

CITATION: Department of Education, Training and Employment v CZ [2013] QCAT 739

PARTIES: Department of Education, Training and Employment
(Applicant)
v
CZ
(Respondent)

APPLICATION NUMBER: CML218-13

MATTER TYPE: Childrens matters

HEARING DATE: 6 December 2013

HEARD AT: Brisbane

DECISION OF: **Senior Member Endicott**

DELIVERED ON: 6 December 2013

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. CZ is prohibited from entering the grounds of the Pimpama State Secondary College for a period concluding 7 November 2014.**
- 2. The Tribunal prohibits the publication of the name of the Respondent and her son.**
- 3. The application for costs is dismissed.**

CATCHWORDS:

EDUCATION – where aggressive behaviour including an assault and death threat occasioned to school staff – where likelihood of apprehension of future physical harm established

POWERS OF TRIBUNAL – where order sought to prohibit person from entering school premises – where student had been withdrawn from school – where reasonable likelihood student could return to school catchment area to live – where parent had some ongoing relationship with the school

NON-PUBLICATION – where interests of justice to withhold name of student from publication

COSTS – where application not disputed – where leave had not been granted for legal representation – where no evidence of how costs sought had been incurred – where the interests of justice did not compel a costs award

Education (General Provisions) Act 2006 ss 340 and 341
Queensland Civil and Administrative Tribunal Act 2009 ss100 and 102

Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No 2) [2010] QCAT 412

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Department of Education, Training and Employment appearing through Jason Davies, an officer of the Department of Education, Training and Employment

RESPONDENT: No appearance by CZ

REASONS FOR DECISION

- [1] CZ's son was a student at Pimpama State Secondary College in 2013. According to evidence filed in the tribunal, due to her aggressive behaviour towards the school's administrative staff on 15 March 2013 when CZ had attended at the school, the deputy principal directed that all future communications from the school would be conducted through the year-coordinator or deputy principal. On 12 August 2013 CZ phoned the school and spoke to a deputy principal about issues with her son's laptop. CZ was abusive to the deputy principal, swore at him and accused him of lying.
- [2] Evidence was given that CZ sent an email to the principal of the school on 14 August 2013 asking for a meeting with him about issues relating to her son's laptop. A meeting was arranged at the school for 16 August 2013.
- [3] According to the evidence given to the tribunal, during that meeting, CZ was verbally aggressive and abusive and she called the principal some obscene names. The principal gave evidence that he asked CZ to leave the school grounds. In response CZ shoved the principal in the chest with both her hands. A deputy principal arrived on the scene and tried to intervene but CZ pushed past her and then punched the principal in the head three times.
- [4] Evidence was given that CZ then indicated that she intended to go and collect her son. The principal gave a direction that CZ was not to enter

school premises but CZ ignored that direction and entered one of the school buildings.

- [5] The principal gave evidence that he caught up with CZ when she was walking towards a school exit with her son. Evidence was given that CZ then approached the principal and struck him in the mouth. CZ verbally abused him and made a threat that her partner would come to the school and kill the principal. This assault and verbal abuse occurred in full view of many students.
- [6] A direction was later made by the Department of Education, Training and Employment under section 340 of the *Education (General Provisions) Act 2006* (the Education Act) prohibiting CZ from entering the premises of Pimpama State Secondary College for a period of 60 days. The Department sought an order from QCAT to prohibit CZ from entering the school premises for a year.
- [7] By the time the application came on for hearing on 6 December 2013, CZ's son had been withdrawn from the school. The Department proceeded with the application on the basis that the withdrawal did not prevent the student from being re-enrolled at the school at any time.
- [8] There was evidence from all of the school personnel who witnessed the assault, abusive language and threat made by CZ. I accept that evidence which was not contradicted or disputed in any way by CZ prior to the date of the hearing. CZ did not attend the hearing.
- [9] I find that CZ had on 16 August 2013 assaulted the principal of the school during two separate incidents on that day, she verbally abused and threatened the principal and she ignored his directions to leave the school grounds and not to enter any school buildings. I find that the actions of CZ had occurred variously in the presence of staff and students of the school. Her behaviour was objectionable, unlawful and disruptive of the orderly running of an educational institution when students were present.
- [10] The Department wants to take steps to ensure that CZ does not repeat this objectionable behaviour at the school. To that end, the Department is seeking to invoke a legal remedy to prohibit CZ from entering the school premises for a year. Section 341 of the Education Act provides QCAT with power to make such an order if satisfied that the person who is the subject of the application is likely to cause physical harm, or apprehension or fear of physical harm or is likely to damage the premises or property at the premises or is likely is likely to disrupt the good order or management of the school.
- [11] The Department submitted that the conduct on 12 August 2013 and particularly on 16 August 2013 suggested that CZ had poor impulse control, abusive tendencies, unmanaged anger issues, hostility and a lack of respect for school authorities. It was submitted that her behaviour had caused upset and stress to school staff who had witnessed that behaviour. The principal had stated that given the extent of CZ's abusive and

disruptive behaviour on 16 August 2013, it was reasonable to infer that CZ may again disrupt the good order of the school if she were permitted to attend on the premises.

