

# SUPREME COURT OF QUEENSLAND

CITATION: *Laing v Laing* [2014] QSC 194

PARTIES: **ANDREW MARK JAMES LAING**  
(applicant)  
**v**  
**TRACEY LEIGH LAING**  
(first respondent)  
**and**  
**PUBLIC TRUSTEE OF QUEENSLAND**  
(second respondent)

FILE NO/S: BS7197 of 2014

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 22 August 2014

DELIVERED AT: Brisbane

HEARING DATE: 8 August 2014

JUDGE: Atkinson J

ORDERS: **1. Pursuant to section 6 of the Succession Act 1981, I direct that the body of James Lindsay Laing, deceased, be released to his son, Andrew Mark James Laing, for the purpose of a funeral and subsequent burial at Gungahlin Cemetery, Mitchell, the Australian Capital Territory.**

**2. Subject to formal requirements of the registrar, a grant of representation of the estate of James Lindsay Laing, deceased, be made to the Public Trustee of Queensland limited to collecting the deceased's estate, paying his debts and preserving the estate until further order.**

**3. That the costs of the Public Trustee of Queensland of, and incidental to, this application be assessed and paid out of the deceased's estate on an indemnity basis.**

CATCHWORDS: SUCCESSION – PERSONAL REPRESENTATIVES – RIGHTS POWERS AND DUTIES – DISPOSAL OF BODY – where the deceased had executed three Wills – where the validity of the Wills and identity of the executor or personal representative was uncertain – where the applicant applied for a limited grant of administration of the estate for the purpose of burying the deceased – where the applicant was one of the deceased's three children – where the second respondent was

the deceased's second wife – where the applicant sought to bury the deceased in a double plot next to the applicant's mother in Canberra, the Australian Capital Territory – where the first respondent sought to cremate the deceased in Queensland – whether the body of the deceased should be released to the applicant for the purpose of burying the deceased in Canberra

*Cremations Act 2003 (Qld), s 7, s 8*

*Succession Act 1981 (Qld), s 6*

*Reid & Ors v Crimp & Ors [2004] QSC 304*

COUNSEL: R M Treston QC for the applicant  
The first respondent appeared on her own behalf  
R Whiteford for the second respondent

SOLICITORS: Delaney & Delaney Solicitors for the applicant  
The first respondent appeared on her own behalf  
Official Solicitor for the Public Trustee of Queensland for the second respondent

[1] On 8 August 2014 I made the following orders in this application:

- "(1) Pursuant to section 6 of the Succession Act 1981, I direct that the body of James Lindsay Laing, deceased, be released to his son, Andrew Mark James Laing, for the purpose of a funeral and subsequent burial at Gungahlin Cemetery, Mitchell, the Australian Capital Territory.
- (2) Subject to formal requirements of the registrar, a grant of representation of the estate of James Lindsay Laing, deceased, be made to the Public Trustee of Queensland limited to collecting the deceased's estate, paying his debts and preserving the estate until further order.
- (3) That the costs of the Public Trustee of Queensland of, and incidental to, this application be assessed and paid out of the deceased's estate on an indemnity basis."

[2] I informed the parties that I would subsequently deliver my reasons for making those orders. These are my reasons.

### **Mr Laing's death**

[3] James Lindsay Laing ("Mr Laing") died on 24 July 2014 at the Ipswich Hospital. He had been brought to the hospital's emergency department by the Queensland Ambulance Service at 11.04am on that day. Dr Ivermee who is a senior medical officer within the emergency department attended him. Mr Laing was accompanied by a woman who described herself to Dr Ivermee as his wife. Dr Ivermee noted Mr Laing's very serious medical history. An examination of Mr Laing showed him to be extremely unwell and the presumptive diagnosis was made that he had suffered a stroke. He was sedated and intubated and mechanically ventilated. The doctor's

opinion was that given Mr Laing's age, his comorbidities and current clinical condition it would be contrary to good medical practice to maintain any life sustaining measures. His wife agreed with that course. The doctor was not made aware of the existence of any appointment of a substitute decision maker. Dr Ivermee asked Mrs Laing if there was anyone else who would want to be notified of his condition and she said:

"There are children living on the Gold Coast. Could you please keep him alive until they get here."

None of Mr Laing's children lives on the Gold Coast. Ventilation was continued but finally withdrawn at 4.15pm on 24 July 2014. Following his death Mrs Laing asked Dr Ivermee a question about whether or not he would be notifying "the trust". He did not know to what she was referring.

