IN THE RACING APPEALS TRIBUNAL

JUSTIN KING
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION OF A FURTHER APPLICATION FOR AN ORDER UNDER CLAUSE 14 OF THE *RACING APPEALS TRIBUNAL REGULATION 2015 (NSW)*

BACKGROUND

1. On 22 December 2023, I determined that an application for a stay which had been made by the Appellant in this matter should be refused. At that time, the factual background was set out in full, and should be read in conjunction with this determination.

EVENTS FOLLOWING THE DETERMINATION OF 22 DECEMBER 2023

2. On 5 January 2024, the Appellant's Solicitor wrote to the Secretary and put what was, in effect, a proposal to resolve the issue of the stay. It is appropriate that the substance of such correspondence be set out in full:

> *We act for Mr Justin King. He has been served an interim AVO in relation to another member of the racing fraternity. I am informed he has appealed his [sic] decision for the interim suspension based on his income and the fact that he is an innocent person until proven otherwise. He dies [sic] any allegation as stated.*
>
> *As you are aware Mr King earns his entire living from the Greyhound industry. The interim AVO application is based on a very vague allegation of "assault" with no other details. I note that Police have not charged or interviewed our client as to any criminal matter. This position has not changed.*

Mr King has been advice [sic] to oppose the application for an AVO against him based on such vague information. On the other hand he may be prepared to accept an undertaking to the Court on a "without admissions basis" and without prejudice if the interim ban can be lifted immediately.

This would allow our client to continue to work and earn a living and the matter would be finalised with the protected person covered by the current conditions of [sic] 1 and 2 of the AVO.

Our client will also undertake not to attend the Richmond and Wentworth Park meetings so as to avoid any contact with the person in need of protection. This would be an excellent compromise for both parties and avoid any Court action or hearings in the future.

3. The Respondent did not consent to the resolution which was proposed. In these circumstances, orders were made on 9 January 2024 to facilitate the bringing of a further application by the Appellant.

SUBMISSIONS OF THE APPELLANT

4. The Appellant has submitted that whilst the allegation which forms the basis of the application under the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* (the CDVA) is one of assault, it remains an allegation which is entirely unparticularised. He has also emphasised that the allegation is denied, and that he has not, at least up to this point, been provided with any evidence to support it.

5. The Appellant has also pointed out, with some force, that notwithstanding the nature of the allegation, no charge of assault pursuant to the *Crimes Act 1900* (NSW) has been laid against him by police. The Appellant relies upon the absence of such a charge as an indication of the lack of strength of the application which has been made under the CDVA, and as a further factor which supports the grant of a stay.

6. The Appellant has further submitted that in circumstances where the application under the CDVA comes before the Penrith Local Court again on 16 February 2024, it is unlikely to be heard and determined until sometime approaching the end of 2024. Whilst there is no specific evidence of that, it accords with my own experience of the extent delays in the Local Court of New South Wales. In

these circumstances, the Appellant has submitted that if a stay is not granted, he will be subject to significant financial prejudice in circumstances where the greyhound racing industry provides his sole source of income.

7. Finally, I should note that the Appellant submitted that the proceedings brought by the complainant were *"totally designed to destroy [his] relationship with the greyhound racing industry ….."* I have disregarded that submission, for the simple reason that there is absolutely nothing to support it.

SUBMISSIONS OF THE RESPONDENT

8. The Respondent submitted that once it became aware of the allegations against the Appellant, it assumed the responsibility of protecting the complainant, and protecting other participants in the greyhound racing industry. It was further submitted that the seriousness of the allegations against the Appellant was reflected in the fact that such allegations involved "*a legal minor".* As far as I can ascertain, that assertion is not supported by any evidence which has been provided to me, but in circumstances where the Appellant has not taken issue with it, I accept it to be the case.

9. The Respondent further submitted that the Appellant's continued participation in the industry, absent resolution of the proceedings brought pursuant to the CDVA, risked undermining public confidence in the industry, particularly given the fact that the purpose of imposing an interim suspension is, at least in part, protective.

