

**COURT OF APPEAL**

**FRASER JA**

**Appeal No 2436 of 2016  
SC No 12809 of 2005**

**CATHERINE YU  
HELENA YU**

**Applicants**

**v**

**CHIEF EXECUTIVE, DEPARTMENT OF  
JUSTICE AND ATTORNEY-GENERAL**

**Respondent**

**BRISBANE**

**WEDNESDAY, 9 MARCH 2016**

**JUDGMENT**

**FRASER JA:** This is a terribly sad case. In January of this year, Justice Daubney resolved a dispute between the applicants, who are the executors of the estate of their mother who died many years ago, and the respondent, who is the chief executive of the Department of Justice and Attorney-General. At the end of the hearing, Justice Daubney made orders in accordance with s 3 of the *Burials Assistance Act* 1965 that the chief executive shall direct Simplicity Funerals to release the deceased's body into the possession of the chief executive or such person as the chief executive nominates. Justice Daubney declared that Simplicity Funerals was entitled to act upon that direction and ordered that following the release of the deceased's body pursuant to orders 1 and 2 the chief executive shall cause the deceased's body to be buried in accordance with the rites of the Catholic Church as soon as practicable. His Honour also made an order as to the place of burial.

Section 3(1) of the *Burials Assistance Act* 1965 provides that:

“It shall be the duty of the chief executive to cause to be buried or cremated the body of any person who has died or who has been found dead in Queensland, in any case where it appears to the chief executive that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the chief executive.”

The applicants have filed, out of time, a notice of appeal against the decision of Justice Daubney. The sole ground of the appeal is that the reliance upon s 3 of the *Burials Assistance Act* 1965 implied the deceased had no family and for that reason there were no arrangements for her burial. As is pointed out for the chief executive there is really no merit at all in an argument that there is any such implication in s 3(1).

In this case the evidence uniformly pointed in the direction of a finding in terms of s 3(1) that no suitable arrangements for the disposal of the body have been or are being made other than by the chief executive.

The factual background may be summarised very briefly. The deceased died on 15 November 2002 at the Princess Alexandra Hospital in Brisbane. An autopsy conducted shortly afterwards found that the deceased had died from hyperkalaemia due to, or as a consequence of, acute renal failure, with end stage pulmonary fibrosis another significant factor. The applicants were dissatisfied with the autopsy and petitioned the Attorney-General to direct an inquest into their mother's death. The relevant minister gave such a direction in the middle of 2007, and thereafter the State Coroner conducted an inquest.

The findings of the State Coroner, published in mid-2009, revealed agreement with the autopsy as to the causes of death. The coroner rejected claims which had been advanced by the applicants that the treatment of their mother had been inappropriate. Subsequently, the applicants applied for statutory review of the inquest and for an injunction against the Attorney-General to prevent the Attorney from burying the deceased's body. Both applications were dismissed by a judgment given in the trial division of the Supreme Court in the middle of 2010. The applicants filed an appeal against that decision to the Court of Appeal, but subsequently consented to their appeals being dismissed in March 2011. Shortly before then, in late February

2011, the applicants approached Simplicity Funerals to conduct the burial and requested the coroner to release the body to Simplicity Funerals. The coroner ordered the release of the body in February 2011 and Simplicity Funerals took possession of the body.

Since then, however, the applicants have refused to allow Simplicity Funerals to bury the body. They have raised a variety of matters in an attempt to justify that refusal. Particular concerns which they expressed were that the deceased's organs had not been returned to the body or those organs with the body may not be organs of the deceased. They requested X-ray testing and DNA testing to allay their concerns. The applicants were informed on several occasions that all of the organs were returned to the body after the autopsy and that the remaining tissue samples were provided to Simplicity Funerals in 2011 and early 2012. There is no reason to doubt that this has occurred.

In these circumstances it cannot be doubted that, on the evidence, no suitable arrangements for the disposal of the body have been made or are being made other than those which have been made by the chief executive. There is no legal merit in the proposed appeal.

Furthermore, there seems to be no point in granting a stay. The effect of a stay would be simply to defer the burial. It would not achieve the result that there would be any other arrangements made for a subsequent burial, with the result that it would be inevitable that s 3 would apply to oblige the chief executive to conduct the burial.

The applicants also raised a number of issues concerning the arrangements for the burial itself, such as concerns about drainage at the site, the clothing which the applicants consider should be worn by the body, and other matters. These are matters for the chief executive to consider in relation to the arrangements for the burial conducted by the chief executive.

Before me Helena Yu made a passionate plea for an opportunity to view the body and stated that she and her sister had not been given that opportunity. I have been informed that unfortunately, because of the state of the body, it is inappropriate for there to be that opportunity. I have also been informed, however, that the applicants would have an opportunity at the funeral to say goodbye to their mother, which they understandably wish to do.

There is no substance in the proposed appeal and therefore there is no basis upon which a stay should be ordered, even if, which I cannot see, a stay would achieve anything. I dismiss the application for a stay.