

DISTRICT COURT

CIVIL JURISDICTION

JUDGE ROBIN QC

No 3616 of 2011

ROSS JOSEPH BOVEY

Plaintiff

and

BRETT ALEXANDER DOWKER and
ALLIANZ AUSTRALIA INSURANCE LIMITED

Defendants

BRISBANE

..DATE 20/04/2012

ORDER

CATCHWORDS

Uniform Civil Procedure Rules

Plaintiff's application that defendant's signature of request for trial date be dispensed with - plaintiff justified in signing request but defendant is now justified in not reciprocating, as it reasonably desires to have the plaintiff examined by an occupational therapist nominated by it - application adjourned until after the date fixed for the examination

HIS HONOUR: I am going to adjourn the plaintiff's application to the 6th of June 2012. It's an application to dispense with the defendant's signature on the request for trial date which the plaintiff has signed. Mr Morton, for the defendants, makes no criticism of that signing, accepting that, within Rule 367(1), the plaintiff was ready for trial.

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He submits that circumstances changed after that when the defendant requested that the plaintiff undergo examination by an occupational therapist nominated by the defence, having had the opportunity to consider a report from an occupational therapist engaged by the plaintiff.

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Although the plaintiff has proceeded with reasonable expedition his claim being in respect of a motor vehicle accident in September 2010, Mr Gibson concedes that even the plaintiff was late in meeting the time set out in the rules in furnishing his expert report. I'm not persuaded by his argument that delay on the plaintiff's side becomes completely irrelevant - which he contends means that the Court ought to focus solely on the defendant's now finding itself some months out of time in seeking its response report.

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I agree with Mr Morton that the fact is that the defence are not ready for trial, so that the matter generally is not ready for trial. It's likely to be messy if the Court toys with notions of putting the proceeding on the call-over list with this amount of uncertainty. In any event, the call-over, as was said from the Bar table, is really only resorted to

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nowadays where there's some reluctance to have matters set
down; otherwise everything gets set down administratively.

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23rd of May is the date the defendant's O/T is available to
see the plaintiff and that's the reason why, in my view, the
present application ought to be adjourned to the 6th of June
2012. Even if the new expert's report is unavailable should
the eventuality, that Mr Morton suggests might arise, of the
expert advising that some other investigations are appropriate
materialise, that can be made known to a Court.

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The application is adjourned to the 6th of June 2012 with
costs reserved.

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