

CITATION: *Patricia Strazzari v The Territory* [2005] NTMC 037

PARTIES: PATRICIA STRAZZARI

v

THE NORTHERN TERRITORY OF
AUSTRALIA

TITLE OF COURT: Crimes (Victim's) Assistance

JURISDICTION: Local Court

FILE NO(s): 20217312

DELIVERED ON: 20 June 2005

DELIVERED AT: Alice Springs

HEARING DATE(s): 1 June 2005

JUDGMENT OF: M Little

CATCHWORDS:

REPRESENTATION:

Counsel:

Applicant: Helen Nicholas
Respondent: Mark Heitmann

Solicitors:

Applicant: Povey Stirk
Respondent: M Heitman

Judgment category classification:

Judgment ID number: [2005] NTMC 037

Number of paragraphs: 9

IN THE LOCAL COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20217312

BETWEEN:

PATRICIA STRAZZARI
Applicant

AND:

**THE NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

REASONS FOR JUDGMENT

(Delivered 20 June 2005)

Ms M LITTLE SM:

1. The applicant filed an interlocutory application on the 27th of October 2004. On the 9th of November Mr Birch SM ruled on the application. On the 7th of December 2004 I set aside the order made by Mr Birch SM. I ordered that the application dated the 27th of October 2004 be re-heard and I reserved the question of costs on the application before me. On 1 June 2005 the reserved question of costs was argued and I reserved my ruling on that question. This is now my decision on that question.
2. The application filed on the 27th of October 2004 sought an amendment of an application for an assistance certificate. The application was granted by Mr Birch SM in the absence of the Territory's solicitor. Ms Nicholas appeared for the applicant before Mr Birch SM. I allowed the setting aside of the order made by Mr Birch SM on the 9th of November 2004 on the basis that, in my view, there was a possibility of a misunderstanding as between the solicitors as to what Ms Nicholas would be representing to the Court when she appeared on the 9th of November 2004. Ms Nicholas understood that Mr Heitmann would not be

attending on the 9th November 2004 on behalf of the Territory. She understood that Mr Heitmann wanted the matter adjourned and she did not oppose that adjournment. Mr Heitmann understood that Ms Nicholas would be asking for that adjournment. There was no request for an adjournment on file from Mr Heitmann. Ms Nicholas was of the view that she was not required to ask for the adjournment as it was in fact not her adjournment application. There in lies the dispute for the purposes of the re-hearing application. The matter proceeded in the absence of Mr Heitmann and the amendment was made by Mr Birch SM.

3. As a matter of practice it is not common that a practitioner would ask for an adjournment on behalf of another practitioner's client, although I do not suggest this is unheard of. Ms Nicholas advised the Magistrate of certain things and he then proceeded in the absence of any direct request from Mr Heitmann for an adjournment. Ms Nicholas did not make an application for an adjournment, but indicated her preparedness to have the matter adjourned.
4. The remedy which Mr Heitmann sought was granted by me on the 7th of December 2004 – that was to set aside the amendments made to the Crimes Victims Assistance application and order the application to be re-heard. At the re-hearing Mr Ward DCM declined the application of Ms Nicholas (order of 14th of December 2004)
5. Mr Birch SM later made a decision on the quantum to be awarded in this case. In the decision of Mr Birch SM, which was delivered on the 18th of May 2005 was an award, inter alia, for loss of amenities of life. This was one of the amendments which Ms Nicholas sought to have made to the application for assistance, which was opposed by Mr Heitmann, and which was ultimately declined by Mr Ward DCM.
6. In his decision on the 18th of May 2005, Mr Birch SM has also made an order that the Territory is to pay the applicant's costs of the application as agreed or taxed. Mr Ward DCM ordered on the 14th of December 2004 that the applicant pay the costs of the application which was unsuccessfully made to amend the assistance certificate.

7. I have a discretion as to whether I order costs be paid by the applicant. The general rule is that each party bears its own costs of an interlocutory application. It is the case that the application was ultimately declined by Mr Ward DCM after a contested application for the amendments to be allowed. Nevertheless it is my view that such a decision should not be seen as warranting, ipso facto, an order for costs from the 7th of December 2004. It is the case that there were no representations made, whether in writing or by a person appearing on behalf on the Territory, on the 9th of November 2004 and without such representation there was always the danger that the matter may proceed in the absence of the Territory's representatives. Even with representations, an adjournment was not guaranteed.
8. In addition, there is the very real possibility that there was a mis-understanding on behalf of Ms Nicholas as to what was required of her on the 9th of November 2004. Alternatively, Mr Heitmann may not have made his request clearly enough. To make a final ruling on this question, without the taking of evidence, is not possible. The file note contained in the affidavit of Helen Nicholas dated 7th December 2004 (annexure A) is not conclusive. To take the matter to evidence is not, in my view, in the best interests of the administration of justice. I do not propose penalising the applicant by making a costs order in the circumstances which are before me. The Territory was granted a re-hearing on this question and was ultimately successful on the issue before the Court. To that extent Territory has not been prejudiced it received its costs from 14th December 2004.
9. The general rule is that each party bears its own costs of an interlocutory application. In the circumstances of this case I see no grounds to make to make an award which moves away from the general position and accordingly I order that each party bears its own costs of the interlocutory application before me on the 7th of December 2004, and the re-listing of the matter on 1st June 2005 to argue the question of costs. I will publish these reasons and authorise the reasons together, with a copy of the order to be distributed to the Solicitor on the record.

Dated this 20th day of June 2005.

M Little
STIPENDIARY MAGISTRATE