

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2013 / 3834

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: Dominic Birch

Delivered On: 26 August 2014

Delivered At: Coroners Court of Victoria
65 Kavanagh Street, Southbank, Victoria, 3006

Hearing Dates: 26 August 2014

Findings of: Caitlin English

Representation:

Police Coronial Support Unit: Leading Senior Constable Amanda Maybury

I, Caitlin English, Coroner having investigated the death of Dominic Birch

AND having held an inquest in relation to this death on 26 August 2014
at Melbourne

find that the identity of the deceased was Dominic Birch

born on 9 November 1996

and the death occurred on 24 August 2013

at Monash Medical Centre, 246 Clayton Road, Clayton 3168

from:

1 (a) ASPIRATION PNEUMONIA

1 (b) JUVENILE HUNTINGTON'S DISEASE

in the following circumstances:

1. Dominic Birch was 16 years old when he died. At the time of his death, he was on a Guardian to Secretary Order dating from 8 February 2012. He was residing at a temporary placement, the Franklin Street Children's Respite Facility, 15 Franklin Street, Sale.
2. Due to Dominic being under the Guardianship of the Secretary to the Department of Human Services (DHS), he is a person 'in care' (s 3 *Coroners Act* 2008) and thus his death is a reportable death to the coroner (s 11 *Coroners Act*). Further, his 'in care' status mandates the coroner to hold an inquest into his death (s 52 (2)(b) *Coroners Act*).

Background

3. Dominic was the third child born to Lynette Birch and his father was unknown. Ms Birch spent 18 years prior to her death in residential care due to her own diagnosis of Huntington's disease. She died in May 2009.
4. Dominic had two older half siblings, Elizabeth and Kelly Pleiter. Kelly has been diagnosed with Huntington's disease.
5. Because of her own illness, Ms Birch had difficulties caring for Dominic. DHS became involved when he was four weeks old and he was made subject to a Guardian to the Secretary Order in December 1996. In October 1997, he was placed in the long term care of Ms Birch's step brother, Tom Birch and his wife, Margaret McCluskey. Dominic was the

subject of a residency order made by the Family Court to Mr Birch and Ms McCluskey on 10 January 1998.

6. Mr Birch and Ms McCluskey had three older children, Shannon, Harley and Honey, who Dominic regarded as his siblings.
7. In 2001, Mr Birch and Ms McCluskey separated, eventually divorcing in 2004.
8. Ms McCluskey retained the care of Dominic and his siblings. DHS remained involved with the family and a number of reports were substantiated regarding, amongst other things, Ms McCluskey seeking unnecessary medical intervention for all the children.

Disability services

9. In March 2005, when Dominic was eight years old, he was deemed eligible to receive services from Disability Client Services. He was assessed at Ms McCluskey's request. Dominic was found to have significant deficits in his ability to communicate effectively and his speech at times was difficult to understand. He had limited ability to carry out instructions and any more than one at a time led to confusion and frustration.
10. Dominic was found to have significant deficits in his cognitive abilities: his full scale IQ scale was 62, putting him in the mild disability range.
11. Between 2005 and 2013, Disability Services provided on-going support to Dominic and his carers. This support took the form of referrals for behavioural issues and counselling, as well as respite, funding for day care, transportation, general care, medical equipment and support plans and support packages.

DHS involvement

12. In October 2006, Dominic, still in the care of Ms McCluskey, was placed on a twelve month Supervision Order with conditions including intensive supervision and involvement from support services. At this time, Dominic's medical needs were managed by his treating neurologist, Dr Andrew Churchyard.
13. Dominic was diagnosed with Juvenile Huntington's disease when he was 11 years old.
14. In 2008, Ms McCluskey was experiencing difficulties with the challenges of Dominic's on-going care and was seeking increased respite for Dominic. A Custody to Secretary Order was made from 3 December 2008 until 8 February 2012. Dominic was then made subject to

a Guardianship to the Secretary Order on 8 February 2012, which meant decision-making authority passed to the Secretary of DHS over his medical and health needs.

