



HIGH COURT OF AUSTRALIA

Public Information Officer

11 September, 2003

CHRISTOPHER MICHAEL ROGERS v NATIONWIDE NEWS PTY LIMITED

The High Court of Australia today allowed an appeal by Sydney eye surgeon Dr Rogers who had sued for defamation for the misreporting of the circumstances of earlier litigation in which he had been successfully sued by a patient.

Maree Lynette Whitaker was awarded almost \$875,000 in damages and interest by the New South Wales Supreme Court in 1990. Dr Rogers had operated on her blind right eye. She was left blind in both eyes. Dr Rogers was found liable because he had failed to warn Mrs Whitaker of a remote risk in the surgical procedure he recommended and performed. He was not negligent either in recommending the procedure or in the manner in which it was performed.

The Australian Taxation Office assessed the interest component of the award as income and taxed Mrs Whitaker on it. In the Federal Court in 1996 Justice Graham Hill rejected Mrs Whitaker's challenge to the assessment. The Daily Telegraph's story on this second case referred to her being blinded by her surgeon's negligence. The story imputed to Dr Rogers negligence in the performance of the surgery.

Dr Rogers sued Nationwide News, publisher of The Daily Telegraph, for defamation and was awarded \$250,000 by the NSW District Court. Judge Robyn Tupman found that the journalist was more concerned with sensationalism than accuracy and did not check earlier stories in her own newspaper or other newspapers which widely reported the original *Rogers v Whitaker* decision. The NSW Court of Appeal, by majority, allowed an appeal by Nationwide News, holding that the publisher had made out a defence under section 24 of the NSW Defamation Act protecting fair reports of court proceedings. The Court of Appeal also unanimously held that the damages awarded to Dr Rogers were excessive. He appealed to the High Court.

The High Court unanimously held that The Daily Telegraph's story was not a fair report of court proceedings and defamed Dr Rogers by adding to what was actually said by Justice Hill. Nationwide News's conduct in publishing the story was not reasonable in the circumstances so the story was not entitled to the statutory defence of qualified privilege.

The Court also unanimously held that the \$250,000 damages were not excessive.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*