

MEAD v MEAD (S123/2007)

Court appealed from: Full Court of the Family Court of Australia

Dates of judgment: 6 June 2006 & 25 August 2006

Date of grant of special leave: 2 March 2007

Ms Lucy Mead ("the wife") appealed against orders made by Justice Cohen sentencing her to four months imprisonment for contempt of Court. This arose out of proceedings brought against her by Mr Colin Mead ("the husband") pursuant to section 112AP of the *Family Law Act 1975* (Cth).

The orders that the wife was convicted of breaching ("the injunctive orders") were made by a Judicial Registrar on 30 August 1999, extended by Justice Rose on 7 September 1999 and varied by Justice Cohen on 2 November 2001. In essence, the parties were restrained from dealing with any real property in which they had an interest. There was no evidence however that the wife was in Court on either 30 August 1999 or 7 September 1999. It is also common ground that she was never served with a sealed copy of those orders.

On 20 December 2001 the wife signed a mortgage of her interest in a property known as the Quoin Island Resort, while on 14 February 2003 she also transferred her interest in a property at 68 First Avenue, Katoomba. Both properties were the subject of the injunctive orders. There is no question that the injunctive orders remained in force at all relevant times. At the contempt trial before Justice Cohen, the wife did not adduce any evidence. She submitted however that the husband had failed to prove all of the elements of his application beyond reasonable doubt. On 30 May 2005 his Honour concluded that the evidence established beyond reasonable doubt that the wife had breached the injunctive orders. He also held that the wife knew of both their contents and their meaning. Justice Cohen further held that the wife's actions were a flagrant challenge to the authority of the Court.

On 6 June 2006 and 25 August 2006 the Full Court of the Family Court (Holden & Coleman JJ, May J dissenting) upheld the wife's appeal. Their Honours found that there was no admissible evidence before Justice Cohen to establish that the wife knew of both the contents and the meaning of the injunctive orders. It also could not be presumed a lay person of reasonable intelligence would understand such orders. The majority further held that Justice Cohen was wrong to draw an adverse inference from the wife's failure to give evidence. This relieved the husband of the requirement of proving an essential element of his case. It also imposed an unjustifiable evidentiary onus upon the wife.

Justice May however held that Justice Cohen's finding that the wife was aware of the orders was a conclusion clearly open to him. His Honour found that it was a rational inference in view of the wife's choice not to give evidence.

The grounds of appeal include:

- The Full Family Court erred in holding that, because any communications between the wife and her solicitor would have been the subject of client legal privilege which she could have invoked as the basis for objecting to evidence being led of such communications, it was not open to the learned trial judge to infer that the wife had acquired knowledge of the contents and meaning of the injunctive orders by way of such communications.