

SUPREME COURT OF QUEENSLAND

CITATION: *Harvey v State of Queensland* [2026] QCA 214

PARTIES: **BARRY HARVEY**
(appellant)
v
STATE OF QUEENSLAND
(respondent)

FILE NO/S: Appeal No 3141 of 2026
SC No 10098 of 2018

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 2 July 2026 (Freeburn J)

DELIVERED ON: 23 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 13 October 2026

JUDGES: Bond JA, Boddice JA, Cooper J

ORDERS: **1. The appeal is dismissed.**
2. The appellant is to pay the respondent's costs of the appeal on the standard basis.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – DISCONTINUANCE AND WITHDRAWAL – DISCONTINUANCE OF CLAIM – where the appellant claims to have been assaulted by police – where, as a consequence of the alleged assaults, the appellant filed a claim and statement of claim seeking damages from the respondent – where the respondent filed and served its defence – where the appellant prepared and signed a notice of discontinuance of the proceeding and sent it to the office of the Crown Solicitor – where the Crown Solicitor's office confirmed the respondent's consent to the discontinuance by executing the notice and filing it the following day – where the filing of the notice effected a discontinuance of the appellant's claim – where the appellant applied to have the discontinuance set aside seven years after the notice of discontinuance was filed pursuant to r 304(2) of the *Uniform Civil Procedure Rules 1999* (Qld) – where the primary judge concluded that the appellant had not shown good reason for setting aside the notice of discontinuance and dismissed the application – whether the primary judge erred in the exercise of their discretion under r 304(2) of the *Uniform Civil Procedure Rules 1999* (Qld)

Uniform Civil Procedure Rules 1999 (Qld), r 304(2), r 309(1)

AB v Tabcorp Holdings Ltd [2015] FWCFB 523, cited
Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd (2021) 9 QR 141; [\[2021\] QCA 198](#), applied
Ahmet v Chief Commissioner of Police [2014] VSCA 265, cited
Christodoulou v Disney Enterprises Inc (2006) 156 FCR 369; [2006] FCAFC 183, cited
SZFOZ v Minister for Immigration and Citizenship [2007] FCA 1137, cited
Thorne v Kennedy (2017) 263 CLR 85; [2017] HCA 49, distinguished
Tyler v Custom Credit Corp Ltd [\[2000\] QCA 178](#), distinguished

COUNSEL: The appellant appeared on his own behalf
M T O’Sullivan for the respondent

SOLICITORS: The appellant appeared on his own behalf
C E Christensen, Crown Solicitor for the respondent

- [1] **BOND JA:** I agree with the reasons for judgment of Cooper J and with the orders proposed by his Honour.
- [2] **BODDICE JA:** I agree with Cooper J.
- [3] **COOPER J:** The appellant claims to have been assaulted by police on three occasions: on 10 July 2014, on 15 September 2014, and on 21 September 2015. On 19 September 2018, he filed a claim and statement of claim seeking damages of \$8.4 million from the respondent by reason of the alleged assaults. On 15 October 2018, the respondent filed and served its defence in which it denied liability.
- [4] On 13 December 2018, a little less than two months after having been served with the defence, the appellant prepared and signed a notice of discontinuance of the proceeding and sent it to the office of the Crown Solicitor. After service of the defence, the appellant could only discontinue the proceeding with the respondent’s consent or with the court’s leave: *UCPR* r 304(2). The Crown Solicitor’s office confirmed the respondent’s consent to the discontinuance by executing the notice and filing it the following day. The filing of the notice effected a discontinuance of the appellant’s claim: *UCPR* r 309(1).
- [5] More than seven years after that notice was filed, the appellant applied to have the discontinuance set aside. The primary judge concluded that the appellant had not shown good reason for setting aside the notice of discontinuance and dismissed the application. The appellant now seeks to challenge that conclusion. For reasons that follow, the appeal must be dismissed.

The material before the primary judge

- [6] The application was heard on 2 July 2026. The appellant affirmed three affidavits which he relied on at the hearing. The transcript of the hearing establishes that the primary judge read those affidavits before the appellant made oral submissions.