- [4] On 30 July 2014 Dr Ivermee attended a meeting with Mr Laing's three children. He had not known of their existence at the time of Mr Laing's death. Those children were Andrew, Marie and Jacqueline Laing. Dr Ivermee is not able to say whether or not he would have been able to keep Mr Laing alive until his children arrived had he known of the children's existence and their desire to see him.
- [5] A dispute has arisen between Tracey Laing, Mr Laing's widow, and Mr Laing's three children as to the method and place of the disposal of the body of Mr Laing. An originating application was filed by Andrew Laing which enlivened the jurisdiction of the court to determine the matter.

### **Legal overview**

- [6] The Queensland Law Reform Commission issued its report reviewing the law in relation to the final disposal of a dead body in December 2011. That report is QLRC Report No. 69. Chapter 4 of that reports sets out an overview of the current law with regard to the right to decide the method and place of disposal. As is therein pointed out when a person dies, the first priority is to arrange for the disposal of the person's body. The question of who has the right to determine the method and place of the disposal of the deceased person's body is at present governed by the common law. The common law provides that the executor of a deceased person's will has the duty to dispose of the body of the deceased and therefore the right to possession of the deceased's body for the purpose of its disposal.<sup>1</sup>
- [7] The only statutory limitation on the common law in Queensland is found in s 7 of the *Cremations Act* 2003 where the deceased has left signed instructions to be cremated. Section 7 only applies if the deceased person has left signed instructions to be cremated. That is not the case in this instance. In such circumstances, s 8 of that Act provides that a coroner or independent doctor must not issue a permission to cremate if aware that an adult child of the deceased objects to the cremation and that a person in charge of a crematorium must not allow a deceased person's remains to be cremated if that person is aware that an adult child of the deceased person objects to the cremation. Section 8 is expressed to override the common law to the extent that it qualifies a personal representative's right to decide how to dispose of

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<sup>1</sup> QLRC report No. 69 at [4.3].

the deceased person's human remains. In such circumstances, a cremation cannot be lawfully carried out.<sup>2</sup> In QLRC Report No. 69, the Commission recommended a statutory regime which would assist in dealing with the unfortunate disputes which arise about the disposal of a deceased person's body.<sup>3</sup>

### **Factual circumstances**

- [8] Mr Laing was born on 8 September 1929 and so was aged 84 years at the time of his death. He was married in 1960 to Christobel Laing. Mr Laing and his first wife, Christobel, had three children, Jacqueline born in 1962, Maria born in 1967 and Andrew born in 1968. Jacqueline has five children and Andrew three children. Christobel died in 2002 and was buried at Gungahlin Cemetery in Canberra. Mr Laing selected a double plot at the cemetery so that he could be buried next to Christobel Laing when he died. Mr Laing visited his wife's grave every Friday for many years and frequently expressed to his three children his wish to be buried next to Christobel in the site he had selected.
- [9] The Laing family had a close connection with Canberra. The family moved to Canberra in 1972 and Mr Laing stayed there until he moved away in 2012. The three children grew up and pursued their own successful careers while maintaining a close relationship with their parents and, after their mother's death, with their father. Maria Laing lived with Mr Laing for six months in 2005 before she moved to Melbourne and after that time frequently visited him and would telephone him daily. She set up home assistance for him. Andrew Laing works in Paris as a consultant economist but is a regular visitor to Canberra where he owns an apartment. His first wife is buried in Canberra. He and his current wife hope to return to work in Australia in the near future. Jacqueline Laing lives in London but regularly visits Canberra. Each of Mr Laing's three children have said that they would visit their father's grave if he were buried in Canberra with their mother. None of Mr Laing's family apart from his second wife Tracey has any connection with Queensland. Many of Mr Laing's friends are buried in the same cemetery as his first wife.
- [10] Mr Laing was a highly intelligent and educated man. He was born in Scotland and studied law at the University of Glasgow and worked in a legal office in Glasgow until going to India in 1959. He married Christobel Laing in 1960 and worked in India for approximately 12 years in the Bengal Chamber of Commerce and Industry. In 1971 the family emigrated from India to Perth and then moved to Canberra in 1972. He was a lawyer in the Attorney-General's department for many years. The Laing family remained in the same house throughout their time in Canberra.
- [11] From about 2006 Mr Laing's personality appeared to change. He began to make large cash gifts to people he had only recently met, in particular to young female prostitutes. He gave away many household assets and large sums of money including all of his savings, the proceeds of his inheritance from his wife, his car and the cash from his life insurance policy. He made many proposals of marriage to much younger women including his own niece, to prostitutes he had met and to a young immigrant to enable her to obtain a visa to remain in Australia.

