

SUPREME COURT OF QUEENSLAND

CITATION: *Rubasin v Murphy* [2026] QCA 125

PARTIES: **RS RUBASIN**
(applicant)
v
LUCAS MURPHY
(respondent)

FILE NO/S: Appeal No 5631 of 2025
SC No 3927 of 2025

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application – Civil

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 31 October 2025 (Williams J)

DELIVERED ON: 3 July 2026

DELIVERED AT: Brisbane

HEARING DATE: 17 June 2026

JUDGES: Bond JA, Bradley JA, Doyle JA

ORDERS: **1. Order 3 made by the primary judge is deleted and in lieu thereof it is ordered that each party bear their own costs of the application.**
2. Otherwise the orders made by the primary judge are confirmed.
3. Each party must bear their own costs of the appeal.

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – OTHER MATTERS – where the registrar had been directed to refuse to issue the applicant’s originating proceeding without leave of the court – where the applicant sought such leave – where the applicant sought to advance a case alleging breach of a novel duty of care but by way of a seriously deficient statement of claim – where the trial division judge refused leave but on the ground that the alleged duty of care did not arise – where the trial judge’s discretion miscarried by addressing the merits of that question in circumstances where the deficiencies in the pleading were such as to warrant refusal of leave without so doing
Agar v Hyde (2000) 201 CLR 552; [2000] HCA 41, cited
GXB v Tyson [No 2] [2025] WASCA 115, cited
LTS v Police Officer A [2025] QSC 230, cited
Pachkovski v Australian Executor Trustees Ltd [2011] NSWCA 94, cited
Re NYY [\[2025\] QCA 64](#), cited

COUNSEL: The applicant appeared on her own behalf
R K Nattrass for the respondent

SOLICITORS: The applicant appeared on her own behalf
Avant Law for the respondent

- [1] **BOND JA:** The applicant is a self-represented litigant who attempted to file a claim and statement of claim dated 9 August 2025 in the trial division of the Supreme Court of Queensland.
- [2] She claimed the following relief:
- “1) Defendant pay any out-of-pocket expenses for the services incurred to the applicant to use in the proceeding against the Defendant’s report;
 - 2) Aggravated & Punitive damages for falsifying medical reports;
 - 3) Loss of Workcover compensation;
 - 4) Legal and administrative fees incurred from this proceeding to the applicant be paid by Defendant.”
- [3] The statement of claim was a confusing document which often pleaded evidence rather than material fact and failed to distinguish between material fact and particulars.
- [4] Essentially it revealed that the applicant alleged that she had pursued a workers compensation claim for psychological injury arising from workspace bullying; that Workcover had appointed the respondent, a consultant forensic psychiatrist, to examine the applicant; that the respondent had produced a report dated 5 June 2020 and that Workcover had relied on the respondent’s report to reject the applicant’s workers compensation claim.
- [5] In the statement of claim the applicant advanced various complaints about the report the respondent had produced, including by advancing the very serious allegations (not pleaded in the manner that such allegations would warrant) of apparently intentional wrongdoing by the respondent, including that he had –
- (a) misrepresented her responses to his questions to her;
 - (b) fabricated details;
 - (c) falsely diagnosed her; and
 - (d) made manipulated statements within his report.
- [6] The statement of claim, again in a form which did not accord with the rules of pleading (amongst other things because it pleaded rolled up conclusions without an adequate plea of the material facts which would support them), asserted –
- (a) the respondent owed her a duty of care;
 - (b) his diagnosis breached the duty of care by –
 - (i) diagnosing her as having Schizophrenia;

- (ii) making erroneous statements about her in the report which could be regarded as negligent misrepresentations;
 - (iii) making manipulated statements about her in the report;
 - (c) the respondent's conduct in breach of the duty of care caused her loss because it caused her to "lose trust with medical practitioners" and "to record future medical visits" and further to lose the benefits from her workers compensation claim; and
 - (d) she intended to seek –
 - (i) economic loss in the form of full income until she returned to work and medical expenses;
 - (ii) non-economic loss in the form of "rehabilitation benefits" and "change of Applicant's trust in professionals"; and
 - (iii) aggravated and punitive damages.
- [7] Pursuant to UCPR r 15 the registrar referred the proposed originating process to a judge of the Supreme Court before issuing it. The judge responded by directing the registrar to refuse to issue the originating process without leave of the Court. It may be inferred that the registrar complied with the direction.
- [8] The applicant responded by filing an originating application on 3 September 2025 which sought leave to commence proceedings. She did not propose any amendment to either the claim or the statement of claim. The originating application claimed the following relief:
- "1. The Applicant be granted leave to commence proceedings.
 - 2. Respondents pay Aggravated & Punitive damages for misrepresenting, falsifying medical reports to the Applicant.
 - 3. Respondents pay for damages for medical negligence to the Applicant.
 - 4. Respondents pay for the loss of Work Cover claim benefits to the Applicant.
 - 5. Respondents pay any penalties ordered by the Court to the Applicant.
 - 6. Respondents pay for any administrative and further legal fees incurred by the Applicant throughout this proceeding."
- [9] Whilst the first order sought by the originating application was a legitimate procedural response to the registrar's refusal, the commencement of an originating application which by claims 2 to 6 substantially sought to replicate the claims for relief in the claim which the registrar had refused to issue without leave of the court was an obvious abuse of process. Further it could never be regarded as permitted pursuant to UCPR rr 9 and 11(a). If the applicant's intention was that she should be given leave to commence a proceeding in the way she had originally sought to do (namely by filing her claim and statement of claim in their unamended form) then that was the relief that she should have sought by her application. If her intention was that she should be given leave to commence a proceeding but by reference to an

