PER-B-17 Mr R v Mental Health Tribunal for Scotland

Perth 31 August 2017 Sheriff Principal Lewis

Act: Miss Morrison for the Appellant

Alt: Ms Mays for the Respondent

The sheriff principal, having heard the solicitors for the appellant and respondent in respect of the appeal, refuses said appeal; adheres to the decision of the Mental Health Tribunal; finds no expenses due to or by either party.

Sheriff Principal

1. Mr R has a longstanding diagnosis of schizophrenia. He has been involved with mental health services for 17 years. His condition is aggravated by epilepsy and substance misuse. A compulsory treatment order ("CTO") was granted in 2009 and has, from time to time, been varied. The treatment regime under the CTO afforded to Mr R is depot and oral and oral antipsychotic medication coupled with periods or "secure and safe in-patient care and assessment of his mental health and treatment requirements" as well as treatment, support and supervision by skilled staff in the community. On 24 February 2017 a variation to the CTO resulted in treatment reverting from care in the community by care to hospital based treatment. Mr R accepted that decision.

2. On 10 April 2017 Mr R applied under section 100 of the Mental Health (Care and Treatment) (Scotland) Act 2003 to the Mental Health Tribunal for Scotland ("the Tribunal") for revocation of the CTO because he believed that the CTO is no longer necessary. Alternatively, he sought variation of the CTO because he believed that it is no longer necessary for him to be detained in hospital as suitable care could be provided in the community. His application was refused on 7 June 2017.

3. Mr R decided to challenge that decision and has appealed to this court under section 320(2) of the 2003 Act. An appeal to the Sheriff Principal may be made only on one or more of the grounds set out in section 324(2). The ground upon which Mr R relies is that the Tribunal acted unreasonably in the exercise of its discretion (s324(2)(c)). He does not argue before this court that the Tribunal's decision was not supported by the facts found to be established (s234(2)(d)), a concession made by Ms Morrison this morning.

4. Ms Morrison accepted from the outset that the threshold test for an appeal of this type, as considered in the authorities (*G v G Minors: custody appeal)* 1 WLR 647, *Britton v Central Regional Council* 1986 SLT 207 and *Lawrie (Named Person for AL) v Mental Health Tribunal for Scotland* SCOT SC 44) is high. The points in issue in this appeal are narrow. She argued that:

(i) The decision of the Tribunal was discretionary. The Tribunal had a duty to act reasonably in the exercise of that discretion. The decision of the Tribunal is flawed because it failed to narrate the evidence of the patient and thus failed to take into account a relevant consideration.

(ii) Further, the Tribunal has not explained why the evidence of the RMO and MHO was referred to that of the appellant.

In support of those propositions she relied upon *MacPhail* on Sheriff Court Practice at paragraphs 18.106 and 18.111.

5. Ms May refuted the contention that the Tribunal had erred in the exercise of its discretion. When read as a whole, the decision contains appropriate findings in fact and adequate reasons for the decision. Based on the written and oral evidence before it, the Tribunal concluded that the statutory conditions for the CTO continued to be met and that it remained necessary for Mr R to remain in hospital for treatment. She accepted that the Tribunal had not recorded in absolute detail the evidence of the appellant but that is not essential (*Moray Council v Scottish Ministers* 2006 SC 691 at para 35) and the omission is not fatal. The Tribunal recorded that it preferred the evidence of the MRO and MHO and explained why it so concluded. It is implicit in that acceptance that the evidence of the appellant had been rejected.

6. Notwithstanding the concession made by Ms Morrison, Ms May submitted that there is no perceptible error in the balancing exercise undertaking by the Tribunal and in relation to how that task is to be undertaken she referred me to *MacPhail* para 18.112, and *Lawrie*. The assessment of the facts and the weighing of those facts is for the decision maker (*City of Edinburgh Council v Secretary of state for Scotland* 1998 SC (HL) 22. The Tribunal must reach a decision based on the evidence and provide clear reasons for making findings that are central to the issue in dispute (*Scottish Ministers v Mental Health Tribunal for Scotland re (JK)* 2009 SC 398). The Tribunal has done so. For those reasons the appeal should be refused.

