

Schizophrenic negligence

Carrier v Bonham [2001] QCA 234 (22 June 2001)

On 22 June 2001, the Queensland Court of Appeal unanimously held that the standard of care owed by a schizophrenic is the objective standard of the ordinary reasonable person. This is the only appropriate Australian court ruling on the issue.

From previous issues of *Plaintiff* you may recall the Queensland District Court case of *Carrier v Bonham* [2000] QDC 226 (4 August 2000) involving John Bonham, a chronic schizophrenic, who escaped from the Royal Brisbane Hospital and in an attempt to commit suicide, jumped in front of a passing bus. The bus driver, Keith Carrier suffered nervous shock as a result.

At first instance, in the Queensland District Court, Judge McGill QC found Bonham had not breached the standard of care owed to Carrier because as a mental patient the standard of care was analogous to the standard owed by a child. According to the judge, that standard had not been breached. The judge however found Bonham responsible under the principles of *Wilkinson v Downton* [1897] 2 QB 57, an English case.

In *Carrier v Bonham* [2001] QCA 234 (22 June 2001), Justice McPherson did not decide whether Bonham's actions were a battery or an assault on Carrier because that was not the subject of the appeal.

Wilkinson v Downton held that a defendant is liable for wilfully doing an act calculated to cause physical harm to the plaintiff. During the appeal, Bonham's representatives argued that the word "calculated" meant subjectively "contemplated and intended" rather than objectively "considered likely to happen". Judge McPherson made short shift of that saying that the word "calculated" is "one of those weasel words" capable of either subjective or objective interpretation. His Honour, after reviewing a number of High Court cases that followed *Wilkinson v Downton*, applied the objective test.

His Honour then discussed the ever-decreasing distinction between "trespass" and "negligence". Overseas cases and academic opinions were also reviewed. The analogy between mental patients and children was rejected because, unlike childhood, mental illness is not a natural step to adulthood.

The appeal on liability was dismissed with the ruling that the "defendant's mental condition had no effect on the standard of care owed by him to the plaintiff, which on the contrary is to be judged by the standard of an ordinary and reasonable person and that it did not diminish or reduce his liability and negligence to the plaintiff".

The appeal on quantum was also

dismissed. The only success for Bonham was that the indemnity costs order was reduced to a standard costs order because the court considered that the Public Trustee had acted appropriately (given the complex legal questions) in not accepting the plaintiff's offer but requiring the court to rule on liability.

Justice Moynihan agreed with Justice McPherson, as did President McMurdo. The President added that, apart from Bonham being negligent, he was also liable under the *Wilkinson v Downton* case. **PL**

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