amended form of claim and statement of claim then that was the relief that she should have sought by the application.

- [10] The primary judge had heard submissions on the application on 22 October 2025 and again on 29 October 2025. On the latter occasion her Honour adjourned the application to 2.15 pm on 31 October 2025 and made timetabling directions. During the hearing on 29 October 2025 the applicant had indicated that she would be able to comply with the timetabling directions.
- [11] By email in the afternoon of 30 October 2025, the applicant made an informal adjournment application which she asserted was based on medical grounds. She did not provide any admissible supporting evidence for the application, relying only on an emailed copy of a document purporting to be a medical certificate excusing her from work. The respondent's solicitors informed her that the application for adjournment was opposed. The primary judge's associate informed her that the matter would remain listed, the parties were required to appear and the application for adjournment would be dealt with first, with the resumed hearing continuing if the application failed.
- [12] The applicant failed to appear at the hearing on 31 October 2025. The primary judge gave ex tempore reasons for refusing the adjournment application. Her Honour then proceeded to deal with the application for leave, giving ex tempore reasons for making the following orders:
- “1. Leave to issue the applicant's proposed claim and statement of claim against the respondent dated 9 August 2025 is refused.
 2. The originating application filed 3 September 2025 (“the application”) is otherwise dismissed.
 3. As to costs:
 - (a) The parties bear their own costs for the hearing on 29 October 2025;
 - (b) Otherwise, the applicant pays the respondent's costs of the application on the standard basis.”
- [13] Although the primary judge recognised by reference to authority¹ that an application for leave was not the occasion for a hearing or determination on the merits, the primary judge's ex tempore reasons reveal that she made just such a determination by accepting the submissions from the respondent that “the duty of care as alleged by the applicant does not arise in respect of the particular relationship between the applicant and a medical practitioner who is appointed to undertake an independent medical examination pursuant to the *Workers' Compensation and Rehabilitation Act*.”
- [14] By an application filed in this court on 3 December 2025 the applicant sought to set aside the orders made by the primary judge, save for the costs order in relation to the hearing on 29 October 2025. She then sought an order that the originating application be listed for rehearing by a different applications judge and an order that the parties bear their own costs of the appeal.

¹ *LTS v Police Officer A* [2025] QSC 230 per Burns J at [10].

- [15] The respondent correctly submitted to this Court that the application was in substance an appeal and should have been commenced by notice of appeal not by application and, in any event, the application was out of time by 5 days and should have been advanced by an application for extension of the time within which to appeal. However, the respondent expressly took neither point and invited this Court to deal with the application as though it had been advanced by notice of appeal filed within time. Accordingly, that is the course which should be taken.
- [16] The applicant's material contained a proposed notice of appeal which essentially complained that she had not been afforded procedural fairness in the way in which the primary judge listed the matter for hearing, dealt with her multiple applications for extension of time, and, ultimately refused her application for adjournment. The applicant's written submissions on appeal advanced grounds of appeal which went beyond those identified in the notice of appeal without seeking to amend the proposed notice of appeal, including by (1) suggesting that the primary judge failed to afford the applicant the assistance she should have been given as a self-represented litigant and (2) attempting to engage with the merits of the duty of care question.
- [17] The parties have in their written and oral submissions engaged at length with the merits of the competing arguments. The respondent submitted that no appealable error was demonstrated. Ultimately the respondent submitted, that even if some error could be identified, it remained open for the applicant to remedy the proposed pleading and again seek to prosecute the claim because nothing in her Honour's orders would preclude the applicant permanently from doing so. As such, submitted the respondent, there was no substantial injustice to remedy.
- [18] The orders made by the primary judge are to be regarded as interlocutory orders on matters of practice and procedure from which the appeal is an appeal in the strict sense.² Although there is no absolute rule and each case must be considered in light of its own particular circumstances, generally an appellate court will not interfere with such orders unless, in addition to error of principle, the appellant demonstrates that the order will work a substantial injustice to one of the parties.³
- [19] Where a pleading seeks to assert a novel or unusual cause of action in tort, authority recognises that, particularly if there is any uncertainty in relation to the pleaded material facts, it may be appropriate for a Court to form the view that the question whether the law should recognise the existence of the alleged duty should await a trial rather than to be determined on a strike out, and to exercise its discretion accordingly.⁴ *A fortiori*, it seems to me, when the question arises not on a strike out but on an application for leave to commence a proceeding in relation to a pleading which was sufficiently inadequate as to justify refusal for that reason alone and without seeking to determine the question of the existence of a duty of care. Her Honour erred by deciding to embark on a consideration of the underlying merits of the existence of the alleged duty of care.

