

W Primary Care Trust v TB & Ors [2009] EWHC 1737 (Fam)

SUMMARY OF THE PROCEEDINGS:

These proceedings were brought in the Court of Protection, the applicant being W Primary Care Trust.

The respondents in this case were respectively:

- TB the vulnerable adult (by her Litigation Friend the Official Solicitor);
- "V" (the establishment currently providing her with care and treatment on a day-to-day basis);
- C and W Partnership NHS Foundation Trust, which supplies psychiatric care to TB and also provides services to her under the aegis of the Community Mental Health Team (CMHT);
- W Metropolitan Borough Council, which provides social and welfare care for TB.

BACKGROUND:

The vulnerable adult in this case suffered from an Acquired Brain Injury with an associated psychiatric disorder "Chronic Delusional Disorder". Her condition presented itself as an unrelenting pre-occupation with the belief that blood was flowing from her brain into her stomach; she described this sensation, understandably, as painful and distressing. TB was convinced that her symptoms had a physical cause, and this fixation resulted in her frequently seeking emergency medical treatment.

TB had, at the point of the application, received a wide range of psychiatric treatments both in the community and as a psychiatric in-patient. Following the death of her parents TB had moved in with her brother with whom she resided for sometime. A recent deterioration in her condition led to her admission to V.

It was the belief of the CMHT that medical intervention to date had not produced lasting relief from her condition and that a complex package of neuro-psychological and neuro-behavioural therapies in a residential unit was necessary. There was unanimous professional evidence to the effect that it was in TB's best interest to be detained at V for a number of months.

ISSUES:

The primary issue in this case related to TB's clear and expressed desire to leave V, in order that she might be admitted to an NHS hospital for treatment of what she believed to be a physical, as opposed to a psychological, condition. It was evident that up until the point of the application, the staff at V had managed to keep TB at the location by using a combination of distraction and verbal dissuasion; force or physical restraint had not therefore been deployed. However, there was mounting concern from staff as to the likely continued success of such strategies, together with concern as to and over their appropriateness in the event that TB became determined to leave.

If TB were to be deprived of her liberty in clear contravention of her wishes, her rights under Article 5 of the Human Rights Act 1998 would be infringed. The PCT and the Official Solicitor therefore sought a declaration that TB was eligible to be deprived of her liberty at V pursuant to an authority under section 4A of the Mental Capacity Act 2005.

The Court of Protection was asked to consider the following: assuming that residential treatment at V was in TB's best interests as defined by the Mental Capacity Act 2005 as amended by the Mental Health Act 2007, whether depriving TB of her liberty in order to treat her could be authorized under schedule 1A the Deprivation of Liberty Safeguards or under s16 of the MCA 2005.

THE LEGAL FRAMEWORK:

There are essentially two streams of statutory provision under which an incapable person can be lawfully deprived of their liberty in order for them to be given necessary rehabilitative mental health care. The two streams are under the MHA 1983 and the MCA 2005. However, section 16A of the 2005 Act circumscribes the powers of the Court of Protection to make a welfare order, which incorporates an element of deprivation of liberty. If by operation of section 16A (2) (b) TB was ineligible to be deprived of her liberty under the MCA 2005 the only option remaining for detaining her lawfully would be under the MHA 1983. The complexity of this case was further compounded as V did not accept patients under the Mental Health Act 1983 and TB could not, for this reason be detained at V. In the light of this Mr. Justice Woods, gave consideration to the suitability of V as a treatment centre for TB and concluded that V was, when all the circumstances were considered the most suitable establishment to treat TB.

REASONING & DECISION:

As V was a registered care home under the Care Standards Act 2000, but was not registered as an independent hospital, nor was it considered part of the NHS, it did not fall within the necessary definition of a "Health Service Hospital" as defined under the relevant provisions of the MHA 1983.

On this basis Mr. Justice Wood reasoned that the declaration and orders sought by the PCT did not therefore constitute declarations/orders seeking "to accommodate her in a hospital". Following this reasoning to its logical conclusion, TB was not a "mental health patient" as defined under schedule 1A of the MCA 2005. It therefore followed that TB's detention at V fell outside of the categories of ineligibility under paragraph 2 of schedule 1A of the MCA 2005. Mr. Justice Woods held, that it was for these reasons that an order under the MCA or standard authorisation pursuant to the DOLS could be made, provided that there was sufficient evidence to establish that it was in TB's best interests. Satisfied that the best interests test had been met in this case, an order was accordingly made.

COMMENT:

It is regrettable that after the judgment in this case had been drafted, but prior to its delivery, the vulnerable adult in this case committed suicide. Mr. Justice Woods took the unusual measure of issuing the judgment even though no declaration or orders would be issued, on the basis that this issue was occurring with increasing frequency and there was to date, no reported decision to guide advocates and their clients.