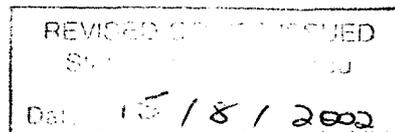




## Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Writ No 72 of 1999

PHILIP NORMAN RUBY and WIN RUBY

Applicants/  
First Plaintiffs

and

JARWELL PTY LTD (ACN 050 409 213)

Applicants/Second  
Plaintiffs

and

HAZELWOOD COURT PTY LTD  
(ACN 063 821 965) AS TRUSTEE FOR THE  
HAZELWOOD COURT UNIT TRUST

Respondent/  
First Defendant

and

ARTHUR VANDEN TIMMS

Respondent/  
Second Defendant

And

ELLIS HILL-LYGH

Respondent/  
Third Defendant

CAIRNS

..DATE 14/08/2002

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: When this application came on for hearing before me on the 5th of August 2002, there was no appearance by the respondent to the application.

Notwithstanding that, I was satisfied that both the former solicitors of the respondent, who were still solicitors on the record even though they had indicated an intention to seek leave to withdraw, and a firm of solicitors who were thought to be willing to undertake the representation of the respondent, had been advised of the hearing, but neither appeared.

The affidavit of Mr McKinstry, a principal of the respondent's former solicitors, contained passages which on my quick reading indicated that there had been compliance with rule 444 of the Uniform Civil Procedure Rules and also Mr McKinstry's firm's compliance with rule 445.

That, however, was a misreading on my part because when proper examination of the material was undertaken, it was clear that the applicant had not strictly complied with rule 444 in the way required.

My misreading caused me to make an order for costs against the absent respondent which in the circumstances as they have now been revealed to me ought to be varied. That is not to say the applicant will not ultimately be deprived of costs because prime facie there is a failure by the respondent to comply with the rules, but I should at least give the respondent an

opportunity to be heard on this topic, since the applicant  
comes before me seeking the concession of relief from  
compliance with rule 444.

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In those circumstances the orders which I made on the 5th of  
August 2002 will be varied by deleting paragraph 5, "The first  
defendant and third defendant pay the plaintiffs' costs of and  
incidental to this application" and substituting in lieu  
thereof, "(5) Costs of and incidental to this application will  
be reserved."

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