

CITATION: *Patricia Strazzari v The Territory* [2005] NTMC 028

PARTIES: PATRICIA STRAZZARI

v

THE TERRITORY

TITLE OF COURT: Crimes (Victim's Assistance)

JURISDICTION: Local Court – Alice Springs

FILE NO(s): 20217312

DELIVERED ON: 18 May 2005

DELIVERED AT: Alice Springs

HEARING DATE(s): 21 April 2005

JUDGMENT OF: J Birch

CATCHWORDS:

Mental Distress – Loss of Superior Skills

REPRESENTATION:

Counsel:

Applicant: H Nicholas
Defendant: M Heitmann

Solicitors:

Applicant: Povey Stirk
Defendant: M Heitmann

Judgment category classification: B
Judgment ID number: [2005] NTMC 028
Number of paragraphs: 23

IN THE CRIMES (VICTIMS ASSISTANCE) COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20217312

BETWEEN:

PATRICIA STRAZZARI
Applicant

AND:

THE TERRITORY
Defendant

REASONS FOR JUDGMENT

(Delivered 18 May 2005)

Mr JOHN BIRCH SM:

1. On the 21st of April 2005 I made orders in regard to the applicant's application for the issue of an assistance certificate. On that day I said I would publish my reasons and now do so.
2. This is an application pursuant to s.5 (1) of the Crimes (Victim's Assistance) Act for an assistance certificate to issue in favour of the applicant in respect of an injury suffered by her as a result of an offence.
3. In considering the application I have had the benefit of submissions both written and oral by counsel and the affidavit of the applicant sworn on the 14th of October 2003 together with the annexures.
4. The offence occurred at the Alice Springs Hospital whilst the applicant was in her employment there. At about 7.20pm on the 22nd of November 2001 while the applicant was working as the triage nurse in the Accident and Emergency Department of the hospital. She had cause to conduct a medical examination of the offender Howard Ross. During the course of the examination the offender reached out with his left hand and in an upward motion placed his hand on her

vagina through the applicant's shorts causing her to jump backwards. The offender then left the triage area, exiting the hospital where he sat down. He was later arrested, charged and imprisoned for the offence.

5. For the purposes of the application Mr Heitmann admits that the applicant is a victim of an offence. The applicant says that as a result of the offence she has suffered mental injury and mental distress. Further, that due to this injury she has or will suffer economic loss as she can no longer work in her pre-injury capacity namely a triage nurse in accident and emergency.
6. Following the incident the applicant remained off work from the 22nd of November 2001 until the 20th of December 2001. Upon her return to work she worked in the manager's job for 10 weeks. At the conclusion of this period of relieving the applicant returned to her former position in the emergency department where she worked for two weeks until suffering a back injury. The applicant then worked in a special project position until the 39th week of her pregnancy when she went on maternity leave. On the 14th of January 2003 the applicant again returned to work as the Acting Director of Nursing for a period of 6 weeks. Later in 2003 the applicant resigned from her employment to care for her second son who is autistic.

Mental Distress of the Victim

7. It is the applicant's submission, based upon the findings of the psychologist, she had suffered an acute post traumatic stress reaction with some anticipatory anxiety. The applicant asserts in her affidavit of the 14th of October 2003 that the symptoms of "my post-traumatic stress have largely resolved" but only because she is not in the hospital work environment. It is her belief that should she return to the Emergency Department the symptoms would resurface.
8. M/s Delahunty, Consultant Clinical Psychologist, examined the applicant and prepared her psychological report (annexure D of the applicant's affidavit of the 14th of October 2003) setting out all material available from the applicant. The applicant agrees with the contents of the report except for one matter to which I'll refer later. M/s Delahunty expressed the following opinion:

“Ms Strazzari’s symptoms immediately following the assault suggest she was suffering from an acute post-traumatic stress **reaction**, including a pre-occupation with her safety, physiological and emotional arousal, symptoms of avoidance and recurrent and intrusive distressing recollections of the event. It appears these symptoms largely resolved over the course of 3 to 4 weeks and thus do not meet the criteria for Post-Traumatic Stress Disorder as outlined in the *Diagnostic and Statistical Manual for Mental Disorders, 4th Edition (DSM-IV)*.”

