

DISTRICT COURT OF QUEENSLAND

CITATION: *Atholwood v. Barrett* [2004] QDC 505

PARTIES: **MICHAEL GERARD ATHOLWOOD (Plaintiff)**
v.
PETER ROBERT BARRETT (Defendant)

FILE NO/S: D1338 of 2001

DIVISION:

PROCEEDING: Assessment of Damages

ORIGINATING COURT: District Court Brisbane

DELIVERED ON: 10 December 2004

DELIVERED AT: Brisbane

HEARING DATE: 15 November 2004

JUDGE: Samios DCJ

ORDER:

CATCHWORDS: DEFAMATION – Assessment of damages
Carson v John Fairfax & Sons Limited (1993) 178 CLR 44, 60-61 Appl
Kendell v The North Queensland Newspaper Co Ltd (1994) Aust Torts Reports 81-272 Cons
Shepherd v Walsh and ACC Publishing Pty Ltd & Ors (2001) QSC 358 Cons
Timms v Clift (1998) 2 Qd.R. 100 Cons

COUNSEL: Mr M. Evans for the plaintiff
No appearance for or on behalf of the defendant

SOLICITORS: Gilshenan & Luton for the plaintiff
No appearance for or on behalf of the defendant

[1] The plaintiff's claim against the defendant in these proceedings is for damages for defamation.

- [2] The defendant not having filed a Notice of Intention to Defend, judgment has been entered against the defendant for damages to be assessed.
- [3] This is the assessment of the damages.
- [4] The plaintiff's claim is that in April 1998 and prior to 21 May 1998 the defendant orally said to various persons, including the plaintiff's business competitors, that the plaintiff was a paedophile.
- [5] Particulars of this defamation are as follows:
- (a) In or about March 1998 the defendant approached Mr John Michael Murphy who was working on his vehicle on the premises of Advance Motors, adjacent to the defendant's business premises. The defendant informed Mr Murphy that:
 - (i) the plaintiff was the head of a paedophile ring with another businessman from the area, a Mr Mal Crompton.
 - (ii) the plaintiff had interfered with the defendant's child.
 - (iii) the defendant had spoken with the Plaintiff's wife and informed her that he was a paedophile.
 - (b) In or about April 1998 the defendant approached both the plaintiff and Mr Shane Karl Alex, an employee of the plaintiff. The defendant made allegations that:
 - (i) the plaintiff was a paedophile
 - (c) On or about 11 May 1998 the defendant said to Mr Lance Robert Ricks words to the effect of "You know that Michael Atholwood is a paedophile. He has been interfering with my son when he took him to the drags. You know he killed another boy and put him in a wheelie bin."

[6] Further, the plaintiff claims in this period the defendant orally said to other persons including the plaintiff's business competitors that the plaintiff was molesting the defendant's son.

[7] Particulars of this defamation are as follows:

(a) In or about March 1998 the defendant approached Mr John Michael Murphy who was working on his vehicle on the premises of Advance Motors, adjacent to the defendant's business premises. The defendant informed Mr Murphy that:

(i) The plaintiff was the head of a paedophile ring with another businessman from the area, a Mr Mal Crompton.

(ii) The plaintiff had interfered with the defendant's child.

(iii) The defendant had spoken to the plaintiff's wife and informed her that he was a paedophile.

(b) On or about 11 May 1998 the defendant said to Mr Lance Robert Ricks words to the effect of "You know that Michael Atholwood is a paedophile. He has been interfering with my son when he took him to the drags. You know he killed another boy and put him in a wheelie bin."

[8] Further, the plaintiff claims in this period the defendant orally said to various persons, including the plaintiff's business competitors, that the plaintiff had killed a nine year old and put him in a wheelie bin.

[9] Particulars of this defamation are as follows:

(a) On or about 11 May 1998 the defendant said to Mr Lance Robert Ricks words to the effect of "You know that Michael Atholwood is a paedophile. He has been interfering with my son when he took him to the drags. You know he killed another boy and put him in a wheelie bin."

[10] Further, the plaintiff claims in this period the defendant orally said to various persons, including the plaintiff's business competitors, that the plaintiff's wife, Diane, was having an affair with the defendant.

[11] Particulars of this defamation are as follows:

(a) In or about April/May 1998 the defendant approached Mr Shane Karl Alex and informed him that the plaintiff's wife was having an affair with the defendant.

