

BETWEEN GARTH OWEN FREW

Appellant

NOT
RECOMMENDED

A N D JUSTICE DEPARTMENT

Respondent

729



Hearing: 1 March 1990

Counsel: C.R. Johnstone for Appellant
R.E. Neave for Respondent

Judgment: 1 March 1990

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeals against an order made by a District Court Judge that a warrant be issued to seize his motor vehicle. The defendant apparently conferred with the Court some time at the end of last year about the extent of his outstanding fines. The total of those fines was \$1,380. I am told that they relate almost entirely, if not entirely, to fines for parking offences. Following this discussion with the Registry of the District Court, the amended enforcement of fines proceedings introduced into the Summary Proceedings Act in 1987 were brought into force. The appellant prepared a statement of his means which was referred to the Registrar. The Registrar has minuted that statement of means "Unable to make offer. Lives above means". Following that, the Registrar referred the matter to a Judge. The appellant appeared before Justices of the Peace on 27 January 1990. They remanded him to 5 February

for a community service assessment, noting "No funds - defendant consents to community service".

The appellant appeared before a Judge on 5 February with a community service report indicating that community service was available for the appellant at St Anne's Primary School, the activity being general help around the school. There is no record of what the Judge said at the time other than his minute on the file "Warrant to seize car". Section 88(3) of the Summary Proceedings Act empowers a District Court Judge under these circumstances, inter alia, to refer the matter to the Registrar with a direction that one or both of the enforcement procedures referred to in s.87(1) of this Act, as specified in this direction, be invoked. Section 87(1) empowers the Registrar to issue a warrant to seize property. I am quite satisfied that what the Judge has done is directed the Registrar to exercise his powers under s.87(1) to seize the appellant's car.

The appellant is a university student. At the time he was in receipt of an unemployment benefit but he is now in receipt of a bursary because he is attending university which results in even less income being made available to him. At all stages he has made no offer to pay the fines, and essentially his submission is that he financially cannot afford to do so. He owns a 1971 Peugeot car which is not registered. His counsel tells me that he is instructed that the car is of a value of \$500 at the most and the vehicle would have to be sold to a wrecker. This

information does not entirely tally with the next part of his submission that the appellant needs the car to get to university. I am not satisfied that there is any need to use a car to get to university. There are other means of transport, and in days of less affluence but equal distance to travel, university students were able to attend the university either by walking or by means of a bicycle. The ownership and operation of a motor vehicle is a privilege. It carries with it an obligation to have consideration for other users of the road. One use of those roads is the right of others to use parking spaces. It is an expensive habit to have a motor car. This man is single, and I see no reason in the world why his car should not be seized to enable, if necessary, part payment of the fines that were imposed upon him.

Counsel has said that it is not clear whether this was to be in satisfaction of the total fines. It is quite clear that it is not. There is a specific provision in the Act that one of the things a District Court Judge may do is remit either the fines or part thereof and he may do that when he sends a person to prison or when he directs property to be seized or the like. Unless he does so, as I read the Act the obligation to pay fines continues and so it should. This appellant not only has a motor car but he has an equity in a residential property. At this stage he has interrupted to say that that is not correct. What he says is that he is a one-third owner of the property which is subject to a mortgage and that he has no equity. I have

difficulty in believing that. If there is an equity in the house, I do not understand why the Registrar cannot take steps against the equity in respect of that house to ensure that the balance of the fines is paid. That is a matter for the Registrar to consider.

There is real concern in the community at the number of people who are being fined and are not paying them and the extraordinary amount of unpaid fines that exist. It makes a mockery of the law for a man with unpaid fines to be able to preserve assets in the nature of a motor vehicle and an equity in a house when he is single and has no dependants. The appeal is dismissed.

A. O. Healey

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. AP43/90

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