



Judgment Summary

Supreme Court
Australian Capital Territory
Court Of Appeal

Wednesday, 18 October 2023

Ross v Gordon [2023] ACTCA 40

McCallum CJ, Baker and McWilliam JJ

The Court of Appeal has delivered its decision in *Ross v Gordon (No 2)*, unanimously allowing the appeal in part. The matter involves a dispute in relation to the appellant's entitlement to the deceased's estate. The appeal raised issues regarding the scope of a remittal made by the Court of Appeal in earlier proceedings. The appellant sought declaratory relief and costs.

On 10 May 2022, in *Ross v Gordon* [2022] ACTCA 21; 18 ACTLR 89, the Court of Appeal had upheld an earlier appeal by the appellant on the ground that the learned trial judge erred in ruling that the Estate's liabilities exceeded its assets. The Court of Appeal had then remitted the proceedings to the Supreme Court.

In the present proceedings, the Court unanimously held that the trial judge did not err in finding that jurisdiction in the remitted proceedings was constrained by the earlier reasons for remittal of the Court of Appeal. As such, jurisdiction upon remittal was limited to consideration of an issue which the plaintiff ultimately did not press. The Court also found that there would be no practical utility in issuing the declaration sought by the plaintiff.

However, the Court held that the trial judge had erred in the exercise of the costs discretion. The order awarding costs to the defendant was set aside and each party was ordered to pay their own costs.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.

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