First affidavit

- [7] In his first affidavit, filed on 9 June 2026, the appellant deposed that he filed the notice of discontinuance because of his failing mental health and his inability to cope with the legal process. He asserted that he feared for his safety and welfare because of the alleged assaults by police. He deposed that he was physically abused and threatened at the Roma Street Watchhouse. He said this led to the discontinuance. The appellant exhibited a photograph which he said depicted injuries he suffered from the physical abuse police allegedly inflicted on him at the Roma Street watchhouse. However, he did not say when the alleged threats or abuse occurred and provided no details beyond a broad allegation. The appellant further asserted that a sergeant from the Sandgate police station brought false charges against him and that this also led to him discontinuing the proceeding. Again, he did not say when the charges were brought or how the bringing of those charges caused him to sign the notice of discontinuance.
- [8] The appellant exhibited medical reports which he said evidenced his mental state at the time of the discontinuance. He deposed that he had attempted suicide on two occasions but did not say when either attempt occurred. The reports exhibited to the first affidavit were two documents titled “Preliminary Medical Attendant’s Statement” which were apparently provided in respect of an insurance claim made by the appellant because of his inability to work.
- [9] The first statement was signed by a psychiatrist on 28 May 2026. The statement recorded that on 30 October 2013, prior to the first of the alleged assaults by police, the psychiatrist had diagnosed the appellant with Major Depressive Disorder, and secondary conditions of Agoraphobia and Obsessive-Compulsive Disorder. The statement described the appellant’s symptoms as depressed mood, anhedonia, social isolation and counting obsessions. The psychiatrist stated that the predisposing causal factors associated with the appellant’s condition were the breakdown of the appellant’s marriage, work pressures and his estrangement from his son. As to whether the appellant’s employment was a significant or contributing factor to his symptoms, the psychiatrist stated that the appellant’s symptoms arose before he had ceased work, but those symptoms were reportedly exacerbated by bullying in the workplace. The psychiatrist stated that the appellant was hospitalised on two occasions for his condition, in 2019 and in 2025, but provided no further detail about either admission.
- [10] The second statement was signed by a general practitioner on 25 May 2026. The general practitioner stated that the appellant had first consulted her about his condition in December 2025. The general practitioner referred to the psychiatrist’s earlier diagnoses and further stated that the appellant had previously been treated by acute care teams in New South Wales and Queensland, including an admission for an episode of self-harm. The statement records that the appellant was admitted to the Royal Brisbane and Women’s Hospital in 2019 and subsequently discharged from that admission in 2020; and that he was admitted to Nepean Hospital in New South Wales between August 2025 and September 2025. The statement does not record whether either admission was for an episode of self-harm. The general practitioner stated that the predisposing causal factors associated with the appellant’s condition are family estrangement, social isolation and concomitant physical conditions. She said the appellant had reported becoming obsessed with a relationship and experiencing a mental breakdown which caused the relationship to end. The appellant also reported that he was bullied at work.

- [11] Neither of the medical statements addressed the appellant's mental state in December 2018, when he signed the notice of discontinuance. Neither statement makes any reference to any of the alleged assaults by police or to the appellant being fearful for his safety because of those alleged assaults.
- [12] In the first affidavit the appellant also stated that the respondent had failed to comply with orders for disclosure. He did not exhibit the relevant order to the affidavit. Nor did he identify the documents which the respondent had not disclosed as required by the order. He provided no explanation of how the claimed non-compliance with the order for disclosure had any bearing on his decision to sign the notice of discontinuance.
- [13] The appellant deposed to believing that he had a good chance of success on his claims against the respondent based on video evidence which had been provided to him. The appellant did not put any video evidence before the primary judge.
- [14] Finally, the appellant explained the time between the discontinuance and his application on the basis that he had spent five years in Sydney caring for his father.

