



Summary of Judgment

STEPHANIE MORTIMER v IAIN WEST (IN HIS ROLE AS DEPUTY STATE CORONER)

[2018] VSCA 188

2 August 2018

Today, the Court of Appeal (Tate, McLeish JJA and McDonald AJA) allowed an appeal against an order made by a judge of the Trial Division of the Supreme Court dismissing a proceeding brought by Mrs Stephanie Mortimer against the refusal of the Deputy State Coroner ('the Coroner') to re-open an investigation into the death of Mrs Mortimer's sister, Ms Robena Lloyd.

The Coroner found that Ms Lloyd died on 7 August 2009 from *enterococcus faecalis sepsis* and acute renal failure following her discharge two days earlier from the Angliss Hospital, Upper Ferntree Gully ('the Hospital'). The Coroner was satisfied that the Hospital's medical and nursing management of Ms Lloyd was acceptable and within the parameters of reasonable health care practice. He commented that there was no indication when Ms Lloyd was discharged from the Hospital that she would re-present just 40 hours later with overwhelming sepsis and renal failure.

Mrs Mortimer sought to have the Coroner re-open his investigation on the basis of new facts and circumstances. The Coroner held that the new facts and circumstances relied upon did not alter previously accepted facts so as to make the earlier findings unsustainable and, therefore, it was not appropriate to re-open the investigation.

The judge below held that the Coroner had not erred in applying the test he did.

The Court of Appeal held that the test applied by the Coroner was overly stringent and had no foundation in the relevant statutory language. It held that if the Coroner had applied the correct test it may have led to a different outcome. The Coroner's decision thus involved an error on a question of law.

The Court set aside all the findings of the Coroner and remitted the matter to the Coroners Court for the investigation to be re-opened.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.