

CITATION: *Morina v NTA* [2008] NTMC 040

PARTIES: CHARMAINE MORINA

v

THE NORTHERN TERRITORY OR
AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victim's Assistance) – Alice Springs

FILE NO(s): 20711952

DELIVERED ON: 13 June 2008

DELIVERED AT: Alice Springs

HEARING DATE(s): 23 April 2008

JUDGMENT OF: G Borchers

CATCHWORDS:

REPRESENTATION:

Counsel:

Applicant: Nicholas Simmons
Respondent: John McBride

Solicitors:

Applicant: Povey Stirk
Respondent: John McBride

Judgment category classification: C
Judgment ID number: [2008] NTMC 040
Number of paragraphs: 22

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

No. 20711952

[2008] NTMC 040

BETWEEN:

CHARMAINE MORINA
Applicant

AND:

**THE NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

REASONS FOR DECISION

(Delivered 13 June 2008)

Mr BORCHERS SM:

1. The Applicant seeks an Assistance Certificate pursuant to s 5 of the *Crimes (Victim's Assistance) Act* in respect of an injury suffered as a result of an offence that occurred in the Apatula Community on 25 August 1998.
2. The Applicant's Application was filed on the 27th April 2007 together with an Application for Extension of Timing in which to apply for an Assistance Certificate. Pursuant to s 5(1) an Application is to be filed within 12 months.
3. Leave was granted to the Applicant on 9 January 2008 to extend the period for filing the application pursuant to s 5(3) until 27 April 2007.

THE OFFENCE

4. The Applicant relied upon her affidavit sworn on 8 October 2007 in setting out the circumstances surrounding the offence. She deposed to travelling with a work colleague from Centrelink to the Finke (Apatula) Community on

25 August 1998. That night they stayed in the Apatula Women's Centre. At about 11.00pm a person knocked on the door but neither the Applicant nor her work colleague responded. The person knocked again and without answering the Applicant asked who was there through the closed door as the person made verbal threats that he was going to rape and kill them and was trying to open the door. He also said he would get his gun and damage their motor vehicle. He was banging on the door. The Applicant was terrified. The women escaped through another door and ran to the Community Development Officer's house for help.

5. The following morning at 10.30am the Applicant reported the incident to the Kulgera Police Station, the closest police station to the Apatula Community. On returning to her office in Alice Springs the Applicant completed a Report of Client Aggression on which the material in her affidavit appears to be based.
6. Ronnie Goodwin was charged by way of summons and was convicted in the Alice Springs Court of Summary Jurisdiction on 19 September 2002. A letter tendered from the Information Access section of Police, Fire and Emergency Services dated 2 March 2007 attested to this. No information is provided regarding the nature of the offence.
7. The Applicant also deposed in her affidavit that after having two weeks off work as a result of the offence she returned to work in Alice Springs before transferring to a Centrelink office in Mount Barker South Australia. She had time off work in 2000 during which she gave birth to her second son and at some stage she returned to Alice Springs and her employment at Centrelink where she worked up until an unknown date in 2006. No evidence was presented regarding her work performance from August 1998 to 2006.

INJURY

8. “Injury” is defined in s 4 of the *Crimes (Victim’s Assistance) Act* to mean:

“bodily harm, mental injury, pregnancy, mental shock or nervous shock but does not include an injury arising from the loss of or damage to property (which loss or damage is the result of an offence relating to that property)”.

9. The legislation also provides in s 9 that in assessing the amount of assistance to be specified in an Assistance Certificate, the Court may

“Subject to this Act, include an amount in respect of:

9(f) Mental distress of the victim.”

10. In her affidavit the Application states that on the night of the offence the Applicant was distressed, fearful and could not sleep. She had two weeks off work and upon her return, felt that she could not cope with her duties and responsibilities. She became fearful of the clients she dealt with and deposed to evading interviews with clients by going to the toilet. Further she stated she suffered severely disrupted sleep, a detachment from life, and a numbness and intense tiredness. This tiredness interfered with her capacity to exercise and her social ability. Her fearfulness of clients manifested itself in hyper vigilance; she regularly checked that windows and doors were locked. She stated that at some date after giving birth to her second son in April 2002 she consulted a medical practitioner because she was depressed, drinking and acting erratically and feeling angry. The medical practitioner prescribed medication, however her condition worsened and she was admitted to Helen Mayo House at Glenside Hospital on 28 January 2001 for a period of four weeks. She deposed that at this time she was diagnosed as suffering from post traumatic stress disorder. No evidence regarding her work performance at Centrelink after the 1998 offence was provided to this Court.

11. No medical evidence was tendered in respect of the medical practitioner who the Applicant consulted in 2000 or the Glenside Hospital. However, the Applicant did rely upon the following reports:
 - (i) Report of Michael S. Tyrrell – Psychologist dated 11 February 2005.
 - (ii) Report of Tracey Quinney – Psychologist dated 22 February 2005.
 - (iii) Report of Michael S. Tyrrell – Psychologist dated 15 February 2007.
 - (iv) Report of Dian Booth – Psychologist dated 6 December 2007.
12. These reports reveal that the Applicant had been seen by Michael Tyrrell on two occasions by February 2005. She first saw Tracey Quinney on 26 July 2004 and she first saw Dian Booth on 5 July 2007. Michael Tyrrell acknowledged that allied medical practitioners had seen the Applicant prior to his involvement including Dr Peter Colton in 2005.
13. Tracey Quinney’s report refers to:

“An accepted worker’s compensation case for post traumatic stress syndrome (PSTD) resulted from the incident through Centrelink”.

She also refers to a “previous condition of post traumatic stress disorder”.

