



## HIGH COURT OF AUSTRALIA

Public Information Officer

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BELINDA ANN WILLETT (AN INFANT BY HER LITIGATION GUARDIANS DEBORAH ANN WILLETT AND PATRICK WILLETT) v DUDLEY D FUTCHER

A disabled woman who requires an administrator to manage her affairs was entitled to damages to cover the administrator's costs of overseeing investments on her behalf, the High Court of Australia held today.

In July 1979, at nine weeks of age, Ms Willett suffered severe brain and other injuries as a result of a motor vehicle collision. When she was 23 her action against Mr Futcher went to mediation. He admitted liability and they settled for \$3.85 million compensation plus trustee administration and management charges. As Ms Willett was incapable of managing her affairs she was unable to make a binding agreement to settle her litigation so application was made to the Queensland Supreme Court for approval. Justice John Byrne made orders approving the settlement and appointed Perpetual Trustees Queensland as administrator of Ms Willett's financial affairs. He also gave directions for the subsequent determination of what management fees should be paid to Perpetual.

At the determination hearing before Justice Margaret White, evidence was given as to what fees would be charged by both Perpetual and the Public Trustee based on the fund being reduced to zero when Ms Willett reached the end of her life expectancy of 59. Perpetual anticipated that the present value of the fees it would charge and the outgoings it would incur would total \$876,506 and the Public Trustee expected its fees and outgoings would total \$969,336. Mr Futcher disputed some categories of the charges Ms Willett sought. Justice White allowed an amount of \$180,000 to cover the management fees to be paid by Mr Futcher. This figure covered only an establishment fee and a discretionary portfolio management fee. Justice White disallowed other categories relating to investing Ms Willett's money. After an unsuccessful appeal to the Court of Appeal, Ms Willett appealed to the High Court.

The Court unanimously allowed the appeal. It held that the kinds of costs of managing the damages awarded to persons incapable of managing their own affairs should allow for remuneration and expenditure properly charged or incurred by the administrator of the fund during the life of the fund. No distinction of the kind made by Justice White between investment advice and other services should be drawn in assessing that amount.

The Court ordered that the matter be remitted to the Court of Appeal to reassess the damages to be allowed.

- *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.*