10. The Respondent acknowledged that no criminal proceedings had been brought against the Appellant arising out of the circumstances which form the basis of the application under the CDVA. However, it was submitted that the determination to impose an interim suspension was nevertheless appropriate, given that:

    (a) a young person had made a serious allegation against an industry participant; and

(b) NSW Police had lent *"sufficient credence"* to those allegations to make a complaint on that person's behalf.

11. In terms of the undertakings previously proffered by the Appellant, the Respondent submitted that they were "*inappropriate*" because "*the complainant ought not to be required to restrict her participation in greyhound racing".*

12. Finally, the Respondent submitted that any financial prejudice to the Appellant as a consequence of the interim suspension was outweighed by the risks posed by allowing the Appellant to continue his participation in the industry. In support of that submission, the Respondent relied on a previous decision of the Tribunal in a matter of *Smyth* in which the following was stated:

> *The aspect of hardship is indeed one which the Tribunal does consider, but having regard to the totality of the facts that are available to the Tribunal on this interim suspension appeal, the Tribunal is not persuaded that that factor alone warrants the integrity issues which are of such import to be paramount [sic].*

CONSIDERATION

13. In refusing the Appellant's previous application for a stay, I ultimately concluded (at [29]–[30]) that the necessity to preserve the integrity of the greyhound racing industry outweighed (amongst other things) the financial prejudice to which the Appellant would be subject if a stay were not granted. That conclusion was obviously reached on the basis of the information which was then available. Since that time, a number of further circumstances have emerged which, in my view, materially change the position.

14. To begin with, it is now clear that although the application for an order under the CDVA is apparently based upon an allegation of assault, no *charge* of assault has been laid against the Appellant. That fact is both unusual and significant. As a matter of practice, it is highly unlikely that the police would have made the application under the CDVA, and sought an interim order, in the absence of the complainant providing evidence, in the form of a written statement, detailing the

basis on which he or she was said to be in need of protection. Given that, the absence of any charge of assault being brought, in circumstances where the proceedings under the CDVA are apparently based upon such an allegation, is capable of sustaining one of two inferences, either that:

(i) it has been determined that the information in the possession of the police (which, as I have said, must include a statement from the complainant) is, even when taken at its highest, insufficient to conclude that there are reasonable prospects of a conviction for an offence of assault; or

(ii) such information, even though it may be sufficient to ground reasonable prospects of a conviction, discloses an offence of such triviality that a determination has been made, in the exercise of prosecutorial discretion, that it is not in the public interest to bring a charge.

15. Either inference is capable of supporting the Appellant's overarching submission that the allegation against him is weak. Accepting that to be the case, I take the view that any risk to public confidence in the greyhound racing industry falls towards the lower end of the scale.

16. Further, in circumstances where the sole basis of the Respondent's decision to impose an interim suspension on the Appellant is the fact of the proceedings brought under the CDVA, the Respondent proposes to await the outcome of the CDVA proceedings before taking the matter any further. Whilst that is not an unreasonable for the Respondent position to take, a number of factors flow from it.

17. To begin with, the Appellant denies the allegation and will oppose the application, which means that it will have to proceed to a hearing in the Local Court. Accepting the submissions of the Appellant, that hearing is unlikely to take place until the latter part of 2024. It follows that if a stay is not granted, the

Appellant will be deprived of his principal source of income for a period of approximately 12 months, in a case where the allegations against him are, on one view, not particularly strong. Importantly, that is a matter to which I specifically alluded in my earlier determination (at [30]) as having the potential to materially change the circumstances of this particular case if it were to eventuate. It now has.

18. The Respondent sought (in part) to meet this development, and the issue of prejudice generally, by relying upon the statement made by the Tribunal in the matter of *Smyth* which I have extracted at [12] above. A number of observations should be made in that regard.

19. First, it is apparent from the recitation of the facts by the Tribunal in *Smyth* (at [3]) that the case against that Appellant was far stronger than the case against the present Appellant.

20. Secondly, one of the factors which caused the Tribunal to find against the Appellant in *Smyth* was the fact that the delay (which I calculate as being in the nature of weeks and not months) was "*not inordinate"* (at [9]). That is a long way removed from the delay which it is now clear will be experienced in the present case, and which will be productive of severe financial hardship to the Appellant if a stay is not granted.

