



Friday, 7 December 2018

## Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Coshott v Prentice (No 2)** (FCAFC) - costs - three appeals heard together and dismissed - appellant in each appeal ordered to pay respondent's costs - application for lump sum costs order dismissed

**Gayle v Fairfax Media Publications Pty Ltd (No 2) Gayle v The Age Company Pty Ltd (No 2); Gayle v The Federal Capital Press of Australia Pty Ltd (No 2)** (NSWSC) - defamation - damages - publication of reasons for rulings - plaintiff awarded \$300,000 in damages - application to discharge jury dismissed

**Noori v Topaz Fine Foods** (VSCA) - accident compensation - fall from stepladder in work accident - appeal against dismissal of 'serious injury application' - 'narrative test' satisfied - appeal allowed

**Chibanda v Chief Executive, Queensland Health & Anor** (QCA) - security for costs - judicial review - application for extension of time to appeal against refusal of extension of time to seek statutory order of review - first respondent granted security for costs

**GRD v BJD** (WASC) - judgments and orders - corporations - plaintiff undischarged bankrupt sought leave to be director of corporation - application granted

**Veal (by his next friend Watson) v Hehir** (ACTSC) - judgments and orders - medical negligence - professional negligence - plaintiff was minor - plaintiff's next friend did not wish to continue with settlement and sought that Court disapprove settlement - settlement disapproved - orders made

## Summaries With Link (Five Minute Read)

### **Coshott v Prentice (No 2) [2018] FCAFC 221**

Full Court of the Federal Court of Australia

Kerr, Farrell & Gleeson JJ

Costs - Court dismissed three appeals heard together and ordered that each appellant pay respondent's costs - appellant sought lump sum costs order under r40.02(b) *Federal Court Rules 2011* (Cth) - appellant contended appeals were 'separate proceedings' and that a 'consolidated costs order' would unjustly result in each appellant's joint and several liability for the others' costs - whether lump sum costs order would 'fall foul of' s37M *Federal Court of Australia Act 1976* (Cth) - whether appropriate to make lump sum costs order - held: Court not satisfied to make lump sum costs order - Court concluded making a lump sum costs order would cover the three appeals' costs, thus wrongly imposing on appellants costs incurred in proceedings they were not party to - appeal dismissed.

[Coshott](#)

### **Gayle v Fairfax Media Publications Pty Ltd (No 2) Gayle v The Age Company Pty Ltd (No 2); Gayle v The Federal Capital Press of Australia Pty Ltd (No 2) [2018] NSWSC 1838**

Supreme Court of New South Wales

McCallum J

Defamation - damages - action arising from publication of newspaper articles which accused plaintiff of 'exposing his genitals to a woman in a change room' - newspapers admitted articles defamatory but raised defences of truth and statutory qualified privilege - defences were defeated - determination of damages - publication of reasons for rulings - consideration of application for discharge of jury - ss22(3), 35, 30 & 38(1)(d) *Defamation Act 2005* (NSW) - damage to plaintiff's reputation - width of articles' readership - whether basis for aggravated damages - necessity of avoiding 'double or triple compensation' - held: plaintiff awarded \$300,000 damages - Court not satisfied to grant injunction to restrain defamation's repetition - application to discharge jury dismissed.

[View Decision](#)

### **Noori v Topaz Fine Foods [2018] VSCA 323**

Court of Appeal of Victoria

Maxwell P; Hargrave & T Forrest JJA

Accident compensation - applicant developed pain after falling from stepladder in work accident - no 'organic injury' to explain identified pain levels or function loss - applicant made 'serious injury application' under *Accident Compensation Act 1985* (Vic), contending pain was an 'aggravation or exacerbation' of his pre-existing psychiatric condition, with consequences satisfying 'serious injury' - primary judge accepted genuineness of applicant's account of the pain but rejected application, finding he had 'difficulty in disentangling those work-related

symptoms' from totality of plaintiff's 'ongoing condition' - whether 'disentanglement' arose as question in respect of 'serious injury' definition - held: no dispute pain due to work accident - once primary judge accepted account of pain genuine, it 'had to be concluded' applicant had 'severe disturbance' with consequences satisfying 'narrative test' for serious injury - appeal allowed.

[Noori](#)

## **Chibanda v Chief Executive, Queensland Health & Anor [2018] QCA 334**

Court of Appeal of Queensland

Gotterson JA

Security for costs - judicial review - applicant sought statutory order of review against first and second respondents - Court dismissed application - applicant had unsuccessfully cross-applied for extension of time to seek statutory order of review - applicant, under r748 *Uniform Civil Procedure Rules* (1999) (Rules), sought extension of time to appeal against dismissal of application for extension of time - first respondent, under r772 of the Rules, sought security for costs - applicant's 'financial position' - prospects of success - held: Court satisfied to grant security for costs in first respondent's favour.

[Chibanda](#)

## **GRD v BJD [2018] WASC 374**

Supreme Court of Western Australia

Master Sanderson

Judgments and orders - corporations - plaintiff was undischarged bankrupt - plaintiff sought Court's leave under s206G *Corporations Act 2001* (Cth) to be director of corporation - Court's power to grant leave to 'disqualified person' to 'manage a corporation' - whether plaintiff had complied with s206G(2)'s requirements - onus - circumstances of non-payments of debts - extent of plaintiff's cooperation with trustee in bankruptcy - held: Court satisfied to grant application.

[GRD](#)

## **Veal (by his next friend Watson) v Hehir [2018] ACTSC 330**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Judgments and orders - medical negligence - professional negligence - application for disapproval of settlement - plaintiff minor brought proceedings by next friend against 'first third party' doctor - next friend was plaintiff's mother - mother did not wish to proceed with settlement as she did not consider it was in best interests of plaintiff - mother sought that Court disapprove settlement - first third party sought that settlement be approved - r282 *Court Procedures Rules 2006* (ACT) - held: Court satisfied to disapprove settlement - orders made.

[Veal](#)

# Benchmark

## Dream On

**By:** David Conolly

A child in a gallery sits,  
takes paper and pencil,  
and starts to draw.  
The paintings around her  
disappear.  
They have served  
their purpose.

womb of  
They have sparked in her  
the spirit to create –  
the spirit formed in her  
along with bone and blood  
in the mystic dark of  
her mother's womb –  
humanity's sacred site.

Thus is passed  
from age to age  
imagination,  
Dream  
wonder,  
passes  
dreams.  
unborn.

From another womb  
in a faraway age  
another child emerged  
with a dream –  
the Great Dream  
of a world renewed by  
peace and justice,  
formed in the

love.

He said that children  
show us  
what God is like.

No wonder  
we celebrate  
his birth.

No wonder that  
still lives, and  
to children yet

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