

FAMILY LAW PRACTICE AND PROCEDURE After hearing the case the former de facto wife died
proceedings suspended Family Law Act 1975 (Cth) APPLICANT: Ms Fletcher RESPONDENT: Mr
Jones FILENUMBER: BRC 3721 of 2011 DATE DELIVERED: 15 October 2014 PLACE
DELIVERED: Brisbane PLACE HEARD: Brisbane JUDGMENT OF: Stevenson J HEARING DATE:
18 August 2014; 12 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr
Hackett SOLICITOR FOR THE APPLICANT: Hirst & Co COUNSEL FOR THE RESPONDENT: Mr
Williams SOLICITOR FOR THE RESPONDENT: Barry Nilsson Lawyers ORDERS (1) It is noted that
presently there is no legal personal representative for the deceased de facto wife and these
proceedings currently are suspended. IT IS NOTED that publication of this judgment by this Court
under the pseudonym Fletcher & Jones has been approved by the Chief Justice pursuant to s
121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT BRISBANE FILE
NUMBER: BRC 3721 of 2011 Ms Fletcher Applicant And Mr Jones Respondent REASONS FOR
JUDGMENT THE PROCEEDINGS On 18 August 2014 I heard competing interim applications in this
dispute as to property settlement between former de facto spouses. I reserved judgment, which I was
about to deliver when my Associate received correspondence from the solicitor for the de
facto husband, Mr Jones. This letter stated that the de facto wife, Ms Fletcher died on ... September
2014. I caused the proceedings to be relisted on 12 September 2014 to ascertain the position in
relation to the estate of the late Ms Fletcher. I was informed that she died intestate and that her
husband, Mr Cook, intends to apply for a grant of Letters of Administration in the Supreme Court of
Queensland. I directed written submissions in relation to the appropriate course with regard to
my reserved judgment. I received written submissions from the solicitor for Mr Jones on 3 October
2014 and the lawyer for the late Ms Fletcher on 13 October 2014. The written submissions of the
solicitor for the late Ms Fletcher indicated that her widower has provided instructions for an
application for a grant of Letters of Administration and for continuation of these proceedings pursuant
to s 90SM(8) of the Family Law Act 1975 (Cth) (the Act). Section 90SM(8) provides as follows: If a
party to the de facto relationship dies after the breakdown of the de facto relationship, but before
property settlement proceedings are completed: (a) the proceedings may be continued by or against,

as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and (b) if the court is of the opinion: (i) that it would have made an order with respect to property if the deceased party had not died; and (ii) that it is still appropriate to make an order with respect to property; the court may make such order as it considers appropriate with respect to: (iii) any of the property of the parties to the de facto relationship or either of them; or (iv) any of the vested bankruptcy property in relation to a bankrupt de facto party to the de facto relationship; and (c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party. Rule 6.15 provides as follows: Death of party (1) This rule applies to a property case or an application for the enforcement of a financial obligation. (2) If a party dies, the other party or the legal personal representative must ask the court for procedural orders in relation to the future conduct of the case. (3) The court may order that the legal personal representative of the deceased person be substituted for the deceased person as a party. Note 1: The court may make other procedural orders, including that a person has permission to intervene in the case (see rules 1.12 and 6.05). Note 2: For the effect of the death of a party in certain cases, see subsections 79 (1A), 79 (8), 79A (1C), 90SM (2), 90SM (8), 90SN (5), 90UM (8) and 105 (3) of the Act. As yet, there is no legal personal representative for the late Ms Fletcher. It follows that there has been no application pursuant to r 6.15 for substitution of a legal personal representative for the deceased de facto wife. It follows also that there has been no application pursuant to r 6.15 for procedural orders in relation to the future conduct of the case. In the Marriage of Strelys (1988) 12 Fam LR 437 the Full Court (Simpson, Nygh and Graham JJ) considered s 79(8) of the Act and O 14 r 6(1). Section 79(8) is the equivalent provision to s 90SM(8) in relation to de jure marriages and O 14 r 6(1) was the previous embodiment of r 6.15. Nygh J held as follows in relation to s 79(8): ...Section 79(8)(a) allows the proceedings to be continued by the substitution of the legal personal representative of the deceased. In my view, until and unless such a person is appointed, the proceedings are, as it were, suspended... Nygh J held as follows in relation to the then Order 14 Rule 6(1): The obvious implication of that provision is that it is for the court to

givedirections as to the conduct of the proceedings followingdeath. This is aspecial provision dealing with a specific situation and the more generalprovisions of O 11 r 2 must, in my view,be read subject to this provision. In my view, upon the death of a party to incomplete proceedings under s 79, theproceedings are in effect suspended pending the directions of the court under 16(1) as to the future conduct of the proceedings. The purported withdrawal ofthe proceedings at a time when the proceedings could not be continued pendingthe appointment of a legalpersonal representative was ineffective to terminatethose proceedings. Itis thus the case that I am unable to take any step in these proceedings until alegal personal representative is appointed forthe late Ms Fletcher and thatperson is substituted for her pursuant to r 6.15. I decline to stay theproceedings pending thoseevents, as I consider that it is unnecessary that I doso. I certify that the preceding ten (10) paragraphs are a truecopy of the reasons for judgment of the Honourable Justice Stevenson deliveredon 15 October 2014. Associate: Date: 15 October2014 AustLII:Copyright Policy|Disclaimers|Privacy Policy|Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/870.html>