

SUPREME COURT OF QUEENSLAND

CITATION: *Willett & Anor v Futcher* [2004] QCA 64

PARTIES: **DEBORAH ANN WILLETT**
(first plaintiff)
BELINDA ANN WILLETT (an infant by her litigation guardians **DEBORAH ANN WILLETT** and **PATRICK WILLETT**)
(second plaintiff/appellant)
v
DUDLEY D FUTCHER
(defendant/respondent)

FILE NO/S: Appeal No 2709 of 2003
SC No 4579 of 1980

DIVISION: Court of Appeal

PROCEEDING: Personal Injury - Quantum Only - Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Judgment of the Court delivered 20 February 2004
Further Order delivered 19 March 2004

DELIVERED AT: Brisbane

HEARING DATE: 7 October 2003

JUDGES: Davies JA, Jones and Holmes JJ
Separate reasons for judgment of each member of the Court, each concurring as to the further order made

FURTHER ORDER: **Appellant to pay the respondent's costs of and incidental to the appeal to be assessed on the standard basis**

CATCHWORDS: PROCEDURE - COSTS - GENERAL RULE - COSTS FOLLOW THE EVENT - COSTS OF WHOLE ACTION - GENERALLY - where appeal was of general importance - whether the "general public importance" of the appeal justified a departure from the general cost rule

COUNSEL: T Matthews for the appellant
D B Fraser QC, with M P Kent, for the respondent
D C Rangiah for the Public Advocate

SOLICITORS: Quinlan Miller & Treston for the appellant
McInnes Wilson for the respondent

[1] **DAVIES JA:** I agree with the costs order proposed by Jones J for the reasons he gives.

- [2] **JONES J:** The appellant unsuccessfully appealed against the quantum of the allowance for fund management which had been assessed as part of her damages. The appellant now submits that despite this outcome she should not pay the respondent's costs on appeal. The appellant does so on the grounds that the question arising on appeal was one of general importance, that the decision provided a clarification of the scope of the services to be considered when making such an assessment, such scope not having been authoritatively determined in earlier decisions.
- [3] The appellant had sought a very substantial increase in the allowance which, had the argument succeeded, would have been well above the usual range of such assessment. Moreover, the appeal was determined largely on arguments which had been rehearsed of the court of first instance.
- [4] I do not consider that the fact that the appeal involved a question of "general public importance" gives such support to the application. As was observed in *Hollier v Australian Maritime Safety Authority*¹ "much litigation has a **public interest** going beyond the interests of the parties. But this feature is inherent in common law litigation and provides no ground for departure from the usual rule as to costs".
- [5] The circumstances in this case do not justify a departure from the normal rule that costs should follow the event.
- [6] I would order that the appellant pay the respondent's costs of and incidental to the appeal to be assessed on the standard basis.
- [7] **HOLMES J:** I agree with the reasoning of Jones J in respect to costs and with the order he proposes.

¹ (1998) Federal Court of Australia (Full Court) VG 116/1998