



HIGH COURT OF AUSTRALIA

13 April 2022

ZAGI KOZAROV v STATE OF VICTORIA [2022] HCA 12

Today, the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. The appellant was employed by the respondent as a solicitor in the Specialist Sexual Offences Unit ("the SSOU") of the Victorian Office of Public Prosecutions. The primary question in the appeal was whether the respondent's failure to take reasonable measures in response to "evident signs" of the appellant's psychiatric injury from vicarious trauma suffered in that role caused the exacerbation and prolongation of the appellant's psychiatric injury.

The appellant commenced employment in the SSOU in June 2009. Her work there involved "cases of an abhorrent nature involving child rape and offences of gross depravity". In February 2012, the appellant was diagnosed with post-traumatic stress disorder resulting from vicarious trauma which she had suffered in the course of employment. The appellant was later diagnosed with major depressive disorder as a corollary of her post-traumatic stress disorder.

The appellant sued the respondent and was awarded damages for negligence at trial. On appeal, the Court of Appeal upheld the trial judge's finding that the respondent had been placed on notice of a risk to the appellant's mental health by the end of August 2011. However, the Court of Appeal rejected the trial judge's finding that, at the end of August 2011, the appellant would have accepted an offer to rotate out of the SSOU. On that basis, the Court of Appeal found that the respondent's breach of duty did not cause the exacerbation of the appellant's psychiatric injury between August 2011 and the appellant's departure from the SSOU in February 2012.

The High Court found that the respondent had been placed on notice by the end of August 2011 that the appellant was at risk of harm from her work. The High Court also found that the Court of Appeal erred in rejecting the trial judge's finding that the appellant would have co-operated with steps to rotate the appellant out of the SSOU, had those steps been taken subsequent to occupational screening at the end of August 2011. The considerations supporting that conclusion included: the appellant's cooperative conduct in February 2012 in liaising with the respondent about her future role; her preparedness to be assessed by a psychologist in August 2011; and expert evidence led at trial that a very significant majority of people, if assessed as having a work-related psychiatric injury, and after having had the diagnosis and its relevant consequences explained to them, will accept the advice of a clinician in respect of that injury. The Court of Appeal thus erred in finding a lack of causation between the breach of duty and the appellant's injury.

- *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.*