Decision

7. Where the ground of appeal is that the Tribunal acted unreasonably in the exercise of its discretion, it is not for me to interfere with that decision merely because I might have reached a different conclusion. I may intervene if satisfied that the Tribunal did not exercise its discretion at all; or in exercising that discretion the Tribunal misdirected itself in law; or misunderstood or misused the material before it or took into account an irrelevant consideration or failed to take into account some relevant feature or that the Tribunal just had gone "plainly wrong" (*MacPhail* paras 18.110-112, *G v G*, and *Britton v Central Regional Council*). I may also intervene if the Tribunal in carrying out the balancing exercise of weighing up the factors gave too little or too much weight to a particular factor or factors (*MacPhail* para 18.112, and *Lawrie*)

8. There was, and is, no dispute over the diagnosis nor is there any dispute that Mr R requires medication of the type currently being prescribed. The matter for the Tribunal to determine was whether the treatment for Mr R should be provided in the community or in X Hospital.

9. At the hearing before the Tribunal Mr R was represented by a solicitor and an advocacy worker. He gave evidence. Mr R did not provide the Tribunal with any contradictory evidence from any psychiatrist or other expert concerning the therapeutic benefits or indeed the feasibility of care in the community. His mother (a "named person") was unable to attend the Tribunal but did submit a reflective, helpful and indeed very touching email endorsing the supported accommodation solution. The advocacy worker read out a pre-prepared statement on behalf of Mr R in which he made a heartfelt plea to return to his flat with promises of co-operation with the care workers. The essence of the evidence for and on behalf of Mr R appears in paras 2–4 of the decision.

10. The RMO and MHO gave oral evidence. The evidence of the MHO accepted by the Tribunal appears in paras 9–11 of the decision In short, they spoke of Mr R's history of illness, his engagement with the professionals, his noncompliance with treatment, the effect of his disengagement on his mental health, and the care plans. Supported accommodation was

considered by the MHO and RMO but both remain committed to rehabilitation and recuperation continuing within the hospital at present as providing the best outcome for Mr R. The Tribunal regarded the MHO and the RMO as credible and reliable, commenting that their evidence was clear and persuasive.

11. The foregoing is reflected in the findings made by the Tribunal on page 4 of its decision. The findings are brief but are unequivocal and in my view supported by the evidence which it regarded as clear and persuasive.

12. It is clear from the decision that the Tribunal did take into account the views of Mr R and those of his mother, and balanced those against the views of the professionals fairly and appropriately. The Tribunal has given clear reasons for accepting the evidence of the RTO and MHO.

13. The Tribunal does not need to narrate in its decision every word spoken by each witness (*Moray Council*). Were that to be a requirement then decisions and judgment would run to hundreds of pages. What is required is a summary of the evidence, written with clarity and precision. I am not persuaded that the Tribunal erred in its approach to the recording and narration of the evidence of Mr R.

14. What the Tribunal has not done, in terms, is to state that it preferred the evidence of the RMO and MHO over that of Mr R although it is clear from the language of the decision when read as a totality that it did reject the evidence of Mr R in preference to that of the professionals. It might have been better had the Tribunal done so. Although I am not inclined to the view that this omission is fatal in the circumstances of this particular case, I would urge the Tribunal to consider careful and review its current stylistic approach to its written decisions. Ms May explained why the Tribunal is loath to use words such as "credible", "reliable" and "rejection" but agreed that more appropriate language could be utilised.

15. It is clear that the Tribunal is sympathetic to the predicament of Mr R but in my view has not acted irresponsibly or failed to take into account relevant material or took into account something irrelevant or otherwise acted unreasonably in the exercise of its discretion. For all of the above reasons, the appeal is refused. No award of expenses was sought.