Manchester City Council v MI

Court and Reference: Court of Appeal; FC3 1999/6437/2

Judges: Butler-Sloss, Schiemann and Mantell LJJ

Date: 25 June 1999

Appearances: MI in person; R Patterson QC (instructed by the City Solicitor) for Manchester

Judgment:

Butler-Sloss LJ

1. This is an appeal by the mother of a man, PI, born on 26 October 1960, so that he is now 38, from the order of HHJ Tetlow made on 5 November 1997 in the Manchester County Court. In a sense, and for a number of reasons, this is a somewhat stale appeal and it might be said, and indeed Mrs Patterson for the Manchester City Council, who were the applicants before HHJ Tetlow, has put to us rather delicately, that there is a certain rather academic element to this appeal which I will explain later. The council applied, as the local social services authority, under the Mental Health Act 1983 that the functions of the mother as the nearest relative of PI should be exercisable by the council under s29(1)(c) of the Mental Health Act 1983 and the judge made the order which was sought by the council. The mother wishes to set aside that order. She is most anxious that PI should be returned to her. Alternatively, she seeks a new hearing to give herself a chance to explain to another judge why the order ought not to be made.

2. The council has produced additional evidence for this court, which we have read without taking into account because, in my view at least, it is evidence which might be of significance if the appellant won because it goes to what has happened to PI since the hearing before the judge and deals with his discharge from a psychiatric hospital near Manchester and his living in the community under supervision with a guardianship order applied for and granted to the council. There have been a number of Mental Health Review Tribunal applications by the mother, 2 at least and she has been unsuccessful in obtaining the discharge from guardianship from the Mental Health Review Tribunals. That is irrelevant to us on the issue which is raised before us today, although it is helpful of the council to have provided that information, certainly for completeness, and it might in other circumstances have been highly relevant. But we are concerned with whether HHJ Tetlow rightly made the order under s29(1)(c) of the Mental Health Act.

3. The background to this case is the mother is a qualified nurse. She has 2 children, a daughter, who is a teacher, and the son, PI. PI lived with her from birth, all through his life, apart from one or two intermittent

periods, firstly in 1991 and then in 1993/1994 when he was for various reasons removed. He did spend a period in 1993, and in 1994-early 1995, in Calderstones Psychiatric Hospital. In between these periods that he was in hospital he was at home.

4. The view of the mother is that PI has suffered from and may well continue to suffer from mild epilepsy which is controllable by drugs. Those drugs, she says, can perfectly well be administered by her. She is supported in the view that PI suffers from mild epilepsy not only by the GP with whom PI at one time was registered, a Dr Metzger, but also by Prof Adrian Williams, a professor of clinical neurology at the University of Birmingham Hospital.

5. The opposite view as to the state of health of PI is taken by the Manchester City Council, as the social services authority, by one of their senior social workers, who was the authorised social worker and probably still is, by at least one police officer and, perhaps most importantly, by 2 consultant psychiatrists.

6. The way in which this matter arose to be dealt with by the court was that there were complaints by neighbours, which may or may not have been justified - it matters not - made to the police. The police investigated, got in touch with social services and on 10 January 1997 the approved social worker, Mr Gerard Evans, attended at Mrs I's house. He made an assessment under s2 of the Mental Health Act and he was supported in that assessment, in particular by Dr Miller, who was at the time a locum consultant psychiatrist in Manchester. The assessment by 2 psychiatrists - because a Dr Bishay, who is senior to Dr Miller, later gave a report - has a very different approach to the problems from which PI is said to suffer. Dr Bishay on 5 February 1997 in his report on PI said:

> "[He] suffers from chronic schizophrenic illness and Tourette Syndrome. He has a long history of hospitalisation, violence and assaults on women. He has received treatment in Birmingham and in Calderstones Hospital. In Calderstones he was looked after in a secure ward for males, nursed by males."

