LEVEL TWENTY SEVEN CHAMBERS

***State of Queensland v The Estate of the Late Jennifer Leanne Masson* (B63/2019)**

Judgment Notes
13 August 2020

Background facts
Ms Masson was a 25 year old with chronic asthma. In 2002, she suffered a severe asthma attack at a friend's house in Cairns. An ambulance was called for and arrived a few minutes later. Queensland Ambulance Service (QAS) officers provided immediate treatment which included the administration of the drug salbutamol. About 20 minutes later, when transporting Ms Masson to a hospital, her condition deteriorated, and the officers administered the drug adrenaline. She received further doses of adrenaline on arrival at the hospital.

Asthma is a disease characterised by inflammation and constriction of the bronchial passages, causing breathing difficulty. In severe cases such as Ms Masson's, the results of oxygen deprivation are life threatening. Salbutamol and adrenaline are drugs which facilitate breathing by dilating the bronchial passages.

Ms Masson had virtually stopped breathing by the time the QAS arrived on the scene. By the time she arrived at hospital, Ms Masson had suffered irreversible brain damage from oxygen deprivation. Ms Masson lived in a vegetative state until 2016, receiving around the clock care. The claim was started before her death and continued by her estate.

Issues at first instance and Court of Appeal proceedings
The trial judge held that the paramedics had acted with reasonable care, by considering the use of adrenaline but preferring the use of salbutamol; which the trial judge found was consistent with the course suggested by a responsible body of medical opinion. The trial judge also made a finding that (if negligence had been shown) the earlier administration of adrenaline would have avoided Ms Masson's brain damage.

Court of Appeal Findings
The QCA found that, to show reasonable care to their patients, QAS officers should follow the clinical practice manual provided by the QAS to its officers. A QAS officer is not expected to make the fine professional judgments of a medical specialist, due to their more limited medical education, training and experience. It is not consistent with the exercise of reasonable care and skill for an ambulance officer to depart from the guidance provided in the clinical practice manual. The manual indicated a preference for the administration of adrenaline to patients at risk of imminent arrest cardiac.

The clinical practice manual did this by directing a QAS officer, for a patient presenting with Ms Masson's symptoms, to "consider adrenaline". The QAS officer (it was held on appeal) did not actually consider the administration of adrenaline but immediately rejected it, not because of a clinical judgment, but because the paramedic misunderstood the clinical practice manual by thinking that in no case was adrenaline to be given to a patient who was not bradycardic. Ms Masson was tachycardic at the time salbutamol was administered. The QCA held the clinical practice manual did not suggest salbutamol as an alternative to adrenaline for severe bronchospasm with imminent arrest.

The QCA reversed the finding of the trial judge who found the use of salbutamol was a reasonable response given Ms Masson had a rapid heart rate and high blood pressure. This finding, the QCA held, was not supported by the evidence.

The QCA unanimously found that the QAS officer was negligent for not administering adrenaline immediately on arrival in accordance with the clinical practice manual, and the QAS was vicariously liable.

High Court Findings
The High Court held that the QAS officer had not been shown to have acted negligently, because he did consider the administration of adrenaline, but rejected its use as not appropriate because of the risks of such a drug for someone presenting with Ms Masson's conditions (of high blood pressure and high heart rate). This was in accordance with a responsible body of medical opinion (even if not the majority opinion). The court also reversed the Court of Appeal's decision departing from the factually finding of the primary judge in circumstances which did not meet the test in *Fox -v- Percy*.

It was ordered that the Court of Appeal orders be set aside and, in their place, it should be ordered that the appeal to the Court of Appeal be dismissed with costs.

Shane Doyle QC and Roger Traves QC (with CJ Fitzpatrick) appeared for the appellant, instructed by Crown Solicitor (QLD).

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