Second affidavit

- [15] In his second affidavit, filed on 23 June 2026, the appellant stated that he suffered Post Traumatic Stress Disorder (**PTSD**) because of the alleged assaults by police. He described the psychological symptoms of that condition as being fear and distrust of the police. He said that he spent a week sleeping on a friend's verandah because he was afraid that police were coming to get him. He said that he had been told by a senior police officer that police were monitoring his Facebook account and this greatly distressed and frightened him. He stated that the respondent's defence contained fabrications about his conduct on the occasions he alleges he was assaulted by police. He said he had applied to set aside the discontinuance immediately upon him regaining capacity, which occurred after he was treated at Nepean Hospital in August and September 2025.
- [16] The second affidavit also contained the following paragraphs:
 - “7. Elements of duress
 - a. The bashings themselves
 - b. My PTSD which made me fearful and distrustful of Police and the Government
 - c. The Malicious Prosecution by [the police sergeant]
 - d. The threats made to me at Roma St Watchhouse
 - e. My concern the Sandgate Police would come to my home and need to stay elsewhere
 - f. The monitoring of my Facebook account
 - g. The malicious lies in the defence filed by Crown Law that attempted to portray me as violent.
 - h. The failure to disclose the video of Maroochydore Watchhouse on July 10th 2014.

8. Elements of Mental Health

- a. The impact my Mental Health had on my ability to fully understand that the filing of a discontinuance would practically kill off my claim
- b. The impact my Mental Health had on my ability to pursue and act on the claim
- c. The impact my Mental Health had on my perception of danger and duress by the Defendant
- d. My suicide attempts in 2019 and 2025.

9. Elements of timing

- a. My need to be in Sydney for 5 years to care for my Palliative Father who was an invalid with Dementia.”

[17] During oral submissions made to the primary judge, the appellant stated that he had been diagnosed with PTSD by Metro Health South at Buranda in July or August of 2017. The primary judge asked the appellant to identify the medical evidence of that diagnosis. The appellant appeared to accept that there was no such evidence before the primary judge, saying that he had applied to the Metro Health South for the relevant records but had been told that it may take up to 28 July 2026 for those records to be provided to him.

Third affidavit

[18] In his third affidavit, filed on 29 June 2026, the appellant deposed to things which he said occurred on two occasions when he was arrested by police. He did not say when those arrests occurred. The appellant deposed that, because of what he described as “malicious lies” made in the respondent’s defence, he feared that police would arrest him and he would lose his lease over his residence. He stated that upon reading the defence he decided that because of the malicious fabrications, his existing fear and distrust of the police, the courts and the government, and the effect of those matters on his mental health, he would file the notice of discontinuance. He said those matters added to duress he felt when he filed the notice of discontinuance. He asserted that the cumulative effect of mistreatment, malicious prosecution and fabrications by police led him to believe, in his weakened mental state, that the discontinuance was the only course available to him to protect himself. He said that, in his mental state at the time of the discontinuance, he did not understand the effect of his actions.

[19] The appellant also made statements in the form of submissions in the third affidavit as follows:

- (a) he was entitled to the benefit of a presumption of undue influence because that presumption should be recognised as attaching to the relationship between a member of the public and police;
- (b) in circumstances where the cumulative conduct of the respondent meant he was unable to make clear, calm or rational decisions, he was deprived of the ability to exercise free choice in the decision whether to discontinue the proceeding;
- (c) the cumulative conduct of the respondent amounted to unconscionable conduct which, to the respondent’s knowledge, placed him at a special disadvantage;

- (d) the delay caused by his incapacity and his need to be in Sydney caused no prejudice to the respondent as videos which proved his claims exist and no witness testimony would be required;
- (e) various matters applied in his favour on the application – his proceeding had good prospects of success, “striking out” the proceeding would effectively end his claims, the matter was ready to progress to trial, his status as a self-represented litigant, and the respondent’s failure to disclose a video of the incident on 10 July 2014.

