IM LAWYERS



Court dismisses child sexual abuse claim due to inconsistencies in evidence

Date: Monday October 14, 2024

On 30 May 2024, the Supreme Court of Queensland ('the Court') dismissed BYM's child sexual abuse claim for damages related to abuse she alleges occurred at school in 1999. This case provides rare guidance as to what the Court might consider when determining claims relating to historical sexual abuse allegations. In this case, inconsistencies in evidence were a key consideration of the Court.

You can read the full judgement in "BYM v The Corporation of The Trustees of The Roman Catholic Archdiocese of Brisbane (No 2) [2024] QSC 106" here.

The parties to this child sexual abuse case

The plaintiff: BYM (a pseudonym)

BYM alleged that she was the victim of child sexual abuse while she was attending school in 1999.

The alleged perpetrator: CD (a pseudonym)

CD is the person who BYM alleges perpetrated sexual abuse against her while she attended school in 1999. CD denies that the alleged child sexual abuse occurred.

The defendant: The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane

This is the organisation that was in charge of running the school that:

BYM attended;

was where BYM alleged she suffered the child sexual abuse; and

employed the alleged perpetrator, CD.

Why did the Court dismiss BYM's claim for child sexual abuse compensation?

Simply put, BYM's claim for damages (compensation) was dismissed because the Judge did not accept the abuse occurred in the manner BYM alleged. It is important to note that this does not mean that the Court thought that BYM was not telling the truth (as she recalled it to be).

This was highlighted by the Court at paragraph 314 of the judgement:

> *"I do not find that the Plaintiff was dishonest. Her evidence was very real to her and obviously very distressing. It is not disputed that the Plaintiff has a significant mental health condition. However, I am not satisfied on the Plaintiff's evidence that the assault occurred as alleged".*

Why did the Judge not accept BYM's version of the abuse?

Essentially, the Judge dismissed the case against CD because:

the Court did not consider that BYM's evidence was persuasive;

the Court accepted CD's evidence; and

other factors which the Court considered reduced the persuasiveness of BYM's evidence.

1. Persuasiveness of BYM's evidence

When considering BYM's evidence, the Court highlighted inconsistencies between her own

evidence and:

evidence of other witnesses (including BYM's own witnesses);

references in medical records;

references in medical reports; and

other documents/materials.

The Court also highlighted admissions from BYM herself that she has lied, exaggerated information, and/or been untruthful in the past in respect of disclosure of the abuse.

The Court considered that these factors reduced the probative value of BYM's evidence.

2. Persuasiveness of CD's evidence

Given the length of time it often takes for victims of child sexual abuse to feel comfortable disclosing the occurrence of abuse, it is not infrequent for the perpetrator of abuse to not be available to provide evidence in the claim for damages as they have passed away.

This has been considered by the courts in relation to whether this may give rise to circumstances where a stay of proceedings (a halt to the Court action) may be appropriate. You can read about stays of proceedings in our case review blog, "High Court overturns permanent stay in child abuse case". This was not such a case, however, as the alleged perpetrator, CD was available to provide evidence at the trial.

When considering CD's evidence, the Court concluded that his evidence was frank and credible. Given the Court's opinion that BYM's evidence was less than persuasive, this resulted in the Court not being convinced to the required standard of proof (see below) that the abuse, alleged by BYM, occurred as she alleged.

3. Other factors

The Court also considered the evidence of several other witnesses for both the plaintiff and the defendant. Other factors, which the court noted included:

the toilet block where BYM alleged the abuse occurred was in a central location and, therefore:

there was a higher likelihood of someone walking into that toilet block while the abuse was occurring;

if the abuse had occurred, it is likely that someone would have heard the abuse occurring;

BYM attended the bathroom during class time and was told by her teacher to be quick. Had the abuse been occurring, BYM's teacher would likely have noticed that BYM was taking a long time to return to the classroom; and

The Court accepted the evidence of some of the witnesses that the toilet cubicle doors were able to be opened from the outside. This in the writer's opinion, was especially damaging to BYM's case given an important part of her allegations were that CD unlocked the door from the outside of the cubicle.

Standard of proof required in child sexual abuse cases

It is important to understand the standard of proof faced by survivors of child sexual abuse. In other words, the level to which abuse survivors are required to convince the Court to accept their version of events.

For civil claims, the usual standard of proof is "on the basis of probabilities". In other words, BYM is required to prove that it was more probable than not that she suffered the abuse as alleged.

However, where a civil claim involves an allegation of a serious nature (such as the perpetration of child sexual abuse), case law provides that the Court must give due consideration to the gravity of the allegations, which will usually result in the Court needing to be satisfied at a level higher than usual that the allegations are more probably than not.

Impact of this child sexual abuse case being dismissed

This decision represents the first properly contested case involving allegations of historic child sexual abuse since the removal of limitation periods (that is, time limits to make a claim) in Queensland.

The decision highlights the risk faced by survivors seeking damages for historic child abuse in not being able to persuade the Court of their version of the abuse they suffered.

Even though the Court was not satisfied by the evidence of the claimant, it did confirm that this does not necessarily mean the claimant was being deliberately untruthful. Rather, the Court was not appropriately persuaded (following consideration of all the evidence from both sides) that the abuse occurred as alleged by the claimant in her Statement of Claim (pleading).

Get help from an abuse compensation lawyer

Child sexual abuse compensation claims are, by their nature, highly complex. In particular, the often lengthy passage of time between the abuse and seeking compensation means significant focus needs to be given to obtaining and collating all the facts of the case should it proceed to Court.

At IM Lawyers, we work closely with survivors of historical child sexual abuse. We offer an initial free consultation and will run your case on a “no win, no fee” basis. So, it costs you nothing to find out exactly where you stand.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.