

CITATION: *Margaret Rose Speers v Northern Territory of Australia*  
[2005] NTMC 026

PARTIES: MARGARET ROSE SPEERS

v

THE NORTHERN TERRITORY OF  
AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes Victims Assistance

FILE NO(s): 20412819

DELIVERED ON: 6<sup>th</sup> May 2005

DELIVERED AT: Darwin

HEARING DATE(s): 29<sup>th</sup> April 2005

JUDGMENT OF: Judicial Registrar Fong Lim

**CATCHWORDS:**

Offence – What constitutes an “attack” or “menace” by a dog- remoteness of damage

**REPRESENTATION:**

*Counsel:*

Applicant: Ms Truman  
Respondent: Mr Rowbottom

*Solicitors:*

Applicant: Halfpennys  
Respondent: Withnall Maley

Judgment category classification: C  
Judgment ID number: [2005] NTMC 026  
Number of paragraphs: 47

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

No. 20412819

BETWEEN:

**Margaret Rose Speers**  
Applicant

AND:

**Northern Territory of Australia**  
Respondent

REASONS FOR JUDGMENT

(Delivered 6<sup>th</sup> May 2005)

Judicial Registrar Fong Lim:

1. The Applicant has applied for an Assistance Certificate to issue in her favour pursuant to section 5 of the Crimes (Victims Assistance) Act.
2. The Respondent has opposed the application on the basis that there was no offence committed therefore the Respondent is not entitled to an Assistance Certificate. The Applicant has to prove to the Court that she is a victim within the meaning of section 5 and that is she suffered an injury arising out of an offence.
3. The only evidence before me is the affidavit of the Applicant of the 8<sup>th</sup> of February 2005 and the PROMIS records from the police report. The PROMIS records were only of assistance in confirming that the Applicant had made a report to the Police regarding the incident. The Police made a decision not to pursue the complaint however that is decision is not of relevance in this court's deliberation.

4. **The evidence:** The Applicant was walking along Casuarina Beach on the 6<sup>th</sup> of July 2003 with her husband. They were standing in the shallows 10- 15 feet from the waters edge when a man and his four dogs came down to the beach. The Applicant identified the dogs as one that looked like a Pit-bull, two staffy crosses and a young black dog.

5. The Applicant then states the following:

“When the man came down onto the beach I noticed that he took each of the dogs off their leash. Then he began to run with them along the water’s edge. His two friends did not run with him but stood and waited on the beach. As the dogs drew level to our position they suddenly left their owner and charged in a tight pack toward me. I was a bit worried but did not move as I expected that they would veer off at the last moment. They didn’t veer but instead came straight at me. The head of the leading dog ( the Pit bull) struck me hard on the side of my left knee. The force of the impact knocked me over into the water at which time the dogs were salivating all over me.”

6. This is the only evidence of the incident.

7. The Applicant relies on section 75A of the Summary Offences Act and by-law 65 of the Darwin City Council By – Laws which are couched in the same terms as follows:

“The owner of a dog that -  
(a) attacks a person or animal; or  
(b) menaces a person or animal,

is guilty of an offence”

8. The question is whether the facts as described by the Applicant constitutes and attack or menace by the dogs. The test to apply is an objective test. There is no evidence that the dogs were growling or baring their teeth only that they “charged toward” the Applicant in a “tight pack”.

9. After the dogs ran into her and knocked her over the Applicant states that

“At this time I was absolutely panic struck and feared I was about to be seriously savaged by the dogs”

10. It is clear that at this point the Applicant has real concerns for her safety
11. Before I can find that the dogs attacked the Applicant I have to be convinced on the balance of probabilities that the dogs had shown aggressive behaviour consistent with a will to harm the Applicant. Examples of such aggressive behaviour might be an attempt to bite, bailing a person up, growling and baring of teeth, snapping at a persons heels or to run at someone aggressively. The Applicant is obviously of the view that the dogs had “charged at her” the question is whether on the balance of probabilities the dogs actually charged the Applicant.
12. It is important to note the position of the Applicant at the time of the incident and relative to that of the dogs. The Applicant says she was standing in the shallows 10 – 15 feet from the shore and the dogs were running along the water’s edge. It was when the dogs came level with her that they veered off towards her. Given that the Applicant was in the water and that the dogs headed directly towards her it is unlikely that there was something else that had attracted their attention beside the Applicant. If they were in the water to play it is unlikely they would have travelled that distance through water to reach the Applicant with enough force to knock her over.
13. It is my view that on the balance of probabilities the dogs did charge at the Applicant and in doing so they knocked her over and that constitutes an attack. Even if it were not an attack it is clearly menacing, threatening behaviour for a pack of four dogs to charge at a person, knock them over and then stand over her.
14. I therefore find that on the balance of probabilities an offence was committed by the owner of the dogs pursuant to section 75A of the Summary Offences Act and by law 65 of the Darwin City Council By laws.
15. **Damages** -

