(MHTS/B62/08)

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

APPLICATION BY

D

against

The Mental Health Tribunal for Scotland

Act: Party
Alt: Mays, Solicitor

EDINBURGH, 6th May 2008

The Sheriff Principal, having resumed consideration of the cause, refuses the appeal.

NOTE:

1. Section 32(3) of the Mental Health (Care and Treatment) (Scotland) 2003 provides a right of appeal to the Sheriff Principal against certain decisions of a Mental Health Tribunal. One of the decisions specified is a decision under section 103(3)(c) of the Act following on an application under section 100(2)(a) to revoke a compulsory treatment order.

2. A compulsory treatment order was made in respect of B on 29 November 2006. It was extended in May 2007. As a result of correspondence between B's mother, the present appellant, and the Mental Health Tribunal for Scotland an application for revocation of the CTO came before a Mental Health Tribunal sitting in St Boswells on 26 November 2007. This was an application at the instance of the appellant as B's "named person".

3. At the hearing the Tribunal had before it a letter from the appellant dated 15 October (addressed to the President of the Mental Health Tribunal for Scotland) and a copy of an application to extend the CTO which had been received by the MHTS on 21 May 2007. A report from a Mental Health Officer and a care plan were appended to that application. The Tribunal heard evidence from the present appellant and from Mr Yapp a Mental Health Officer.

4. The thrust of the terms of the appellant's letter of 15 October was not directed to the need for a continuing CTO, on the face of it, but to the fact that B should never have been made the subject of compulsory measures of care in the first place. From the terms of that, and voluminous correspondence produced to me, it is plain that from 2002, when B was first made the subject of compulsory measures of care under the Mental Health (Scotland) Act 1984, the appellant has never accepted that he suffers, or has suffered from any form of mental illness. She alleges, without so far as I can see any supporting evidence, conspiracies on the part of police officers, doctors, social workers and members of the public who may have had occasion to complain about her son's conduct, all with a view to detaining her son and subjecting him to treatment which he does not need. The motives of those who are the subject of the appellant's allegations are not identified.

5. Standing the fact that the application to it was misconceived, it is not difficult to see why the Tribunal refused it. It found that B has a mental disorder diagnosed as schizophrenia, that diagnosis having been made as far back as 2000 and confirmed in a report by Dr Solomon who examined B on 10 May 2007. The Tribunal found that he was "in need of ongoing care and medical treatment which will alleviate the symptoms and without which the patient would be at significant risk of damage to his own and to other persons health, safety and welfare". The Tribunal went on to observe that the proposed care plan which concluded the giving of suitable medical treatment did not include the requirement of hospital in-patient care, and was accordingly in their view the least restrictive means to afford to the patient the course of treatment necessary for him.

6. In reaching this decision, it cannot be said that the Tribunal erred in law; arrived at a decision not supported by established facts; exercised its discretion unreasonably or permitted a procedural impropriety to occur in the course of the hearing. Each of these heads of appeal is put forward by the appellant in a letter dated 9 January 2008 which I was prepared (perhaps generously) to treat as a summary application for the purposes of these proceedings. These heads of appeal reflect the provisions of section 324 of the 2003 Act. Unfortunately the substantive statements in support of each of them do little more than rehearse the history of events and the fact that the appellant disagreed with every factual conclusion which might have indicated that her son was ill. An assertion that an appellant does not agree with stated facts does not mean that they are wrong, and the fact that a Tribunal may reach a view which an appellant does not like does not constitute bias. Nothing was identified which constitutes an error in law on the part of the Tribunal in arriving at its decision in November 2007 nor can it be said that it exercised its discretion unreasonably given the information which was before it.

7. I endeavoured to explain to the appellant at the commencement of the appeal hearing that I could only be concerned with the propriety of the decision reached on 26 November 2007. Her position was, and clearly remains, that everything which has led to her son's original detention and subsequent treatment has been wrong and it is that which she wishes the Court to re-open. It is not possible for me to comply with that request. Decisions which were made by courts and tribunals sometime ago cannot be the subject of the sort of review which the appellant contemplates. It is plain that no court or tribunal dealing with B has even had before it anything other than, on the one hand, opinions and diagnoses of doctors and health care professionals expressed in apparent good faith, and on the other hand the competing unsupported opinion of the appellant. There is simply no competing authoritative view which might indicate that the medical opinion of B's condition is wrong.

8. In all these circumstances this is a case in which the appeal against the Tribunal's decision clearly falls to be refused.