



HIGH COURT OF AUSTRALIA

12 November 2014

HUNTER AND NEW ENGLAND LOCAL HEALTH DISTRICT v MERRYLN ELIZABETH
MCKENNA
HUNTER AND NEW ENGLAND LOCAL HEALTH DISTRICT v SHEILA MARY SIMON &
ANOR

[2014] HCA 44

Today the High Court unanimously allowed appeals from a decision of the Court of Appeal of the Supreme Court of New South Wales and held that the Hunter and New England Local Health District, a health authority responsible for the conduct of a hospital and its medical staff in Taree, New South Wales, did not owe a duty of care to the relatives of a man killed by a mentally ill patient who had been discharged from the hospital into the man's care.

In 2004, Phillip Pettigrove, a man from Victoria with a long history of chronic paranoid schizophrenia, was involuntarily admitted to, and detained in, the Manning Base Hospital at Taree under the *Mental Health Act* 1990 (NSW). Mr Pettigrove had at the time been with a friend in New South Wales, Stephen Rose. After a doctor at the hospital reviewed Mr Pettigrove's medical history, and spoke to Mr Pettigrove, Mr Rose and Mr Pettigrove's mother in Victoria, it was agreed that Mr Pettigrove would be kept in the hospital overnight and that, the following day, Mr Rose would drive Mr Pettigrove back to his mother's home in Victoria where he would receive continuing medical treatment. In the course of the journey, Mr Pettigrove killed Mr Rose.

Relatives of Mr Rose brought proceedings in the District Court of New South Wales for damages for psychiatric injury allegedly suffered by them as a result of Mr Rose's death. The relatives alleged that the hospital and the doctor did not exercise reasonable professional care and skill in deciding to discharge Mr Pettigrove into the care of Mr Rose for the journey to Victoria, and that the health authority was therefore liable. The District Court found that there had been no breach of duty of care and entered judgment for the health authority. That decision was set aside on appeal by the Court of Appeal. By grant of special leave, the health authority appealed to the High Court.

The High Court unanimously allowed the appeals. The High Court held that the hospital and doctor did not owe the alleged common law duty of care to Mr Rose's relatives. The *Mental Health Act* prohibited the detention, or the continuation of detention, of a mentally ill person unless the medical superintendent of the hospital formed the opinion that no other less restrictive care was appropriate and reasonably available. The High Court found that performance of that statutory obligation would not be consistent with the common law duty of care alleged by the relatives of Mr Rose.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*