



Transcript of Proceedings

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 State Reporting Bureau

Date: 27 October, 2003 ✓

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 559 of 2002

LEE ENGLISH

First Plaintiff

and

EBONY LEE ENGLISH

Second Plaintiff

and

TAHIA DEE ENGLISH by her litigation
 guardian LEE ENGLISH

Third Plaintiff

and

PARIS EPIPHANY ENGLISH by her
 litigation guardian LEE ENGLISH

Fourth Plaintiff

and

DR OAKLEY R SMALL

First Defendant

and

DR SOLA GIAMOS

Second Defendant

CAIRNS

..DATE 23/10/2003

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: The plaintiffs in this action are respectively the widow and three children of Desi Jackson English who died on 9 December 1999. The plaintiffs instituted a claim for damages against the defendants - two medical practitioners who were retained to treat the deceased in the 12 hours before his death. The plaintiffs claim that the defendants negligently failed to undertake tests which would have revealed that the deceased's blood sugar levels were at dangerous levels for him, an insulin dependent diabetic.

The defendants are prepared to compromise the plaintiffs' claim for damages in the sum of \$200,000. The first, second and third plaintiffs are prepared to accept the settlement in these terms. The fourth plaintiff is an infant who was born on the 5th of September 1988. She was, thus, 11 years of age at the time of her father's death and is now 15 years of age.

The plaintiffs have agreed to an apportionment of the settlement sum between themselves, and the amount which is proposed to be allowed for the fourth plaintiff is \$12,000. The evaluation of the fourth plaintiff's financial dependency on her father's income has to be considered against the background of his past earnings and his potential future earnings, and of the family arrangements of pooling the resources of both the mother and the father.

The deceased was working as a hotel manager at the time of his death. His net earnings then were approximately \$428 per week. There was an assertion that he received additional

undeclared income, but it was the figure that I have just mentioned which appears to have been taken into account as being reasonable because there was evidence also of a patchy work history for the deceased.

The deceased, because of his long history with diabetes, suffered from an onset of renal disease. Although he was only 39 years at the time of his death, his life expectancy was considerably reduced by this condition. Dr d'Emden, whose opinion was sought by the defendants, expressed the view that the prospect of the deceased working beyond the age of 50 years was highly unlikely. Dr Michael Suthers, who also has expertise in this area, thought that Dr d'Emden's prognosis was "too gloomy", but nonetheless there is clear evidence indicating limitations on the deceased's future earning capacity.

In the past, the first plaintiff worked part-time and, through this, contributed to the family income. Whilst she was not working at the time of this incident, she has resumed work since. The fourth plaintiff's financial support for the future thus will come from the continued efforts of her mother in providing income and support, and from the contribution made from the anticipated financial benefit from her father, now crystallised as a result of the settlement. In the period between the deceased's death, the fourth plaintiff has been fully maintained by the first plaintiff. So, essentially, the \$12,000 settlement sum is to be applied for the future and not for the past.

For the future it is anticipated that the first plaintiff will continue to provide the basic necessities for the fourth plaintiff and, consequently, the \$12,000 will be used principally to provide for the fourth plaintiff's needs additional to the basic support which will continue to be received from her mother.

Because the sum is relatively small, the plaintiffs' advisers have suggested, rather than the amount be invested with the Public Trustee of Queensland, that a family member - namely Mr Arthur Johnston, the fourth plaintiff's maternal grandfather - should be appointed trustee of the settlement sum.

Mr Johnston is 64 years of age. He is a retired police officer and has engaged in a number of business ventures since his retirement there. He is now retired completely. He is in receipt of a mature aged pension. He lives with his wife who is also in receipt of a pension, and they have a significant sum of money invested in an account with the St George Bank. Mr Johnston, if made trustee of the sum, proposes to invest the settlement moneys in a similar account to his own investments until she attains the age of 18 years. The order which is proposed would allow him to make drawings on that account for the welfare and advancement of the fourth plaintiff in accordance with the laws of the State of Victoria where Mr Johnston lives.

In all these circumstances, I am satisfied that the settlement
in the sum proposed is one that is in the interests of the
fourth plaintiff and should therefore be sanctioned.

I am prepared to appoint Mr Johnston as trustee of that sum
and to direct that he have the powers given to trustees for
investment and for the making of advances from the trust fund
that exist in accordance with the laws of the State of
Victoria.

I will make orders, therefore, in terms of the amended draft
initialled by me and placed with the papers.
