IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI 2008-404-000379
CRI 2008-404-000380

JOSEPH GREGORY HALLETT
Appellant

v

AUCKLAND CITY COUNCIL
Respondent

Hearing: 20 April 2009

Appearances: Appellant in person
W Kiewik for the respondent

Judgment: 24 April 2009

JUDGMENT OF STEVENS J

This judgment was delivered by me on Friday, 24 April 2009 at 10.30am pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

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Introduction

[1] Joseph Gregory Hallett (the appellant) has appealed against orders in respect of two fines under the Transport Act 1962 (the Act) and certain Auckland City Council (the respondent) bylaws. Following the issue of reminder notices under s 21 of the Summary Proceedings Act 1957, the appellant was fined for driving in a bus lane and parking illegally. The fines were respectively $150 for driving in the bus lane and $40 for parking illegally.

[2] The appellant has advanced various grounds contending that the orders imposing the fines are erroneous in fact and law. He also asserted that the respondent was engaged in "egregious prosecution" against him. The respondent contended that there is no jurisdiction in the High Court to entertain the appeal. In the course of the oral argument, the appellant appeared to acknowledge the inevitable, namely, that:

a) There is no right of appeal from a fine imposed under s 21(5) of the Summary Proceedings Act;

b) There is no statutory right of appeal from a decision to decline an application under s 78B of the Summary Proceedings Act; and

c) Even if there were jurisdiction to appeal, both appeals are many months out of time in terms of s 116(1) of the Summary Proceedings Act.

[3] Despite such acknowledgements, the appellant sought to raise wider arguments as to the fairness and propriety of the statutory regime applicable to infringement notices and any review of them. Such arguments were based on the contents of four affidavits, which the appellant filed in support of his appeal. Regrettably, much of the material in the affidavits is irrelevant and otherwise inappropriate for the Court to consider. In a separate Minute, I have made directions regarding the contents of the affidavits concerned.

[4] For the reasons set out below, the appellant has failed to establish jurisdiction or to sustain any of the grounds advanced in support of the appeal. The appeal must therefore be dismissed and the appellant will be required to pay both fines.

Statutory and regulatory context

Offences

[5] The bus lane offence was against Auckland City Consolidated Bylaw 1998 (the Consolidated Bylaw) Part 25 Traffic (2006) cl 25.17.3 and cl 25.17.4. Clause 25.17 of the Consolidated Bylaw relevantly provides:

> …
>
> 25.17.3 No person may use a vehicle traffic lane specified under clause 25.17.1 in a manner contrary to the restriction applicable to that type of lane.
>
> 25.17.4 Any resolution under clause 25.17.1 specifying the location of a special vehicle lane, does not apply to any vehicle which is using the lane for a distance of not more than 50 metres for the purpose of turning into a side road or a property fronting the road on which the specified special vehicle lane is located.

[6] Infringement fees for such an offence are set out in Schedule 2 Part 10 of the Act. In this case a maximum infringement fee of $750 applied.

[7] The parking offence was against cl 25.15.5 of the Consolidated Bylaw and ss 41A and 72(6A) of the Act. Clause 25.15 provides that every person who parks a vehicle in a pay and display area must in summary pay the appropriate fee and, having obtained a receipt from the pay and display parking metre, display it in the vehicle.

[8] Under s 72 of the Act, bylaws in respect of the use of roads may be made by any local authority in respect of the roads under its control. There was no challenge to the validity of the bylaw in question. Every person who parks in breach of a bylaw of a local authority in any portion of a road where parking is for the time being governed by the location of parking metres commits an offence: see s 72(6A) of the Act. Under s 42A of the Act, the infringement fee payable for a stationary

vehicle offence is specified in Schedule 2. Again, the maximum infringement fee is, under Schedule 2 Part 10, a maximum of $750.

[9] Section 41A of the Act provides that proceedings for a stationary vehicle offence, such as parking in any portion of a road in breach of any Act or Regulation may be taken against the person who allegedly committed the offence or the registered owner of the vehicle.