16. Pain and Suffering - the Applicant suffered a fracture left lateral tibial plateau. She was admitted to hospital for 1 week and had her leg in a cast for 9 weeks and a full leg brace for 4 weeks after that. For three months after being released from hospital the Applicant was unable to weight bear on that leg. She was required to use crutches. The Applicant found the use of crutches difficult and was continually pulled off balance by the weight of the cast. She says that two weeks after returning home she overbalanced and hurt her back.
17. After having hurt her back the Applicant claims that she had difficulty sleeping without the use of various items details of which will be discussed later in the claim for special damages.
18. The Applicant had the cast removed on the 3<sup>rd</sup> of September 2003 and went through a short period of physiotherapy after which she was advised by the physiotherapist that the swelling could take up to two years to settle and that she would have to accept some residual stiffness as well as limited flexion and likely onset of arthritis. This advice was given to her by Dr Nyunt an orthopaedic surgeon.
19. In paragraph 33 of her affidavit the Applicant explains how she also developed pain in her shoulder in about January of 2004 which she attributed to her use of crutches. This pain developed into “frozen shoulder” and required months of physiotherapy. Apparently the pain has now resolved but the Applicant has not regained full range of movement.
20. Presently the Applicant still has less than 90 degree bend in her knee and has undergone a arthroscopic surgery on the 1<sup>st</sup> of December 2004 after which the Applicant states she suffered several weeks of “considerable pain”. The Applicant has also been advised by one surgeon that she may require a knee replacement in the future.

21. Dr Millons has assessed that the Applicant has a 13% permanent impairment of her whole body (without any allowance for the frozen shoulder).
22. The Applicant has also being diagnosed as having suffered some symptoms of Post Traumatic Stress Disorder (see report of Dr Kenny) that being depression and occasional nightmares. Dr Kenny does however believe that the symptoms are now largely resolved and do not require any treatment. The Applicant does now have a residual fear of dogs.
23. It is my view that the Applicant has suffered a major injury to her leg which has resulted in further injury to her shoulder, back and mental health and will continue to suffer from a leg which is not fully functional for the rest of her life. In these circumstances the Applicant should be awarded the sum of \$20000.00 for pain and suffering.
24. **Loss of amenities of life** – before the injury the Applicant describes herself as a “very mobile woman”. In her description of her present difficulties to Dr Millions the Applicant says she cannot kneel or squat, she has difficulties in negotiating stairs and slopes and living in an elevated house magnifies this problem, and she does little of the housework.
25. The Applicant claims to have previously led an active life, walking daily (to stave off the effects of osteoporosis) 5 to 6 kilometres a day and had plans to travel in her retirement.
26. Now the Applicant is less independent relying on her husband to drive her places as she does not drive because of her knee. She has also been left with a fear of dogs.
27. It is also important to note that Dr Millions has assessed the Applicant as having a 13% permanent impairment which obviously would effect the Applicant’s general enjoyment of life.
28. For loss of amenities of life I award the Plaintiff \$6000.00

29. **Pecuniary Loss** - the Applicant has claimed many expenses which she says are as result of the injury inflicted upon her.

30. Medical Expenses – Subsequent to the removal of her cast the Applicant was required to attend physiotherapy and hydrotherapy and has done so up to present time. She has been advised by her orthopaedic surgeon that there will be no further improvement in the condition of her knee through physiotherapy. See paragraph 36 of the Applicant’s affidavit which states:

“Despite undertaking months and months of physiotherapy, hydrotherapy and other treatment I still have less than a 90 degree bend in my leg. I have been informed by my orthopaedic surgeon and verily believe that this may be the best result that I can achieve.”

31. It is my view that while some physiotherapy and hydrotherapy was useful to the improving the Applicant’s condition it is clear the need to continue any such treatment is not supported by medical evidence and cannot be claimed. I am also not convinced that the continued physiotherapy ( after a short period of time up to her last appointment at the hospital in about November of 2003) was recommended by a medical practitioner. By her own evidence the Applicant was advised:

“On the last visit (*to the fracture clinic*) I was told I did not need to attend again as they could do nothing more for me. I was advised that the damage to blood vessels, lymphatic system, etc, and the swelling could take up to two years to settle. I was further advised that the injury had permanently altered the mechanics of the knee and I would have to accept some residual stiffness, as well as limited flexion and the likely onset of arthritis.”

32. I do not have any evidence before me that shows extended physiotherapy and hydrotherapy was warranted on relation to the Applicant’s knee problem or even that it assisted the Applicant in any way. It is my view that given the prognosis conveyed to the Applicant at her last visit to the fracture clinic it is more likely that there was no such recommendation. I accept that the Applicant did attend the sessions she has set out in her affidavit and that she paid the fees however there is no evidence that she would benefit from these

sessions or that she did benefit. On the contrary the Applicant states that after months of the treatment she is still left with limited use of her leg.

