appeared to me to relate to merits of the claim rather than reasons for delay. Other facts in the material lead me to believe that the claim may to be considered to be speculative in any event.
10. The First Respondent argued that the request for an extension of time should not be granted. He argues that:
 - 10.1 the applicant knew of the time limits at least by May 1999
 - 10.2 that notwithstanding this knowledge the applicant did not file his application until December 2000.
 - 10.3 That the Defendant would suffer prejudice in that it is now not possible for it to examine the roller door mechanism which is said to have inflicted the electrical shock to Mr Braddock.
 - 10.4 That the First Respondent is no longer reasonably able to locate all of the relevant witnesses to the event.

10.5 The applicant has, in any event, his rights under the Work Health legislation.

11. In my view there are insufficient reasons shown by the applicant to justify the delay and, additionally the defendant would be substantially prejudiced if the application was allowed to proceed.
12. For the above reasons I find that the application is entitled to be heard in relation to the appeal from the Judicial Registrar but on the merits the appeal should be rejected and the application for extension of time is refused.

Dated this 8th day of February 2002.

HUGH BRADLEY
CHIEF MAGISTRATE