

NORTHERN TERRITORY OF AUSTRALIA

CORONERS ACT 1993

Rel No: D0009/2016

Promis No: 7513587

Section 16

Coroner's Reasons for Decision not to Hold Inquest

Section 34

Coroner's Findings

1. I, Kelvin Currie, the undersigned, Deputy Coroner for the Northern Territory, have investigated the death of:

JUSTIN MORGAN-PARKE

On: 9 January 2016

At: 60 Evan Road, Herbert. Northern Territory.

I have decided not to hold an inquest into that death because the investigations into the death have sufficiently disclosed the identity of the deceased person, the time, place, cause of death, relevant circumstances concerning the death and the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*.

2. I do not consider that the holding of an inquest would elicit any information further to that disclosed by the investigations conducted.

SUMMARY OF EVIDENCE

Identification

3. On 9 January 2016 the deceased's body was identified by his brother, Joshua Salter.

Post-Mortem Examination

4. An autopsy was performed by Dr John Rutherford, Forensic Pathologist on 11 January 2016. His provisional report gives the cause of death as:

1(a) Disease or condition leading directly to death: *Drowning*

Specimens

5. Specimens were taken for toxicology analysis.

Results: Forensic Science Case Number: 1600575

1. Alcohol was not detected in the jugular venous blood.
2. No other drugs were detected in the jugular venous blood.

Police Investigation

6. A coronial investigation by Police found no suspicious circumstances surrounding this death.

Circumstances

7. Justin (the deceased), a 3 year old Caucasian boy was born on 5 November 2012 in Darwin to Jennifer Morgan and Craig Parke.

Justin's parents separated and his mother, with whom he was to live most of the time, moved to a rental property at Herbert. With her in that move were Justin and his older brother who was 14 years of age. Also living at that property was Alicyn. Justin's father did not have a high regard for Alicyn and expressed concerns about her being around his son.

The property was rented by a couple known to Jennifer. In area it was just over 2 hectares. On the property was a house with a veranda and a large concrete area extending out from under the veranda to a plunge pool/spa. Fifteen metres away was a shed with a self-contained unit at the back of it that Alicyn had moved into.

As the property was over 1.8 hectares there was no legal requirement for the pool to be fenced. It mattered not that the pool was close to the house or that the property was rented.

Justin's father had raised concerns about the property having an unfenced pool as Justin had never attended swimming lessons and could not swim. He could not touch the bottom of the pool without being fully submerged. He loved the water and had been in the pool many times with family members. Much of the time he just sat on the step.

On 9 January 2016 they were still in the process of shifting to the property.

Jennifer left Justin in Alicyn's care while she drove into Nightcliff to remove the remaining property from the previous residence. Justin's older brother was looking after himself in the house.

At around 9.30 – 10.00am that morning Alicyn took Justin to the Gray shops. She bought him spring rolls and a strawberry oak milk drink and a small toy truck.

When they returned home from the shops Alicyn went into her bedroom in the self-contained unit to put the bed together. Justin played nearby. He said he was hungry and Alicyn gave him half a bacon and egg sandwich and told him to go and sit outside on the outdoor setting chairs located under the veranda beside the pool.

Alicyn said she kept an eye on him through the window while she continued putting the bed together. She saw him eating his sandwich and playing with the dog. After he finished his sandwich he came back inside and helped Alicyn put the wheels back on the bed. He then ran back outside to play.

Justin's brother said that he was in his room all morning and afternoon talking to friends on the phone, leaving his room on only two occasions. The first occasion around 11am-12pm he came out and saw Justin in the pool, standing on the step in his underwear. Alicyn was standing nearby with her back to him and he was splashing water on her. They appeared to be having fun. Joshua returned to his room and came back out at about 12:20pm to get a drink of water. This time he did not see anyone in the pool or outside. About 10-20 minutes later he heard Alicyn yelling for help.

Alicyn said that she had been inside the room and finished putting the bed together. She noticed that she hadn't seen or heard Justin for some time and went searching for him. She went to the main house where Justin's brother was playing computer games and asked him if he had seen Justin. He said that he hadn't.

She said that she went back outside and had a really sick feeling. She ran over to the pool and saw Justin face down at the bottom of the pool. He was not moving.

She estimates that it was about 5 minutes from when she went to look for him until she found him in the pool.

Alicyn jumped into the pool and pulled Justin out, laying him on the concrete beside the pool. She screamed out for help and commenced CPR.

Justin's brother heard Alicyn and came out of the house. Alicyn told him to phone "000", which he did. The phone call was recorded as occurring at 12.51pm.

Alicyn picked Justin up and moved him into the shade under the veranda and continued CPR, all the while on the phone to the emergency services worker. While she was doing CPR, Justin vomited but did not show any other signs of life.

His brother waited at the front gate for the emergency services to arrive.

Police arrived at around 1.00pm and took over CPR. On arrival he was noted to be pale and cold to touch. St John ambulance arrived at around 1.15pm and continued CPR. Justin was administered adrenaline, amiodarone, IV and Sodium Chloride however despite all resuscitation efforts, he was unable to be revived and he was declared deceased at 1.38pm.

The toy truck that Alicyn had bought for him that morning was located the following day at the bottom of the pool. It is likely that he dropped it into the water while he was playing in or around the pool and had tried to retrieve it.

It was a very sad and tragic accident and it illustrates just how very easy it is for young children to drown.

Children require active supervision at all times when they are playing or swimming in or around the water. Death from drowning can occur in minutes and in most cases supervision is absent for as little as 2-5 minutes. It often occurs without sound, not even splashing.

It is easy to move to blame. However, it is difficult to see apportioning of blame as a productive exercise. The fact is that many a carer or mother has turned his or her back for a moment, whether it is in the house, the yard or a shopping centre and the child has disappeared.

The problem is that there is only one system. It is 'supervision'. If that fails there is no further system between that failure and potential disaster. That was the issue that the *Swimming Pool Fencing Act* sought to rectify.

Currently under the *Swimming Pool Safety Act 2004*, swimming pools located on premises of 1.8 hectares or more in area ('large premises') are not required to be fenced.

The Coroner's Office wrote to the Swimming Pool Safety Authority (Authority) to determine the policy basis for the exemption of properties over 1.8 hectares. The Authority is positioned within the Northern Territory Government Department of Infrastructure.

The Authority indicated that the legislation commenced on 1 January 2003, and was reviewed 12 months after coming into operation. One of the amendments following the review re-defined "large premises" to be premises of 1.8 hectares or more in area (previously defined as being 2 hectares).

It seems that the reason for the exemption of properties over a certain size was that states like NSW had such an exemption.

The Authority's response indicates that no further review has occurred in the last decade.

If there is an appropriate reason for such exemptions it is assumed they relate to the likelihood of streams and dams on larger working properties. However

that is a completely different type of hazard to a pool situated within metres of the house. Allowing that hazard to exist, where the property is rented as a residence, also seems somewhat inconsistent with the intent of the legislation.

Recommendation

I recommend that the Northern Territory Government give consideration to the breadth of the exemption from the fencing requirements for pools on properties over 1.8 hectares.

FINDINGS

I find that the deceased is Justin Morgan-Parke, a 3 year old Caucasian boy born on 5 November 2012 in Darwin. He resided at 60 Evan Road, Herbert.

The deceased died at 60 Evan Road, Herbert on 9 January 2016.

The cause of death was accidental drowning.

Dated 14 November 2016

Kelvin Currie
Deputy Coroner