

SUPREME COURT OF QUEENSLAND

CITATION: *Shepherd v Nominal Defendant* (No 2) [2020] QSC 228

PARTIES: **Chase Shepherd BHLG Bou Shepherd**
(Plaintiff)
v
Nominal Defendant
(Defendant)

FILE NO/S: SC No 686 of 2016

DIVISION: Trial Division

PROCEEDING: On the Papers

ORIGINATING COURT: Supreme Court at Townsville

ORDERS MADE: 29 July 2020

DELIVERED AT: Townsville

JUDGE: North J

ORDER: 1. **The Litigation Guardian, Bou Shepherd, pay the defendant's costs (assessed on the standard basis) of and incidental to:**

- 1) **The proceeding in the District Court;**
- 2) **The application for transfer of the proceeding into this Court; and**
- 3) **The proceeding in this Court.**

CATCHWORDS: COSTS

SOLICITORS: Premier Compensation for the plaintiff
Jensen McConaghy for the defendant

[1] I published my reasons for judgment on 26 June 2020. I ordered that there be judgment for the defendant. On that occasion I intimated that in my view costs should follow the event (see reasons at [101]).

[2] I proposed an order for costs with leave to either party to submit in writing for a different order within 21 days.

- [3] The defendant has submitted for an order different from the order I proposed.¹ The plaintiff has not submitted to the contrary.²
- [4] In its submissions, the defendant, correctly, reminds me that the plaintiff sued by his Litigation Guardian, his brother. (See reasons at [2], the Consent of Bou Shepherd filed 1/7/2016 and UCPR r 95).
- [5] In the circumstances the plaintiff's Litigation Guardian is exposed to a liability for costs in the event, as happened here, of an adverse outcome in the litigation.³
- [6] The defendant submits that the Litigation Guardian should pay the defendant's costs of and incidental to the proceeding both in the District Court and in this Court.
- [7] So far as I can determine there is no decisive legal or discretionary consideration that suggest an order following the event as sought by the defendant should not be made (consider UCPR r 681).
- [8] In the circumstances the order for costs should be:

“The Litigation Guardian, Bou Shepherd, pay the defendant's costs (assessed on the standard basis) of and incidental to:

- 1) The proceeding in the District Court;
- 2) The application for transfer of the proceeding into this Court; and
- 3) The proceeding in this Court.”

¹ See email dated 16 July 2020, Ex 1 on this costs hearing.

² See email dated 27 July 2020, Ex 3 on this costs hearing.

³ See *NSW Insurance Ministerial Corps v Abualfoul* (1999) FCA 433 at [28], [29] and [30]; *N (on behalf of her son N) the State of Queensland (acting through the Dept of Education and the Arts)* [2007] QSC 208 at [61].