



# MAGISTRATES COURT of TASMANIA

## CORONIAL DIVISION



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## **Record of Investigation into Death (Without Inquest)**

*Coroners Act 1995  
Coroners Rules 2006  
Rule 11*

**(These findings have been de-identified in relation to the name of the deceased, family, friends and others by direction of the Coroner)**

I, Simon Cooper, Coroner, having investigated the death of DF

**Find, pursuant to section 28(1) of the *Coroners Act 1995*, that:**

- a) The identity of the deceased is DF;
- b) DF died in the circumstances outlined further in this finding;
- c) The cause of DF's death was extreme prematurity associated with acute chorioamnionitis;
- d) DF died at the Royal Hobart Hospital, Hobart in Tasmania on the same day as his birth; and
- e) DF was born at in Southern Tasmania.

### **Introduction**

In March 2016 an ambulance was dispatched to a home in southern Tasmania because SF had just given birth to a baby, DF, at 23 weeks gestation.

Upon their arrival, ambulance officers found SF sitting with DF on her lap, wrapped in a towel and blanket. DF was non-responsive, not breathing and paramedics were not able to hear any chest sounds when they examined him. However a heart rhythm of 26 sinus bradycardic was detected and he was rushed to the Royal Hobart Hospital for treatment. CPR was commenced by ambulance paramedics, and continued, on the way to the Hospital.

DF arrived with his mother at Hospital where the treatment of him was taken over by

emergency medicine specialists. Sadly, care was ceased as there was no improvement in DF's heart rhythm, and no other signs of life.

### **Jurisdiction to investigate death**

Section 21 of the *Coroners Act* 1995 provides that a coroner has jurisdiction to investigate a death if it appears that the death is or may be reportable.

The concept of "reportable death" is defined in section 3 of the Act. That section provides, *inter alia*, that a death is reportable if it is of a child under the age of one which was sudden and unexpected. Self-evidently, before a child can die it must have been alive. Put another way, unless a child is born alive then jurisdiction under the Act for investigation to be carried out by a coroner cannot exist, because an essential precondition (jurisdictional fact) to the exercise of that jurisdiction is not established. This is known as the 'born alive' rule.

The question then is whether or not DF was born alive. No authority exists in this jurisdiction which deals with the issue. However consistent with the authority of the South Australian full court in *Barrett v Coroner's Court of South Australia* (2010) 108 SASR 568, I was, and am, satisfied that DF was born alive and as such jurisdiction to investigate his death exists under the *Coroners Act* 1995.

In *Barrett [supra]* the court was asked to review a decision of a coroner that jurisdiction existed to investigate the death of a newborn infant. In that case the birth of the baby occurred at the home of the mother. She was attended by a midwife. The birth was a planned home delivery. The evidence was that the pregnancy had been unremarkable and tests shortly before birth indicated the foetus was both viable and healthy. The birth did not proceed as planned and after a time an ambulance was called to assist. After the baby was delivered from its mother the only sign of life it demonstrated was pulseless electrical activity (PEA). No other signs of life such as movement, breath, pulse or crying were present. The court concluded that PEA was a sufficient sign of life, on its own, to satisfy the 'born alive' rule. The case is indistinguishable from the present; and, although obviously the legislative regime in South Australia is not the same as that which applies in this state, there is practically no difference. Although I am not bound by *Barrett [supra]* the reasoning in my respectful view is strongly persuasive and I am satisfied it is a correct statement of the law in Tasmania with respect to the so-called 'born alive' rule. Applying the principle that is to be drawn from that case leads to the conclusion the death of DF is properly within the jurisdiction of the court to investigate.

### **Findings**

Because of the circumstances of DF's death, an autopsy was carried out at my direction on the body by a forensic pathologist. That forensic pathologist, Dr Donald

McGillivray Ritchey, found that DF was a normally developed premature infant boy. There were no apparent traumatic injuries of his body, skeleton or internal organs. He appeared normally formed and there were no apparent congenital abnormalities.

Dr Ritchey expressed the opinion that the cause of DF's death was extreme prematurity associated with acute chorioamnionitis. Chorioamnionitis is the inflammation of the foetal membranes and placental disc. It is a common cause of premature rupture of membranes and premature labour. Dr Ritchey expressed the view that normal gestation for humans is approximately 40 weeks and that the probability of survival of a child born at or about 23 weeks is extremely low. He said that premature delivery is problematic for a foetus due to the inadequate development of the lungs.

I accept Dr Ritchey's expertise and his opinion as to the cause of DF's death.

I observe that the medical advisor to the Coroners' Office, Dr Anthony J Bell, expressed an opinion as to the cause of DF's death in terms identical to Dr Ritchey.

The treatment of DF by both paramedics and at the Royal Hobart Hospital was of an appropriate standard. Nothing more could have been done for him.

I am satisfied on the basis of the evidence provided to me as a result of the careful and comprehensive investigation into this death that there were no suspicious circumstances surrounding DF's death. There is no evidence, at all, that any person played any role whatsoever in his death.

### **Comments and Recommendations**

The circumstances of DF's death are not such as to require me to make any recommendations or comments pursuant to section 28 of the *Coroners Act* 1995.

I extend my sincere condolences to DF's family and loved ones.

**Dated** 9 February 2017 at Hobart in the State of Tasmania.

**Simon Cooper**  
**Coroner**