7. The importance of it is this, that the 2 consultant psychiatrists have taken the view, because Dr Miller supports Dr Bishay that he is suffering from mental illness, and I now read from her report:

> "... for which he requires hospital treatment. PI requires this treatment for his health and the protection of others."

8. She said in relation to s2 and s3 that this treatment cannot be provided unless PI is detained.

9. No-one criticises PI at all. It is clear from the consultant psychiatrists that he suffers from mental illness. Therefore he is not responsible for his actions and it is a misfortune that his illness means that he has certain problems. The trouble is, among other things, that he is 6"1' in height and something between 18 and 20 stone in weight and therefore in the sexual assaults which are alleged of course there is an element of violence.

10. The judge therefore had before him on 5 November the fact that PI had been admitted under s2 for assessment and then detained under s3 and was at that time in hospital in Calderstones having by then been there for some 11 months. The council needed to take over the control of PI because the mother has always refused to accept, and this is the council's case, that her son suffered from a mental illness and that he required in-patient treatment for mental illness. She, as I have already said, has always said that there is no mental illness and that he suffers from epilepsy and all the problems that there may be stem from his inability from time to time to control his limbs and therefore he has made involuntary movements and certainly has not assaulted anyone, certainly has not made any sexual advances to anyone.

11. The judge was faced with this conflict of evidence. He had the reports from Dr Miller, a report from Dr Bishay and he had a report from the approved social worker. He had to consider the meaning of mental disorder under s1 of the Mental Health Act, as interpreted by s145. He had to consider under s29 that:

> "(1) The County Court may, upon application made in accordance with the provisions of this section in respect of a patient, by order direct that the functions of the nearest relative of the patient under this Part of this Act ... shall ... be exercisable by the applicant, or by any other person specified in the application...
>
> (2) An order under this section may be made on the application of –
> (c) an approved social worker..."

12. In relation to an application by a social worker, the person specified to exercise the powers shall be the local social services authority. Under subs(3) the ground for making an application is that "the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient". That was the issue before HHJ Tetlow on 5 November. The test which he should apply was set out in a decision of the Court of Appeal called W v L [1974] QB 711. Lawton LJ at p718 said:

> "The proper test is to ask [in that case it was a woman as it is in this one] what a reasonable woman in her place would do in all the circumstances of the case ... looking at it objectively, what would a reasonable woman in her place do when faced with this wife's problem?"

13. In that case it was a young husband and a young wife and the young wife refused to agree to a s3 order. If one substitutes for the wife in this case the mother the test is what a reasonable mother in the place of this mother would do in all the circumstances of the case. HHJ Tetlow said:

> "The test is what a reasonable person in Mrs I's place would do in all the circumstances. In other words, an objective case."

14. He correctly, in my view, sets out the test which he has to follow. He then sets out the County Court Rules under which this application can be made to the County Court. He dealt with the evidence of the police constable who knew of complaints. He dealt with the evidence of a registered nurse who attended in December 1996 and then the evidence on 10 January 1997 when her son, PI, was removed. On that occasion there was Mr Evans, the approved social worker; Dr Miller, the psychiatrist; another doctor and some police officers who attended. On that occasion PI was removed under a s2 assessment. Dr Miller gave evidence to the judge and the judge had therefore her evidence and the report. One added point which is in dispute with the mother is that PI, according to Dr Miller, has an IQ of 60 and cannot function independently, but according to the mother he has a much higher IQ and can read and write and function very well. The judge made the point from the evidence before him that there had been a previous history of problems, both in Birmingham and earlier in Manchester. The judge raised this question of suspected epilepsy and the report of Prof Corbitt - I think he probably meant Prof Williams actually. The issue before the judge was whether or not the mother would co-operate to allow PI to be treated in hospital under s3 and the view of the City Council and the view of the doctors was that mother would not co-operate. I have to say, having heard the mother today, it is clear, as it was clear to the judge, that she would not co-operate because she does not believe that these circumstances are actually the circumstances which are relevant to her son. The judge considered the alternative to making the s29(1)(c) order. He said:

> "... if I make no Order, … PI will be discharged now, or very shortly, he would go home to his mother, a regime of non-cooperation and refusal to give appropriate prescribed medication would result with a decline in the son's condition with predictable results."

