

COURT OF APPEAL

MULLINS P

**Appeal No 54 of 2026
DC No 674 of 2022**

LESLEY ELIZABETH ENEVER

Appellant

v

SARAH DRYSDALE MEYERS

Respondent

BRISBANE

FRIDAY, 4 SEPTEMBER 2026

JUDGMENT

- [1] **MULLINS P:** On 28 May 2026, I ordered that the appellant must give security for the costs of the appeal in the sum of \$12,000 within 21 days of the date of the order for the reasons that were given on that day: *Enever v Meyers* [2026] QCA 94 (the reasons). The security was not provided within the period specified in the order and remains outstanding.
- [2] On 24 June 2026 the appellant requested the registry to extend the time for complying with the order by 90 days. The respondent did not consent to that requested extension. On 3 July 2026 the respondent filed an application for the appeal to be dismissed with costs pursuant to r 774(b) of the *UCPR* that was listed for hearing on 17 August 2026.
- [3] The respondent's solicitor swore an affidavit in support of the application that was also filed on 3 July 2026. A further affidavit from the respondent's solicitor was filed on 13 August 2026 that exhibits the email correspondence between the

appellant and the registry that was copied to the respondent's solicitor. This shows that the appellant was seeking the issue of subpoenas to Dogs Queensland and Dogs West to pursue material that the appellant believes will be relevant to issues she intends to rely upon in her appeal arising from evidence given at the trial about the male dogs from the litter produced from Sugar. The proposed subpoenas seek a very extensive list of 15 categories of documents. The registry declined to issue the subpoenas, as the appeal was stayed.

[4] Even though no formal application was filed by the appellant, the appellant was seeking to vary or reduce the amount specified in the security for costs order and was relying on her affidavit filed on 13 August 2026. When the respondent's application came on for hearing on 17 August 2026, I allowed the appellant's application to also be before the Court. I adjourned the hearing of both applications to 4 September 2026, ordered the appellant to pay the costs thrown away by the adjournment fixed in the sum of \$885, and ordered any affidavits on which the appellant proposed to rely to be filed by 31 August 2026. The appellant paid the costs of \$885 and filed a further affidavit on 31 August 2026.

[5] The appeal was commenced by notice of appeal filed on 9 January 2026. The application for security for costs was brought promptly. The appellant's solicitors then withdrew and the appellant has been self-represented. The appellant has not filed an outline of submissions for the appeal as required by the Practice Direction. Security for costs were ordered for the reasons set out at [5] of the reasons:

“On the appellant's own material, she is currently in a poor financial position for various reasons. As the dispute determined by the trial judge depended in part on the trial judge's assessment of the evidence of the witnesses in conjunction with their written communications, it will not be straightforward for the appellant to seek to overturn the findings of the trial judge. It is relevant that the appellant has already had her 'day in court' and lost on the merits when she was legally represented. In the circumstances, it is appropriate to order security for the respondent's costs of the appeal.”

[6] It should also be noted that, as recorded at [4] of the reasons, the appellant anticipated that by 5 June 2026 she would have access to the proceeds from the sale of a litter of eight puppies which would enable her to provide the security for costs. There is no direct explanation by the appellant in her affidavits as to why that did not eventuate.

- [7] By the affidavit filed on 31 August 2026, the appellant relies on the written submissions of her counsel submitted to the trial judge at the conclusion of the trial and seeks to argue each of the grounds of appeal based on the trial submissions but without regard to the findings based on the contemporaneous communications around February 2020 (at [11]-[13] of the trial judge's reasons) and on credit (at [33] and [34]) that largely determined the trial judge's conclusions on the issues of fact and the application of the relevant law to those factual findings. In relation to whether the agreement between the parties as to whether there was a sale or bailment of the dog Sugar, it was the contemporaneous communications before the delivery of the dog and the respondent's husband's evidence that were critical. The trial judge's rejection of a formed breeding agreement (at [35]) based on the respondent's husband's evidence resulted in the dismissal of the respondent's counterclaim.
- [8] An application to set aside or vary the order for security for costs is made under r 772(4) of the *UCPR*. Whether it should be made depends on balancing all the relevant factors: *Thompson v Robinson* [2005] QCA 387 at [6]. The factors that are relevant in this matter are:
- (a) the reasons for why the security was ordered remain relevant;
 - (b) the appellant asserts she suffered multiple broken ribs by 26 May 2026 and has been unable to undertake her work as a landscaper but this assertion is made in the context of no financial documentary material at all being put before the court by the appellant on either the security for costs application itself or for the purpose of today's hearing;
 - (c) there is no direct explanation in the affidavits for why the proceeds from the litter of pups expected to be received in June 2026 are no longer available, although in oral submissions today the appellant explained it was her inability to work which meant she needed the proceeds from the sale of the litter for her living expenses;
 - (d) the appellant's seeking to have subpoenas issued that are not directly relevant to the issue of the nature of the agreement between the appellant and the respondent in relation to the dog Sugar shows the appellant misunderstands

the nature of an appeal, as it is not an opportunity to have a second chance at litigating her original claim;

- (e) the appellant's reliance on her counsel's submissions to the trial judge to show that she has an arguable appeal does not address error by reference to the findings of the trial judge based on the credit of the key witnesses and contemporaneous communications to the making of the sale agreement found by the trial judge;
 - (f) the fact that the appellant is self-represented is a neutral factor;
 - (g) as explained at [6] of the reasons, the amount of \$12,000 ordered to be provided by way of security was much less than the respondent's estimated recoverable costs of the appeal.
- [9] Taking into account all the relevant factors, I am unpersuaded that the appellant has shown that this is an appropriate matter in which the order for security should be set aside or the amount ordered to be provided for security should be reduced to nil.
- [10] The same factors are generally relevant to the respondent's application. In addition, it can be inferred that the respondent as a natural person is prejudiced by the delay in the finalisation of the appeal due to the failure of the appellant in complying with the security for costs order. The making of the order for security for the respondent's costs was an important step to protect the respondent against the possibility that the appellant would not succeed in her appeal and would not be able to pay an order for costs in the respondent's favour. In all the circumstances including those which I have canvassed on the appellant's application, the respondent's application for dismissal of the appeal should succeed.
- [11] The orders which I make are:
1. The appellant's application to set aside or vary the order made on 28 May 2026 is dismissed.
 2. The appeal is dismissed.
 3. The appellant must pay the respondent's costs of the appeal including the costs of the applications heard on 4 September 2026.