



SUPREME COURT OF WESTERN AUSTRALIA

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JUDGMENT SUMMARY

Rayney v The State of Western Australia

(CIV 2177/2008)

This summary issued by the Court is provided as an aid to obtaining a prompt understanding of the outcome of the lengthy reasons for decision delivered in this matter. It is not an addition to, or qualification upon, those reasons and has no purpose or effect beyond that stated.

The plaintiff, Mr Lloyd Patrick Rayney, claimed damages for defamation arising from a series of media conferences conducted by Detective Senior Sergeant Jack Lee during the course of an investigation into the murder of the plaintiff's wife, Mrs Corryn Rayney. The plaintiff claimed that the words used by DSS Lee in four media conferences conducted by him, or alternatively the words spoken at the last of the four conferences on 20 September 2007, bore the imputation that the plaintiff had murdered his wife. In the alternative, the plaintiff pleaded that the words meant that the plaintiff had so conducted himself as to give rise to a reasonable suspicion that he had murdered his wife.

The defendant, the State of Western Australia, denied that the words used bore either of the meanings pleaded by the plaintiff. It contended, however, that if the words did bear the plaintiff's alternative meaning, they were true. The defendant pleaded that the words used by DSS Lee bore a different meaning being that the police suspected the plaintiff of having murdered or unlawfully killed his wife and had reasonable cause for so suspecting, and that that imputation was true. The defendant also contended that if, contrary to its denial, the words did bear either of the meanings pleaded by the plaintiff, then they were uttered on an occasion which attracted the defence of qualified privilege, either under the *Defamation Act 2005* (WA) or at common law.

For the reasons published on 15 December 2017, the Court reached the following conclusions:

- That the words used by DSS Lee on 20 September 2007 stand alone as a separate publication, and should be construed on their own.
- That the words used by DSS Lee on 20 September 2007, in their entirety, bore the imputation that the plaintiff murdered his wife. The defendant did not assert that that imputation was true.

- That the defence of qualified privilege, either under the *Defamation Act* or at common law, is not available to the defendant in the circumstances of the defamatory publication by DSS Lee.
- That it follows that the plaintiff is entitled to be awarded damages for the defamation.

The Court also concluded that the publication was attended by circumstances of aggravation which make the statutory cap on damages for non-economic loss inapplicable. In those circumstances, it determined that the damages for non-economic loss, which are designed to compensate the plaintiff for the damage to his personal and business reputation, personal hurt and distress caused by the defamation and vindication of the plaintiff's reputation, should be assessed at \$600,000.

In relation to damages for economic loss, to which the plaintiff is also entitled, the Court concluded that the defamatory statements made by DSS Lee caused the plaintiff to suffer economic loss by way of loss of income for the period from the date of the defamation until the date of his arrest and charge with murder on 8 December 2010. It concluded that thereafter the defamatory statements ceased to be a cause of economic loss and will not be a cause of loss in the future. Rather, the damage to the plaintiff's practice from that date onwards is attributable entirely to other causes. For the purpose of quantifying the plaintiff's economic loss, the Court resolved the points of difference between the expert witnesses called by each party. It proposed that quantification of the amount of the plaintiff's economic loss be undertaken having regard to the findings made in its reasons following conferral between the parties and their experts.

In light of the conclusions reached as to the meaning of the words, any question of the truth of the imputations, with which most of the very long trial was concerned, has no bearing on the outcome. However, the Court reviewed all of the evidence and made findings in relation to those matters for the sake of completeness. Had it been necessary to determine those matters, the Court would have concluded that, in the circumstances known to the Western Australian Police as at 20 September 2007, and in light of the plaintiff's conduct then and subsequently known, it cannot be said that there were reasonable grounds to suspect that the plaintiff murdered his wife or that he had so conducted himself as to give rise to that suspicion. Rather, those matters gave rise to no more than a basis, which clearly did exist, for police to continue, as part of their wider investigation, to investigate whether the plaintiff may have had any involvement in his wife's death.