The primary judge’s reasons

- [20] After summarising the appellant’s arguments about the circumstances in which he says he signed the notice of discontinuance and the explanation for delay in bringing the application to set it aside, the primary judge observed that a party who knowingly and willingly files a notice of discontinuance is unlikely to persuade a court to set that notice aside as an abuse of process, referring to the decision of Ryan J in *SZFOZ v Minister for Immigration and Citizenship* [2007] FCA 1137.
- [21] The primary judge concluded that the appellant had not properly explained his delay of seven and a half years in making the application. The primary judge did not consider that caring for a parent for a period of five years could properly explain such a lengthy delay. Further, that purported explanation did not account for the further period of two and a half years. The primary judge rejected the appellant’s explanation that delay beyond the five years he says he was caring for his father was due to his psychological illness. The primary judge stated that the appellant’s psychological symptoms were largely unsupported by medical evidence. The primary judge further noted the public interest in the finality of litigation before concluding that the appellant had not shown good reason for setting aside the notice of discontinuance.

The appeal

- [22] The appeal is from an exercise of judicial discretion on a question of practice and procedure. As Bond JA observed in *Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd* (2021) 9 QR 141, 149 [12]–[13], although there is no absolute rule and each case must be considered in light of its own particular circumstances, generally an appellate court will not interfere on such an appeal unless, in addition to error of principle, the appellant demonstrates that the order will work a substantial injustice.
- [23] The appellant argues before this court that the primary judge failed to consider numerous matters which should have applied in his favour on the application. Those matters can be broadly summarised as follows:
 - (a) matters going to the circumstances in which the appellant said he signed the notice of discontinuance – the proximity in time between the respondent filing the defence and the appellant signing the notice, the appellant’s fear of losing his home, the elements of duress set out in the appellant’s affidavits, the appellant’s diagnosis of PTSD caused by the alleged police assaults, the state of the appellant’s mental health when he signed the notice and his inability to recognise the consequences of his conduct;
 - (b) matters explaining the delay in making the application to set aside the notice – the continuation of the appellant’s mental illness (including his suicide attempts

in 2019 and 2025), the appellant's role as primary carer for his father, and the appellant's inability to access court while he resided interstate;

- (c) the public interest in having claims of police brutality determined by the court;
- (d) authorities identified by the appellant, including authorities he argues were binding on the primary judge.

Further material relied on for the appeal

[24] In addition to the material that was before the primary judge, the appellant relied on a further affidavit for the purposes of the appeal. That further affidavit exhibited records the appellant had obtained from the Caboolture Hospital and the Redcliffe Caboolture Acute Care Team. The appellant deposed that the records confirmed his poor mental health around the time of filing the notice of discontinuance and his diagnosis of PTSD.

[25] The exhibited records cover the period from 28 July 2017 to 18 December 2017, approximately nine months before the appellant commenced his proceeding against the respondent and approximately one year before he signed the notice of discontinuance. The appellant's assertion that the records provide evidence of his mental state around the time the notice of discontinuance was filed is incorrect.

[26] Further, the records contain only two references to PTSD. First, the record of a Mental Health Services Triage and Rapid Assessment undertaken on 28 July 2017 refers to "a query as to whether [the appellant] had PTSD or depression" having been raised on an earlier assessment. Secondly, a progress note dated 1 August 2017 prepared by a consultant psychiatrist with the Redcliffe Caboolture Acute Care Team contained the following statement:

"Patient with symptoms that [sic] of Obsessive Compulsive Personality Disorder. While his preoccupation with the safety of his son seemed to be of delusional intensity and due to a psychotic process, it could also be driven by his underlying personality structure. There are symptoms of PTSD."

[27] Neither of these references to PTSD provides evidence of a diagnosis. When that was pointed out to the appellant during his oral submissions on the appeal, he stated (without providing any evidence) that the diagnosis was made by the Metro Health South facility at Buranda, but he had been unable to obtain records of that diagnosis because the facility had burned down.

Consideration

[28] None of the appeal grounds can be accepted.

