

SUPREME COURT OF QUEENSLAND

CITATION: *Reid & Ors v Crimp & Ors* [2004] QSC 305

PARTIES: **TANYA REID AND SONIA WICKS AND MELINDA CRIMP**
(applicants)
v
CHERRIE CRIMP AND NEIL JUDGE
(first respondents)
and
AUSTRALIAN HERITAGE FUNERALS TOOWOOMBA
(second respondent)

FILE NO: BS7669 of 2004

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 15 September 2004

DELIVERED AT: Brisbane

HEARING DATES: 1 & 3 September 2004

JUDGE: Wilson J

ORDERS: **1) That the first respondents pay the applicants' costs of and incidental to the hearing on 3 September 2004 to be assessed on the standard basis;**
2) that the first respondents pay the second respondent's costs of and incidental to the hearing on 3 September 2004 to be assessed on the standard basis;
3) that there be no order as to the costs reserved on 1 September 2004.

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where applicants granted urgent interim injunction to restrain cremation – where costs of application for interim injunction reserved – where application for injunction ultimately successful – where second respondent acted properly on instructions from first respondents.

COUNSEL: PW Hackett (1 September 2004) and KS Howe (3 September 2004) for the applicants
DA Skennar for the first respondents

SOLICITORS: Barry & Nilsson for the applicants
Doyle Wilson Solicitors for the first respondents

Alroe & O'Sullivan for the second respondent

- [1] **WILSON J:** On 1 September 2004 Mr Hackett of counsel appeared before me to seek an urgent interim injunction to restrain a cremation which was to take place that afternoon. He relied on the speed with which the funeral and cremation had been arranged to ground suspicions about the death and whether the first respondents were indeed the executors with authority to make those arrangements. He told the Court his clients wanted time to view the body before the cremation took place. He did not rely on the provisions of the *Cremations Act* 2003 until they were raised by the Court. An interim injunction was granted. Costs were reserved.
- [2] On the return of the application 2 days later, Mr Howe of counsel appeared for the applicants, Ms Skennar of counsel for the first respondents and Mr Alroe, solicitor, for the second respondent. The applicants had viewed the body. Their concern had shifted to a desire to fulfil what they asserted was the deceased's wish to be buried. Their counsel invoked s 8 of the *Cremations Act*, and the decision turned on the proper construction of that section.
- [3] The second respondent was retained by the first respondents to arrange the funeral and cremation. The cremation was to be carried out by a public crematorium. At all times the second respondent acted properly in following the instructions of the first respondents in relation to arrangements for a private funeral to be followed by cremation. It did not know that the applicants wanted any more than to view the body until one of its proprietors, Mrs McGrath-Colquhoun, received a phone call from the applicant's solicitor while the application for an interim injunction was being heard, in the course of which the solicitor referred to breach of the *Cremations Act* because his clients had objected to the cremation. Had the second respondent known of the objection earlier, it would not have proceeded with arrangements for the cremation.
- [4] The applicants were ultimately successful in stopping the cremation. They should have an order for costs against the first respondents, but those costs should be limited to the costs of and incidental to the hearing on 3 September 2004 only. There is no warrant for those costs being assessed on other than the standard basis.
- [5] In my view the applicants acted reasonably in joining the second respondent, as it was acting (on instructions from the first respondents) to facilitate the cremation. The second respondent's costs of and incidental to the hearing on 3 September 2004 should be paid by the first respondents on the standard basis.
- [6] I order –
- (i) that the first respondents pay the applicants' costs of and incidental to the hearing on 3 September 2004 to be assessed on the standard basis;

- (ii) that the first respondents pay the second respondent's costs of and incidental to the hearing on 3 September 2004 to be assessed on the standard basis;
- (iii) that there be no order as to the costs reserved on 1 September 2004.