

Gaffy v Tennant Creek Town Council (No 2) [2002] NTCA 8

PARTIES: GAFFY, LISA MICHELLE

v

TENNANT CREEK TOWN COUNCIL

TITLE OF COURT: COURT OF APPEAL OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL FROM SUPREME COURT
EXERCISING TERRITORY
JURISDICTION

FILE NO: AP 17 OF 2000 (9608483)

DELIVERED: 2 October 2002

HEARING DATES: 19 and 20 March 2001

JUDGMENT OF: MARTIN CJ, THOMAS & BAILEY JJ

REPRESENTATION:

Counsel:

Appellant: J Reeves QC and S M Gearin
Respondent: P Day

Solicitors:

Appellant: Povey Stirk
Respondent: Collier & Deane

Judgment category classification: C
Judgment ID Number: mar0227
Number of pages: 3

mar0227

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Gaffy v Tennant Creek Town Council (No 2) [2002] NTCA 8
No. AP17 OF 2000 (9608483)

BETWEEN:

LISA MICHELLE GAFFY
Appellant

AND:

TENNANT CREEK TOWN COUNCIL
Respondent

CORAM: MARTIN CJ, THOMAS & BAILEY JJ

REASONS FOR JUDGMENT

(Delivered 2 October 2002)

- [1] An appeal from the learned Judge at first instance delivered on 21 June 2000 was allowed by this court on 15 October 2001 to the extent that the judgment and orders made by him with respect to past loss of earnings, interest thereon and future loss of earnings capacity were set aside. In lieu thereof damages were increased. Interest on past loss of earnings was allowed for a period of 8 years at 4 per cent (\$13,440). The reasons for all that appear from this Court's judgment.
- [2] The order was taken out and authenticated on 9 November 2001 in the following terms:

“The appeal is allowed to the extent that the judgment and orders made by the learned trial judge with respect to past loss of earnings,

interest thereon and future loss of earning capacity was set aside and lieu thereof there will be judgment for the appellant in the sum of \$315,664.89.”

- [3] By summons of 9 May 2002 the appellant sought orders in respect of interest on the extra amount awarded by this court for future economic loss for the period from 21 June 2000 to date of payment or, alternatively, a declaration that interest runs on the extra amount for future economic loss awarded by this court on 15 October 2001 from 21 June 2000 until payment.
- [4] We sought and obtained written submissions from both parties. It was noted that counsel for the appellant upon the hearing of the appeal did not seek any particular order in relation to the date from which interest upon which any increased award should commence to run. The parties addressed themselves to the application of the slip rule, the provisions of s 85 of the Supreme Court Act and r 59.02 of the Supreme Court Rules.
- [5] Section 85 provides that except as provided by a law in force in the Territory the judgment carries interest from the date of judgment at such rate as is fixed by the Rules. Plainly it is not necessary to seek an order for interest after judgment. It is a statutory right.
- [6] The rule provides that a judgment of the court shall bear the date of and take effect on and from the day it is given, unless the court otherwise orders.
- [7] In our opinion the orders of this court substituting its award for that of the learned trial Judge, by implication, directs that its judgment take effect from

the date of judgment at first instance (*Official Receiver in Bankruptcy v Schultz* (1990) 170 CLR 306 at 318). Should there be any real doubt about that then we declare that that was the intention of the court.

[8] Of course, any interest paid upon the original judgment will be taken into account in calculating interest on the substituted award.

[9] Although this issue has been resolved in favour of the appellant we are of the view that there should be no order as to costs. The issue going to clarification of the court's order was a matter in respect of which both parties were asked to make submissions.