HIGH COURT OF AUSTRALIA

13 August 2020

STATE OF QUEENSLAND v THE ESTATE OF THE LATE JENNIFER LEANNE MASSON
[2020] HCA 28

Today, the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland ("the QCA"). The High Court held that the State of Queensland, as provider of ambulance services under the name "Queensland Ambulance Service" ("QAS"), was not liable in negligence, either vicariously or directly, by reason of the failure of its ambulance officers to promptly administer adrenaline to Jennifer Masson, a chronic asthmatic, who suffered a severe asthma attack.

On the night of 21 July 2002, Ms Masson collapsed outside a friend's house in Cairns. On arrival, Clinton Peters, the intensive care paramedic responsible for treating Ms Masson, observed that she was in respiratory arrest and had high blood pressure and a very high heart rate. He elected to administer intravenous salbutamol, which like adrenaline acts as a bronchodilator. Initially, Mr Peters considered Ms Masson's condition to be improving, however during transportation to hospital her vital signs worsened. At this point, the officers switched to administering adrenaline but, by the time of arrival at Cairns Base Hospital, Ms Masson had sustained severe, irreversible brain damage due to oxygen deprivation. She lived in a vegetative state until her death in 2016.

Proceedings were commenced on Ms Masson's behalf seeking damages in negligence and the claim survived in the hands of her estate. The trial judge found that: (1) Mr Peters had considered administering adrenaline at the outset, as recommended by the QAS Clinical Practice Manual ("the CPM"), but decided against doing so because of the risks associated with using adrenaline on a patient with Ms Masson's high heart rate and blood pressure; and (2) in 2002 a responsible body of opinion within the medical profession supported the view that those presenting symptoms provided a sound basis for preferring salbutamol to adrenaline in the initial stage of treatment ("the body of opinion finding"). On appeal, the QCA determined that Mr Peters had failed to consider using adrenaline, as he mistakenly regarded himself as precluded from doing so by the CPM. Additionally, their Honours held that the body of opinion finding was not supported by evidence, and that even if there had been such a body of opinion and Mr Peters had been aware of it, departing from the CPM by not administering adrenaline would nonetheless have amounted to a want of reasonable care.

Having granted special leave to appeal, the High Court restored the findings of the trial judge. In two sets of reasons the Court stated that the trial judge's conclusion, that Mr Peters made a clinical judgment not to administer adrenaline because of Ms Masson's high heart rate and blood pressure, was neither contrary to compelling inferences nor glaringly improbable – it should not have been overturned. Contrary to the QCA's reasons, the decision not to administer adrenaline did not contravene the guidance in the CPM, which was a flexible document that permitted the exercise of clinical judgment. Nor was the decision negligent, as it conformed with a responsible body of professional opinion. The plurality observed that, in concluding otherwise and rejecting the body of opinion finding, the QCA disregarded the evidence of expert witnesses called by the State by reason of their Honours' acceptance of a submission as to the superiority of adrenaline. That submission was based on a contention that had not been put to any of the expert witnesses at the

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trial and should not have been accepted. Nettle and Gordon JJ stated that the QCA's reasoning effectively required that in order to constitute a "responsible" or "respectable" body of opinion, a view must be shared by a majority of the relevant profession; this is not so. In the circumstances, Mr Peters' treatment of Ms Masson did not fall below the standard of care expected of an ordinary skilled intensive care paramedic.

- *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.*