² See *Re NYY* [2025] QCA 64 at [37].

³ See *Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd* [2021] QCA 198 at [11] to [14].

⁴ *Agar v Hyde* (2000) 201 CLR 552 at [64] per Gaudron, McHugh, Gummow and Hayne JJ; *New South Wales v Spearpoint* [2009] NSWCA 233 at [26] per Allsop ACJ (with whom Beazley JA agreed) and cf *Perera v Genworth Financial Mortgage Insurance Pty Ltd* (2017) 94 NSWLR 83 at [32] to [38] per Leeming JA; *Sedgwick Australia Pty Ltd v JLOC Super Pty Ltd* [2024] QCA 218 at [15] per Bond JA, with whom Callaghan and Crowley JJ agreed.

- [20] It is not necessary to seek to resolve whether there is any merit in the other matters of which the applicant complains. I do observe, however, that the attempt to justify an adjournment by the mere email provision of a generic general practitioner's medical certificate is to be deprecated as unlikely to be regarded by a judicial officer to constitute cogent evidence justifying an adjournment. Guidance on relevant considerations is to be found in *Pachkovski v Australian Executor Trustees Ltd*⁵ and *GXB v Tyson [No 2]*.⁶
- [21] The exercise of discretion by the primary judge having miscarried for the reasons I have explained, it falls to this Court to exercise the discretion afresh. Although the deficiencies in the applicant's pleading were drawn to her attention during the course of argument in this Court, the applicant was unable to develop any persuasive reason why she should have leave to commence a proceeding without having first addressed the deficiencies. In my view the inadequacies of the claim and the statement of claim are such as to warrant a refusal of the exercise of the discretion to grant leave to commence the proceeding by filing the claim and the statement of claim in their present form. I would not interfere with the first order made by the primary judge. Nor, for reasons already advanced would I interfere with the second order made by the primary judge.
- [22] The question of what should occur with costs is more difficult. The respondent won below but for reasons he should not have. Although it is axiomatic that appeals are against orders not reasons, the applicant was justified in seeking to overturn the orders because the decision by the primary judge on the point of law may have proved an obstacle for any subsequent attempt to plead the case in tort. Arguably it was the ratio for the primary judge's decision. Moreover, the way in which the respondent put its arguments below operated to deny the applicant the opportunity to engage with the deficiencies of her pleaded case and to seek to bring the application for leave on the basis of an amended pleading. In all the circumstances of this case, the proper disposition of costs is that each party should bear their own costs of the application and of the appeal.
- [23] For completeness and in case the applicant does subsequently seek to re-apply for leave but in relation to a reformulated claim and statement of claim, I record that it is not clear whether the applicant's claim for non-economic loss in the form of "rehabilitation benefits" and "change of Applicant's trust in professionals" should be regarded as a claim for damages based on liability for personal injury within the meaning of the *Personal Injuries Proceedings Act 2002*.⁷ If it should be so regarded, and the applicant fails to comply with the provisions of that Act before seeking to commence a proceeding, that might well be another reason why leave to commence would be refused.
- [24] I record further that I express no view on the question whether it is possible to plead the duty of care on which the applicant apparently seeks to rely in such a way as would survive a strike out application, in the event leave to commence was ever given. I would not be prepared to express a view on that question in the absence of complete argument and in relation to a pleading which properly expressed relevant material facts.

⁵ *Pachkovski v Australian Executor Trustees Ltd* [2011] NSWCA 94.

⁶ *GXB v Tyson [No 2]* [2025] WASCA 115.

⁷ The latter proposition particularly seemed as if it was intended to encompass some compensable psychological injury.

[25] I would order:

1. Order 3 made by the primary judge is deleted and in lieu thereof it is ordered that each party bear their own costs of the application.
2. Otherwise the orders made by the primary judge are confirmed.
3. Each party must bear their own costs of the appeal.

[26] **BRADLEY JA:** I agree with Bond JA.

[27] **DOYLE JA:** I have read and agree with the draft reasons for judgment of Bond JA and with the orders proposed by his Honour.