

## *Hunter and New England Local Health District v McKenna*

### *Hunter and New England Local Health District v Simon* [2014] HCA 44

#### Background

Phillip Pettigrove suffered from chronic paranoid schizophrenia. In July 2004, he was admitted to and detained at Manning Base Hospital where he received treatment for his mental illness. Dr Warwick Coombes, a psychiatrist at the Hospital who examined Mr Pettigrove concluded that Mr Pettigrove was a “mentally ill person”. The medical superintendent at the Hospital, Dr Kay Wu, certified that Mr Pettigrove was a “mentally ill person”.

Dr Coombes consulted with Mr Pettigrove, Mrs Pettigrove’s mother and Mr Pettigrove’s friend Mr Stephen Rose about how Mr Pettigrove would be cared for. It was agreed that Mr Pettigrove would stay at the Hospital overnight and that the next day he would be released, and Mr Rose would drive him to Mr Pettigrove’s mother’s house. During the journey to Mrs Pettigrove’s home, Mr Pettigrove murdered Mr Rose before killing himself.

#### District Court Proceedings

Two separate proceedings were commenced: one brought by Mr Rose’s sister and the other by Mr Rose’s mother (**plaintiffs**). The District Court held that it was convenient to deal with the two proceedings together. The plaintiffs alleged that Dr Coombes and the Hospital (**defendants**) did not exercise reasonable care and skill in discharging Mr Pettigrove from the Hospital and into Mr Rose’s care.

The question before the Court in the proceedings was whether either or both the Hospital and Dr Coombes owed Mr Rose, or his relatives, a duty of care that was breached by discharging Mr Pettigrove into the company of Mr Rose. The trial judge found that there had been no breach of duty and entered judgment in both proceedings in favour of the defendants.

His Honour held that it was not shown that a reasonable person in the position of the defendants would have concluded that there was a not insignificant risk of Mr Pettigrove behaving the way he did. Further, the defendants had acted in a way that was widely accepted in Australia by peer professional opinion as competent professional practice.

#### Court of Appeal

The plaintiffs appealed the District Court’s findings to the New South Wales Court of Appeal. The Court of Appeal held that the defendants owed a duty of care not to release Mr Pettigrove, a mentally ill person, from Hospital into the care of Mr Rose. The Court held that the defendants were negligent in so doing and this negligence caused the injuries to Mr Rose and his relatives.

## High Court

The defendants appealed the Court of Appeal's decision to the High Court of Australia, submitting that the Court of Appeal erred in finding a duty of care existed between the Hospital and Mr Rose's relatives.

The High Court considered sections 4 and 20 of the *Mental Health Act 1990* (NSW). The High Court noted that section 4 provided that interference with the lives of mentally ill individuals was to be kept to a minimum while section 20 provided that mentally ill individuals were not to be detained unless no other care of a less restrictive kind was appropriate and reasonably available. In light of these two provisions the High Court held that such an alleged duty by the plaintiffs was inconsistent with the *Mental Health Act 1990* (NSW).

## Our Observations

The duty of care owed by members of the medical profession to third parties will be considered and constructed in conjunction with the duties medical practitioners owe to their clients or patients. In this instance, the scope of the duty of care owed by the defendants to Mr Rose and his relatives was impacted by the constraints placed on the defendants' duties to their patient by sections 4 and 20 of the *Mental Health Act 1990* (NSW).

The High Court did not, however, determine many of the Civil Liability Act issues raised in the Court of Appeal proceedings (refer to our earlier article in the 2014 newsletter). We await further judicial guidance on these issues.

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