[12] The plaintiff was born on 6 February 1940 and is 64 years of age. At the time of the defamation he was 58 years of age.

[13] At the material times to the plaintiff's claim the plaintiff and the defendant carried on business at business premises in close proximity to each other at Lawnton. There were a number of other businesses conducted from other premises in this area.

[14] The plaintiff had carried on his business at these premises since about 1987. The plaintiff's business was the repair and rebuilding of racing and high performance engines for both motor and boat racing, as well as performing some engine reconditioning and general automotive work.

[15] I am satisfied on the evidence that the plaintiff was well known and well regarded by many others in this industry in which he worked prior to being defamed by the defendant. Further, I am satisfied on the evidence the plaintiff was well known and well regarded by many others in drag racing circles in Australia. I accept he was considered to be "an elder statesman of the sport". I also accept that he had an excellent reputation prior to being defamed by the defendant.

[16] The defendant shot the plaintiff on 21 May 1998. The shooting was not a trivial event. In the weeks leading up to the shooting the plaintiff was informed by others of the defamatory statements the defendant was making about the plaintiff. The defendant was charged with attempted murder. The defendant fired two shots at the plaintiff. One shot hit the plaintiff. The bullet entered the plaintiff's jaw, neck, chest and then into his right side. He required hospital treatment for three days. I accept the plaintiff returned to work two weeks later but was severely restricted in the work which he was able to undertake. This was due both to his physical restrictions from his injuries but also due to the effect of both the unfounded allegations and the shooting on his mental state. The plaintiff had difficulty concentrating. Reminders of the allegations made him very distressed. Over the weeks following the shooting people frequently tried to discuss the allegations with him. He found this very distressing. He also found it increasingly difficult to regain his concentration and continue working after the allegations had been brought up. I am satisfied that instead of quelling the effect of the defamation constituted by the statements pleaded by the plaintiff in these proceedings, the shooting simply reaffirmed these defamatory statements. I accept after the plaintiff was shot by the defendant on 21 May 1998 a number of people made statements to the effect that the plaintiff deserved being shot because he was a paedophile.

[17] The defendant was not tried for shooting the plaintiff as he was found to have been of unsound mind at the time of the shooting and was detained for a short period of time in the John Oxley Memorial Hospital.

[18] The plaintiff has been examined by Ms Cameron, a clinical and neuropsychologist. She examined the plaintiff for her report dated 22 March 2001. In that report she

concluded the plaintiff was suffering from a moderate to severe degree of anxiety-depression and post traumatic stress condition. Ms Cameron states in this report the plaintiff's mental state can be directly related to the shooting incident and circumstances surrounding it. In a further report from Ms Cameron dated 12 November 2004, she states his condition of post traumatic stress largely arises from the effects of the shooting incident. His condition of reactive depression arises from the effects of accusations by the defendant, the rumours this contributed to and word getting back to the plaintiff of these rumours.

[19] The plaintiff has also been examined by Dr Grant, a psychiatrist, on 8 July 2002. Dr Grant's opinion is that the plaintiff suffered a post traumatic stress disorder. He states in his report this is a direct result of the assault upon the plaintiff and the threats before and after the assault.

[20] I accept the plaintiff gave up work on 30 June 2001. Notwithstanding, I accept the defamatory statements caused the plaintiff to suffer a reactive depression or adjustment disorder with affected mood, I consider it is the shooting and the effects upon the plaintiff from the shooting that caused the plaintiff to give up work on 30 June 2001.

[21] I accept the plaintiff is genuine when he describes the impact these defamatory statements and the shooting have had upon him, and having observed him as he gave his evidence I accept he is still being adversely affected by the defamatory statements and the shooting.

[22] In assessing the damages I am satisfied there has been a significant grapevine effect in this case. Further, to be called a paedophile is one of the worst possible things

that could be said about someone if it were untrue. I accept that it is one of those statements which, despite denial, may have a tendency to persist and leave a lingering and permanent mark on a person's reputation. I accept it is extremely difficult, if not impossible, to dispel this.

