

# SUPREME COURT OF QUEENSLAND

CITATION: *Ruddell v State of Queensland* [2010] QSC 15

PARTIES: **RUDELL, Sarah-Lea**  
(plaintiff/respondent)  
v  
**STATE OF QUEENSLAND**  
(first defendant/applicant)  
**BAKER, Howard**  
(second defendant/applicant)

FILE NO/S: Townsville SC No 364 of 2001

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 25 January 2010

DELIVERED AT: Brisbane

HEARING DATE: 25 January 2010

JUDGE: Margaret Wilson J

ORDER: **1. that the proceeding be transferred to the Brisbane Registry of the Supreme Court;**  
**2. that the trial be conducted in Brisbane.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER RULES OF COURT – TRANSFERS AND CONSOLIDATIONS – where medical negligence claim is pending in the Townsville Registry of the Court – where the defendants have applied for its transfer to Brisbane – whether proceeding should be transferred to the Brisbane Registry of the Court

*Crown Proceedings Act 1980 (Qld)*  
*Health Service Act 1991 (Qld), s 73(2)*  
*Supreme Court Act 1975 (Qld), s 289*  
*Uniform Civil Procedure Rules 1999 (Qld), r 49*

COUNSEL: R J Douglas SC and DJ Schneidewin for the defendants/applicants.  
K C Fleming QC and A Moon for the plaintiff/respondent.

SOLICITORS: Minter Ellison Lawyers for the defendants/applicants.  
Wilson Ryan & Grose Lawyers for the plaintiff/respondent.

SUPREME COURT OF QUEENSLAND		1
CIVIL JURISDICTION		
MARGARET WILSON J		
No 364 of 2001		
SARAH-LEA RUDELLE	Plaintiff	10
and		
STATE OF QUEENSLAND	First Defendant	
and		
HOWARD BAKER	Second Defendant	
BRISBANE		20
..DATE 25/01/2010		
ORDER		
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1 - 2	ORDER	60

HER HONOUR: This is a medical negligence claim pending in the Townsville Registry of the Court. The defendants have applied for its transfer to Brisbane. 1

The plaintiff is a 32 year old woman. She was born prematurely at the Cairns Base Hospital. That hospital was conducted by the Peninsula and Torres Strait Regional Health Authority, which has since been dissolved. The first defendant, the State of Queensland, is sued pursuant to section 73(2) of the Health Service Act 1991 and the Crown Proceedings Act 1980. The second defendant was at all material times employed by the Peninsula and Torres Strait Regional Health Authority and the plaintiff's treating doctor. 10

The plaintiff alleges negligence of the defendants caused her to become blind. She brings this proceeding by her litigation guardian who is her mother and carer. 20

The plaintiff and her mother live in Townsville.

The second defendant is no longer employed by the first defendant. He resides in the Brisbane region. 30

The Court has power to transfer the proceeding pursuant to the Supreme Court Act 1975 section 289 and the UCPR Rule 49. 40

The preponderance of expert witnesses proposed to be called by the parties is in the Brisbane region.

The plaintiff intends to call Dr D Tudehope. The defendant intends to call Drs G Gole and B D Slaughter. All of these people are in the Brisbane area. The plaintiff proposes to call a psychiatrist, Dr Kippax, who is in Townsville, and the defendant a psychiatrist, Dr Alcorn, who is in Brisbane. 50

I am not persuaded that the evidence of the experts could be adequately given by telephone or, at least, not all of them. Of course, this is not an application for leave to call evidence by telephone, and such an application should, if possible, be determined by the trial Judge. But I foresee the desirability of the experts being present in Court, not only to give their evidence and be cross-examined, but also to hear the testimony of other experts.

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The trial is expected to take two weeks. The costs of having Brisbane based experts travel to Townsville for, say, three days of the trial would be very high. Similarly, the cost of having a Townsville witness travel to Brisbane would be high. But, as I say, the preponderance of the experts is in Brisbane.

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If the proceeding were transferred to Brisbane the plaintiff and her litigation guardian would be faced with the costs of attendance at the trial here. Those costs could be expected to be high in financial terms. There may also be issues of emotional distress and inconvenience although there is no evidence of these. If the proceeding is to be transferred to Brisbane, I think it should be a condition of the order that, in the first instance, the defendants meet the reasonable travel and accommodation costs of the plaintiff and her litigation guardian to enable their attendance in Brisbane for the trial and associated preparation.

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The events with which this proceeding is concerned occurred as long ago as 1978. The litigation was commenced in 2001. I am told that the Townsville Judge is disqualified from hearing it. No special arrangements are in place for another Judge to attend in Townsville to conduct the trial and it is unlikely that such arrangements could be put in place without a fairly long lead time.

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In all the circumstances this is a matter which should be brought to trial as soon as possible. I have been informed that two requests for trial date have been tendered by the plaintiff to the defendants but not signed and returned.

There were also applications returnable today in relation to the pleadings and expert evidence,  
but these have been resolved.

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Another factor is that both sides have chosen to engage Brisbane based counsel.

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In all of the circumstances I think the proceeding ought to be transferred to the Brisbane  
Registry of the Court and that the trial ought to be conducted here in Brisbane.

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HER HONOUR: Order as per amended draft.

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