



New South Wales Court of Appeal

CITATION :	Re Tyrone [2002] NSWCA 414
FILE NUMBER(S) :	CA 40629/02
HEARING DATE(S) :	10 December 2002
JUDGMENT DATE :	10 December 2002
PARTIES :	Re Tyrone
JUDGMENT OF :	Handley JA at 1; Santow JA at 8; Young CJ in Eq at 9
LOWER COURT JURISDICTION :	Supreme Court - Common Law Division
LOWER COURT FILE NUMBER(S) :	CLD 11428/02
LOWER COURT JUDICIAL OFFICER :	Sully J
COUNSEL :	Appellant: I Temby QC/Lakatos Respondent 1 - P Braine Respondent 2 - S Norton SC/Moore
SOLICITORS :	Crown Solicitor's Office: Ms Saima Bangash Ref AGD010.7638
LEGISLATION CITED :	Children and Young Persons (Care and Protection) Act 1989
DECISION :	Leave to appeal refused. Summons dismissed with costs.

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL**

**40629/02
CLD 11428/02
HANDLEY JA
SANTOW JA
YOUNG CJ in EQ**

10 December 2002

RE: TYRONE

A question was raised as to the construction of s 74 of the *Children and Young Persons (Care*

and Protection) Act 1989 in the context of an order of the Children's Court which was challenged as being beyond power.

HELD: The questions raised by the summons for leave to appeal had become academic. Accordingly leave to appeal was refused and the summons dismissed with costs.

ORDERS

- (1) Leave to appeal refused.
- (2) Summons dismissed with costs.

IN THE SUPREME COURT OF NEW SOUTH WALES COURT OF APPEAL

40629/02
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HANDLEY JA
SANTOW JA
YOUNG CJ in EQ

10 December 2002

RE: TYRONE

Judgment

1 **HANDLEY JA:** These proceedings raised questions of real practical importance to the Department, the Children's Court and others as to the true construction of s 74 of the *Children and Young Persons (Care and Protection) Act 1998*. However those questions have become academic in the present proceedings because the orders of the Children's Court which are challenged as being beyond power will almost certainly never be implemented.

2 The child is due to be returned to his mother within the next few days and it is practically certain that the services ordered by the Children's Court which have not been provided will never be provided.

3 The function of courts is to decide real disputes where the parties are in contest. It is not to decide questions which as between the parties have become academic, however important they may be to one of those parties for future cases. The Court therefore must refuse leave and the summons will be dismissed with costs.

4 In doing so the Court expresses no view as to the correctness or otherwise of the decision of Sully J. It is unfortunate that these questions cannot be decided by the Court in the present proceedings because the lapse of time has rendered the matter academic.

5 It is not in dispute that the method of testing the validity of interim orders of the Children's Court is by prerogative type proceedings in the Supreme Court. The decision of Sully J was given on 5 July this year in respect of orders of the Children's Court of 16 May. Although these proceedings were expedited, for reasons which are not known to this Court, they have not come on for hearing until today.

6 Should the questions arise in the future, as Mr Temby QC for the claimants suggests they inevitably will, a Judge or a Master of the Common Law Division could be asked to refer the proceedings direct to this Court. In cases of urgency the parties are free to approach the President or his delegate in private chambers to seek an early hearing. Where the urgency is of an extreme kind, the proceedings can be heard within a few days.

7 I make those remarks for the benefit of the parties, particularly for the Crown Solicitor who presumably will have the carriage of any future case. However, the orders of the Court are as I have announced.

8 **SANTOW JA:** I agree.

9 **YOUNG CJ in EQ:** I agree.

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