LIABILITY FOR FALSE IMPRISONMENT AND JUDICIAL IMMUNITY IN AUSTRALIA'S FEDERAL COURT SYSTEM

THE Australian case of *Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020, stemmed from one of the parties to a routine family law property dispute, Mr. Stradford, being declared in contempt of court by Judge Vasta of the Federal Circuit Court of Australia ("FCC"). He was detained and falsely imprisoned for the purported contempt (at [375]) and brought an action against the judge. Wigney J. rejected Judge Vasta's claim for judicial immunity from suit and found him personally liable for the tort of wrongful imprisonment, referring to "a gross miscarriage of justice" (at [1]) and finding that Judge Vasta "acted without or in excess of his jurisdiction in the requisite sense" (at [368]). The case establishes that a judge of an inferior court acting without jurisdiction is not afforded judicial immunity.

During an earlier hearing, it was put to Mr. Stradford that he had not adequately or properly disclosed his financial position. Judge Vasta said he would jail Mr. Stradford should he not comply with disclosure orders: "I don't have any hesitation in jailing people for not complying with my orders" (cited at [22]).

When the matrimonial proceedings came before another judge, Judge Turner, for directions, Mr. Stradford claimed he had produced all the documents he was capable of producing. Mrs. Stradford claimed that he had not disclosed some documents, and Her Honour circled these items on a copy of the orders. However, she did not find that Mr. Stradford had failed to comply or conclude that he was in contempt. She adjourned the matter "for hearing of the contempt application", despite there not having been any "contempt application" filed (at [28]).

The matter came again before Judge Vasta, with both parties appearing unrepresented. He "inexplicably stated, at the very commencement of the hearing, that Judge Turner had determined that Mr. Stradford was in contempt. It is almost impossible to conceive how the Judge arrived at that conclusion" (at [122]). A conversation with Judge Turner or consultation of the court records would have revealed no finding of Mr. Stradford failing to comply with orders, nor of contempt (at [360]). There were "fundamental and egregious errors in the purported exercise of (Judge Vasta's) power to punish Mr. Stratford for contempt" (at [5]). Despite Mrs. Stradford making it clear that she did not want Mr. Stradford to go to jail, Judge Vasta sentenced Mr. Stradford to imprisonment for contempt (at [36]).

Mr. Stradford was imprisoned for seven nights and then made an application to stay the imprisonment orders. Judge Vasta granted the stay application and in doing so, "effectively conceded that he erred in

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finding Mr Stradford in contempt and in sentencing him to imprisonment" (at [50]).

The tort of false imprisonment is one of strict liability and "... it is the defendant who must show lawful justification for his or her actions" (at [153]) (citing Kirby J., in *Ruddock v Taylor* (2005) 222 C.L.R. 612, [2005] HCA 48, at [140]).

Judge Vasta, and the Commonwealth, contended that there was lawful justification for the imprisonment, on the basis that "the imprisonment order and warrant remained valid and effective until set aside" (at [157]). Wigney J. rejected this proposition, noting that while there is no doubt that "orders made by a superior court are valid until set aside" (at [179]), by contrast, "[a] judicial order of an inferior court made without jurisdiction has no legal force as an order of that court" at [179]). Judge Vasta acted "in excess of his jurisdiction by ... making the imprisonment order and issuing the warrant without first finding that Mr Stradford was in contempt" (at [174]). As an inferior court judge his purported contempt orders were deprived of legal effect *at the time they were made*. There was no justification for the imprisonment and the tort was established.

As to the continuing distinction at common law between the immunity of superior and inferior court justices, Wigney J. found little assistance in dicta by Lord Denning in *Sirros v Moore* [1975] Q.B. 118, 135–36 that the distinction was "no longer valid [as] a matter of principle" (at [136]). Instead, he favoured the comments of Lord Bridge in *Re McC* [1985] A.C. 528, who regarded the distinction as being "deeply rooted in our law" (at [550]). Wigney J. found this approach provided "highly persuasive authority in relation to the metes and bounds of the judicial immunity available to inferior court judges, including in Australia" (at [255]).

For Wigney J., it was well established that superior court judges are protected from liability for acts done judicially in a bona fide, albeit mistaken, exercise of jurisdiction (at [207]) (for an excellent critique of this immunity, see Murphy "Rethinking Tortious Immunity for Judicial Acts" (2012) 33 LS. 455). By contrast, an inferior court judge would not be protected by immunity where they lacked subject matter jurisdiction to hear a proceeding or cause in the first place (at [344]) or where a condition precedent (sometimes known as a jurisdictional fact) for making an order, or imposing a sentence, was not fulfilled (at [346]). This would be the case even where the judge acted in the mistaken belief that they had jurisdiction, unless they had "no knowledge, or means of ascertaining, the fact or facts that relevantly deprived him or her of jurisdiction to hear or entertain the proceeding". Further, in situations where an inferior court justice does have subject matter jurisdiction, something quite exceptional such as "gross and obvious irregularity of

procedure" must occur to deprive them of judicial immunity (at [250], citing Lord Bridge in [1985] A.C. 528, 547–48; see also at [249], [254], [345]–[346]).

Despite a mistaken belief that the plaintiff had been found in contempt, Judge Vasta had the means of ascertaining (he had the means but did not check) whether Judge Turner had in fact made those findings (she had not) (at [361]). At [362], Wigney J. stated that " [a] finding of contempt was a condition precedent to the imposition of the sanction imposed by the Judge. There was no proper foundation in law for the making of the imprisonment order. In imposing a sentence of imprisonment in the absence of any such finding, the Judge acted without or in excess of jurisdiction in the requisite sense".

This finding, as well as findings that Judge Vasta ignored requirements imposed by the Family Law Act and the FCC rules, including those related to natural justice, amounted to "gross and obvious irregularity of procedure", rather than mere "narrow" or "technical" breaches (at [363]–[372]). Following In re McC, Judge Vasta was not protected by judicial immunity for false imprisonment.

Although superior court judges have absolute immunity when acting judicially, the judgment of Wigney J. confirms that judicial immunity is not absolute for inferior court judges. The careful analysis of the precedents and application of the common law principles concerning judicial immunity is perhaps illustrative of Wigney J. being cognisant of policy arguments in favour of abolishing the distinction between superior and inferior courts in relation to judicial immunity, while recognising that abolition of the distinction would necessarily originate from the legislature.

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