

13/02; [2002] VSC 199

SUPREME COURT OF VICTORIA

MOATE v MAGISTRATES' COURT OF VICTORIA and ANOR

Beach J

20 May 2002

NATURAL JUSTICE – MATTER FIXED FOR ONE-DAY HEARING IN MAGISTRATES' COURT – APPLICATION BY PARTY TO VACATE HEARING DATE AND FIX LATER DATE – CONTENTION BY PLAINTIFF THAT HEARING OF MATTER WOULD EXCEED ONE DAY – APPLICATION REFUSED - WHETHER MAGISTRATE IN ERROR.

In refusing an application for an adjournment by a plaintiff, the magistrate noted that evidentiary submissions could be heard and determined on that day and if the case took longer than one day, it would be accommodated according to dates available to the court. Upon appeal—

HELD: Appeal dismissed.

There was no denial of natural justice by the fact that the magistrate confirmed the one day's hearing when told by the plaintiff that the hearing would take three days. Clearly, if the hearing exceeded one day, the magistrate would either continue with the hearing the next day or adjourn the further hearing to some other suitable date.

BEACH J:

1. In February 2002 the plaintiff, Peter Moate, brought two private prosecutions for criminal defamation against the second named defendant, Paul Janetzki, in the Melbourne Magistrates' Court. The charges were brought pursuant to s10(2) of the *Wrongs Act* 1958.

2. The matter has been mentioned before the Magistrates' Court on a number of occasions, including 8 April. On that day the magistrate referred the plaintiff, who was appearing his own behalf, and counsel for the second-named defendant to the coordinator of the court to have a day fixed for the hearing of the informations. The plaintiff and counsel for the second defendant duly presented themselves before the coordinator and that day the coordinator fixed the informations for hearing on 17 May. However, later that day the date was extended at the request of the second defendant to 24 May and that course was later assented to by the plaintiff.

3. However, on 10 May the plaintiff made application to the Magistrates' Court to vacate the hearing date and for a further date to be fixed. The application was made because the plaintiff contended that the hearing of the matter would exceed one day and would in fact take some three days. The magistrate refused the application. According to the affidavit of Stephen Kendall Lucas sworn 15 May 2002 and filed on behalf of the second defendant in opposition to the plaintiff's present proceeding, the magistrate, in refusing the adjournment of the matter from 24 May, noted that the evidentiary submissions could be heard and determined on that day and that if the case took longer than one day, it would be accommodated according to the dates available to the court.

4. On 14 May the plaintiff filed an originating motion in this court whereby he seeks, among other things, an order in the form of mandamus overturning the decision of the defendant, and I assume he means the decision of the Melbourne Magistrates' Court, whereby disputed facts were entered into the court's records and the hearing date of the 24 May 2002 was confirmed. There are no grounds specified in the originating motion upon which the plaintiff seeks to have the decision quashed. However, in his affidavit sworn 14 May, the plaintiff has alleged that the defendant, and I assume again he is referring to the Melbourne Magistrates' Court, which is the first defendant to this proceeding, has denied him natural justice by -

"(a) admitting into the court records admitted facts that the informant objected to;

(b) confirming the one day hearing date when the available evidence clearly showed that the matter required a hearing time in excess of one day;

(c) erred in not staying the proceedings once the defence conveyed to the court they would object to virtually all the evidence and refer the matter for rehearing as to the conduct of the matter. The efficient conduct of the matter was clearly frustrated in its present guise, and

(d) denying the plaintiff the blessing of the court to prosecute in a proper manner a serious crime when no evidence or comment had been raised by any party that the prosecution's case was frivolous or vexatious, the defence having admitted publication and qualified privilege in regards the report."

5. In my opinion, there can be no denial of natural justice so far as the magistrate admitting into the court records admitted facts because the admissions in question are simply admissions by the second defendant that he prepared and published the document which the plaintiff alleges to be defamatory. Nor can the fact that the magistrate confirmed the one day's hearing when told by the plaintiff that the hearing would take three days. Clearly, if the hearing exceeds one day, the magistrate will either continue with the hearing the next day or adjourn the further hearing to some other suitable date.

6. As to the complaints specified in (c) and (d), in my view there is simply no basis for them. For mandamus to lie, there must be a refusal of the court in question to exercise its jurisdiction. The magistrate in the present case has not failed in that regard. It must be remembered that the decision to grant or refuse an adjournment is discretionary in character and it is rare that a superior court will disturb such a decision.

7. I can find no circumstances in the present case which justify this court interfering in any way with the proceeding before the Magistrates' Court. If at the end of the day the plaintiff is dissatisfied with the outcome of that proceeding, there would be steps available to him in that regard.

8. In those circumstances, it follows that the proceeding before this court must be dismissed with costs to be taxed and paid by the plaintiff.

APPEARANCES: The plaintiff Moate appeared in person. For the second defendant: Mr G Livermore, counsel. Australian Government Solicitor.
