

TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF QUEENSLAND

No 1806 of 1991

CIVIL JURISDICTION

JONES J

SHERRY ANN WALLACE AS EXECUTRIX OF THE ESTATE Plaintiffs
OF JAMES ROBERT WALLACE (DECEASED) ON HER
BEHALF AND ON BEHALF OF BOBBIE LYNNE WALLACE
(AN INFANT) AND BROOKES CHRISTY WALLACE (AN
INFANT)

and

IAN DOUGLAS HYDE

Defendant

BRISBANE

..DATE 03/03/98

ORDER

HIS HONOUR: In this matter I am asked to sanction settlement of a claim brought on behalf of Brookes Christy Wallace, an infant, who was born on 7 September 1982. Her claim is for the loss of the dependency benefit following the death of her father in a motor vehicle collision on 7 October 1990.

The circumstances of that collision give rise to allegations of contributory negligence and the whole action brought by the wife of the deceased and his two children is coloured by allowance for contributory negligence. The dependency benefit sought on behalf of Brookes is affected by Workers' Compensation payment under the scheme applying under the province of Alberta in Canada.

In the end result, the total benefit which the child Brookes Christy Wallace will receive is \$A109,000. The part of the benefit which she receives from the Workers' Compensation payment in Alberta continues to her age of 18 years. At present her mother receives the sum of \$C2,400 per month as compensation benefits for the mother and for Brookes.

Having considered the economic benefit which was likely to flow to Brookes had her father lived, which is set out in the two several opinions of counsel retained on behalf of the plaintiffs, I have come to the view that it is appropriate to sanction the settlement of the further payment to Brookes of \$A12,00 as being an appropriate share of the total settlement sum.

The plaintiff's mother, Sherry Ann Wallace, has requested that she be appointed trustee of the \$12,000 settlement sum, and I have to consider whether that is appropriate in the circumstances where it is indicated to me that the Public Trustee of the province of Alberta would also be prepared to fulfil the trustee role.

Having regard to the fact that the mother does receive now \$C2,400 per month which she expends for the benefit of herself and the child and that payments of this order will continue until the child reaches 18 years of age and that the mother will continue to receive Workers' Compensation payments of a lesser but still significant degree beyond that time, it is, in my view, safe for the mother to be allowed to be trustee in this instance. Given that she has discharged her responsibilities in the past in respect of Workers' Compensation benefits, it seems to me there is no reason to anticipate why she would not continue to do so with the sum of \$12,000.

In those circumstances, I make the orders in the terms of the draft initialled by me and placed with the papers.

I order further that the opinions of counsel be placed in a sealed envelope and not opened except with the leave of the Court or a Judge.