No evidence of any diagnosis contemporary with the event or anytime prior to 2005 was tendered in evidence. Dian Booth relies upon the diagnosis of chronic post traumatic stress disorder made by Michael Tyrrell on 15 February 2007. However, that is not exactly what Michael Tyrrell diagnosed the Applicant to be suffering from on that date. In his opinion she was suffering from “Chronic remnants of, and enhanced predisposition to post traumatic stress disorder”. Further he states:

“There is no doubt that she has been psychologically pre-disposed to anxiety based disorder by her early developmental environmentHowever there is also little doubt that the very frightening Finke event has left her with permanent very increased stress sensitivities

via chronic and now low grade post traumatic stress syndrome deriving from that incident.”

14. The medical evidence in respect to the 1998 incident before this Court therefore consists of reports from Dian Booth who relies upon Michael Tyrrell’s 2007 diagnosis, Tracey Quinney who relies upon a previous unknown and undated diagnosis and Michael Tyrrell who first saw the Applicant in February 2005. Each however have carried out their own examinations, provided therapy and formed their own opinions.

15. Tracey Quinney provides the following opinion regarding the Applicant:

“Ms Morina presents with exacerbated symptoms from a previous condition of Post Traumatic Stress Disorder. A diagnosis that Ms Morina suggests that she has never truly worked through.

As suggested in the content of this report there may be personality features that lend to a vulnerability to anxiety but time has not permitted a true picture of this.

Ms Morina has difficulties at times with her relationship with her partner and is socially isolated however these do not appear to bear on the situation to any great degree.

Ms Morina often presents as depressed and this may be related to a depressive style but also potentially due to managing the impact of the symptoms of anxiety and hyperarousal.

Ms Morina will not be able to return to her pre injury duties at Centrelink due to her avoidance to returning to work, the acute anxiety which in do so, her hyperarousal and fear of potential threatening situations.

Ms Morina does not wish to return to work at Centrelink. She does not feel confident in her ability to do so and her employer to keep her safe.”

16. Dian Booth does not explore to any degree any issue in respect of the Applicant’s history apart from the offence in August 1998 and another work related offence in June 2004 which is the subject of a further Application for as Assistance Certificate. Apart from referring to a medical report dated 19

August 1999 she did not obtain any information from the Glenside Hospital regarding the Applicant's admission in January 2001 nor from her Strathalbyn medical practitioner who provided medication post the birth of her second son in April 2000. Ms Booth's diagnosis appears to be based on highly selective information and I do not rely upon it.

17. While there is no evidence of any treatment received by the Applicant for the period from August 1998 until sometime in June 2005 the Applicant argues that as Michael Tyrrell has stated in his report of 15 February 2007, post traumatic stress disorder can endure or lie dormant indefinitely and can be exacerbated into acute anxiety and depressed mood by relatively low-grade but salient trigger stressors. The Applicant argues further that she is vulnerable to post traumatic stress disorder systems as a result of the trauma she was exposed to in August 1998.
18. The importance of the lack of medical evidence of any diagnosis or treatment between August 1998 and 2004 is not only a matter that goes to evidentiary proof but has bearing upon the difficulties the Applicant has in disentangling this Application from a further application she has filed for the issue of an Assessment Certificate in respect of an incident that took place at the Alice Springs Centrelink office in June 2004 [Application No 20711944]. In that matter the Applicant relies upon the same psychologists' reports. It is difficult to determine from each of the reports prepared by the three psychologists, who all initially saw and treated her after June 2004, how the August 1998 incident had a bearing on their respective diagnosis when many other events, including her hospitalisation in 2001, she continued employment with Centrelink and her marital relationship breakdown, were not explored in any detail.
19. I am satisfied that the Applicant was exposed to the commission of an offence at the Apatula Community on 25 August 1998. The Applicant argues that she should be found to be a victim as defined by the legislation

because she suffered an injury as a result of that exposure. She argues that while she may have had some predispositions to anxiety she suffered post traumatic stress as a result of the offence. Further any predisposition is only to be taken into account as part of her subjective make-up as this Court is bound to accept her as she is. [*Mount Isa Mines Ltd v Pusey* (1970) 125 C42 383]

20. The Applicant argues that she was off work for two weeks after the August 1998 offence. There is no evidence before this Court to support that contention. There is no contemporaneous medical evidence of an injury.
21. I am not satisfied beyond reasonable doubt that the Applicant suffered an injury as a result of the 25th August 1998 offence. There is ample evidence in the report of Tracey Quinney that the Applicant is upset and angry that Centrelink have not adequately dealt with her experience.

“Ms Morina strongly identifies that the incident at Finke in 1998 has not been resolved. The incident threatened Ms Morina’s sense of safety and ability to be happy.

Ms Morina believes strongly that her experience and the subsequent impact on her life was not validated by Police and her employer.

Ms Morina continues to feel anger at the impact the incident has had on her ability to parent, her relationship with her partner and her ability to work with the public again. Ms Morina feels extremely ‘damaged’ and does not believe that she can truly get over the experience.

She believes that management does not acknowledge how staff are feeling, the pressure they are under and the conditions they have to work with.

Ms Morina sees all clients as potentially violent and is hyper vigilant in her response. Ms Morina often feels overwhelmed by her anger, her feelings of being unsafe and resentful. Ms Morina does not feel confident in her ability to control her anger.”

None of these observations however suggest that the Applicant suffered a “mental injury” or “mental shock or nervous shock” as a result of her exposure to the offence.

22. Accordingly, the Application is dismissed.

Dated this 13th day of June 2008.

Greg Borchers
STIPENDIARY MAGISTRATE