Infringement notice procedure

[10] Infringement notices are governed by s 21 of the Summary Proceedings Act which relevantly provides:

> **Summary procedure for infringement offences**
>
> (1) Proceedings in respect of an infringement offence may be commenced—
>
> …
>
> (b) Where an infringement notice has been issued in respect of the offence, by providing particulars of a reminder notice in accordance with subsections (4) and (4A), or by filing a notice of hearing in a Court, under this section.
>
> (2) Where—
>
> (a) An infringement notice has been issued in respect of an infringement offence; and
>
> (b) On the expiration of 28 days from the date of service of the notice, or a copy of the notice,—
>
> (i) The infringement fee for the offence has not been paid to the informant at the address specified in the notice; and
>
> (ii) The informant has not received at that address a notice requesting a hearing in respect of the offence,—
>
> the informant may serve on the person or one of the persons served with the infringement notice, or a copy of the infringement notice, a reminder notice that contains the same or substantially the same particulars as the infringement notice.
>
> …
>
> (3) The informant may provide particulars of the reminder notice in accordance with subsections (4) and (4A) if—

(a) a reminder notice has been served under subsection (2); and

(b) on the expiration of 28 days from the date of service of that notice,—

(i) the infringement fee for the offence has not been paid to the informant at the address specified in the notice; and

(ii) the informant has not received at that address a notice requesting a hearing in respect of the offence.]]

…

(4) For the purposes of subsections (1), (3), and (3D) and subsections (4A) to (5A), the particulars of a reminder notice are—

(a) the contents of the reminder notice, or such parts of the reminder notice that are prescribed as the particulars for the purposes of this subsection; and

(b) any particulars relating to the service of the infringement notice and reminder notice that may be prescribed; and

(c) any other particulars that may be prescribed.

…

(4C) When particulars of a reminder notice provided under subsection (3) or subsection (3D) are verified under subsection (4B) as containing the particulars described in subsection (4)(a) and (b), the reminder notice is deemed to have been filed in the Court appointed for the exercise of the criminal jurisdiction which is the nearest by the most practicable route to the place where the offence was alleged to have been committed.

(5) If, following the verification under subsection (4B) of particulars of a reminder notice provided under subsection (3), a reminder notice is deemed to have been filed in a Court within 6 months from the time when the offence is alleged to have been committed, an order is deemed to have been made in that Court (as if on the determination of an information in respect of the offence) that the defendant pay a fine equal to the amount of the infringement fee for the offence together with costs of the prescribed amount.

…

(5AB) An order under subsection (5) or subsection (5A) is deemed to have been made on the date that the relevant reminder notice is deemed to have been filed under subsection (4C).]]

…

(6) A notice requesting a hearing in respect of an infringement offence must—

(a) Be in writing signed by the person or one of the persons served with the infringement notice in respect of the offence, or a copy of the infringement notice; and

(b) Be delivered to the informant at the address specified in the infringement notice before or within 28 days after service of a reminder notice in respect of the offence, or within such further time as the informant may allow.

…

(12) In any proceedings for an infringement offence for which an infringement notice has been issued it shall be presumed, unless the contrary is proved, that—

(a) The infringement notice in respect of the offence has been duly issued, and the notice, or a copy of the notice, has been served on the defendant:

(b) Any reminder notice or copy of a notice of hearing required to have been served on the defendant has been duly served:

(c) The infringement fee for the offence has not been paid as required under this section.

…

[11] Section 78B of the Summary Proceedings Act establishes a procedure to correct irregularities in infringement notices:

Power to correct irregularities in proceedings for infringement offences

(1) This section applies if a defendant is deemed to have been ordered, or is ordered, to pay a fine or costs or both under section 21 and—

(a) a District Court Judge or Registrar, on the application of the defendant, is satisfied, whether on the basis of a statutory declaration or evidence given before the Judge, that—

…

(iii) some other irregularity occurred in the procedures leading up to the order for the fine or costs, or both; or

…

(b) the informant applies to a District Court Judge or Registrar to withdraw the reminder notice filed or deemed to have been filed under section 21.

(2) The Judge or, subject to subsections (3) and (4), the Registrar may do one or more of the following:

(a) authorise the informant to serve a reminder notice on a person other than the defendant (being a person to whom the infringement notice was issued or on whom it was deemed to have been served):

(b) authorise the informant to serve on the defendant another copy of the reminder notice or the notice of hearing and, for that purpose, require the defendant to specify an address at which personal service, service by post, or service by either method may be effected:

(c) grant a hearing or rehearing of the matter, and proceed with the hearing or rehearing immediately or set it down for a later date:

(d) set aside or modify the order:

(e) make any other order as to costs or otherwise that the Judge or Registrar considers appropriate in the circumstances.