- [12] Other senior staff at the school gave evidence that they were anxious and apprehensive about CZ attending at the school in future as they were concerned about the welfare and safety of staff and students.
- [13] The principal gave evidence that CZ's son had been suspended from school on a number of occasions and in late November 2013 his father had contacted the school with the news that he was taking his son to Mackay to live with him. The principal gave evidence that from his discussions with the father he had formed the view that the son was upset and reluctant to go to Mackay as the son did not get on well with the father's new wife. The principal stated that he would not be surprised if the son returned to live with his mother as early as the start of the 2014 school year.
- [14] The principal told the tribunal that he had been employed by the Department since 1989. He had extensive experience as a teacher and educational administrator and he had observed situations before when students had gone to live with one parent and then another. He stated that in those situations, at 13 or 14 years of age a student would often make their own decisions about which parent they lived with. If CZ's son returned to live with her, then the son would be in the catchment area for Pimpama State Secondary College and he would be entitled to attend that school.
- [15] The principal also stated that CZ still has school property in her possession. She had refused to return the laptop and that steps would have to be taken to retrieve the property from her.
- [16] I accept the evidence of the witnesses for the Department that they are apprehensive for the welfare and safety of students and staff in the event that CZ attends at the school and escalates into aggressive and violent behaviour. I am satisfied that it is a reasonable inference to draw from the evidence that, as a result of CZ's behaviour on 16 August 2013, her presence at the school is likely to cause staff and students to have an apprehension of physical harm.
- [17] She demonstrated a complete lack of self control on 16 August 2013, a lack of respect for the principal and a disregard for the harmful impact that her behaviour was having on her son and on other students witnessing the disturbing events of that day. Quite apart from the actual violence she caused, CZ made a chilling threat, overheard by students, to have the principal killed at the school and this threat would be likely to have an ongoing disturbing impact on students and would be likely to revive fear and concern if CZ were to return to the school premises.
- [18] I am satisfied that the basis for an order under section 341 has been established. I gave considerable thought to the evidence that CZ's son

had been withdrawn from Pimpama State Secondary College in late November 2013 and had not been re-enrolled for the 2014 school year as at the date of hearing. However I concluded that such a fact was not determinative of the application. There was credible evidence that the student had been reluctant to go to Mackay to live with his father and that as a result there is a reasonable likelihood that he will return to live with his mother back into the school catchment area. In addition CZ has school property in her possession that must be retrieved. It is reasonable to infer that her relationship with the school has not been finalised and that CZ could attend on school premises at any time unless prohibited by an order of this tribunal.

- [19] I concluded that an order should be made under section 341 of the Education Act. The Department had applied for a prohibition for the maximum period of one year. I concluded that the maximum period sought was appropriate given the gravity of the behaviour witnessed by students and staff and its likely impact on them. The tribunal had made an interim order on 13 November 2013 prohibiting CZ from entering the school premises until the hearing of the application. It is appropriate that I take account of the period of time during which the interim order was in place when determining the duration of the final prohibition order.
- [20] I was satisfied that an order prohibiting CZ from entering the school premises should be in force until 7 November 2014. This order is for the maximum period less some allowance for the time in which the interim order was in place.
- [21] The Department applied for a non publication order so that identifying details of CZ's son would be withheld from the public. I was satisfied from the submissions of the Department that it was in the interests of justice that a non publication order should be made so that CZ's son is not unnecessarily harmed by any publication of the details of this proceeding. Such an order also has the consequential effect of CZ's identity being withheld from public scrutiny.
- [22] The Department also applied for costs. The Department was not granted leave to be legally represented but in an appropriate case costs should be able to be recovered when a government agency uses its in-house legal resources in a proceeding. Leave in this case had been granted for the Department to appear through a legal officer of the Department. The Department sought costs in the sum of \$5,500.
- [23] There was no evidence as to how the claimed legal costs of \$5,500 had been incurred. I was not convinced by the submissions of the Department that it was in the interests of justice that costs were awarded to the Department.¹ In *Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No 2)* Justice Wilson had stated that to make a costs order, the tribunal must find there to be circumstances that point so compellingly to a costs award that they overcome the strong contra-indication against

¹ *Queensland Civil and Administrative Tribunal Act 2009 s 102.*

costs contained in section 100 of the *Queensland Civil and Administrative Tribunal Act 2009*.²

- [24] The evidentiary basis for making a prohibition order against CZ was always strong. There had been nothing to indicate that CZ would oppose such an order being made. She had not responded when the application was served on her. There were no complex questions of facts or law to be determined. As anticipated by the QCAT Act, the Department as a party to the proceeding had used its own personnel to appear at the hearing and its representative was both skilful and helpful in the manner of presenting the evidence and submissions to the tribunal.
- [25] Contrary to the submissions on this issue made by the Department, there are no circumstances that I find are so compelling that I should depart from the statutory provisions in section 100 of the QCAT Act that each party to a proceeding must bear their own costs for the proceeding. I dismissed the application for costs.

² [2010] QCAT 412 at [29].