

DISTRICT COURT OF QUEENSLAND

CITATION: *O’Gorman v Selff* [2010] QDC 13

PARTIES: **MICAEL DAVID O’GORMAN**
(applicant)

And

DONNA MARIE SELFF
(respondent)

FILE NO/S: 1957/09

DIVISION: Civil jurisdiction

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: Brisbane

DELIVERED ON: 9 February 2010

DELIVERED AT: Brisbane

HEARING DATE: 16, 24 November 2009

JUDGE: Rackemann DCJ

ORDER: **The respondent to pay the applicant compensation in the amount of \$7,500.**

CATCHWORDS: *Criminal compensation- mental or nervous shock from police officer spat upon*

Criminal Offence Victims Act 1995

R v Kazakoff ex parte Ferguson [2000] QSC 156

R v Tiltman ex parte Dawe [1995] QSC 345

RMC v NAC [2009] QSC 149

COUNSEL: Mr Hall for the applicant

No appearance for the respondent

SOLICITORS: McCowans for the applicant

- [1] The applicant is a police officer who seeks compensation pursuant to the *Criminal Offence Victims Act 1995* resulting from a serious assault committed by the respondent which led to her conviction, upon a plea of guilty, on 22 October 2007.
- [2] The applicant was called to attend a disturbance on 15 January 2007. On that day the respondent was affected by alcohol and had become agitated and abusive. This was first reflected in her behaviour towards a neighbour, which attracted the attention of police. On that day she struggled with the applicant and spat at him. The spitting constituted the serious assault for which she was convicted. The applicant claims that, as a consequence of the spitting, he has suffered mental or nervous shock for which he now seeks compensation.
- [3] Following the incident the applicant attended Redcliffe Hospital for blood tests. During questioning the respondent had claimed she was Hepatitis C positive. Blood tests on the applicant were repeated three times over a nine month period. Understandably this caused the applicant concern for himself and his family. This led him to make changes, to protect his family from any possible infection. These changes included reduced sexual activity with his wife and increased hygiene precautions, such as keeping toothbrushes separate. He says that his marital relationship and family life were affected and he had feelings of rage against the respondent, which were difficult to resolve with his Christian beliefs. His self esteem was affected, until getting the final blood tests (which were negative). He claims to have been “personally changed” by the incident. The effects upon him are more fully set out in his affidavit and recorded in the report of Dr Allan Freed, a psychiatrist who examined the applicant on the 17 June 2008. I accept the content of that material.
- [4] Dr Freed noted that the applicant was not depressed at the time of interview, but was still resentful and angry, in particular, that he and his wife and family had had to change the way they lived. In Dr Freed’s opinion, the applicant’s response to the incident was more than fear, fright, unpleasant memories or anger. In his view, it fell within the meaning “mental or nervous shock” at least in the broad sense in which that expression has been interpreted in *R v Kazakoff ex parte Ferguson* [2000] QSC 156, and the cases which have followed it.
- [5] In describing the nature and extent of the applicant’s condition, Dr Freed referred to the “global assessment of functioning scale”. Prior to the accident the applicant ranked 91-100 on that scale which put him in the range of people who have no symptoms to those who have superior functioning. In Dr Freed’s assessment, the applicant now falls within the 71-80 range which is described as:
- “80-71 If symptoms are present, they are both transient and expectable reactions to psychological stressors (eg difficulty concentrating after a family argument); no more than slight impairment in social, occupational, school functioning (eg temporarily falling behind in school work).”
- [6] Dr Freed also provided a psychiatric impairment rating scale for the applicant in relation to a number of areas of functional impairment. He assessed his impairment as “little or no impairment” in each of the following respects:

- (i) Self care and personal hygiene
- (ii) Travel
- (iii) Concentration, persistence and pace
- (iv) Adaptation

- [7] He assessed the applicant's functional impairment in social and recreational activities as "mild." The greatest level of impairment was in "social functioning" where Dr Freed assessed the impairment as "moderate."
- [8] The meaning of "mental or nervous shock" for the purposes of the compensation table has recently been examined by Byrne SJA in *RMC v NAC* [2009] QSC 149. His Honour did not adopt the meaning given by Thomas JA in *R v Kazakoff ex parte Ferguson (supra)* but preferred the approach of Lee J in *R v Tiltman ex parte Dawe* [1995] QSC 345 (speaking of the previous legislative analogue), that the expression refers to a recognizable psychiatric illness. Counsel for the applicant conceded that on the approach of Byrne SJA there would, in this case, be no compensable "injury" and the application would fail.
- [9] While there is a deal of force in the reasoning of Byrne SJA, the broader approach of Thomas JA is that which has been generally accepted, followed or applied. It is the one which I am persuaded to adopt in the absence of binding authority to the contrary.
- [10] I am satisfied that the applicant has suffered a compensable injury, namely mental or nervous shock. I am not, however, prepared to assess the extent of that injury as falling at the upper end of the moderate category, as was urged on behalf of the applicant. Having regard to the report of Dr Freed, I assess compensation in the amount of \$7,500, being 10 per cent of the scheme maximum.
- [11] I order the respondent to pay to the applicant compensation in the amount of \$7,500.