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<sup>2</sup> See *Reid & Ors v Crimp & Ors* [2004] QSC 304.

<sup>3</sup> QLRC report No. 69 at [6.264].

- [12] He had, according to his children, been a capable and able lawyer, a prudent and conservative man and a devoted and loving husband and father. However he became detached from his immediate family, remote and forgetful. He also became physically frail. Andrew Laing's affidavit sets out the sad history of Mr Laing's deteriorating personality and financial position.
- [13] On 29 October 2010 Mr Laing's three children applied to the ACT Civil and Administrative Tribunal for the appointment of a manager to make decisions about property and financial matters for their father. It set out his repeated emotional and financial vulnerability to a number of what are therein described as predatory women including the respondent to this application, then Tracey Wilmot. Each of the women appeared to the children to be a prostitute working in the sex industry. The children's concern was raised because although their father had only met Ms Wilmot a few weeks earlier and his relationship with her was through her position as a sex worker for him, he had formed an intention to sell his home and move with her to somewhere outside Brisbane.
- [14] Mr Laing was assessed by Associate Professor Carmell Peisah, a specialist old age psychiatrist, for the purposes of the hearing in the ACT. As to Mr Laing's vulnerability to undue influence and financial exploitation due to his mental or psychological condition or disorder Dr Peisah gave the following opinion:
- "Mr Laing has many risk factors for undue influence, namely cognitive deficit with impairment in reasoning and lack of insight, personality change, willingness to hand over money; physical frailty and physical and psychological dependency on a carer, vulnerability to sexual bargaining, a major age discrepancy between himself and his carers/intimates and family conflict."
- [15] She was of the opinion that he had impaired decision making ability in relation to his financial matters.
- [16] On 10 May 2011 the Civil and Administrative Tribunal of the Australian Capital Territory (ACT) appointed the Public Trustee for the ACT as the manager of Mr Laing's property.
- [17] On 29 October 2012 the Queensland Civil and Administrative Tribunal (QCAT) changed that order by removing the Public Trustee for the ACT as administrator and appointing the Public Trustee of Queensland as Mr Laing's administrator.
- [18] On 28 October 2013, the Adult Guardian was appointed as guardian for Mr Laing for decisions about those with whom Mr Laing had contact and/or visits. The Public Trustee of Queensland remain as administrator for Mr Laing for all financial matters.
- [19] Mr Laing made an application to QCAT for a declaration that he had capacity. That declaration was dismissed by judgment of QCAT on 26 May 2014. In a carefully reasoned decision, the member of QCAT decided that the role of the Public Trustee and of the Adult Guardian should continue. The reasons for decision refer to the fact that notwithstanding that Mr Laing had brought the application, he blamed his children for litigating with him, including bringing the application that he had brought himself.

