

DISTRICT COURT OF QUEENSLAND

CITATION: *J v J* [2008] QDC 97

PARTIES: **E.R.J by her Litigation Guardian B. D. R.**
(Applicant)
v
R.J.
(Respondent)

FILE NO/S: 238 of 2007

DIVISION:

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT:

DELIVERED ON: 26 February 2008

DELIVERED AT: Cairns

HEARING DATE: 30 November 2007

JUDGE: Bradley DCJ

ORDER: **That the respondent pay to the applicant the sum of \$37,500 by way of criminal compensation and I direct that the sum be paid to The Public Trustee of Queensland whose receipt therefore shall be sufficient discharge to the respondent.**

I direct that from such funds The Public Trustee pay to the solicitors for the applicant costs and outlays incurred in making this application to be assessed on an indemnity basis,

I further direct that The Public Trustee of Queensland hold the balance sum in trust for the maintenance, welfare and advancement of the applicant until she attains her majority.

CATCHWORDS:

COUNSEL: Mr R Silva Solicitor for the applicant
No appearance for the respondent

SOLICITORS: Wettenhall Silva Solicitors for the applicant

[1] On 26 August 2004 the respondent (who is the applicant's father) was convicted of three counts of indecent treatment of the applicant, a child under 16 who was to his knowledge his lineal descendant, and four counts of raping the applicant. The respondent pleaded guilty to the offences along with others concerning the

applicant's sister before His Honour Judge White in the District Court sitting at Cairns.

- [2] The applicant now seeks an order for compensation for the injuries suffered by her because of the offences pursuant to s 24 of the *Criminal Offence Victims Act 1995* ("the Act").
- [3] The respondent is currently serving a term of imprisonment and is incarcerated in the Capricornia Correctional Centre. Although the respondent has not been served strictly in accordance with the *Uniform Civil Procedure Rules* I have before me a faxed acknowledgement of receipt of the application and the supporting material signed by the respondent and I am satisfied the material came to his notice in adequate time before the hearing date. There was no appearance by or on behalf of the respondent at the hearing of this application.
- [4] The offences were committed between 1 September 2003 and 30 November 2003 when the applicant was 12 to 13 years of age.
- [5] The respondent had the sole care of the applicant and her sister who was also offended against and was aged 14 to 15 at the time of the offending. The applicant and her sister also had a stepbrother who was in the care of the respondent. The applicant's mother suffers from a mental illness and had not been involved in the care of the applicant or her siblings.
- [6] I was not the sentencing judge and I have not been provided with a copy of the schedule of facts tendered by the prosecution during the sentence hearing. However, it appears from the transcript that the offending against the applicant generally included the respondent kissing her breasts, touching her vagina, digitally penetrating her vagina and repeatedly penetrating her vagina with a vibrator.
- [7] In an affidavit dated 3 October 2007 the applicant child states that the offences have affected her in a number of ways:-
 - a. I can't concentrate on my work properly. I am emotional a lot of the time, I can't get the memories of what happened out of my head and I have nightmares about the past.
 - b. Causing difficulties in my relationship with men. I don't trust people, especially men anymore. I get flashbacks of what happened when I have sex and I think that person is my dad. I thought that going out with boys would make me think about other things instead of the problem but it didn't solve anything.
 - c. I was a virgin when the respondent first assaulted me. I am scared that this will happen again to me.
 - d. I feel sad all the time. I sometimes feel that I am fat and ugly and I don't eat for days. I feel that nothing good will happen to me. I feel empty inside and sometimes wish I was dead."
- [8] On 4 April 2007 the applicant was interviewed and assessed by Dr Chris Richardson, a psychologist. In her report dated 28 April 2007 Dr Richardson concludes that the applicant is "reporting moderate to severe symptomatology associated with Post Traumatic Stress Disorder (PTSD) and moderate to severe Depression".

- [9] The applicant told Dr Richardson that after the offending she cut herself and committed other acts of self harm and also abused drugs and alcohol, although she no longer engages in that behaviour. Dr Richardson lists the extensive continuing problems reported to her by the applicant since the offending which include emotional, physical, social and sexual issues. Clearly the applicant has been extensively adversely affected by the offending.
- [10] Dr Richardson is of the opinion that the applicant does suffer a sense of violation, she feels worthless and that others are better than her, she experiences significant levels of distress associated with insecurity and fear and is hypervigilant, she reports difficulty in all aspects of her sexual encounters and experiences significant distress.
- [11] Dr Richardson concludes:-
 “It is apparent from her report that Ms J has experienced significant behavioural and psychological problems since the incidents in 2003. That her father would behave in such a manner towards is distressing for Ms J. It is imperative that Ms J be supported in her recovery from the abuse she suffered at the hands of her father. Given the symptomatology associated with PTSD and Depression she suffers it is expected that she would benefit from 36 sessions of psychological therapy with a suitably qualified therapist. The Australian Psychological Society rate is currently \$186 per hour.”
- [12] Clearly there was no behaviour whatsoever on the part of the applicant which contributed to her injuries.
- [13] In addition to compensation pursuant to the Compensation Table which is Schedule 1 to the Act for mental or nervous shock, the applicant is also entitled to compensation for the “adverse impacts” of the sexual offending committed against her by her father. I assess compensation as follows:-
- | | | |
|------------------------------------|-----|---------------------------|
| Mental or nervous shock (moderate) | 20% | \$15,000.00 |
| Adverse impacts | 30% | <u>\$22,500.00</u> |
| | | <u>\$37,500.00</u> |
- [14] I order that the respondent pay to the applicant the sum of \$37,500 by way of criminal compensation and I direct that the sum be paid to the Public Trustee of Queensland whose receipt therefore shall be sufficient discharge to the respondent. I direct that from such funds the Public Trustee pay to the solicitors for the applicant costs and outlays incurred in making this application to be assessed on an indemnity basis and I further direct that The Public Trustee of Queensland hold the balance sum in trust for the maintenance, welfare and advancement of the applicant until she attains her majority.