

CITATION: *Raggett v The Territory* [2007] NTMC 017

PARTIES: STEPHANIE RAGGETT

v

THE NORTHERN TERRITORY OF
AUSTRALIA

TITLE OF COURT: Crimes (Victim's Assistance)

JURISDICTION: Local Court – Alice Springs

FILE NO(s): 20510099

DELIVERED ON: 23 March 2007

DELIVERED AT: Alice Springs

HEARING DATE(s): 18 December 2006, 16 February, 19 -20 March
2007

JUDGMENT OF: M Little SM

CATCHWORDS:

REPRESENTATION:

Counsel:

Applicant: Alison Broughton-Wright
Respondent: Ruth Morley

Solicitors:

Applicant: CAWLS
Respondent: Povey Stirk

Judgment category classification: B
Judgment ID number: [2007] NTMC 017
Number of paragraphs: 19

IN THE CRIMES (VICTIM'S ASSISTANCE) COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20510099

[2007] NTMC 017

BETWEEN:

STEPHANIE RAGGETT
Applicant

AND:

**THE NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

REASONS FOR JUDGMENT

(Delivered 23 March 2007)

Ms M LITTLE SM:

1. This is an application for an assistance certificate to be issued on behalf of the applicant. A hearing was conducted and I reserved my decision. This is now the decision in the matter. The applicant bears the onus of proof on the balance of probabilities.
2. At the initial hearing on 18 December 2006 the following exhibits were tendered by the applicant –
 - A1: Affidavit of applicant dated 6 November 2006
 - A2: Certificate of proceedings
3. A preliminary issue arose with respect to the date of the offence. There is an inconsistency between date of the offence as set out in parts of A1 and the date of the offence in the certificate of proceedings. The respondent is satisfied on the material before the Court that the incident is one and the same event. It is agreed between the parties that the conviction set out in A2 is the offence the subject of the application for an assistance certificate. I am satisfied on the material before

me that the offender has been convicted of an aggravated assault upon the applicant and that that assault is the subject of this claim. This offence is pursuant to s.188 (2) of the Criminal Code.

4. The question of quantum is the issue in dispute and that will be the focus of this decision. The first issue is whether there was an offence. I am satisfied that the offender (called the defendant in exhibit A1) assaulted the applicant on 30 April 2004 and that for the purposes of the Crimes (Victim's Assistance) Act an offence was committed. The assault involved a blow to the inner right ankle with a metal weapon. The offence was an aggravated assault and that was the offence which was the subject of the certificate of proceedings.
5. The material before me raised the prospects of a further offence namely deprivation of liberty. That issue was not raised at the hearing on 18 December 2006. I arranged for the matter to be called back on for submissions to be made. This issue does have a direct bearing on the question of quantum and accordingly I was of the view that it was necessary to have the matter re-listed. The applicant sought leave to re-open her case and, in the absence of any objection to that course, leave was granted. A further affidavit of the applicant dated 7 March 2007 was filed and became exhibit "A3". That affidavit was directed to the deprivation of liberty allegation. Based upon the material before me I am satisfied that an offence of deprivation of liberty was committed by the offender as against the applicant and that occurred from 30 April 2004 to 3 May 2004. In the circumstances that the applicant was in, I am satisfied she had no realistic way of leaving the house. The applicant was injured to such an extent that she was rendered virtually immobile. Had it been, for example, an injury to her arm which did not so directly affect her mobility, the offence may not have been made out. This was as a consequence of the offender's actions. The whole of the applicant's circumstances need to be considered when looking at whether the offence of deprivation of liberty occurred including the history of domestic violence, the crippling injury she had sustained at the hands of the offender and that there was no means of communication with the outside world. The offender constantly checked her and questioned about whether she was trying to get away. Finally he slept nearest to the door and woke whenever she moved. I find she was confined

against her will and that the offence of deprivation of liberty is made out. This is an offence pursuant to s.196 of the Criminal Code.

6. Section 9 (1) of the Crimes (Victim's Assistance) Act sets out the matters which are relevant when assessing the quantum in a claim under the Act. The relevant subparagraphs in this matter are:

(e) pain and suffering of the victim,

(f) mental distress of the victim,

(g) loss of the amenities of life by the victim.

7. Section 9 (1) (a) was raised on the material before me but no proof of expenses actually incurred was put before the Court.