- [20] It is not necessary for the purposes of this application to determine which of any of the Wills executed by Mr Laing are valid, except to say that there is real doubt as to whether he had testamentary capacity to make the Wills he made in 2010 or 2011 and 2013, and there must be doubt therefore as to the identity of the executor or personal representative. The Wills before me were a Will made on 19 May 2005 whereby he appointed the Public Trustee of ACT as his executor and made provision for his children. Mr Laing made another Will which is dated 1 March 2010 and 1 March 2011 in different parts of the Will. It is said to have been made in contemplation of his marriage to Tracey Wilmot. In that Will he bequeathed his share in real property in India to his children and the residue of his estate to Tracey Wilmot and, if she were to predecease him, to her children. He stated why he had made no other provision for each of his three children. Ms Laing asserted in court that this Will was executed by Mr Laing on 1 March 2010. This was contrary to her evidence that she did not meet him until May or June of 2010. This assertion was not sworn evidence but rather submissions from the Bar Table which were patently absurd.
- [21] A third Will was dated 21 March 2013 and appointed the Public Trustee of Queensland as his executor. In that Will he disposed of the whole of his estate to his wife Tracey Laing and if that gift failed then to her four children. He specifically included a declaration that he had decided not to make provision for his own three children. None of the Wills expressed any view about the disposal of his body.
- [22] On the hearing of the application before me Mr Laing's three children were jointly represented by solicitors and counsel and the Public Trustee was also represented by solicitors and counsel. Their submissions were extremely useful. Both the applicant and the Public Trustee submitted that the court should make the decision as to the method and place of disposal rather than the Public Trustee. Ms Tracey Laing represented herself and with the agreement of the other parties I allowed her to present material to me which was not in admissible form but nevertheless allowed the court to understand her point of view and the documents on which she wished to rely.
- [23] Ms Laing disputed a number of matters contained in Andrew Laing's affidavit so she was given the opportunity to cross-examine him about those matters. She also gave oral evidence herself. Amongst the documents which she provided to the court were two handwritten notes which she said were in Mr Laing's handwriting. She interpreted the notes as expressing his desire to be cremated. The notes were not signed. The handwritten notes were decidedly unusual for a man of his education and intellect in that they were misspelt, ill-expressed and somewhat illegible and incoherent. They displayed hostility to his children. One was on the back of a page on which there was handwriting in a firm hand by another person which contained full details of Tracey Laing's children and their dates of birth and various other instructions. The word "watch" was written in very shaky writing which looked similar to the writing attributed by Ms Laing to Mr Laing. Another handwritten note in very shaky writing had apparently been torn up and stuck together with sticky tape. Both gave the appearance of being instructions with regard to his Will and an Enduring Power of Attorney. Nothing in these documents persuaded me that they represented a free and rational choice made by Mr Laing that he would prefer to be cremated. In any event, they did not satisfy the requirement of s 7 of the *Cremations Act*.

- [24] Also included in Ms Laing's material was a letter apparently addressed to her on 19 September 2011 from Mr Laing's three children in which they set out their opposition to their father's marriage to her and the reasons for that including the fact that a management order had been made by the ACT Civil and Administrative Tribunal on account of his propensity to exploitation. The material also showed the disputes he had with his proposed marriage celebrant and with the real estate agent who was to sell his house in Canberra. It is apparent from those emails that Mr Laing relied heavily on Tracey Laing's opinion about what to put in those emails.
- [25] Unfortunately all the material provided by Tracey Laing as well as the contents and manner of her giving evidence only served to reinforce my view that the orders made in the ACT Civil and Administrative Tribunal and in QCAT were well justified.
- [26] In her oral evidence Ms Laing said that she married Mr Laing on 28 September 2011. She said she met him in May or June of 2010 when she opened the door for him as he was leaving a Chinese restaurant. Some three or four months later he rang her because of her advertisement in a newspaper as a sex worker not realising that she was a person who had opened the door for him at a Chinese restaurant. Her divorce from her husband was finalised on 21 September 2011 and she married Mr Laing one week later.
- [27] I took into account all of the evidence provided by Ms Laing, Mr Laing's children and the Public Trustee in making my decision.

### **Factors in favour of burial in Canberra**

- [28] The factors that have persuaded me that Mr Laing's body, which had been kept in the Ipswich Hospital for two weeks, should be buried in Canberra included that he lived almost all of his adult life in Canberra, he was a well regarded solicitor in the Attorney-General's Department, he raised a family there, he had a wife there of almost 40 years and when she died in 2002 she was buried in a cemetery plot which was purchased by him on the basis that there were two plots side by side for him to be buried beside her. There is no question that he was at that time able to make a rational and considered decision as to where and how his body would be interred.
- [29] On the other hand, the decisions made by the ACT Civil and Administrative Tribunal as well the decisions made in QCAT and the evidence before me convinces me that he was unable to make properly considered judgments later in his life and his hostility to his children was both irrational and encouraged by his second wife, the respondent.
- [30] Mr Laing's residence in Queensland was very short in duration and he had no family or friends in Queensland apart from his second wife and her family. Andrew Laing has offered to pay for the transport of Mr Laing's body to Canberra so that it can be buried in the funeral plot that Mr Laing purchased. Andrew, Maria and Jacqueline have indicated that they will visit their father's grave in Canberra. They will continue to tend the gravesite as they have done for the years since their mother died.

### **Conclusion**

- [31] The most important factor was that Mr Laing's remains were dealt with promptly and treated with dignity. I was satisfied that the best way of ensuring that was to make the order that his body be released to his son Andrew for the purpose of a funeral and subsequent burial at Gungahlin Cemetery, Canberra in the Australian Capital Territory.