

[2002] QSC 225

SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION
FRYBERG J

No 1106 of 2002

EDNA EILEEN STEWART

Applicant

and

ALWYN ALFRED WOODS

Respondent

BRISBANE

..DATE 14/06/2002

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application for directions in a pending originating application. The originating application is for criminal compensation. The circumstances in which it was made have been set out in reasons for judgment which I delivered on 12 June. I shall not repeat them.

The issue today is whether the action is incorrectly constituted at present, whether the Public Trustee of the Northern Territory should be substituted as a respondent and, if so, what further steps should be taken in the proceedings.

At the outset Mr Kimmins, on behalf of the applicant, conceded that the application is presently incorrectly constituted. That is because the named respondent is dead and was known to be dead when the application commenced.

The Public Trustee of the Northern Territory has administered his estate and one would assume that this is some indication that he died domiciled in the Northern Territory. However, that is not necessarily the correct conclusion of fact, a matter to which I shall revert in a moment.

The Public Trustee, however, has acted as the personal representative and is the only person asserting a claim so to act. It seems to me that these circumstances, regardless

of whether or not administration has been granted by a Court, the Public Trustee should be the respondent in the proceedings.

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It is important that there be a respondent because any order which is made in the proceedings will be binding on the estate of the deceased man who was the perpetrator of the offence giving rise to the application. On one view of the law this may lead to a right to trace assets into the hands of beneficiaries, even if the personal representative no longer has any assets in his hands.

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In addition, there are a number of complex questions of law which may arise in the application. I have referred to them briefly in my earlier reasons for judgment. It is important that there be a contradictor before the Court to ensure the proper presentation of the relevant issues. The process of litigation in our Courts is rendered much more difficult if complex questions of law have to be determined ex parte. For that reason, the assistance which could be given by the Public Trustee would be considerable.

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More importantly, any judgment which is given will be binding on the Public Trustee. The Trustee will, therefore, have a significant interest in placing the true facts in relation to the administration before the Court, particularly in identifying whether the domicile of the man Woods was in the Northern Territory at the time of his death, what the assets of the estate were, if any, who the

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beneficiaries were, if any, and in raising any plea of plene administravit if such a plea is to be raised. There are also issues relating to limitation periods which the Trustee might think fit, or might not think fit, to raise, and possibly, issues relating to Northern Territory succession law.

It is, of course, a matter for the Public Trustee to determine what course should be taken but at this stage the proper course, it seems to me, is for the application to be served and if there is no appearance then, no doubt, the matter can proceed to judgment if that is the proper course upon the filing of an affidavit of service.

I should record that in the event that there is no appearance for the Public Trustee it may be that this is a case in which I should follow the course which was adopted by the Court of Appeal in the matter of Julie v. Atwell, [2001] QCA 510, where the Court invited the Attorney-General to be represented and to address submissions to the Court. The need for that will depend upon the presence or otherwise of the Trustee and it would be premature to say anything further about that possibility at the present time.

Consequently, I direct that the Public Trustee for the Northern Territory be substituted as respondent for Alwyn Alfred Woods. I direct that in addition to the application and the affidavits intended to be relied on, the applicant serve on the Public Trustee:

- (a) The reasons for judgment published on 12 June 2002;
- (b) A copy of this order; and
- (c) A copy of the reasons for this order.

I adjourn the application to 10.00 a.m. on the 3rd of July 2002. I grant liberty to apply. I order that costs be reserved.

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