- [23] In *Carson v. John Fairfax & Sons Limited* (1993) 178 CLR 44, 60-61 the majority of the High Court said of the purposes to be served by damages awarded for defamation:

“Specific economic loss and exemplary or punitive damages aside, there are three purposes to be served by damages awarded for defamation. The three purposes no doubt overlap considerably in reality and ensure that ‘the amount of the verdict is the product of a mixture of inextricable considerations’. The three purposes are consolation for the personal distress and hurt caused to the appellant by the publication, reparation for the harm done to the appellant's personal and (if relevant) business reputation and vindication of the appellant's reputation. The first two purposes are frequently considered together and constitute consolation for the wrong done to the appellant. Vindication looks to the attitude of others to the appellant: the sum awarded must be at least the minimum necessary to signal to the public the vindication of appellant's reputation. ‘The gravity of the libel, the social standing of the parties and the availability of alternative remedies’ are all relevant to assessing the quantum of damages necessary to vindicate the appellant.”

- [24] In Queensland it has been observed that the reported cases of awards in defamation proceedings range from \$600,000 to \$1,000. In *Shepherd v. Walsh and ACC Publishing Pty Ltd & Ors* (2001) QSC 358 at para. 65, Jones J said:

“To assist my deliberation in assessing damages respective counsel referred me to a large number of reported cases with awards ranging from \$600,000 to \$1,000. What is demonstrated by these cases is the significant disparity between cases decided in New South Wales and those decided in Queensland and between assessments made by juries and judges. I do not propose to deal specifically with these cases which the researches of counsel have identified for me save to say that I am guided mostly by the decisions in Queensland courts whether made by judge or jury.”

- [25] In *Kendell v. The North Queensland Newspaper Co Ltd* (1994) Aust Torts Reports 81-272, the Court of Appeal did not disturb a jury's verdict of \$60,000 in a case where in a newspaper article it was alleged that the matron of the Townsville Hospital had manhandled a psychiatric patient.
- [26] Further, in *Timms v. Clift* (1998) 2 Qd.R. 100, the Court of Appeal noted at p.102 that the appeal involved "a judgment in the District Court in a defamation suit; judgment was entered below against the defendant, now appellant, in the sum of \$165,000 damages together with interest and costs, taxed as between solicitor and client. The total was \$272,910 plus costs, perhaps the highest defamation judgement in the history of the State".
- [27] In *Timms v Clift* the plaintiff was a police sergeant defamed in a facsimile sent to a newspaper and the newspaper article published in the Courier Mail to the effect that he had illegally kept and sold livestock on police property. At p.110 the Court of Appeal stated:

"Some useful information about recent awards is to be gleaned from a publication called the Gazette of Law and Journalism. For that one learns that the highest award in Britain was \$1.5M in 1979 (Issue No. 25, p.11), that the highest award in South Australia was one of \$268,000, and the highest jury assessment in Queensland (not an award) was \$750,000 in *Bellino v. Australian Broadcasting Commission*. The publication records no Queensland award in excess of \$100,000.

It is a question whether this court should be influenced by the circumstance that the award here in question appears to be high by local standards and may be the highest award ever made in this State; cf. the comments of Kirby P. (as his Honour then was), referred to in the leading judgment in *Carson v. John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 54, 62. As we read what was said there, notice may be taken of the size of the challenged verdict compared with other verdicts given in a particular State."

- [28] In the end, the appeal was allowed in *Timms v. Clift* and the verdict did not stand. A retrial was ordered on the first publication by the facsimile transmission. However, \$82,500 was allowed as damages for the publication in the Courier Mail plus interest.
- [29] In assessing the damages in these proceedings I bear in mind the defamatory statements were not published in a newspaper nor on television for example which may lead to a wider publication of the defamation than is the tendency with oral defamation. Nevertheless, I consider this is a case of a serious defamation with significant consequences for the plaintiff. I also bear in mind that in this assessment of damages I am not to compensate the plaintiff for the shooting and the effects of the shooting upon him. Compensation for the shooting and the effects of the shooting upon him is the subject of other proceedings.
- [30] In all the circumstances I assess the plaintiff's compensatory damages for the defamatory statements as a whole relating to paedophilia in the sum of \$100,000.
- [31] I assess the plaintiff's compensatory damages for the defamatory statement that he had killed a nine year old child and placed him in a wheelie bin, in the sum of \$30,000.
- [32] I assess the plaintiff's compensatory damages for the defamatory statement that the defendant had an affair with the plaintiff's wife in the sum of \$10,000.00.
- [33] Therefore, I assess the plaintiff's damages in the sum of \$140,000.00.

[34] I allow the plaintiff interest on the sum of \$140,000.00 at the rate of 4 percent per annum from 1 April 1998 to 10 November 2004 (6.62 years) which is the sum of \$37,072.00.