REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PAMELA ANNE JULIEN

APPLICATION NO: A30/08/569

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 10 JULY 2002

DATE OF DETERMINATION: 10 JULY 2002

IN THE MATTER OF an appeal by Mrs P A Julien against the refusal by the Stewards of the Western Australian Greyhound Racing Authority on the 17 April 2002 to accept nominations to race.

Mr R E Birmingham QC, instructed by Dwyer Durack, appeared for the appellant.

Mr R J Davies QC, assisted by Mr J Woodhouse, appeared for the respondent.

This appeal came on for hearing on the 10 July 2002. I sat alone by agreement of the parties. The appeal was upheld and the decision of the Stewards to refuse nominations set aside. I now publish my reasons.

This appeal involves a greyhound trainer who is married to a disqualified person. They both live in the family home located on a parcel of land near to other land on which the kennels are located and training occurs. Whilst the material facts are not too complicated nor in dispute the relevant facts relating to the land use and occupancy do take a little explaining. Four separate pieces of land need to be considered. All are located east of

Stoneville Road in Stoneville. They are all in excess of 2 hectares in area, with Lot 4710 being the largest comprising 2.3576 hectares. The two western lots, which enjoy the main frontage to Stoneville Road, are lots 4780 and 4640. These two lots are separated from each other by two 5.49 metre driveways which give road access to the two rear lots, being Lot 4710 (the northerly one) and Lot 4700 (the southerly one). The two rear blocks share a common boundary along the whole of their respective driveways. That boundary extends east to the rear boundaries of these two lots. Lot 4780 has a common boundary with Lot 4710, as does Lot 4640 with Lot 4700. However, significantly there is no common boundary shared by Lots 4710 and 4640.

The appellant is a licensed greyhound owner/trainer. The appellant's husband, Maxwell John Julien, formerly trained greyhounds but currently is a disqualified person. Prior to his disqualification Mr Julien resided with the appellant in the family home located on Lot 4710 and trained greyhounds on the same lot. The house is set back from all boundaries. As I understand it the house is located approximately 65 metres from the closest point to Lot 4640, being the north-eastern corner of Lot 4640. The appellant's kennels which were being utilised at the relevant time are situated on Lot 4640. That lot is separated from Lot 4710 by uncleared bushland and by the surveyed access road to Lot 4700. Photographs revealing the bushland and other relevant features of the Lots were tendered in evidence to supplement the title searches and other information which the Stewards had relied on and which I was asked to examine. Lots 4640, 4710 and 4700 are all owned jointly by the appellant and her husband.

On 17 April 2002, the Chief Steward wrote to Mrs Julien as follows:

> *'I refer to the Stewards' inquiry conducted in the Stewards' office at Cannington today.*
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> *After deliberation, the Stewards find as follows:*
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> *Essentially, the Stewards' task in this matter is to determine whether or not Rule 180(2) is being complied with. In arriving at our determination, we have taken into account the Report of Inspection dated 11 March 2002, all the documentation presented by you (including the definition of 'premises'), and all the oral evidence submitted at this inquiry.*
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> *You have maintained that because the greyhounds are now only being trained at Lot 4640 it is a separate premise to Lot 4710 where you and disqualified person Mr M Julien reside. It is however clear to us that there are no barriers separating Lots 4640 from 4710. It is not in dispute that there are three different lots, all owned by yourself and Mr M Julien, a fact which the Stewards are familiar with. Previously the training of greyhounds has occurred from both Lots 4640 and 4710 as one premise for the training of greyhounds. In our opinion, the changes*

that you have undertaken do not convince us that Lot 4640 is a different premise to that of Lot 4710.

Under the terms of Rule 180(2) we conclude that Lots 4640 and 4710 are in fact one premise. As a result, we find that you are not complying with Rule 180(2).

Rule 184(g) states:

184. Grounds for disqualification of greyhound

(1) A greyhound may be excluded from participation in greyhound racing or may be disqualified if:

(g) any person connected with the nomination, training or racing of the greyhound, or who is the owner, part owner or lessee, is guilty of a breach of these rules or fails to comply with these rules or is guilty of a breach of the rules of a club or of a syndicate, or is a defaulter.

Acting under Rule 184(g), the Stewards order that your greyhounds which are being trained from Lot 4640 will be excluded from participation in greyhound racing by not accepting any further nominations.'

The appellant appeals on the basis that *'The Stewards erred in their determination that Lots 4640 and 4710 Stoneville Road, Stoneville are not separate properties. (Rule 180(2))'*. From a titles office perspective they clearly are separate. Lot 4640 is the whole of the land in certificate of title volume 1679 folio 756, whilst Lot 4710 is the whole of the land in certificate of title volume 1679 folio 755. Whilst these lots are not contiguous as previously stated they do share a common owner.

Rule 180(2) is in the following terms:

'A person can not train any greyhound on premises in which a disqualified person or defaulter or warned off person resides.'

