

SUPREME COURT OF QUEENSLAND

CITATION: *Simpson v Grundy & Anor (No 2)* [2011] QSC 329

PARTIES: **DEBBIE-JO SIMPSON**
(plaintiff)
v
LINDSAY GRUNDY
(defendant)

FILE NO/S: 12752 of 2009

DIVISION: Trial

PROCEEDING: Costs Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 9 November 2011

DELIVERED AT: Brisbane

HEARING DATES: On the Papers

JUDGE: Dalton J

ORDER: **The plaintiff pay the defendant's costs of and incidental to the proceeding on a standard basis to be assessed or agreed.**

COUNSEL: Mr G Mullins for the plaintiff
Mr S C Williams QC with Mr E J Williams for the defendant

SOLICITORS: Shine Lawyers for the plaintiff
Jensen McConaghy for the defendant

- [1] **DALTON J:** I delivered judgment in this matter on 6 October 2011. I found for the defendant on the basis that the plaintiff had established no breach of duty in a negligence case. The matter was one where the factual circumstances contended for by the plaintiff's side conflicted with those contended for by the defendant's side. In the end I rejected most of the evidence called by the defendant's side on credit grounds. I found that the facts were in accordance with the evidence given by the plaintiff's parents. However on the facts as I found them, no breach of duty was established. I expressed considerable reservations as to the evidence of both the plaintiff and her brother, also on credit grounds. I invited submissions as to costs in these circumstances.

- [2] Under r 681 of the *Uniform Civil Procedure Rules 1999* costs are in the discretion of the Court, “but follow the event, unless the court orders otherwise.” I have regard to the reasoning of the High Court in *Oshlack v Richmond River Council*¹ as to the purpose of, “the usual order as to costs.” I also have regard to cases such as *Kitching & Anor v Queensland Commissioner of Police*² as to the difficulties attending making costs orders as to severable issues.
- [3] In this case I made credit findings against witnesses on both sides of the record. It seems to me that even had the defendant’s side contended for a factual version of events in line with that which I have found to be correct, the plaintiff would nonetheless have continued with her action and the defendant would have incurred the costs of defending it. There is nothing from which I could conclude that there would have been significantly less trial time, or significantly less interlocutory cost in the proceeding. I order that the plaintiff pay the defendant’s costs of and incidental to the proceeding on a standard basis to be assessed or agreed.

¹ (1998) 193 CLR 72.

² [2010] QSC 443.