15. He was satisfied that he needed treatment. The judge in an extremely clear and very helpful judgment sets out his findings. These are findings with which it would be extremely difficult for this Court to interfere. He says:

> "Firstly ... it is clear to me that PI clearly suffers from mental disorder, characterised as mental illness; mental impairment. Mrs I says it is petit mal epilepsy. There they have been grounds for saying so in the past, but on present evidence, I am satisfied that the present problems are not epileptic or epileptic in origin."

16. Then:

> "Secondly, I am not convinced from previous occasions in earlier years there was clear and obvious evidence of epileptic problems ... nor can I accept Mrs I's evidence ... Thirdly, I find that PI's present condition needs treatment. I conclude that from the evidence I have heard of the progress he has made in Calderstones. Fourthly, I find that more time is required to get to the stage where a discharge can be considered and I conclude that it is more than 28 days ... a s2 order is not appropriate. A s3 application would be ... Fifthly, I find that, if I do not make an order, PI will come home, a regime of medication would be put in place but I am not persuaded that Mrs I would follow such a regime ... I am satisfied she would follow a regime tailored to treat epilepsy, ... a regime incompatible with the diagnosis I find is the correct one ... I am satisfied the necessary treatment cannot be carried out successfully in the home environment; ...
>
> Standing back, a reasonable person, in my judgment, in Mrs I's shoes, would say PI needs psychiatric, not neurological, treatment and such is necessary in the hospital environment; ... in all the circumstances, looking at it objectively, it would be wrong to deny PI that necessary treatment",

and he made the order.

17. Mrs I comes to us and says all of this is plainly wrong. She says that he is not suffering from mental illness, that the psychiatrists do not know what they are talking about, and I put it like that, that this is a neurological problem and not a psychiatric problem, that psychiatrists are not trained in neurology so how can they understand what is necessary. The correct diagnosis is epilepsy, not mental illness. She says that her son is quiet and reasonable. He is polite and well behaved, that there was nothing when they turned up on 10 January to lead anyone to want to take him away and put him into hospital. This is a denial of his human rights, she says, and is a denial of his opportunity to live quietly and peacefully in the community with his mother and sister, as he has done for so many years. She points out that he went to the gym; he went to church with his sister; he was leading a semi-normal life; he needed some looking after but he was doing very well under that regime; he could read and write; he had a high IQ and the whole of what the psychiatrists are saying and the approved social worker is saying is completely untrue. She is also very concerned that the judge led her to believe at one of the hearings that he was going to let PI out to go home and he was being critical of the way that the doctors and approved social worker dealt with the case. But then on the next occasion when she did not attend, low and behold, he changed his mind. Was he got at, she says; how was it

he changed his mind from what she had learnt from him on that occasion?

18. I have to say that I do have a lot of sympathy with Mrs I who has had the greatest possible difficulty in understanding that the view of the doctors and of the approved social worker is the correct view - I say the correct view because the judge heard the evidence with enormous care. He came to conclusions; he made findings of fact, and based upon the findings of fact he decided that he had to allow the council to take over the duties of the nearest relative from the mother and it is perfectly obvious that the mother would not do what she was asked because she cannot believe, did not then, and does not now believe that it was right that he should be having this treatment and he ought to be at home with her.

19. This is a very sad case, but there is no doubt at all, in my view, that this court cannot possibly interfere with it. If we did interfere with it and we set aside the order, which in my view is inconceivable, there would be a considerable number of subsequent problems, but those subsequent problems do not arise because I, for my part, think the judge was perfectly entitled to come to the conclusion to which he has come and I would dismiss this appeal.

Schiemann LJ

20. I agree that this appeal should be dismissed for the reasons given by my Lady.

Mantell LJ

21. I also agree.