The thrust of this Rule is consistent with Rule 179(1)(f). The latter Rule precludes a disqualified or warned off person from entering or going onto or remaining at *'any place where greyhounds are trained, kept or raced'*. Clearly the two provisions combined are intended to prevent a person who was formerly involved in greyhound racing who has offended and been disqualified from being able to come in contact with any greyhounds whether they are at work, being trained, maintained or raced. This embargo is sought to be addressed in the Rules both by outlawing such a person from being physically present where greyhounds are located as well as by disallowing training to occur where such an offender lives. Not uncommonly greyhound kennels are to be found attached to or associated with an adjoining or nearby residence. This situation can be contrasted in the context of horses where stables are most usually located quite separate and apart from houses. The two Rules are clearly designed to avoid serious offenders from being easily

able to ignore their exclusion from the sport while being physically in a position to come in contact with the animals unlikely to be observed.

In considering whether the appellant was in breach of Rule 180(2) in training greyhounds on premises in which Max Julien actually resided, it is necessary to note the Rule in question contains the word 'on', in relation to the training premises, and the words 'in which' in relation to the residence. The distinction in the terminology is of some significance. Also of significance is the meaning to be ascribed to the word 'premises' as used in this Rule The meaning of that key word must be considered in the context of the surrounding words and not in isolation. Key words can bear different meanings according to the contexts in which the word is found. Per Dixon J in *Turner v York Motors Pty Ltd* [1951] 85 CLR 55, at 75:

> *'The word "premises" is no doubt a vague one but in legislation of this sort (*Landlord and Tenancy Amendment Act*) there are great advantages in a test of its application which is objective and consists in a readily ascertainable physical fact.'*

At page 83 Williams J said:

> *'The word "premises" is used in a popular sense and in this sense has a wide meaning. It is wide enough to include bare land. Its true meaning in any particular statute must be ascertained from the context in which it appears and from an examination of the scope and purpose of the statute as a whole.'*

In the present case, the word 'premises' is coloured or conditioned by the fact that it is used in connection with, not the general area or location where a disqualified person resides, but rather the actual place in which such a person resides. It follows that for the embargo in the Rule to apply there must be some tangible connection between the residence of the disqualified person and the actual 'premises' where the training of the greyhounds takes place. In other words the place of training must be in some appropriate way linked or connected with the place of residing.

The residence of a person is the house or dwelling in which that person resides. The Concise Oxford dictionary defines the word *'reside'* as *'have one's home, dwell permanently, ... be in residence'*, '*residence'* as '*the place where a person resides; an abode, a mansion'*. In *Koitaki Para Rubber Estates Ltd v The Federal Commissioner of Taxation (Commonwealth)* [1940] 64 CLR 241 at 249 Williams J expressed the concept of residence in the following terms:

> *'The place of residence of an individual is determined, not by the situation of some business or property which he is carrying on or owns, but by reference to where he eats and sleeps and has his settled or usual abode. If he maintains a*

home or homes he resides in a locality or localities where it is and they are situate, but he may also reside where he habitually lives even if it is a hotel or on a yacht or some other place of abode.'

In *Australasian Temperance & General Mutual Life Assurance Society Ltd v Howe* [1922] 31 CLR 290 at 334 Higgins J stated '*...in the absence of words to the contrary, the expression in section 75 of the Constitution "residents of different States" and "a resident of another State" refer to 'residence in the ordinary popular sense, usually involving sleep, shelter and home and not to company or business*'.

From the evidence before the Stewards there can be little doubt that Mr Julien's occupation of the home on Lot 4710 makes that abode the usual place where he eats and sleeps and habitually lives. Mr Julien resides in the house located on Lot 4710. But how far does that residency extend? Mr Julien's residence is limited to the house and the yard and garden within the curtilage of and appurtenant thereto. In *Lewis (Inspector of Taxes) v Rook* [1992] 1 WLR 662, Balcombe LJ stated at 670-671:

'In all cases to which I have referred there has been an identifiable main house. Where it is contended that some one or more separate buildings are to be treated as part of an entity which, together with the main house, comprises a dwelling house, Mr Warren submitted that no building can form part of a dwelling house which includes a main house, unless that building is appurtenant to, and within the curtilage of, the main house.

At first I was inclined to the view that this introduced an unnecessary complication into the test, even though this was the way in which Browne-Wilkinson J. approached the problem in Batey v. Wakefield, *55 T.C. 550. On reflection I have come to the conclusion that this is a helpful approach, since it involves the application of well-recognised legal concepts and may avoid the somewhat surprising findings of fact which were reached in* Markey v. Sanders *[1987] 1 W.L.R. 864,* Williams v. Merrylees *[1987] 1 W.L.R. 1511 and, indeed, in the present case. In* Methuen-Campbell v. Walters *[1979] Q.B. 525, 543-544 Buckley L.J. said*:

"In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in trust forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration."

