HIGH COURT OF AUSTRALIA

4 November 2026

ESTATE OF THE LATE GEOFFREY CROFT v MTH
[2026] HCA 44

Today, the High Court unanimously allowed in part an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales that had allowed an appeal from a decision of the Supreme Court of New South Wales which had, in turn, dismissed the claim of the first respondent, MTH, for damages against the appellant, the estate of the late Mr Geoffrey Croft ("the Estate"). The High Court ordered that the proceedings between the Estate and MTH be retried.

In February 1979, MTH, then 16 years old, was placed in temporary foster care with Mr Croft and his wife. In 2019, Mr Croft was convicted of offences involving the sexual abuse of MTH while under his care. In 2020, MTH commenced proceedings relevantly against Mr Croft seeking damages for assault. Prior to the hearing of those proceedings, Mr Croft died. The Estate was substituted as a defendant for Mr Croft.

MTH appeared for herself at trial. Although the Estate accepted that Mr Croft had been convicted of offences against MTH, it denied that Mr Croft abused MTH. The primary judge held that s 91(1) of the *Evidence Act 1995* (NSW) precluded evidence of the convictions being used as evidence of that abuse and dismissed MTH's claim against the Estate.

MTH appealed to the Court of Appeal. The Court of Appeal upheld the appeal, holding that the primary judge had erred in misapplying ss 91 and 92 of the *Evidence Act*, and wrongly rejected the use of the convictions as proof of Mr Croft's sexual abuse. It also held the primary judge had an obligation to ensure that MTH did not, because of lack of legal skill, fail to claim rights or put forward legal arguments. The Court of Appeal determined MTH's claim "as if" a certificate of conviction had been tendered at first instance. The Court substituted judgment in MTH's favour and reassessed damages.

The Estate appealed to the High Court. The High Court held the Court of Appeal erred in holding that the primary judge had an obligation to ensure that MTH did not, because of a lack of legal skill, fail to claim rights or put forward legal arguments. The High Court further held that the Court of Appeal erred in holding that it was appropriate for that Court to decide the appeal "as if" a certificate of conviction had been tendered, and by reassessing damages on that basis. However, the High Court held that the Court of Appeal was correct in finding that the primary judge had proceeded on an incorrect understanding of ss 91 and 92 of the *Evidence Act*. Contrary to the primary judge's approach, the evidence of Mr Croft's convictions was admissible as proof of the relevant acts of sexual abuse to which those convictions pertained.

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.

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