[29] As to the circumstances in which the appellant said he signed the notice, the primary judge read the appellant's three affidavits before hearing his oral submissions. Although some of the matters set out in those affidavits were not expressly addressed in the reasons for dismissing the application, the primary judge's conclusion that the appellant had not shown good reason for setting aside the notice of discontinuance was an implicit rejection of all the matters the appellant relied on in support of his application. Having regard to the nature of the evidence that course was plainly open to the primary judge.

- [30] There was reason to doubt the reliability of the appellant's evidence generally, particularly in circumstances where he failed to adduce evidence supporting his claimed PTSD diagnosis. Substantial parts of his evidence comprised nothing more than broad, conclusory assertions without sufficient detail to permit a finding that the matters the appellant raised had any bearing on the discontinuance of the proceeding. Examples include the entirely unparticularised assertion that he had been threatened at the Roma Street watchhouse and his account of being told that police were monitoring his Facebook account. The appellant failed to adduce evidence of facts necessary to substantiate his assertions. During oral submissions on the hearing of the appeal, the appellant submitted that he had established duress by proving that the respondent had not complied with a Magistrates Court order to disclose a video of the incident on 10 July 2014. However, as previously explained, the appellant did not exhibit the Magistrates Court order to any of his affidavits and nothing in his evidence established that the respondent had a video in its possession which it had failed to disclose in accordance with such order.
- [31] Ultimately, there is an air of unreality to the appellant's assertions. It is difficult to accept at face value the appellant's claim that reading what was pleaded in the respondent's defence caused him to fear that the police would arrest him and he would lose his home. Again, such evidence as there was concerning the appellant's mental health provides no objective support for that assertion. Nor did the medical evidence provide any support for the appellant's claim that, when he signed the notice of discontinuance, he was unable to appreciate or recognise the consequences of his actions.
- [32] As to the explanation for delay, the appellant's submission that the primary judge failed to consider those matters is incorrect. The primary judge expressly addressed those matters in the reasons and concluded that they did not provide a proper explanation for the appellant's delay. Again, that conclusion was plainly open. The primary judge was correct in concluding that neither the appellant's role caring for his father nor the requirement that he live interstate during that period precluded the appellant from applying to set aside the notice of discontinuance in a timelier manner. The primary judge's conclusion that the appellant's psychological symptoms were largely unsupported by the medical evidence was also correct. In terms of evidence of suicide attempts, the statement signed by the psychiatrist did not refer to any such episodes. The statement signed by the general practitioner referred to one such episode but did not state when it occurred. Read at its highest, the medical evidence did not support the appellant's assertion that his mental health issues prevented him from bringing his application earlier than he did.
- [33] As to there being a public interest in having the court determine claims alleging police misconduct, the appellant made no reference to such an interest in his three affidavits or in his oral submissions to the primary judge.
- [34] In his oral submissions at the hearing of the appeal, the appellant referred to the decision of *Ahmet v Chief Commissioner of Police* [2014] VSCA 265, in which the Victorian Court of Appeal overturned a decision to uphold a claim of public interest immunity over records of complaints and investigations concerning four police officers. The court referred (at [20]) to the statement of the High Court in *Commonwealth v Northern Land Council* (1993) 176 CLR 604 at 616, that a claim of public interest immunity must be weighed against the competing public interest in the proper administration of justice. That appears to be the appellant's basis for arguing there is a public interest in having his claims of police misconduct determined by the court.