> *That passage was cited with approval by all the members of this court in* Dyer v. Dorset County Council *[1989] Q.B. 346, all of whom emphasised the smallness of the area comprised in the curtilage. This coincides with the close proximity test to which the other cases refer: "very closely adjacent,"* per *Browne-Wilkinson J. in* Batey v. Wakefield, *55 T.C. 550, 556, approved in the same case by Fox L.J. [1982] 1 All E.R. 61, 64, and adopted by Walton J. in* Markey v. Sanders *[1987] 1 W.L.R. 864.*
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> ...
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> *If the commissioners in the present case had applied what in my judgment was the right test: "Was the cottage within the curtilage of, and appurtenant to, Newlands, so as to be a part of the entity which, together with Newlands, constituted the dwelling house occupied by the taxpayer as her residence?" – I do not see how they could have reached the decision which they did. The fact that the cottage was 175 metres from Newlands, that Newlands was on the northern boundary and the cottage on the southern boundary of the 10.5 acre estate, and that they were separated by a large garden with no intervening buildings other that the greenhouses and tool shed, as is apparent from the commissioners' findings and the plans and photographs which were before us as they were before the commissioners, leads me to the inescapable conclusion that the cottage was not within the curtilage of, and appurtenant to, Newlands, and so was not part of the entity which, together with Newlands, constituted the taxpayer's dwelling house.'*

I am satisfied that premises, within the meaning of Rule 180(2), does not extend beyond the principal residence to include all of the land immediately surrounding it out to the boundaries. See: *Riley v Brooks* [1998] 7 Tas Rep 352; *Shannon v Lithgow City Council* [1995] 88 LGERA 253 – where for the purpose of the Local Government Act 1993 (NSW) premises were considered to include those yards that surrounded a house).

Mr Julien's residence does not extend to the total parcel of land which is fairly substantial. By most metropolitan area standards there is a relatively large amount of surplus land surrounding the premises in which Mr Julien actually resides. That surplus land cannot for the purpose of the rule be treated as part of the residence. This construction does no violence to the language of the Rule and is consistent with the object of the Rule ie where kennels (unlike stables) may be part of the residence or house yard as some owners do keep their dog or dogs at their residence.

Lot 4640 is a separate discrete property from that in which Mr Julien resides namely, 4710. The title searches and photographs which are in evidence confirm that fact. The clear purpose of the Rule is to prevent a person who has been punished by breach of the Rules and imposed a penalty of disqualification from physically coming in contact with greyhounds. Such a person is supposed to be excluded completely from the sport. No part of Lot 4640 touches or abuts Lot 4710. It is separated by Lot 4700. The kennels on

Lot 4640 from no part of Lot 4710 and in any way can be said to be part of the place where Mr Julien resides.

To allow greyhounds to effectively be in the same residence as a disqualified person would restrict the ability of the Stewards from ensuring, through inspection or otherwise, that a disqualified person is in fact precluded from participation or involvement in training, racing etc. This must be contrasted with a position where the kennels are completely distinct and separate from the residence of the disqualified person – where the disqualified person is denied access in a way that can be enforced and, if necessary, supervised.

There is no integral relationship between the residence occupied by the disqualified person on Lot 4710 and the location of the greyhounds on Lot 4640. For the Rule to be breached the two key elements, namely the respective training and residency components, must overlap or be actually connected in some way or be in substance one and the same. This is clearly not the case here. Conducting training at and kennelling on a nearby parcel of land which is not the same parcel which comprises or contains the premises in which the disqualified person resides, means that the appellant is not caught by the Rule. The key aspect to so deciding is where the disqualified person *'resides'*. It cannot be said that Mr Julien *'resides'* at the place where the greyhounds are kept and trained. There is a very clear physical and legal distinction between the two lots.

A close examination of the transcript of the Stewards' inquiry reveals the reasons given by the Stewards are not entirely clear. It would seem that the Stewards were not convinced that despite the fact training was now only occurring on one lot, whereas previously both Lots 4650 and 4710 were employed for the purpose, one should treat the two discrete lots as different premises.

Nothing before me suggests that the assertion made by the appellant to the Stewards, quoted in the letter written by the Chief Steward was incorrect. The greyhounds were being trained only at Lot 4640. That is a separate premise from Lot 4710 which is where the trainer and the disqualified person reside. The Stewards in the April 2002 letter go on to refer to the fact that no barriers separate the two. Whether any barrier does or does not exist is not the test or determiner of the issue. The Stewards have wrongly concluded the training lot and the house lot *'...are in fact one premises'*. I am satisfied on the evidence and the authorities that this cannot be the case. Accordingly, the Stewards erred in so finding and wrongly refused to accept the nominations of the greyhounds. The finding by the Stewards that Rule 180(2) was not being complied with is incorrect.

As there was no breach of the Rules there was no proper basis to apply Rule 184(g).

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.