

# SUPREME COURT OF QUEENSLAND

CITATION: *Burston v Mellissant* [2003] QSC 365

PARTIES: **SHELLIE MARIEE BURSTON**  
(Applicant)  
v  
**CORNELIUS JOHN MELISSANT**  
(Respondent)

FILE NO/S: S.79 of 2003

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 29 October 2003

DELIVERED AT: Townsville

HEARING DATE: 24 October 2003

JUDGES: Cullinane J

ORDER: **Compensation in the sum of \$48,750 is awarded.**

CATCHWORDS: CRIMINAL LAW – OTHER GENERAL MATTER – where respondent imprisoned for six years on a charge of unlawfully wounding the applicant with intention to do grievous bodily harm – whether respondent is liable to pay compensation to the applicant.

*Criminal Offence Victims Act 1995 (Qld), s 26*

*Ferguson v Kazakiff* (2000) QSC 156, applied

COUNSEL: No appearance by the applicant. The applicant's submissions were heard on the papers.  
No appearance by the respondent.

SOLICITORS: S.B. Wright & Wright and Condie for the applicant.  
No appearance for the respondent.

- [1] This is an application for criminal compensation.
- [2] The applicant was born on 9<sup>th</sup> July 1968. She and the respondent lived in a de facto relationship for a number of years which produced one child who was born on 22<sup>nd</sup> February 1997. The applicant had a child from a previous relationship.
- [3] The relationship was a stormy one involving a number of separations. According to the application, she and the respondent separated finally in October 2000. It appears however that the relationship did in fact continue in a fashion and the respondent would from time to time come to the house where the applicant was living and spend time there with his daughter.
- [4] The relevant events occurred on the evening of 25<sup>th</sup> October 2001. As a result of these events the respondent was charged with attempted murder but a plea of guilty was accepted to the lesser offence of unlawfully wounding with intention to do grievous bodily harm. He was sentenced to imprisonment for six years and a declaration was made that the offence was a serious violent offence.
- [5] On the evening in question the applicant had been at her parents' place which was near her own home and saw the respondent's vehicle depart. She walked across to her home and met the respondent on the way and together they entered the home. After their daughter went to bed there was a discussion between them in which the respondent informed the applicant that he wished to resurrect the relationship. The respondent indicated that she did not want to do this and gave her reasons for not wanting to do so. An argument ensued in which the applicant reasserted to the respondent that she did not wish the relationship to continue.
- [6] The respondent got up and walked towards the back door. The applicant thought that he was going to leave but he returned holding a large butcher's knife in his hand.
- [7] The applicant endeavoured to move towards the bathroom with the intention of locking herself there but became concerned about their daughter and instead went to the telephone, at the same time telling the respondent to put the knife down or she would call her parents and the police.
- [8] The respondent ran towards her and pushed her against a door. He then stabbed her in the stomach area and as a result she experienced extreme pain and fell to the floor. She was lying on her side and the respondent repeatedly punched and stabbed her. During this time she was trying to fend him off with her arms and legs.
- [9] The respondent then grabbed her by the hair with his left hand, pulling her head back and exposing her neck. The applicant continued to kick the respondent and struggle with him and this caused him to lose his grip upon her. However in the course of the struggle she was cut on the forehead with the knife. A photograph of the wound appears in the material which is before the court.
- [10] He then grabbed her by the hair again and pulled her head right back and held the knife to her throat. Again she managed to get away from him by kicking him very hard in the leg, causing him to stumble.

- [11] While still lying on the ground she saw him pull the knife across his own throat. She heard somebody at the front door and the respondent ran out through another door.
- [12] Her father came into the house and she was taken to the Mackay Base Hospital.
- [13] In her affidavit she describes her pain and distress upon her admission to hospital and before being given pain killers. It appears that at one time shortly after her admission she heard medical staff saying that the respondent was also being admitted to the emergency department of the hospital and this resulted in her being taken to another area within the hospital.
- [14] She spent some five days in hospital initially, three days in the surgical ward and two days in the general ward. She was moved from the surgical ward because the respondent was moved into that ward and she was terrified of being in the same ward.
- [15] There is a substantial body of material from the Mackay Base Hospital, both relating to the applicant's admission and treatment in the hospital and her subsequent attendances at the hospital.
- [16] Included in these are reports from various medical practitioners including specialists who treated the applicant upon her admission and also subsequently.
- [17] Dr Ali was responsible for the surgery which the applicant underwent. She was seen to have a number of lacerations to the left arm and axilla and forearm. The wound over the anterior axillary fold was up to some five centimetres deep but fortunately no major vessel was involved. The other wounds were less serious.
- [18] There was a single deep laceration about four centimetres in depth on the right side of the neck in the supra clavicular area. This wound was very close to major vessels in the neck. There was a single deep laceration in the anterior abdominal wall. The depth was about four centimetres but there was no extension into the peritoneal cavity.
- [19] Dr Ali performed abridement and suturing of the lacerations which she suffered.
- [20] Dr Harvey, who was described as the senior medical officer, was the doctor who received the applicant in the emergency department and has prepared a report of 2<sup>nd</sup> April 2002 outlining in detail the various injuries which the applicant was observed to be suffering from, and her condition upon admission.
- [21] There are also reports from orthopaedic surgeons.
- [22] I have reports from Dr James, a psychiatrist, Dr Tassan, a plastic surgeon and Dr McIntosh, who is the applicant's general practitioner.
- [23] The applicant was fortunate in that the stabbing wounds that she suffered missed vital organs, in at least one instance only by a small distance.
- [24] Shortly after discharge she awoke on one occasion finding it very difficult to breathe. X-rays which were taken showed that there had been some effect upon her

lungs which was cleared up by inflammatory medication. The applicant did not want to undergo more intrusive treatment and the shortness of breath took a significant time to abate.