8. A global sum can be awarded and that is what I propose doing in this matter.

9. I am satisfied that the aggravated assault caused the following injuries, pain and suffering and loss of amenities of life. The day following the assault the ankle was swollen from the top of her ankle to below her toes, approximately double its normal size. The applicant could not walk and had to crawl sideways across the floor to get to the toilet. She needed assistance from her young child to help her get up onto the toilet. For several days she continued to suffer severe pain which caused her great distress. The applicant was unable to sleep properly at night and when she did get sleep was woken because of the pain to her ankle. She continued to cry with pain and the defendant had denied her access to get to a doctor. She was unable to access any pain relief until she got to the Central Australian Aboriginal Congress – a Medical Centre – several days later. She had extreme difficulty walking and continued to be in great pain. On 3 May 2004 she received pain killers and had her ankle bandaged at Congress. An x-ray revealed that her ankle was not broken. She was given a walking stick and used the walking stick for approximately two weeks. During this time the pain continued to be at a high level. Approximately two weeks after the assault the wound became infected. This was treated at Congress. The applicant continued to suffer pain in her ankle and had difficulty undertaking household tasks. She would be in pain standing on her

ankle. Activities such as fishing were interfered with due to the pain. As at the date of swearing the affidavit exhibit A1 (6 November 2006) she continues to have pain from the ankle and that pain affects her ability to undertake housework and other tasks. She continues to take Panadol before she goes to sleep each night and sometimes the pain wakes her up at night.

10. With respect to the question of the deprivation of liberty the following injuries, in the form of mental injury, resulted. She felt scared and was worried that the offender would hit her again. She was scared if she tried to leave the house he would stop her by hitting her again. The applicant continued to maintain a watch over the defendant for fear that something may occur to her. She would wait for the defendant to fall asleep before trying to get to sleep herself. He slept next to the door and would wake when she moved. She was not able to leave the premises from 30 April 2004 until 3 May 2004. This offence extended the period of time which she was in pain without pain relief – the pain being the result of injuries from the aggravated assault offence. During this time she suffered an almost complete loss of the amenities of life.
11. The applicant has tendered a report from Dr De Decker from Congress dated 7 December 2004 (A1 annexure C). It was noted on 3 May 2004 that she had an inability to bear weight upon her right ankle and she was tender over the medial aspect of the joint. She was again reviewed on 6 May 2004 and she had slight residual swelling of the ankle and the x-ray was reported as normal. She was managed with a supportive bandage to the ankle and an analgesic. She was again reviewed on 17 May 2004. She complained of ongoing right ankle pain. The examination revealed that the medial malleolus was tender and there was discharge on the skin over the affected area.
12. A second report from Dr De Decker was tendered and that is dated 25 May 2006. (Annexure E to the affidavit of the applicant A1). The applicant was reviewed on 21 April 2006. The applicant described the pain she was experiencing as a result of the assault and an examination was undertaken by the Doctor. On examination of the right ankle he did not detect any deformity or swelling. Dr De Decker arranged for a further x-ray to be taken on 24 April 2006. Based upon the re-assessment and the repeat x-ray he concluded that he could find neither clinic nor

radiological evidence for any underlying pathology causing ongoing pain to the right ankle. No further treatment was advised. There are no ongoing consequences from the deprivation of liberty offence.

13. The severe pain suffered by the applicant lasted several weeks. During this time she was greatly affected. She could not go to the toilet without assistance from her young daughter for the first few days. Her situation gradually improved and I find on the material before me that for approximately three weeks she suffered considerable pain and suffering with consequential loss of amenity of life. Once she had been able to leave the home and attend the clinic her mental distress ceased. This marked the point in time which she was no longer fearful that the defendant may assault her again and she was able to get medical assistance and pain relief for her ankle.
14. She has attested to ongoing pain and suffering and loss of amenity of life. This evidence is not disputed. There is no medical explanation for this ongoing pain and therein lies the principal issue in dispute as between the parties. On the material before me I find that the applicant does continue to suffer pain to the right ankle area and this does cause her some loss of amenity of life. I find that this is an ongoing consequence of the assault the subject of these proceedings. This ongoing pain and suffering and loss of amenity of life will be incorporated into the global award in this matter.
15. There are no issues raised with respect to s.12 of the Crimes (Victim's Assistance) Act which would mean the Court would not issue an assistance certificate. There is no behaviour of the victim which would reduce the amount of assistance to be specified in an assistance certificate.
16. I am satisfied that the applicant is a victim within the meaning of the Crimes (Victim's Assistance) Act in that she was injured as a result of the commission of the two offences by the offender. Subparagraphs 9 (1) (e), (f) and (g) of the Crimes (Victim's Assistance) Act are relevant in assessing the quantum in this claim.
17. An assistance certificate will be issued in the sum of \$5,000.

18. Counsel for the Northern Territory asked that the question of costs be reserved and accordingly I reserve that question prior to submissions being made. Parties have liberty to apply to have the matter re-listed before me on the question of costs.

19. The orders made are:

1. An assistance certificate is issued in the sum of \$5,000.
2. Question of costs is reserved. Liberty to apply to have the matter re-listed on the question of costs.

Dated this 23rd day of March 2007.

M Little
STIPENDIARY MAGISTRATE