

CITATION: *Zangari v Northern Territory of Australia & O'Neill* [2003] NTMC 068

PARTIES: Vingenzia Zangari
v
Northern Territory of Australia
and
John O'Neill

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victim's Assistance)

FILE NO(s): 20215479

DELIVERED ON: 30 December 2003

DELIVERED AT: Darwin

HEARING DATE(s): 10 October 2003

DECISION OF: Jenny Blokland SM

CATCHWORDS:

Crimes (Victims Assistance) – future treatment –

Mcilpatrick v Chard (1995) 5 NTLR 9

REPRESENTATION:

Counsel:

Applicant: Ms Farmer
First Respondent: Ms Spurr

Solicitors:

Applicant: Withnall Maley
First Respondent: Halfpenny's

Judgment category classification: B
Judgment ID number: [2003] NTMC 068
Number of paragraphs: 12

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20215479

BETWEEN:

VINGENZIA ZANGARI
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
First Respondent

&

JOHN O'NEIL
Second Respondent

REASONS FOR DECISION

(Delivered 31 December 2003)

Ms Jenny Blokland SM:

Introduction

1. The applicant was assaulted by her son on 29 April 2002 and the offence was reported to police the same day. Her affidavit indicates her son suffers from schizophrenia and at the time of the assault she was his carer. Both the physical injuries and alleged psychiatric injuries, including a component for future medical expenses require consideration.

The physical injuries

2. The assault involved the second respondent pushing, punching and kicking the applicant and throwing her across her unit. She was punched to the right side of her face, the back of her right ear and kicked in the left rib area. She hit a sideboard cupboard when he threw her. In her affidavit she states these

injuries caused her pain for three months and prevented her from performing daily domestic chores. She attended Royal Darwin Hospital. The report from Royal Darwin Hospital confirms the applicant had swelling and bruising over her right angle of mandible and around her right ear. Bruising was also noted near her right elbow, left antecubital fossa, upper thighs, anterior chest wall and tenderness over her shoulders and back. Mild bruising was noted to her stomach. She possessed full range of movement of her neck and back. There was no evidence of mandibular fracture. She received counselling and suggestions in relation to the management of her son and was advised to take paracetamol and neurofen.

3. Around one month later she attended her GP, Dr Boyce and advised of neck ache, jaw pain and bite problems. Dr Boyce prescribed anti-inflammatory tablets, she was given exercises and advised to see a dentist if she had further bite problems.
4. The applicant states: *I believe that I am suffering from a slipping jaw injury and attended my dentist, Dr Lewis, who recommended that I seek orthodontic treatment as a result of this assault. However, before that process can be commenced, I am required to have a hygienist scale and clean my teeth.* Evidence on the file indicates that in preparation of the orthodontic treatment the applicant was advised and did attend on a dental hygienist and paid a total of \$639 for various scaling and cleaning procedures. There is no dental or orthodontic report before the court. The applicant advises the court that since the investigation with her teeth and jaw she has been advised to obtain other treatment apparently not linked or alleged to be linked to this assault.
5. The applicant advises the pain and discomfort lasted for three months on a decreasing scale. She tells the court she was required to rest for approximately four weeks.

6. The various soft tissue injuries resulting from the assault are of significant severity and continued to give her discomfort for a number of months. The evidence in relation to the alleged *slipping jaw* injury is insufficient for me to find such an injury is referable to the assault. I find it was likely that she had significant discomfort in the jaw area and received advice to see a dentist. She was advised from there to take orthodontic treatment and in preparation for that, scaling and cleaning was undertaken. In my view the costs of scaling and cleaning are capable of being compensated because it was a reasonable medical procedure as part of a medical investigation to discern the effects of the assault. It appears the applicant needs to have more treatment before orthodontic treatment can take place, but in my view this does not stop the expenses incurred in the dental hygiene procedures from being characterised as *expenses reasonably so incurred* as a result of the assault. Notwithstanding no further injury has been detected, this was a reasonable procedure invoked as a result of the assault.
7. In terms of the physical injuries (excluding the alleged *slipping jaw*), I assess pain and suffering and loss of amenities at \$3000, plus expenses of \$639 (dental hygiene) plus \$77 for attendance on her GP.

Mental Distress

8. There is no doubt the assault, occurring in the circumstances it did, (being an assault by the son on his mother who was also his carer), has caused significant distress to the applicant. There are a number of factors that must be considered as outlined in Dr Markou's report. First, the applicant has been subject to numerous traumatic experiences in her life including incest, witnessing family violence as a child and being the subject of abuse in a number of relationships. A further difficulty is her son having schizophrenia resulting in complicated medical processes and evidently difficult behavioural management regimes and treatments.

9. Dr Markou's diagnosis is as follows: *Ms Zangari has elements of a Post Traumatic Stress Disorder without fulfilling all of the criteria. Her diagnosis is therefore an adjustment disorder with anxious mood.* In terms of the relationship between this diagnosis and the offence, Dr Markou states: *It is likely that Ms Zangari has suffered psychological symptoms as a result of the assault perpetrated upon her by her son in April 2002. This however does interact with numerous pre morbid traumatic events in addition to her underlying personality, which is somewhat histrionic and obsessive.* Dr Markou doubts that the applicant requires anti-depressant medication and notes she is likely to be resistive to this. In my view it appears the assault by the second respondent has had some negative impact of some significance on the applicant's mental state, however, it is by no means the only operative factor contributing to her current mental state. Dr Markou notes that counselling would be beneficial to the applicant over a six to twelve month period at a cost of around \$2,000-\$3,000. I note the applicant has previously received counselling, both prior to the assault and since the assault from a Victims of Crime counsellor.
10. To make any award for the cost of future counselling I accept what has been submitted by the first Respondent, namely, that I must be satisfied that the applicant genuinely intended to proceed with such measures and incur such cost: *Mcilfattrick v Chard (1995) 5 NTLR 9*. I cannot be so satisfied on the material before me. Dr Markou states under the heading *Prognosis*, the following: *It Is likely that should she receive some form of psychological intervention, particularly some kind of family therapy in which her son is involved, then her outcome is likely to be quite good and to reach a pre-morbid level. She does however have significant underlying issues both with respect to her personality and previous trauma that make an optimal prognosis difficult and it is likely that she is going to*
- (a) *Resist mainstream treatment and*

(b) continue to lead a crusade for help for her son, which may or may not ultimately result in satisfaction of her desire to see some kind of change in the law or in the medical services, and therefore may not lead to a decrease in her own state of anxiety.

11. For these reasons I am not going to award the cost of future counselling. On balance I do take the view that the assault was an element contributing to a diagnosed condition and I assess the amount for mental distress at \$3,000.

Orders

12. I order a *Crimes (Victims Assistance) Certificate* issue in the sum of \$6,716. I will hear the parties on costs.

Dated this 31st day of December 2003.

JENNY BLOKLAND
STIPENDIARY MAGISTRATE