(3) If a Registrar considering an application under subsection (1)(a) is satisfied that any of subparagraphs (i) or (iv) to (vii) of subsection (1)(a) applies, the Registrar must not exercise the power conferred by subsection (2)(a) or (b) except with the consent of the informant.

(4) A Registrar may not exercise the power conferred by subsection (2)(d).

(5) If a Judge or Registrar exercises a power under subsection (2)(a), (b), or (c), the order made or deemed to have been made against the defendant ceases to have effect and the Registrar must take appropriate steps to ensure that the order is not acted on.

(6) If a defendant granted a hearing or rehearing under this section does not appear, the Court may, if it thinks fit, without hearing or rehearing the matter, direct that the original order be restored.

Factual background

Parking offence

[12] The parking fine relates to an incident that occurred on 4 August 2007. The appellant parked his car in a "pay and display" area on Parnell Road and failed to display a parking receipt. An employee of the respondent attached an infringement notice to the appellant's car showing an infringement fee of $40.

[13] On 3 September 2007, the respondent sent the appellant a reminder notice. No response was received from the appellant within 28 days, as a result of which, on 23 October 2007, an order was deemed to have been made that the appellant pay a fine of $40.

Bus lane offence

[14] The bus lane offence relates to an incident that occurred on 8 August 2007. Someone drove the appellant's Mercedes Benz in a bus lane on Sandringham Road. On 10 August 2007, the respondent requested that the appellant disclose the details of the driver. He did not respond. Thus, the respondent issued an infringement notice by post on 3 September 2007.

[15] On 2 October 2007, the respondent sent the appellant a reminder notice. No response was received from the appellant within 28 days, as a result of which, on 19 November 2007, an order was deemed to have been made that the appellant pay a fine of $150.

Section 78B applications

[16] On 18 June 2008, the appellant filed an application under s 78B of the Summary Proceedings Act for each offence. No meaningful grounds were specified. On 23 June 2008, both applications were declined.

[17] On 23 June 2008, the appellant filed a notice of appeal.

Appellant's claims

[18] The appellant seeks to appeal against the orders resulting in the fines against him. No relevant or meaningful grounds have been provided by the appellant in the notice of appeal. It is therefore assumed that the appeal is on the grounds that the orders were wrong in fact and law.

[19] The appellant has submitted four lengthy affidavits, one of which is unsworn. These appear to be intended as evidence in this proceeding and another appeal: see *Hallett v NZ Police* HC AK CRI 2008-404-000192 24 April 2009. These affidavits contain minimal relevant material. The bulk of two of the affidavits comprises attachments or exhibits running to hundreds of pages. The appellant submitted that

these proved various allegations made by him, but these matters were largely irrelevant and beyond the scope of the appeal.

[20] The appellant provided no written legal submissions. At the hearing, the appellant made oral submissions which were properly directed to addressing the written submissions filed by the respondent dealing with the jurisdiction point.

Respondent's submissions

[21] The respondent submitted that the Court does not have jurisdiction on the basis that:

a) There is no right of appeal for a fine under s 21(5) of the Summary Proceedings Act;

b) There is no right of appeal for a decision to decline a s 78B application; and

c) The appeals were filed out of time.

[22] Alternatively, the respondent submitted that the appellant has not presented any meaningful grounds of appeal. Counsel suggested that the only possible legal argument might be that the appellant did not receive notices and so was not heard. However, s 21(12) of the Summary Proceedings Act creates a presumption that such notices were served and the appellant has provided no contrary evidence. Moreover, the respondent submitted that the only reason why the appellant was not heard was that he did not in fact request a hearing.

Discussion

[23] The key question is whether the Court has any jurisdiction to hear this appeal. A defendant has a general right of appeal where a District Court determines any information or complaint that results in a conviction, orders or sentence: see s 115 of the Summary Proceedings Act.

[24] But there can be no jurisdiction in this case as the District Court made no determination. The procedure under s 21(5) of the Summary Proceedings Act is not a determination and hence the statutory right of general appeal to the High Court does not apply. That the s 21 process does not involve a determination of an information under s 115 of the Summary Proceedings Act was settled by the Court of Appeal in *Davies v Ministry of Transport* [1989] 3 NZLR 300. Delivering the judgment of the Court, Richardson J stated at 302:

> Indeed, the s 21 procedure was introduced to provide an automated system of dealing with the very large number of minor matters that had been going before the Court in the minor traffic offence jurisdiction under the former s 21. If the person concerned fails to respond to the infringement notice and reminder notice, the informant Ministry's computer discs then generate, through the District Court computer system, the record required under s 21(5) and the appropriate notice of fine. Nothing in that process can be characterised as a determination of an information by the District Court. What that expression contemplates is an actual judicial decision.