21. Thirdly, in *Smyth* the Tribunal emphasised (at [7]) that determinations of this kind are discretionary. It goes without saying that such discretion must obviously be exercised according to the facts and circumstances of the particular case being considered. Facts and circumstances of cases necessarily differ, and no two cases are the same. Consistent with that, and entirely unsurprisingly, the Tribunal expressly stated in *Smyth* that it had reached its conclusion *"having regard to the totality of the facts"* that had been made available to it. Two further matters arise from that.

22. The first, is that the facts in *Smyth* were, as I have pointed out, different in material respects from those in the present case.

23. The second, is that the passage from the Tribunal's reasons in *Smyth* upon which the Respondent relied cannot be construed (and could not have been intended) as an authoritative statement that financial hardship can *never* be a circumstance which favours a stay (or the upholding of an appeal), or that financial hardship will *always* be outweighed by other factors. To construe the passage in that way would be fundamentally inconsistent with the very nature of judicial discretion.

24. Finally, as far as the Respondent's protective duty is concerned, three observations can be made.

25. The first, is that accepting that such duty extends to participants in the greyhound racing industry generally (i.e. beyond the complainant), nothing has been put before me which supports the proposition that any person other than the complainant might be in need of protection from the Appellant.

26. The second, is that accepting that the Respondent has a duty to protect the complainant, the undertakings proffered by the Appellant (which I infer were proffered in circumstances where the complainant frequents the Richmond and Wentworth Park Greyhound Racing tracks), if imposed as conditions under clause 14(2) of the *Racing Appeals Tribunal Regulation 2015,* go a significant way to ensuring that protection of the complainant is put in place. If the Appellant breaches them, he does so at his peril. Such conditions can be fortified by a further condition effectively prohibiting the Appellant from contacting the complainant in any way. Moreover, and although I have not been provided with a copy of any of the documentation issued by the Local Court, it can be reasonably assumed that the interim order which has been made against the Appellant incorporates conditions directed towards the complainant's protection. A breach of those conditions would amount to an offence under s 14 of the CDVA which carries a maximum penalty of 2 years

imprisonment. In all of these circumstances, I am satisfied that the complainant is protected to the greatest extent possible.

27. The third, is that contrary to the submission advanced on behalf of the Respondent, imposition of the undertakings which have been proffered will not, in my view, result in the *complainant* being required to restrict her participation in greyhound racing. Any relevant restriction will be placed on the *Appellant.*

CONCLUSION

28. In this particular case, and as I pointed out in my earlier determination, there is clearly a serious question to be tried. The sole issue in determining whether a stay should be granted involves a consideration of where the balance of convenience lies.

29. Given the matters which have emerged since my earlier determination, and for the reasons given, I am satisfied that such balance now weighs in favour of the grant of a stay.

30. I therefore make the following orders:

1. Pursuant to Clause 14 of the *Racing Appeals Tribunal Regulation 2025* (NSW), and until further order of the Tribunal, the decision of the Respondent made on 15 December 2023 to impose an interim suspension of the Appellant's registrations pursuant to r 169(5)(c) of the *Greyhound Racing Rules* is not to be carried into effect.

2. The order in [1] is subject to the conditions that for the duration of that order, and until further order, the Appellant is:

    (i) not to communicate with, or attempt to communicate with, directly or indirectly, by any means whatsoever, the named complainant in proceedings brought against him in the Penrith

Local Court pursuant to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW);

(ii) to remain away from:

(a) the Richmond Race Club, located at 312 Londonderry Road, Richmond; and

(b) Wentworth Park Greyhounds, Wentworth Park Road, Glebe.

3. The Appellant is to advise the Appeals Secretary, and the Respondent, by 12 noon on 17 February 2024, of the outcome of the proceedings brought against him in the Penrith Local Court pursuant to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) which are before the Penrith Local Court on 16 February 2024.

DATED: 30 January 2024

THE HONOURABLE G J BELLEW SC