SUPREME COURT
OF QUEENSLAND

Plenary Address
STEP Qld Trust and Succession Law Conference
Friday, 7 September 2012, 9.05am
Peppers, Salt Resort and Spa, Kingscliff

The Hon Paul de Jersey AC
Chief Justice

Good morning madam chair, ladies and gentlemen…

Thank you for inviting me to Kingscliff this morning.

It seems to me that there is something in the water at our new Supreme and District Courthouse in Brisbane. When I sat down, after a couple of entirely leisurely and stress-free weeks leading up to the opening of our new metropolitan courthouse, the Queen Elizabeth II Courts of Law, and turned my mind to this address, the Court had released two decisions in the space of a week on the question of de facto status. That's quite a confluence, when, according to the research skills of my associate, they are the only two published Supreme Court decisions this year dealing with questions of de facto status.

The first of the two decisions to be released was *Pierpoint v Liston*, handed down by the Court of Appeal at the very end of July. The other was a decision from the applications jurisdiction of the trial division of the Court, *O'Neill v Martini*, in which judgment was given 2 days later.

In *O'Neill*, the applicant was self-represented, and claimed to have been in the required two year de facto relationship with the deceased prior to his death.

The deceased had left the entirety of his estate to his brothers in Spain., with nothing to the applicant.

The applicant's central contention was that she had been in a de facto relationship with the deceased for a period exceeding two years prior to the death in July 2006, and thus was entitled to seek better provision from his estate. Ultimately, the trial judge rejected the applicant's claims. The evidence accepted by the trial judge was that the deceased had maintained his own house through the entire time allegedly subject to the relationship, that the deceased had acted towards the applicant's children without any degree of familiarity during a period the applicant claimed fell within their relationship, and that the deceased only started telephoning the applicant's residence in 2005. His Honour also noted that there were 'serious issues related to the credit of [the applicant]'.

On that basis, while some form of relationship may have existed at some time, the judge held that no de facto relationship existed between them. With respect to the factors in section 32DA of the *Acts Interpretation Act* regarding the existence or otherwise of a de facto relationship, His Honour noted:

> Each of the parties collected the single person's pension, maintained separate households, did not share any common real property or purchase any common personal property. They did not have any joint bank accounts. Nor did they pool their finances. They paid their own bills and did not go on holidays together.
>
> The only socialising with friends of which there was evidence was in respect of two occasions … They spent nights apart to an extent which remains controversial but even on her children's evidence was on average about two or three nights per week… There was, also, no indication that their financial arrangements had features of "trust, generosity and intermingling".

Accordingly, the applicant was not entitled to seek a better provision for her from the estate.

Accepting His Honour's conclusion, the case illustrates the great mischief which dishonest recourse to this jurisdiction may visit upon estates. Significantly, having been told by the estate solicitors there was a will, and having been denied a copy, the applicant applied for and was granted letters of administration on the basis no will existed, then took over occupancy of the deceased's house, in order to save rent. When the executor obtained probate of the will, the letters of administration were revoked. The hearing before Justice Douglas lasted 3 days, and at least 10 witnesses appear to have been involved.

His Honour interestingly picked up a caution from a New South Wales decision that he should not be mislead in such a case by "over enthusiastic evidence from the only party alive who can still give evidence as to the exact relationship" which the parties had.

The Court of Appeal decision, *Piermont v Liston*, deals with rather more complicated facts than those in *O'Niell.*

Piermont, the appellant, and applicant at first instance, was the father of the deceased's two children. The deceased died intestate; and the deceased's mother, the respondent, was granted letters of administration of the estate. Peirmont applied for a declaration that he was the deceased's spouse for the purposes of the division of the estate assets, and also for the removal of the mother as administrator of the estate. Although it was clear that the appellant and the deceased had been in a de facto relationship at some point, there was a question about whether they were still in that relationship at the date of the deceased's death.

As observed by Justice Margaret Wilson in the appeal, 'the relationship between the appellant and [the deceased] was volatile, marked by separations and reconciliations'. It was, at times, affected by domestic violence, drugs, and alcohol abuse, and also by the appellant's mental illness. The appellant and the deceased separated twice. As was observed by the judge at first instance, "the effect of a separation of parties who were in a de

facto relationship must be judged objectively by the parties' conduct at the time of the separation in the context of their relationship". Ultimately, in the view of the trial judge, with which the Court of Appeal agreed, the separation a few months before the death of the deceased was intended to be permanent at the time it occurred, and, consequently, notwithstanding their reconciliation prior to the deceased's death, the appellant had not been in a de facto relationship with the deceased for at least two years, ending upon the death of the deceased.

There was another twist to *Piermont v Liston*. The primary Judge, while dissatisfied with some of the grandmother's decisions as administrator, refused the father's application that he be substituted for her. The Court of Appeal did remove the mother, appointing the Public Trustee under s 31(1) of the *Public Trustee Act* 1978, really on the basis the grandmother, who lived in Charleville, could not adequately administer the estate in the interests of the child beneficiaries, who lived in Gatton – for example, unpaid school fees had become a problem.

Obviously, the ideal is a world where there is no need for disputes over estates to be brought before the Supreme Court. However, insofar as the Court's important power to intervene to resolve legitimate disputes is exercised, it is nonetheless interesting that these two decisions should have been handed down so close together.

I wish all the presenters and participants at today's conference an informative and engaging day, and am very pleased now officially to open the STEP Qld Trust and Succession Law Conference, 2012.