Dominic's health and education

15. On 13 September 2008, Dominic was diagnosed with Juvenile Huntington's Disease. Ms McCluskey describes this '... diagnosis was as a result of many medical assessments with many doctors dealing with behavioural issues.'¹ She states that at first it was thought Dominic had ADHD but it was later diagnosed as Juvenile Huntington's Disease.
16. Dominic's diagnosis of Juvenile Huntington's Disease, a degenerative genetic neurological disease, presented features of chorea, which is an abnormal involuntary movement disorder. It consisted of shaking and spasmodic movements that impacted on Dominic's balance and mobility. Features of his illness also included psychosis and epilepsy and his daily medication regime included significant quantities of anti-psychotic medication, as well as medication to treat asthma and epilepsy.
17. Dominic was described as a delightful young person who was well known in the Gippsland community, having resided locally in Traralgon from an early age.
18. After attending various primary schools, he attended Baringa Special School in Moe. He then moved to La Trobe Special Development School in Traralgon. His reports were positive and teachers found him personable and a keen student.
19. Dominic enjoyed company and was popular due to his sense of humour and amicable nature. He was a collector of Pokemon cards and figurines and was proficient at electronic games such as X Box and Play Station 3. He liked to wear his hair 'spiked' and wore classic adolescent attire of printed tee shirts and basket ball sneakers. He barracked for the St Kilda Football Club and like most teenagers, he loved music.
20. Dominic spent a majority of his time in an electronic wheel chair and travelled between Sale and Traralgon twice a day for school in a taxi. He needed assistance managing food and personal hygiene.
21. Dominic had quarterly reviews with his neurologist, Dr Churchyard and saw Traralgon GP, Dr Rooney, to have his medication dispensed in the local community.

¹ Statement by Margaret McCluskey, Coronial Brief

Living arrangements

22. For the last five years of his life, Dominic resided in long term out-of-care placements, including time with Mr and Mrs Bennett. Ms McCluskey continued to have monthly contact with Dominic and was provided with regular up-dates in relation to his care and well being.
23. On 2 August 2012, a joint decision was made (DHS, Anglicare Gippsland and Disability Services) that Dominic needed to move from his long term home based carer. The reasons were that his carer had been diagnosed with cancer and the progression of Dominic's illness was such that he needed high-level care. Three months was allowed for an alternative place to be sourced and transitioned.
24. In November 2012, Dominic was moved to a temporary placement at the Franklin Street Children's Respite Facility. Dominic had long standing relationships with staff and was very familiar with the environment. He received 1:1 support at Franklin Street.
25. There were significant difficulties in securing a suitable long term placement for Dominic.
26. In March 2013, Dr Churchyard warned of securing the resources necessary for Dominic's care: '...there is a rapid evolution of the disease that is characteristic of Huntington's in this age group...'

Events prior to death

27. Over the last 12 months of Dominic's life, his health deteriorated.
28. In January 2013, he was admitted to Central Gippsland Hospital, Sale, and diagnosed with pneumonia and septicaemia. He was admitted to the Critical Care Unit.
29. At this point, Dr Churchyard advised DHS a treatment plan was required in the event Dominic experienced multi organ, respiratory or cardiac failure. The agreed treatment plan supported a palliative approach which was endorsed by the Secretary.
30. Dominic recovered and was discharged on 8 February 2013 back to his placement at Franklin Street. He returned to school on 11 February 2013.
31. On 13 August 2013, Dominic was transported by ambulance to Central Gippsland Hospital, Sale. He had been feeling unwell, was unsteady on his feet, and having difficulties breathing. He was admitted overnight but was discharged the next day. It was thought his condition was viral and he was treated with pain relief and IV fluids.
32. Ms McCluskey described Dominic at this time:

'He was 16 at this time. At this time, he was in a wheelchair, he could not walk, and he could barely talk, but I was able to understand his communications. His vision was poor, he had to wear glasses.'²

