

Supreme Court
New South Wales

Case Name: Ibrahim v South Eastern Sydney Local Health District
Medium Neutral Citation: [2018] NSWSC 913
Hearing Date(s): 15 June 2018
Date of Orders: 15 June 2018
Decision Date: 15 June 2018
Jurisdiction: Common Law
Before: N Adams J
Decision: The summons filed by the plaintiff on 15 June 2018 is dismissed.
Catchwords: EQUITY – Equitable remedies – Injunctions – Plaintiff's wife involved in motorcycle accident leading to hospitalisation and being placed on life support – Doctors formed the view that the plaintiff's wife was brain dead and intended to terminate further treatment – Whether the plaintiff's wife was deceased in the terms of the Human Tissue Act 1983 (NSW) – Whether injunction to prevent cessation of medical treatment should be granted
Legislation Cited: Human Tissue Act 1983 (NSW), s 33
Category: Principal judgment
Parties: Patrick Ibrahim (Plaintiff)
South Eastern Sydney Local Health District (Defendant)
Representation: Counsel:
D Allen (Plaintiff)
D Tadros (Solicitor) (Defendant)
Solicitors:

Mitry Lawyers (Plaintiff)

File Number(s): 2018/185562

Publication Restriction: Nil

JUDGMENT (REVISED FROM EX TEMPORE)

- 1 In this matter, Patrick Ibrahim moves on a summons seeking an injunction to restrain any medical professional, including the South Eastern Sydney Local Health District, from ceasing necessary medical assistance, care, treatment or testing for his wife, Jamel Moussa. Ms Moussa was born on 22 June 1987 and is thus 30 years of age.
- 2 In support of that summons, Mr Ibrahim has provided a detailed affidavit setting out the tragic recent events in relation to his young wife. On Sunday, 10 June 2018, she was involved in an accident on a farm with an all-terrain vehicle, namely a four-wheel motor bike, colloquially known as a quad bike. After the accident she was initially taken to Goulburn Hospital. She was then transferred to Canberra Hospital and finally taken to the Prince of Wales Hospital in Sydney.
- 3 In his affidavit, Mr Ibrahim describes being informed on 13 June 2018 that his wife was "brain dead". In his affidavit, he states that he asked for a copy of all of the medical reports but was told that would take up to 30 days to obtain. He was also informed that she could not have any more tests because she was deceased. Mr Ibrahim's affidavit reflects him being confused about this and asking the doctors, "how can she be dead if she is still breathing, if her organs still work, if her blood is pumping, what if she wakes up?".
- 4 When this matter came on for hearing today, orders were sought initially that I would make an interim injunction until next Monday in order to afford the defendant the opportunity to be present at Court. Although the doctors initially indicated to Mr Ibrahim that they would be turning the life support machine off yesterday, 14 June 2018, that time was extended until midday today.
- 5 What was sought by Mr Allen, who appeared on behalf of the plaintiff, was to impose an injunction only until Monday to prevent the life support machine from

being turned off so that the question of the relevant medical evidence could be explored at that time. I raised with Mr Allen the fact that in an *ex parte* injunction there still needs to be a serious issue to be tried and that if, in effect, Ms Moussa was brain dead, within the meaning of s 33 of the *Human Tissue Act 1983* (NSW), then there would be no serious issue to be tried and there would no basis for me to accede to his request.

- 6 The matter was stood in the list, and just before 11:30am today, Ms Tadros appeared on behalf of the Ministry of Health which she explained structurally manages the South Eastern Sydney Local Health District. Having spoken with Ms Tadros, Mr Allen indicated that he understood that there was an issue in relation to whether there is a serious question to be tried, but indicated that he had no instructions to withdraw the application.
- 7 Ms Tadros indicated that she had medical evidence from Dr Gordon Flynn, a senior staff specialist at the hospital. A telephone call was made to Dr Flynn. He was sworn to give evidence and he gave the following evidence. He stated that when Ms Moussa arrived at the Prince of Wales Hospital from Canberra she was intubated, unresponsive and sedated. He came to the view that she had a hypoxic brain injury, which was revealed by repeated imaging. There was consultation with surgeons, neurosurgeons and orthopaedic surgeons. The doctors came to the view that Ms Moussa was, in fact, brain dead. A further scan was conducted and she was subjected to a pressure measuring machine or device which measures the pressure within the brain. The reading from that test was one incompatible with life.
- 8 Dr Flynn indicated that, in order to declare somebody dead, all brain function must be lost and there are protocols in place. Ms Moussa was sent for a further CT angiogram which revealed that there was no evidence of any blood flow, not only into the brain, but also the skull. There was then a delay phase scan undertaken which showed that in a period of five minutes, not even a small amount of contrast trickled into that area.
- 9 Dr Flynn was asked some questions by Mr Allen on behalf of the plaintiff. He indicated that, although Ms Moussa had been declared dead, a formal death certificate has not been issued. Because of the circumstances of Ms Moussa's

death, a coronial hearing will be necessary. He was also asked how many doctors had come to the conclusion that Ms Moussa was dead. Dr Flynn indicated that the legal requirement is two doctors, but in fact six doctors in this case have all agreed that Ms Moussa is, in fact, deceased.

10 In light of the evidence of Dr Flynn and having regard to the definition of death in s 33 of the *Human Tissue Act*, and also having regard to the protocols explained by Dr Flynn, it is my regrettable conclusion that Ms Moussa is deceased and therefore any further treatment would be futile.

11 In those circumstances, the summons filed by the plaintiff on 15 June 2018 must be dismissed. I make no order as to the costs.

[REDACTED]