- [25] Some further surgery was carried out in July 2002 to repair a hernia caused by the stabbing to the abdomen. This is dealt with in the medical reports.
- [26] The applicant's primary and most serious sequelae of the attack upon her are psychiatric. She also has scarring which concerns her. I do not have photographs of this although there is a description of it in the plastic surgeon's report. There are photographs of her wounds following the incident. The scarring which the applicant has is summarised by Dr Tassan in his report.
- [27] She has some impairment of function of her left arm. The impairment of functions includes some loss of strength and also sensation in parts of the arm and part of the hand.
- [28] Dr Kolarik, an orthopaedic surgeon at the Mackay Base Hospital, deals with the loss of sensation in the left hand and arm as well as the loss of function in the forearm, elbow and biceps. These are, on my reading of it, consistent with the complaints which the applicant makes. Dr Boyce, a neurologist, also deals with this in his report. He thought that the neurologic component of her injuries constituted a disability of 10% of the whole person.
- [29] Dr James, in his report to the solicitors for the applicant dated 15<sup>th</sup> May 2003 outlines the various problems which the applicant has under a number of different headings.
- [30] He refers under the heading of "Mood", to the fact that she suffers from severe mood swings and is easily provoked to irritability and anger and finds it difficult or impossible to express her anger directly. She frequently cries. She has difficulty sleeping.
- [31] Following the accident she had many nightmares relating to matters associated with, although not specifically, of the stabbing itself. She has much reduced energy levels and for some time, it would appear, simply spent the day sitting in a chair until the afternoon and having very little recollection later of what she had done. Under the heading "Intrusive Recollections", Dr James describes the applicant as suffering the onset of panic attacks as a result of having her mind directed towards the events, such as, for example, seeing somebody with a butcher's knife. She also refers to the impact of seeing surgery on a television program. Dr James refers to avoidance behaviour on the part of the applicant where she seeks to block out thoughts or recollection of the attack and avoids talking about them. Her concentration is said to be poor. Her capacity to relate to others, including her own children, has altered for the worse. She describes her awkwardness in dealing with her children and her new partner and her lack of interest in mixing with friends and members of the family, all of whom were, prior to the incident, very important to her. She has lost interest in many things.
- [32] Her appetite is variable. She lost a substantial amount of weight following the incident but has since regained this.

- [33] She sometimes has difficulty thinking about her future and making plans.
- [34] Loud noises produce a bad reaction.
- [35] The applicant was an ambulance attendant prior to the incident and had been so for about six years and had hoped to obtain full time employment.
- [36] She says that she will not be able to continue this work. She has attempted to do so on one occasion, attending on an emergency call to perform CPR on an apparently drowning victim. She felt obliged to do this because relatives were present. When a colleague joined her, she left the immediate scene, giving some excuse to do so but in fact just kept going, leaving behind her equipment. She has not been able to return to her employment since. She is in receipt of a single parent's pension.
- [37] She says that she also has been unable to return to work in a take away food shop where she used to work.
- [38] For some time the applicant consumed alcohol excessively but this did not continue for any significant period. She takes anti depressant tablets.
- [39] Dr James' opinion is that the applicant suffers a post traumatic stress disorder of some significance. He assesses her current score on the DSMIV global assessment functioning as being in the area of 50-51 on a scale of 0 to 100. She requires further treatment, both medicinal and psychotherapeutic, the costs of which are set out in his report.
- [40] The attack upon the applicant was plainly a terrifying one which caused her to fear for her life.
- [41] She has very serious psychiatric consequences of this attack.
- [42] She has other consequences relating to the scarring, the loss of function and sensation in the left arm and the consequences of the damage to the abdomen.
- [43] Claims are advanced under a number of the items in the schedule to the *Criminal Offence Victims Act*.
- [44] There are claims advanced separately in respect of a number of injuries to the arm and claims are made for wounds to and scarring of other parts of the body.
- [45] I adopt the approach to the assessment of compensation referred to by Thomas JA in *Ferguson v Kazakiff* (2000) QSC 156 when speaking of s.26 of the Act, he said:  
  
    *"Now whilst a nervous shock should in this case be treated as a separate state of injury, I do not think that the same conclusion should be reached in relation to the stab wounds and such scarring as has resulted from them. In my view the appropriate assessment should be under Item 24 taking into account the fact that the wounds produced some scarring."*
- [46] Adopting this approach, it seems to me inappropriate to allow compensation for each separate injury to the arm but rather to assess the overall injury to the arm with

the resultant loss of function and the residual scarring. The appropriate item in the Schedule is, in my opinion, Item 26.

[47] I therefore propose to allow compensation for the following:

- |     |                                                                            |          |
|-----|----------------------------------------------------------------------------|----------|
| (a) | Mental or nervous shock (severe) - Item 33                                 | \$22,500 |
| (b) | Stab wounds – arm with consequent loss of function and scarring - Item 26  | \$18,750 |
| (c) | Stab wounds to face, axilla and abdomen with consequent scarring – Item 25 | \$7,500  |

[48] The total of the above items is \$48,750. I make an award of compensation in the sum of \$48,750.