33. On 15 August 2013, Dominic was again transported by ambulance to Central Gippsland Hospital, Sale. He was re-admitted and diagnosed with pneumonia.
34. His condition deteriorated and on 17 August 2013 he was transferred to Monash Children's Hospital, Clayton. Dominic's treatment was co-ordinated between Dr Churchyard and the paediatrician from Monash, Dr Martin Tuszynski.
35. On 19 August 2013, Dominic was settled, but as he was refusing his medication, it was administered by tube. He was maintained on maximal oxygen therapy and antibiotics, however his condition continued to deteriorate.
36. At this time, Dr Churchyard contacted Child Protection and requested permission to commence palliative care for Dominic. Dominic had pneumonia and was experiencing breathing difficulties. It was Dr Churchyard's medical opinion that an assessment for palliative care commence to ensure Dominic had appropriate pain relief. Ms Mariela Diaz, Director Child Protection Southern Division, granted permission for palliative care to commence.
37. From 19-24 August 2013, Dominic was on the paediatric ward and received palliative care. Ms McCluskey had access with Dominic during this time. This was supervised by DHS staff who were rostered 24 hours a day from 20 August 2013 to ensure Dominic was comfortable and not alone. Staff who stayed with Dominic included his child protection worker, Ms Pauline McCluskey (no relation to Ms Margaret McCluskey). Dominic also had visits from his siblings and other family members prior to his death.
38. On 24 August 2013, at approximately 00:40, Dominic passed away. Ms McCluskey was advised by Ms Lynn Stephens from DHS at 01:00.

Report to the coroner

39. A death certificate was completed on 26 August 2013. The treating medical team discussed if a report to the coroner was required however as the death was expected, took the view it was not. Dr Timothy Ford, Paediatric Registrar at the Royal Children's Hospital, on

² Statement by Margaret McCluskey, Coronial Brief

secondment to Monash Children's Hospital, has provided a statement (dated 8 December 2013) to the coroner.

40. Dr Ford stated:

'In retrospect I understand that this view was incorrect and the death should have been reported as Dominic was a child in State care. This requirement has been discussed with the members of the team.'³

41. The matter was referred to the coroner after notification by the Registry of Births, Deaths and Marriages.

42. In the 2012 finding of Fikri Memedovski (COR 2009 5807), Coroner Spooner highlighted the need for medical practitioners to be aware of deaths that are reportable pursuant to the *Coroners Act 2008*. A copy of this finding and its recommendations pertaining to the education of medical practitioners about their legal obligations to report deaths that are reportable to the coroner can be found on the Coroners Court of Victoria Website.⁴

Inquiry by the Commission for Children and Young People

43. The Commission for Children and Young People (formerly the Office of the Child Safety Commissioner) has contacted the coroner for information about Dominic's case. The Commission is mandated (under Part 5 of the *Commission for Children and Young Persons Act 2012*) to conduct an inquiry if a child dies who was known to Child Protection at the time of their death or in the preceding 12 months. The inquiry must relate to services provided to or omitted to the child before his or her death. The Commission has advised the coroner that the investigation is currently in draft form, seeking comment from contributing parties, and will take a number of months to complete.

Ms McCluskey's concerns

44. Ms McCluskey has raised concerns with the coroner regarding the use of Dominic's body after his death. She had originally agreed that some of his organs could be used for medical research, but later withdrew permission.

45. This is confirmed in the medical notes dated 23 August 2013 that there was a request by Ms McCluskey and her lawyer, Ann, to withdraw consent for organ donation. This decision was

³ Statement by Timothy Ford, Coronial Brief

⁴ www.coronerscourt.vic.gov.au

discussed with DHS and confirmed by Bronwyn McFadyen, who was to inform the Organ Donation Bank. Further entries in the medical notes confirm that consent for organ donation had been revoked, and that the consent form was removed from the medical file and destroyed.

46. Inquiries have been made about Ms McCluskey's concerns with the Victorian Institute of Forensic Medicine. The manager of Forensic Technical Services, Coronial Admissions and Enquiries, Dr Jodie Leditschke, has advised her inquiries reveal that the Donor Tissue Bank of Victoria and the Anatomical Pathology Department at Monash Medical Centre have confirmed that no tissue, organs or autopsy were reported to be removed or performed on Dominic after his death.

Finding

I have read Dominic's medical file from Monash Medical Centre and I accept the opinion of Dr Timothy Ford and find the cause of death he has formulated is reasonable.

I find the cause of death of Domenic Birch to be aspiration pneumonia in a young man diagnosed with Juvenile Huntington's Disease.

I direct that a copy of this finding be provided to the following:

Ms Margaret McCluskey
Secretary, Department of Human Services
Executive Director, Monash Medical Centre, Clayton

Signature:



CAITLIN ENGLISH
CORONER

Date: 26 August 2014