33. Had the Applicant provided the court with a report from a doctor or physiotherapist that continued treatment is indicated then she would be entitled to claim for the cost of that treatment. The closest to a report indicating further treatment is the report of Dr Millons who states:

“The knee remains quite stiff and irritable. I would have thought that there was every indication for her to undergo some updated investigation with plain x-rays of the knee and a CT scan to check on the integrity of the articular surface of the lateral tibial condyle and also to exclude any collateral ligament damage.

In light of the findings of those investigations appropriate treatment protocols can be set in train. If nothing much untoward turns up then she could be encouraged to keep going with her exercise program both in the pool and landbased. If in the alternative a problem is identified she may be a candidate for an arthroscopy to check at first hand on the state of the knee joint.”

34. Dr Millons has suggested further investigations should be done before any treatment can be recommended but states further that if those investigations do not turn up anything then the Applicant could be encouraged to continue with her exercise regime. Dr Millons does not endorse the use of physiotherapy nor did Dr Nyunt. There is some suggestion that Dr Millons thought the hydrotherapy may be helpful in his reference to exercise in the pool but that is only if the further investigations show nothing “untoward”.
35. Therefore it is my view that the Applicant has not provided the court with enough evidence to show that the extended physiotherapy or hydrotherapy is warranted given her medical condition regarding her knee.
36. I do accept the Applicant’s evidence that she developed a frozen shoulder out of her use of the crutches and that physiotherapy was required to relieve that condition however I am unable to discern which of the consultations related to the Applicant’s shoulder and which related to the knee. It is my



view that the Assistance Certificate should include an allowance for these services however I am unable to put a figure on that allowance.

37. In relation to the claim for the cost of medication the Applicant sets out the amounts claimed in paragraph 30 of her affidavit. I accept that the use of any of the pain relief medication and the sleeping tablets could be reasonably attributed to the injury to either the knee, back or shoulder. Therefore the claims in relation to Herron caps, AMC pain relief, Antenex tab, and Voltaren are accepted as reasonable. I further accept that the use of a hot/cold pack does relieve swelling and therefore the cost of the pack should be included in the assistance certificate.
38. The Applicant also claims for medicated ointment to treat infections in her toes. I accept her explanation of why the ointment was used and why the infection of her toes was due to the injury and therefore accept the cost of that medication and the cost of waterproof dressing as an expense incurred because of her injury.
39. I am not prepared to accept that two hot /cold packs would be required, that the use of a Sports knee bandage assisted the Applicant or is warranted on medical grounds or that the vitamins, Revenol or Keflor are recommended treatments for the Applicant's injuries and therefore those items will be disallowed.
40. Therefore the claim for medication is assessed at \$136.65.
41. The Applicant also makes a claim for Orthobionomy consultations at a cost of \$1100.00 she states this treatment gave her some pain relief through "gentle form of body work". It is not clear whether the relief was temporary to whether after a serious of sessions the pain was completely gone. It is not clear whether the pain she refers to as neck, shoulder and back pain is directly referable to her injury. There is no medical evidence that this treatment gave any more than a temporary relief from pain which could have

been obtained by the use of medication. It is my view that the cost of these consultations are not claimable because in relation to that cost it most likely was unnecessarily incurred.

42. The Applicant had to purchase a knee brace to wear subsequent to the removal of her cast and that was indicated in the hospital notes and therefore is an expense properly claimed.
43. Other expenses – Apart from medical expenses the Applicant also claims other costs for a cordless phone, adjustable bed, wheelchair hire, heating of pool, special mattress, and various cushions for use in pain relief.
44. The Applicant then states that because of the strain on her husband and her inability to adjust to crutches she and her husband decided to get a wheelchair and over the next 16 weeks she relied heavily on that chair. There was no medical evidence to suggest that the Applicant required a wheelchair however it is clear that the wheelchair may have been required for the time that the Applicant was in plaster so I would allow the cost of the wheelchair hire for 9 weeks.
45. In relation to the cordless phone, adjustable bed, heating of pool and special mattress again there is no medical evidence to support these claims and in my view they were all expenses that the Applicant chose to purchase without any recommendation that the use of these items would ease the Applicant's pain or improve her condition (when it comes to the heated pool).
46. The claims in relation to the various pillows and supports are reasonable claims and would be included in any assessment of damages under common law.
47. **Summary** – It is clear from my analysis above that the damages and loss suffered by the Applicant in relation to this injury would exceed the maximum allowable under the Act and therefore my orders are as follows:

(a) An Assistance Certificate issue in favour of the Applicant in the sum of \$25000.00

(b) The Respondent pay the Applicant's costs and disbursements to be taxed in default of agreement.

Dated this 6<sup>th</sup> day of May 2005

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Tanya Fong Lim  
JUDICIAL REGISTRAR