[25] If the appellant had wished to contest the infringement notice, he should have followed the procedure provided in s 21 of the Summary Proceedings Act. It was accepted by the appellant that there was no document before the Court to establish that he had requested a hearing in respect of either of the infringement notices.

[26] Likewise, there is no right to appeal decisions made under s 78B of the Summary Proceedings Act, as they do not involve the determination of an information or complaint. To quote Randerson J in *Carr v Police* HC AK A202/99 6 April 2000 at [35]:

> …it has long been established that there is no jurisdiction for this Court to consider an appeal from the refusal of a rehearing under s 75: *Tuohy v Police* [1959] NZLR 865 and *Police v Norman* [1975] 1 NZLR 391 (CA). …[T]he reasoning applied in those cases is equally applicable to an appeal against refusal to grant a rehearing under s 78B. Put simply, there has been no determination of an information or complaint in terms of s 115 of the SP Act.

[27] Had there been a basis for general appeal under s 115 of the Summary Proceedings Act, s 116 sets out the requirements for a notice of appeal:

> **Notice of appeal**
>
> (1) Subject to subsection (1A) of this section,] the appellant under any general appeal shall, within [28 days after the defendant has been

> sentenced or otherwise dealt with or the order has been made], file in the office of the Court whose determination is appealed against a notice in writing of the appeal and of the grounds thereof. The notice shall be in the prescribed form and shall be filed in duplicate.
>
> …
>
> (2) The Registrar receiving the notice shall forthwith deliver or post one copy to the respondent or his solicitor and notify the [District Court Judge] or Justice or Justices whose determination is appealed against of the appeal and of the grounds thereof.
>
> …

[28] There is no dispute that the notice of appeal was filed seven months out of time. The latest fine was imposed on 19 November 2007. Thus, the appellant was required to file any general appeal by 17 December 2007. He filed his appeal on 2 July 2008.

[29] Further, there has been no application for leave to file an appeal out of time. For the Court to accept late notice, the appellant must apply for leave: s 123(1) of the Summary Proceedings Act. Even if he had done so, such leave would not be granted. Factors to be considered would include the existence of special circumstances, the risk of a miscarriage of justice, the circumstances of the case as a whole and the likelihood of the appeal succeeding: see *Cleggs Ltd v Department of Internal Affairs* HC AK M1032/84 5 September 1984, Thorp J. Here, there are no special circumstances and, as shall be discussed below, there is minimal chance of the appeal succeeding.

[30] Even if, contrary to the above conclusion, the Court had jurisdiction, the appeal should be dismissed. The appeal in respect of both fines is entirely without merit. The principles applicable to general appeals have been recently considered by the Supreme Court in *Austin Nichols & Co Ltd v Stichting Lodestar* [2008] 2 NZLR 141. Giving the judgment of the Court, Elias CJ stated at [4] that:

> …the appellant bears an onus of satisfying the appeal court that it should differ from the decision under appeal. It is only if the appellate court considers that the appealed decision is wrong that it is justified in interfering with it.

[31] No ground of appeal warranting intervention by the appellate has been advanced or developed by the appellant. He has thus not discharged the onus of showing the imposition of the fines was wrong: see *Toomey v Police* [1963] NZLR 699. Many of the purported grounds of appeal touched on in the affidavits are simply irrelevant to whether the appellant is liable to pay the two fines.

Result

[32] For the above reasons, the appeal must be dismissed. The High Court does not have jurisdiction to entertain either an appeal from the two fines deemed to have been made in the District Court or an appeal from the refusal to exercise the powers in s 78B(2) of the Summary Proceedings Act. Further, the appeal is totally lacking in merit.

Costs

[33] In the helpful written submissions filed by Mr Kiewik on behalf of the respondent costs were sought. However, at the end of the oral hearing I asked counsel for the respondent whether such an application would be pressed. Mr Kiewik indicated that he did not have instructions on the point but could understand it if the Court were not to make any order for costs in the circumstances of this case.

[34] In the expectation that this matter will now be brought to an end, I make no order for costs. However, should the appellant seek to take this unmeritorious appeal any further, the appellant should be in no doubt that such leniency is unlikely to apply to any further application.

[35] There will be no order for costs.

_____

Stevens J