

DISTRICT COURT OF QUEENSLAND

CITATION: *T v W* [2006] QDC 085

PARTIES: **T**
as litigation guardian for
T Applicant

v

W Respondent

FILE NO/S: 2/2006

DIVISION: Civil

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT: District Court

DELIVERED ON: 7 April 2006

DELIVERED AT: Ipswich

HEARING DATE: 10 March 2006

JUDGE: Richards DCJ

ORDER:

[1] **The respondent is ordered to pay the applicant the sum of \$15,000 by way of compensation for injuries suffered by the applicant at the hands of the respondent.**

[2] **It is directed:**

- 1. that the Public Trustee be appointed manager to take possession of the said sum so paid to it and to manage the said sum on behalf of the Applicant with powers and duties defined in the Public Trustee Act 1978 (as amended)**
- 2. that the Public Trustee be authorised to invest the said funds in any investments in which under the Trusts Act 1974, trustees are authorised to invest monies and to re-invest the proceeds in any such investment.**
- 3. that the Public Trustee pay to the solicitors for the Litigation Guardian (whose receipt shall be sufficient discharge), or the**

Legal Aid Office Queensland the proper legal costs and outgoings out of any monies received from the respondent or any other person including any ex-gratia payment made by the State of Queensland pursuant to this assessment and order.

- 4. that the applicant and the Public Trustee be at liberty to apply to this Court in respect of the administration of the trust fund as may be advised.**

CATCHWORDS: Criminal compensation – adverse impact

COUNSEL: R. Hartfiel for the applicant
No appearance for the respondent

SOLICITORS: M.A. Kent and associates for the applicant

- [3] The applicant child, through her mother, is applying for criminal compensation as a result of an act of indecent treatment by the respondent, who was her godfather at the time of the offence.
- [4] On the day in question, the respondent was babysitting the applicant child while the mother was at a meeting. The mother returned unexpectedly to the house and was standing outside the child's bedroom when she heard the respondent speaking to the child. She entered the bedroom and spoke to the child. The child confided in her that the applicant had placed her hand on his penis whilst she was asleep.
- [5] The applicant pleaded guilty on 4 December 2001 to the offence of indecent treatment of a child under 16.
- [6] The child's mother has provided an affidavit indicating that the child's behaviour since the incident has deteriorated:
- She is having problems with other children at school and gets into fights and arguments.
 - Her schoolwork has deteriorated.

- She is suffering from nightmares
 - She was placed on antidepressants when she was eight years of age to assist her with her sleeping difficulties.
 - She has changed schools in an attempt to overcome her problems, however, she continues to have problems.
 - She appears uncomfortable around males.
 - She eats very sweet food obsessively.
 - She is reluctant to participate in activities and often comes into her mother's bedroom to sleep either in the bed or on the floor.
- [7] Leanne Jackson, a neuro-psychologist, has provided a report in relation to the child for the purposes of this application.
- [8] She notes that before this incident the child was very social, although she could be difficult at times. She did fall through the year 2 net at school, however, her mother suggests that this was due to a poor year 2 teacher.
- [9] The offence was committed when the child was in Grade 3. After the offence was reported, the child's mother observed:
- outbursts of temper and physical violence when provoked,
 - built up anger,
 - easily annoyed,
 - deterioration in her schoolwork,
 - constant anxiety about nothing,
 - behavioural and disciplinary problems; and

- continual fights with school friends.
- [10] She was transferred to Springfield College in Grade 5 in the hope that the school environment might assist her, however, her problems continued at Springfield. There have been complaints of her teasing and bullying other children, her school achievements remain poor and she has been diagnosed by Dr Margaret McFarland , a psychiatrist, as having a cognitive profile resembling a child suffering from ADHD. Her brother suffers from mild Asperger’s condition.
- [11] She continues to lack confidence, is unwilling to try new things, she has a lack of concentration, is hyper-vigilant and anxious if she hears a noise at night, still throws tantrums, has difficulty coping with disruptions, cries whenever she has to talk about what has happened to her and feels uncomfortable with males. She does not play sport. She says that she is happy at school but she is scared that someone will break into her house.
- [12] Ms Jackson notes that it is suggested that her academic performance has declined, however, testing in year 2 indicates that the child was already having problems with her schoolwork before this event.
- [13] Ms Jackson said it is likely that she is still suffering from anxiety, fears of intrusion into her private domains, and fears in general. She is quick to react negatively to minor irritations and this is a symptom often observed in post-trauma victims.
- [14] She has flattened mood and is at high risk of developing a later depressive condition. It seems as though she may have become more rigid in her thoughts and behaviours and that may be explained as an attempt to maintain control over her situation, as she has poor self-regulation and impulse control. She has been showing signs of hostility and aggression towards others.
- [15] Because of her lack of confidence the child is vulnerable to peer pressure and, as a reaction to her traumatic experience, may be vulnerable to the consequences of peer rejection. Ms Jackson states, at paragraph 2.11:

“It is unclear as to whether T is suffering from nervous shock, however, she is clearly withdrawn. She displays effective and non-

verbal signs suggestive of covert anger, she suffers from anxiety triggered by separation, a threat to others and to her personal self. She is guarded, and other behavioural indicators suggest that she is hyper-vigilant and hyper-aroused and may suffer from poor impulse control. She is also reportedly suffering from nightmares, however the contents of these is unknown. It is possible on this basis that she is suffering from some symptoms seen in a post-traumatic stress state.”

[16] Given that diagnosis, it is clear that the child whilst not suffering from a diagnosed mental illness, is nonetheless suffering from nervous shock within the meaning of the *Criminal Offence Victims Act 1995*. (see *Ferguson v Kazakoff* [2000] QSC 156).

[17] She is entitled to compensation under the Act and there is no suggestion that she has in any way contributed to her injuries.

[18] She is also entitled to compensation under Regulation 1A of the *Criminal Offence Victims Act Regulations 1995*. For an injury to result in an adverse impact under the regulations, there must be an impact suffered which can be separated from the symptoms exhibited in the diagnosis of nervous shock (see *JJ v AV* [2001] QCA 510).

[19] The following behaviours can be seen as adverse impacts to this child:

- Uncontrollable cravings for sweet food.
- Change of schools due to her behaviour towards others at the school.
- Increased risk of a depressive episode when she is older.

[20] In relation to criminal compensation the following assessment is appropriate:

- | | | |
|-----|---|-----------------|
| (a) | Item 31 - mental or nervous shock minor –
10 per cent of the scheme maximum: | <u>\$ 7,500</u> |
| (b) | In relation to adverse impacts – 10 per cent | |

	of the scheme maximum:	<u>\$ 7,500</u>
Total:		<u>\$15,000</u>

ORDER

[21] The respondent is ordered to pay the applicant the sum of \$15,000 by way of compensation for injuries suffered by the applicant at the hands of the respondent.

[22] **It is directed:**

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2. that the Public Trustee be authorised to invest the said funds in any investments in which under the Trusts Act 1974, trustees are authorised to invest monies and to re-invest the proceeds in any such investment.
3. that the Public Trustee pay to the solicitors for the Litigation Guardian (whose receipt shall be sufficient discharge), or the Legal Aid Office Queensland the proper legal costs and outgoings out of any monies received from the respondent or any other person including any ex-gratia payment made by the State of Queensland pursuant to this assessment and order.
4. that the applicant and the Public Trustee be at liberty to apply to this Court in respect of the administration of the trust fund as may be advised.