



Friday, 18 October 2024

Weekly Wills, Estates and Superannuation Law

A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering Wills Estates and
Superannuation Law

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Executive Summary (One Minute Read)

Z v St Vincent's Hospital Sydney Ltd (NSWSC) - Court restrained hospital from withdrawing life support from motor accident victim for eight days, to enable parents to raise funds to transport her to China for treatment they hoped would be effective

State of New South Wales v Gill (NSWSC) - custody of the body of a deceased aboriginal woman granted to her biological family, rather than her purported de facto

HABEAS CANEM

Peace



Summaries With Link (Five Minute Read)

Z v St Vincent's Hospital Sydney Ltd [2024] NSWSC 1270

Supreme Court of New South Wales

Hammerschlag CJ in Eq

Parens patriae jurisdiction - a young woman sustained serious brain injuries in a motor accident - the uncontradicted medical evidence of a neurosurgeon was that she had a catastrophic brain injury from which she would not recover - the woman's parents came to Australia from China and wanted to arrange for her to be medically transported to Shanghai, believing that she might receive treatment there which may have some beneficial outcome - the parents obtained an interlocutory injunction requiring the hospital to continue to provide life support - the Court now considered final relief, and whether the Court should appoint the parents as the woman's guardians and make orders to facilitate the medical transport to China - held: the evidence was slim as to the parent's ability to raise the funds that would be required, but the parents thought they could raise the funds in about seven days - the Court gave due weight to the hospital's contention that medical practitioners will not be ordered by a Court to provide treatment where it is inconsistent with their medical opinion and not in accordance with what they see to be their ethical responsibilities and applicable codes of conduct - despite the grim medical predictions, some degree of credit must be given to the hopes of her parents and family for some recovery - the Court considered that life support (by way of intubation) should be maintained for eight days, but no more, to give the parents an opportunity to raise the required funds - the hospital should not be ordered to provide resuscitation (as opposed to maintaining life support without resuscitation) during this period, as this would be contrary to what the hospital said were the medical practitioners' ethical responsibilities.

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State of New South Wales v Gill [2024] NSWSC 1263

Supreme Court of New South Wales

Lindsay J

Burial rights - a Wiradjuri woman died intestate with no substantial assets - her remains were held at Newcastle Forensic Medicine in the John Hunter Hospital - a person who claimed to be the deceased's de facto spouse identified as Bundjalung - the biological family said that cremation was an acceptable option within their community, and said that the purported de facto was in reality her pimp - the purported de facto insisted upon a burial according to indigenous custom as he perceived it to be - the Court had granted letters of administration to the deceased's mother - the State commenced proceedings for directions on what to do with the deceased's remains but disclaimed an adversarial role - the adversarial parties initially consented to orders that the body be released to the mother for burial at a cemetery favoured by the purported de facto, according to a regime predicated upon co-operation between the parties - the mother disclaimed that agreement, contending that she was unfairly pressured by her then solicitor - held: no party was now willing to proceed in accordance with the consent

orders - the State had standing to bring the current proceedings, as any person, even a stranger, has standing to apply to the Court for directions in the exercise of its inherent jurisdiction regarding the orderly disposal of a dead body, although the Court must remain diligent to deny standing to any applicant reasonably perceived to be officious or motivated by an improper purpose - there is generally no property in a dead body of a human and that, in the determination of a dispute about disposal of a body, there is a strong public interest element that may prevail over private claims of any type - at the time of her death, the deceased had been living temporarily in a shed at the back of her parents' house and with her children in the care of her parents, and had been dependent upon her parents and, quite possibly, her siblings generally - the deceased's closest connection appeared objectively to have been with the community of her biological family, a connection never severed - the logistics favoured the biological family, given their preparedness to undertake to the Court that, at their own expense, they would move expeditiously to have the deceased's body cremated - the biological family should have custody of the body as they proposed - the Court declined to make an order that the biological family to give notice of the funeral arrangements to the purported de facto or to involve him in those arrangements, and considered that this should be left to the collective judgement of the family.

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Aquino v Bondfield Construction Co (SCC) - The fraudulent intent of a senior employee, found to be the directing mind of companies, can be attributed to the companies in a bankruptcy proceeding

Summaries With Link (Five Minute Read)

Aquino v Bondfield Construction Co 2024 SCC 31

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Jamal, & O'Bonsawin JJ

The President of two family-owned construction companies had for years fraudulently taken tens of millions of dollars from the companies through a false invoicing scheme. In subsequent bankruptcy proceedings against the companies, the payments made under the invoicing scheme were challenged under the *Bankruptcy and Insolvency Act*. Under the Act, money paid by the debtor can be recovered if the transfers were made at undervalue with the intent to defraud creditors. The lower court concluded that these were payments made at undervalue with fraudulent intent. The bankrupt entities contended that the payments were made to creditors and that fraudulent intent was not present. The Court held that the executive's fraudulent intent could be attributed to the bankrupt companies and that the money should be paid back. The Supreme Court (Jamal J, joined by Wagner CJ, Karakatsanis, Côté, Rowe, Martin, O'Bonsawin JJ) dismissed the appeal and held that the courts could find that a debtor intended to defraud creditors even if the debtor was not insolvent at the time of the undervalue transfers. Specifically, the executive's fraudulent intent should be attributed to the debtor companies because he was their directing mind. The Supreme Court stated that the test for corporate attribution is simply whether the executive was the directing mind of the business and whether the actions were performed within the corporate responsibility assigned to him. If so, the fraudulent intent of the executive could be attributed to the corporation.

[Aquino](#)

Poem for Friday

In My Craft or Sullen Art

By Dylan Thomas (1914-1953)

In my craft or sullen art
Exercised in the still night
When only the moon rages
And the lovers lie abed
With all their griefs in their arms,
I labour by singing light
Not for ambition or bread
Or the strut and trade of charms
On the ivory stages
But for the common wages
Of their most secret heart.
Not for the proud man apart
From the raging moon I write
On these spindrift pages
Nor for the towering dead
With their nightingales and psalms
But for the lovers, their arms
Round the griefs of the ages,
Who pay no praise or wages
Nor heed my craft or art.

Dylan Marlais Thomas, poet, writer and broadcaster, was born on 27 October 1914 in Swansea, Glamorgan, Wales. His well-known works include *Under Milk Wood*, "a play for voices", *Do not go gentle into that good night*, and, *And death shall have no dominion*. He loved Wales but was not a Welsh nationalist. His father wrote that he was "*afraid Dylan isn't much of a Welshman*". Robert Lowell, wrote of criticism of Thomas' greatness as a poet, "Nothing could be more wrongheaded than the English disputes about Dylan Thomas's greatness...He is a dazzling obscure writer who can be enjoyed without understanding." The Welsh Academy Encyclopedia of Wales described him, and particularly his life in New York City before his death as a "roistering, drunken and doomed poet."

Dylan Thomas reads "In My Craft or Sullen Art"

<https://www.youtube.com/watch?v=Tiw3uOT2eUc>

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian



parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage

actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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