9. The psychologist went on to say in her report. At page 6:

“These symptoms impacted upon her occupational, personal and family functioning although these symptoms and their effects largely resolved within one month of the event... she does not currently present with a mental injury apart from anticipatory anxiety that she might encounter the offender (who is now deceased).”

10. M/s Delahunty has also expressed an opinion about the applicant’s future need so far as counselling/support services are concerned. Having regard to the applicant’s present situation and intention not to return to the Emergency Department these services will not be required.

11. I am satisfied after considering the evidence before me an amount should be specified in an assistance certificate for the mental distress of the applicant.

Loss of Amenities of Life

12. Following the offence the applicant suffered a number of consequences which impacted upon her amenities of life. In summary form these were:

- a) The applicant was off work until the 20th of December 2001.
- b) She felt threatened in the work place.
- c) Feeling unable to return to shift work and performing a job with a lot of patient contact.

d) The applicant didn't want anyone touching her including her husband.

e) The relationship between the applicant and her children aged 5 ½, 3 and 1 year old was affected as she felt angry and pushed them away. She also felt an inability to meet their needs.

f) On the 23rd of November 2001 the applicant found out she was pregnant and the offence caused a negative impact on her feelings about the pregnancy taking the joy out of it for her.

13. These matters were also raised with the psychologist and are contained in the "Reported Impact/Symptoms" section of her report. It is M/s Delahunty's opinion as a result of the offence the applicant "developed symptoms consistent with a moderate post traumatic stress reaction. These symptoms impacted upon her occupational, personal and family functioning." There is nothing in the evidence before me which would cause me to conclude otherwise.

14. I am satisfied an amount should be allowed for loss of amenities of life.

Pain and Suffering

15. Following the offence the applicant "had a feeling of disbelief, anger and violation... I wanted to get away and didn't want to be anywhere near him." She remained off work until returning to the manager's job. The offence took place over a very short time frame and stopped immediately upon the applicant jumping away. Clearly, it surprised and shocked the applicant.

16. I am satisfied taking into account the evidence an amount should be allowed under this principle of assessment.

Other Pecuniary Loss Arising in Consequence of Injury

17. In addition to the consequences of the offence it is also the applicant's case she is unable to return to her former employment as a level 2 registered nurse as a result of the offence. The offence has made her feel unsafe in the work place, caused her anxiety and an inability to return to her former work so as to avoid patient

contact. It is the respondents submission there is no causal connection, beyond the four week period following the offence, and the applicant's decision not to return to work, was not as a result of the offence. Rather it involved the birth of her next child and the need to care for her children.

18. The responded also submits, if I am against the causation submission, there is no evidence before the Court upon which to quantify the loss and assess any damages. The applicant's qualifications as submitted by counsel from the bar table are in dispute and there is no evidence regarding the loss of superior skills by the applicant.
19. Even if I was satisfied there was some loss suffered by the applicant there is no evidence before me upon which to asses it. Furthermore, I am not satisfied the period under consideration is outside that opined by the psychologist, whose evidence I accept on this point, namely 3-4 weeks.
20. M/s Nicholas submits the offence and its consequences have caused a major catastrophe in the applicant's life. It is submitted the mental distress, loss of amenities of life and the pain and suffering justify a substantial award. M/s Nicholas submits this matter cannot be distinguished from Proudnam v Yellow Express Carriers LTD (1970) NSW R 495.
21. In this matter, I am not satisfied, on the evidence before me, the applicant's loss of superior skills has been made out. Apart from potential anxiety upon a return to work in a nursing environment with patient contact there is nothing to place this matter in the same category as the plaintiff in the Proudnam matter. How then is she to be compensated?
22. The applicant suffered pain and suffering and developed an acute post traumatic stress reaction with some anticipatory anxiety. The incident causing the consequences as detailed in paragraph (12). Taking all these matters into account I assess the amount of assistance for the applicant as follows:

(e) In respect of pain and suffering the sum five hundred dollars (\$500);

(f) In respect of mental distress the sum of four thousand dollars (\$4000);

(g) In respect of loss of amenities of life the sum of two thousand dollars (\$2000).

23. Accordingly, I order an assistance certificate issue in favour of the applicant for the sum of \$6500 for payment by the Northern Territory of Australia. The respondent is to pay the applicants costs as agreed or taxed.

Dated this 18th day of May 2005.

J W A Birch
STIPENDIARY MAGISTRATE