



Transcript of Proceedings

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State Reporting Bureau

Date: 8 July, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 438 of 2004

JAMIE RUSSEL GRIGG

Applicant

and

STATE OF QUEENSLAND

First Respondent

and

ST JUDE MEDICAL AUSTRALIA PTY LTD
ACN 080 212 746

Second Respondent

CAIRNS

..DATE 01/07/2004

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: This is an application pursuant to section 43 of the Personal Injuries Proceedings Act 2002 (PIPA) for leave for the plaintiff to proceed notwithstanding that he has not complied with the pre-Court requirements of the PIPA. The application has been brought on as a matter of urgency necessitating an ex tempore application for the abridgment of time for its hearing. There being no opposition to this course, I order that the time be abridged accordingly.

The plaintiff's claim arises from an incident in May of 2000. In respect of that incident he lodged a notice of claim with the first respondent on the 27th of December 2002. He had consulted his solicitors on the 23rd of October of that year. Since that time there have been discussions between the applicant and the first respondent and the first respondent properly raises no objection to my granting the leave sought in this application.

The situation with the second respondent, however, is quite different. The second respondent had no notice at all of the claim until the 29th of June 2004, two days ago. For that reason the second respondent raises these objections: firstly, that the notice of claim does not comply with section 9A of PIPA. Being a claim arising out of medical negligence, the claim was to be accompanied by a written medical report which detailed the matters required by subsection 9(d) of that particular section. No such medical report accompanies the claim.

Secondly, no reason has been shown in the material supporting the application for this delay as it affects the second respondent; and thirdly, the second respondent raises the question that being only made aware on the 29th of June 2004 it is not in a position to argue whether there is any specific basis of prejudice which might confront it.

The difficulty then is how to deal with these legitimate complaints raised by the second respondent in circumstances where ordinarily the applicant would be granted leave because of the imminent expiration of the limitation period in circumstances where the first respondent does not make any objection to the leave being granted subject to the ordinary statutory restraints.

The applicant turned 21 years of age on the 2nd of June of 2004. Consequently, for his action not to be statute barred, it must be commenced today. The action could certainly start against the first respondent and in the exercise of my discretion I would allow that. In all the circumstances, although I am concerned at the somewhat cavalier approach to the position of the second respondent, it seems that the action should be commenced against both respondents and that the shortcomings in compliance with the legislation to which the second respondent has drawn my attention should be rectified with as a matter of urgency.

I propose therefore in the circumstances to grant the applicant leave to issue proceedings against both respondents.

I order that such proceedings be stayed until the applicant
complies with the pre-Court procedural requirements of PIPA.

I give liberty to apply to the second respondent if they
require further orders in respect of the applicant's
compliance with those pre-Court procedures, and in particular
with the applicant's failure to comply with section 9A(9)(d)
of PIPA.

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HIS HONOUR: Costs are not sought in respect of this
application, yes.

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