- [35] The reference in the primary judge's reasons to the appellant's allegations of assault by police makes it clear his Honour was aware of the nature of the discontinued claims. Whatever public interest there might be in having allegations of police misconduct determined by the court had to be balanced against the public interest in the finality of litigation referred to by the primary judge and his Honour's conclusion that the appellant had not properly explained his conduct in discontinuing his claims before seeking to reinstate the claim more than seven years later. The appellant's material did not demonstrate that any public interest in the determination of his claims of police misconduct outweighed the matters favouring refusal of the application to set aside the notice of discontinuance.
- [36] As to the assertion that the primary judge failed to apply binding authority, the appellant's material at the hearing below identified six cases; four cases were identified in the second affidavit and a further two cases were identified in the third affidavit. Beyond listing the case citations, the appellant did not make any submission to the primary judge about how those authorities applied in support of the application to set aside the notice of discontinuance.
- [37] At the hearing of the appeal the appellant made submissions about several of those authorities.
- [38] First, the appellant referred to *Thorne v Kennedy* (2017) 263 CLR 85 (**Thorne**). In that case, the majority of the High Court explained the doctrines of duress, undue influence and unconscionable conduct. The appellant argued that his evidence established duress such that, applying *Thorne*, the primary judge should have allowed the application to set aside the notice of discontinuance. For the reasons already addressed, the appellant's evidence did not establish duress. In those circumstances, there was no basis for the primary judge to apply *Thorne*.
- [39] Secondly, the appellant referred to the case of *AB v Tabcorp Holdings Ltd* [2015] FWCFB 523, which involved an appeal to the Full Bench of the Fair Work Commission against the dismissal of a worker's application to set aside the discontinuance of his unfair dismissal claim. The dismissed worker had argued that permitting the employer to be represented at a conciliation conference and in the preparation of its material placed him under such duress that he discontinued his unfair dismissal claim. That submission was rejected at first instance on the basis that it could not be said that, by exercising its lawful right to have legal representation, the employer was applying duress to the worker to discontinue his application. The worker's appeal against that decision was dismissed. In circumstances where the appellant's evidence in the present case did not establish duress, the primary judge's decision to dismiss the application was consistent with the decision in *AB*.
- [40] Thirdly, the appellant referred to *Tyler v Custom Credit Corp Ltd* [2000] QCA 178 at [2], where Atkinson J identified factors the court will take into account when considering whether or not to dismiss an action for want of prosecution or whether to give leave to proceed after delay in taking a step in the proceeding. The appellant relied specifically on the following matters:
- (a) the prospects of success in the action;
 - (b) whether or not there has been disobedience of court orders or directions.
- [41] The appellant's evidence did not engage either of those considerations. Although the appellant asserted that videos of some of the incidents where he says he was assaulted

by police demonstrate his claim has good prospects of success, the primary judge was unable to assess those prospects because the appellant did not put any videos in evidence on the application. Further, the appellant's evidence could not support a finding that the respondent had disobeyed a Magistrates Court order to disclose a further video because, as already explained, the appellant did not put such order into evidence.

Conclusion

- [42] The scope of the court's power to set aside the discontinuance of a proceeding was discussed by the Full Court of the Federal Court in *Christodoulou v Disney Enterprises Inc* (2006) 156 FCR 369, 375 [25]-28]. The Full Court commenced by identifying a line of English authorities which establishes that the court has inherent jurisdiction to set aside a discontinuance of proceedings if the act constituting the discontinuance was a nullity in the eyes of the law by reason of fraud or mistake. The Full Court then referred to further authorities suggesting that the power extends beyond cases of fraud or mistake and can be exercised whenever the interests of justice dictate that that is the appropriate course. Having addressed those authorities, the Full Court concluded that the court has power to set aside a discontinuance but found it unnecessary to decide the scope of that power. Even if the relevant test is that it be shown to be in the interests of justice that the discontinuance be set aside, the Full Court was not satisfied that the exercise of the power was warranted in the circumstances of that case.
- [43] I have reached the same conclusion on the present appeal. Assuming in the appellant's favour that the court had power to set aside the discontinuance if it was shown to be in the interests of justice to do so, the material before the primary judge did not satisfy that test. The primary judge considered and rejected the appellant's arguments about the circumstances in which he says he signed the notice of discontinuance as well as the purported explanation for the lengthy delay in applying to set aside the discontinuance. For reasons already given, both those conclusions were correct. In those circumstances, the appellant failed to demonstrate that it was in the interests of justice to set aside the discontinuance.
- [44] The appellant has not demonstrated error in the primary judge's decision.
- [45] I would make the following orders:
1. The appeal is dismissed.
 2. The appellant is to pay the respondent's costs of the appeal on the standard basis.