

PARTIES: ROBINSON, Sandra Glen Elizabeth
v
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY
OF AUSTRALIA

JURISDICTION: Interlocutory Application

FILE NUMBER: 78/99 (9926055)

DELIVERED: 10 April 2002

HEARING DATE: 3 April 2002

REASONS OF: MASTER COULEHAN

CATCHWORDS

PRACTICE - Northern Territory - subpoena to produce documents - pre-trial mans of investigation - not appropriate or necessary

CASES FOLLOWED

Leighton Contractors v Western Metal Resources (2001) 1 Qd. R 261

Mamone v Gagliardi (2000) NTSC 95

Re Queensland Trustees v White and Gardiner 72 ALR 287

REPRESENTATION

Solicitors:

Plaintiff Collier & Deane

Defendant Povey Stirk

Judgment category classification

Judgment ID number mas07

Number of pages 3

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No. 78/99 (9926055)

Between:

SANDRA GLEN ELIZABETH ROBINSON

Plaintiff

and

NORTHERN TERRITORY OF AUSTRALIA

Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 10 April 2002)

1. The plaintiff alleges that she suffered a fall as a result of the defendant's negligence and exacerbated a knee disability. The nature and extent of the plaintiff's injuries are in issue. The proceeding has not been listed for hearing.
2. The defendant seeks leave to issue a subpoena directed to Dr Waddell for the production of the medical records of the plaintiff. The draft subpoena does not limit the production of documents to those relating to the injuries the subject of this proceeding. The plaintiff has no objection to the orders sought, which include the right of the plaintiff to inspect the documents and claim privilege.
3. The evidence is sparse, but it is submitted on behalf of the defendant that Dr Waddell is an orthopedic specialist who has treated the plaintiff and that he will not release the documents without a subpoena. The defendant's solicitor has not sought to have the plaintiff examined by an orthopedic specialist and does not know whether Dr Waddell has provided a report to the plaintiff's solicitors. The procedure sought to be adopted is said to be a cost-effective means of obtaining information as to the plaintiff's

injuries. The third party discovery procedure provided by the rules has not been used because it is more expensive and less convenient.

4. A subpoena should not be used for third party discovery where there is a specific procedure provided by the rules (see O.32.07, **Mamone v Gagliardi** (2000) NTSC 95 and **Leighton Contractors v Western Metal Resources** (2001) 1 Qd. R 261, 264-5). In any event, a subpoena should only be used as a means of investigation when clearly necessary (see **Re Queensland Trustees v White and Gardiner** 72 ALR 287,291). It is not known whether Dr Waddell has provided a medical report to the plaintiff's solicitors, but if he has not, or they will not release it, the defendant may have the plaintiff examined by an appropriate specialist in order to ascertain the extent of the plaintiff's injuries.
5. I am not satisfied that the production of these documents is appropriate or necessary. The application will be refused.