GOVIER v THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q) (B51/2017)

Court appealed from: Queensland Court of Appeal
[2017] QCA 12

Date of judgment: 10 February 2017

Special leave granted: 15 September 2017

Ms Toni Govier was a disability care worker employed by the Respondent ("the Employer"). She was responsible (along with a colleague, MD) with the care of a disabled client, Tara. Ms Govier claimed that MD had physically attacked her, requiring hospitalisation, during a shift crossover at Tara's home on 3 December 2009.

Ms Govier sued the Employer for damages for psychological injuries, alleging that it had breached its duty of care to provide her with a safe system of work. This however was set against a background of bad blood between Ms Govier and MD. Ms Govier also claimed that the Employer had breached its duty of care in the manner in which it investigated the incident. That investigation took the form of the Employer sending her two letters ("the investigative letters").

The first of those letters was delivered to Ms Govier in hospital on the day of the incident. It requested her to attend an interview the following day to discuss the matter. Ms Govier, who was covered by a medical certificate, did not attend that interview. On Friday 18 December 2009 Ms Govier received a second letter. That letter shifted the blame for the incident to Ms Govier and it also made significant criticisms of her conduct.

On 18 March 2016 Judge Andrews held that it was not reasonably foreseeable that the contact between Ms Govier and MD on 3 December 2009 was likely to result in Ms Govier sustaining any recognised psychiatric illness. With respect to the sending of the investigative letters however, his Honour found that the timing, manner and content of those letters had caused Ms Govier a sense of betrayal and had foreseeably aggravated her psychiatric injury. Despite this, Judge Andrews still accepted the Employer's argument, based upon *State of New South Wales v Paige* (2002) 60 NSWLR 371 ("Paige") that that proposed extension of the duty of care (into the realm of investigations of workplace incidents) should not be recognised at law.

On 10 February 2017 the Court of Appeal (Fraser & Gotterson JJA; North J) dismissed Ms Govier's subsequent appeal. In doing so, their Honours unanimously endorsed Judge Andrews' finding that it was not reasonably foreseeable that the contact between Ms Govier and MD on 3 December 2009 was likely to result in Ms Govier sustaining any recognised psychiatric illness. Their Honours also endorsed Judge Andrews' conclusion (concerning the investigative letters) on whether a new category of duty of care should be recognised. They concluded that, simply because an injury suffered by an employee was a foreseeable consequence of a lack of reasonable care by an employer, does not of itself justify the creation of a new category of duty of care.

The ground of appeal is:

- The Court of Appeal erred in deciding, in conformity with the decision of the Court of Appeal of New South Wales in Paige that the Employer did not owe Ms Govier a duty of care not to send her the investigative letters.