PER-B2-18 **JF v Mental Health Tribunal for Scotland**

Perth: 4 April 2018 **Sheriff Principal Lewis**

Act: Ms JF, Appellant

Alt: Russell Hunter, Respondent

The sheriff principal, having heard parties, refuses the appeal; finds no expenses due to or by either party.

Sheriff Principal

Note

1. CF has a diagnosis of schizophrenia. He has been involved with Mental Health Services for some time. His condition is characterised by thought disorder and paranoia. By November 2017 CF's mental condition had deteriorated. He was taken by police officers to B Hospital on 13 November 2017, following which a short term detention certificate ("STDC") was granted by an approved medical practitioner in terms of section 44 of the Mental Health (Care and Treatment) (Scotland) Act 2003. The STDC authorised detention of CF in hospital for a period of 28 days and the giving to him, in accordance with part 16 of the 2003 Act, of medical treatment.

2. On 28 November 2017 CF applied under Section 50 of the 2003 Act to the Mental Health Tribunal for Scotland ("the Tribunal") for revocation of the STDC because he did not accept that his decision making ability with regard to the

provision of medical treatment was significantly impaired. He also did not believe that he would pose a significant risk to his own health, safety or welfare or to the safety of any other person and accordingly a short term detention certificate was not necessary. The application was lodged on behalf of CF by TM, solicitor.

3. JF is the mother of CF. On 30 November CF nominated his mother to be his named person. His mother agreed to so act. (The nomination was subsequently revoked by CF but is not relevant in relation to the outcome of this appeal)

4. The application for revocation was heard by the Tribunal on 4 December. CF did not attend the hearing but was represented by his solicitor. The Tribunal heard evidence from Dr R, the responsible medical officer and from JF. The application was refused.

5. JF decided to challenge that decision and has appealed to this court under sections 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 grounds are:

(a) the Tribunal's decision was based on an error of law;

(b) there has been a procedural impropriety in the conduct of any hearing by the Tribunal on the application;

(c) the Tribunal has acted unreasonably in the exercise of its discretion;

(d) the Tribunal's decision was not supported by the facts found to be established by the Tribunal.

JF relies upon each of those grounds.

6. At the appeal hearing on 7 February 2018 two preliminary issues were discussed – (i) lack of specification in the note of appeal and (ii) the purported existence of two further appeals by JF. Without doubt, the note of appeal as lodged is bereft of detail in that there is no specification of any error of law, of any procedural

impropriety, of the manner in which the Tribunal failed to exercise its discretion reasonably or of the facts which do not support the decision of the Tribunal. These are fundamental omissions which would justify immediate refusal of the appeal. In addition JF advised that she had, on behalf of her son, lodged two further appeals – the first relating to a short term detention certificate issued in early January 2018 and the second relating to her son's revocation of her nomination as a named person. She was adamant that appeals had been lodged with my office. She asked that all three appeals be conjoined as they relate to CF's treatment.

7. In light of the foregoing, I decided to discharge the appeal hearing and to schedule a new date to enable JF to lodge expanded grounds of appeal and for enquiry to made in relation to the purported additional appeals.

8. JF lodged with my office a large bundle of papers, but she had failed to provide an amended note of appeal or any written material which could be regarded as an expansion or amplification of the original note of appeal.

9. At the resumed appeal hearing, Mr Hunter explained that other than an email from JF to the office of the Tribunal intimating a potential appeal in relation to a second short term detention certificate there was nothing to support JF's contention that there were two further live appeals. Mr Hunter advised that he wrote to JF seeking clarification of her intentions. She did not reply. Copies of the correspondence were made available to me and it is clear that the email from JF is not an appeal, however one reads it. My secretary could find no trace of any additional appeals by JF to this court.

10. The first step in relation to challenging an STDC requires an application to the Mental Health Tribunal. There had been no such application and as there had been no such application there could be no appeal to the Sheriff Principal. The legislation

does not make provision for an appeal against a revocation of a nomination for a named person. Accordingly there is nothing to conjoin.

11. JF expressed dismay at this outcome and became somewhat truculent in her approach to the proceedings. She chose to rely upon the content of the documents lodged. She engaged in a character assassination of Dr R and was critical of the Tribunal for accepting what she perceived to be flawed medical evidence.

12. Mr Hunter refuted the contention that the Tribunal had erred in any respect. 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 conditions in section 44(4)(a), (b) and (d) of the 2003 Act continue to be met. The Tribunal recorded that it preferred the evidence of Dr R to that of JF and explained why it so concluded. Mr Hunter submitted that there is no perceptible error in the balancing exercise undertaken by the Tribunal, there was no procedural impropriety in the conduct of the hearing by the Tribunal, nor did the Tribunal make any error in law. For those reasons he submitted that the appeal should be refused.

Decision

13. For an appellant who is self-represented the appeal provisions in section 324 (2) of the 2003 Act are not easy to understand. I endeavoured, at the first appeal hearing, to explain to JF the role of the appeal court in a situation such as this, the paperwork which the appeal court expects to receive and general matters of presentation. She did not pay heed and did not take advantage of the opportunity given to her to expand upon the grounds of appeal.

14. To be clear, there is but one appeal before me. That is an appeal against the decision of the Tribunal made on 4 December 2017 to grant a short term detention

certificate. There is no appeal before this court in relation to the second short term detention certificate nor for that matter is there any appeal relative to the nomination.

15. The decision of the Tribunal of 4 December is a discretionary one. It was taken after hearing evidence from Dr R as well as hearing from the solicitor representing CF and from JF. Where an appeal is taken against a decision which is discretionary in nature, it is not for me to interfere with the decision merely because I might have reached a different conclusion. The appeal is not a re-hearing. I am entitled to set aside the decision in limited circumstances. 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 had just gone "plainly wrong" (MacPhail Sheriff Court Practice at *paras 18-110 to 18-112, G v G (Minors: custody appeal)* [1985] 1 WLR 647, and *Britton v Central Regional Council* 1986 SLT 207). I may also intervene if the Tribunal in carrying out the balancing exercise of weighing up the factors gave too little weight or too much weight to a particular factor or factors. The tests are very high – a point which seemed to be lost on JF.

16. The Tribunal heard evidence from Dr R whom it accepted as credible and reliable. JF had not provided the Tribunal with any contradictory evidence concerning her son's state of mental health and general wellbeing. It is clear from the decision of the Tribunal that it did listen to JF and concluded that her views and evidence were quite confused. It is obvious to any reader of the decision that the Tribunal assessed the evidence carefully. It did not misconstrue the evidence or take into account irrelevant material or ignore material factors or err in the balancing exercise. Accordingly I am not satisfied that the Tribunal has acted unreasonably in the exercise of its discretion.

17. I was not advised of any error of law (none was identified by JF and try as I might I could not detect any).

18. The findings made by the Tribunal appear on pages 1 and 2 of its decision. The findings are brief but they are unequivocal and in my view are supported by the evidence which the Tribunal regarded as clear and persuasive. The entire thrust of JF's submission on the facts was that Dr R had lied and continues to lie about CF's mental state. As no contradictory evidence was adduced before the Tribunal this point is without any merit whatsoever. I am satisfied that the decision of the Tribunal was supported by the findings in fact.

19. I am not satisfied on the information before me that the Tribunal deviated from the rules of procedure by which it is bound or that there has been a procedural impropriety in the conduct of the hearing by the Tribunal. CF was represented by a solicitor at the hearing before the Tribunal. No appeal has been taken by CF.

20. Accordingly, the appeal is refused. No award of expenses was sought.