

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Health and Wellness) v. V.S.*, 2015 NSSC 9

Date: 2015 - 01 - 16

Docket: SFHAPA 010636

Registry: Halifax

Between:

Minister of Health and Wellness

Applicant

v.

V.S.

Respondent

Judge:

The Honourable Justice Elizabeth Jollimore

Heard:

January 6, 2015

Counsel:

John S. Underhill for the Minister of Health and Wellness
Colin M. Campbell for V.S.

By the Court:

Introduction

[1] The Minister of Health and Wellness has filed an application to renew an order relating to V.S. The order, granted by Justice B. MacDonald in July 2014, was premised on a number of findings: that Ms. S was an adult in need of protection and that she was not competent to decide whether to accept the assistance of the Minister. Justice MacDonald's order was a renewal order. Indeed, it was the thirty-fourth renewal order granted with regard to Ms. S.

[2] According to subsection 9(8) of the *Adult Protection Act*, R.S.N.S. 1989, c. 2, Justice MacDonald's order expires six months after it was made. It expires on January 22, 2015.

[3] At the hearing, I received Peter Tufts' affidavit. It provided records and reports from others involved with Ms. S's care. Ms. S did not object to the admissibility of these records and didn't challenge the truth of their contents. Mr. Tufts was also cross-examined. I heard testimony from V.S. who was questioned by her own lawyer and cross-examined.

Ms. S's circumstances

[4] V.S. is sixty-two years old. She lives alone in an apartment in Dartmouth. She does this with assistance from workers at Community Living Centres Inc. and the Supportive Community Outreach Team (SCOT). Support workers visit Ms. S regularly to ensure she is taking prescribed medications, maintaining a safe and clean home, purchasing appropriate groceries and participating in social and leisure activities. Her finances are managed through a program which is part of the Services for Persons with Disabilities program. She receives a wide range of services which are coordinated and monitored by Peter Tufts, a social worker, who is employed by the Department of Health and Wellness as an adult protection worker.

[5] Ms. S has been diagnosed as having schizophrenia. In December 1997, she was admitted to the Nova Scotia Hospital as an involuntary patient. She remained there until the initial *Adult Protection Act* application was begun in 1999. She had been admitted into the Nova Scotia Hospital on forty-two earlier occasions. In 1997, Ms. S was receiving home support services through SCOT, but she was unable to manage in her own home and wasn't compliant with her medication.

[6] Ms. S has other medical conditions: diabetes, thyroid problems, and hypertension. CLC notes reflect fluid retention, decreased bone density and reduced vision in her left eye. Her most recent medication list identifies eighteen daily medications (sixteen and one-half pills taken in every morning – with an additional one on Wednesdays, two pills taken at noon, twelve pills at supper and one pill at bedtime). She has additional pills which are taken as needed, plus two inhalers and creams).

[7] Ms. S objected to taking the pills (clozapine) which treat her schizophrenia; she describes them as "trash" and "junk". CLC staff ensure that she takes her pills regardless of how she feels

about them. She says she knows she must take them, however her history is one of non-compliance unless monitored.

[8] Because of her diabetes, Ms. S must be mindful of her diet. She is not. CLC staff identify her eating forbidden items. Mr. Tufts reviews her grocery receipts to monitor her purchases. On occasion, she will not provide her receipts, so he cannot do this. She regularly speaks of “being good” about her eating habits and improving her dietary choices. However, she continues to buy food which is not appropriate to her diabetic diet.

[9] There is a protocol for responding to Ms. S’s diabetic symptoms: if her blood sugars are over twenty, paramedics are called and she is taken to hospital. In the latter months of 2014, Ms. S’s blood sugars were high enough to invoke this protocol four times, and three times Ms. S refused to go with the paramedics.

[10] Ms. S doesn’t appreciate the importance of the clozapine she takes. She said that she does not need the pills, and they do her no benefit. She said that she has repeatedly asked her psychiatrist to stop the pills, but no psychiatrist has seen this as an appropriate option. She claimed the pills make her tired. She doesn’t understand that her poor diet elevates her blood sugar and tires her.

[11] At the beginning of each month, Ms. S receives her comfort and transportation allowances. While funds last, she spends them. This includes buying unhealthy treats (such as cake, chips and chocolate milk) and making inappropriate purchases: CLC records note Ms. S was required to make store returns of fifteen blankets and a pair of men’s oversize shoes.

[12] Ms. S’s personal care is lacking. She wears the same clothing for several days and has blistered her skin using a heated “Magic Bag”. She has given her telephone number to store staff and asked the staff for their phone numbers, though she does not know them, and knocked on the doors of others in her apartment building so she can give them gifts. Given her vulnerable state, these are dangerous behaviours.

[13] Dr. Edward Gordon has been Ms. S’s treating psychiatrist since 2012. He sees her every two to three months. In preparation for this application, he completed an Adult Protection Services Medical Observation Form. Dr. Gordon described Ms. S as having a “well documented history of schizophrenia with significant cognitive + functional deficits impacting on activities of daily living, physical wellbeing + quality of life.” He said that “because of her disorder she lacks insight into her mental condition, does not believe she has an illness, is not able to speak to its course or appreciate medication benefits or risks of discontinuation on either her physical or mental state.” He concluded, “Were the [*Adult Protection Act*] order lifted she would in my opinion discontinue medication + likely decompensate significantly threatening her physical wellbeing (diabetes) + mental health.”

Legal analysis

[14] My first step in an application to renew an adult protection order is to determine whether Ms. S remains an adult in need of protection. If I determine this, I am then to consider her best

interests. Only if she is in need of protection do I have jurisdiction to renew the order. This analysis is outlined in *N.S. (Minister of Health) v. R.G.*, 2005 NSCA 59 at paragraph 6. Chief Justice MacDonald, who wrote the unanimous reasons in that case, said, at paragraph 14, that subsection 9(3) of the *Adult Protection Act* doesn't require me to "make or renew an order, **even if finding the adult to be in need of protection.** [emphasis added]" I am only to make or renew an order if the order is in Ms. S's best interests.

Is V.S. an adult in need of protection?

[15] Clause 3(b)(ii) of the *Adult Protection Act* defines an adult in need of protection as a person who, in the premises where she resides, isn't receiving adequate care and attention, is incapable of caring adequately for herself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for her adequate care and attention.

[16] At paragraph 41 in *N.S. (Minister of Health) v. R.G.*, 2005 NSCA 59, Chief Justice MacDonald made clear that the reference to the premises where the adult resides should be interpreted broadly "to include where the adult lived either before the initial APO or where he may be living, should the APO terminate."

[17] I am satisfied that Ms. S is an adult in need of protection. Her circumstances, absent the court-ordered intervention of Mr. Tufts and the services which he coordinates and monitors, show her to be incapable of meeting her own needs for health care as a result of her schizophrenia. She manages to take her prescribed medications with supervision. Her physical well-being is jeopardized by her diabetes and her poor dietary choices. She objects to the protocol for responding to her elevated blood sugars and thereby jeopardizes her health. Her interactions with others put her at risk. Ms. S's own choices, her explicit desire to stop her clozapine, her incessant consumption of inappropriate food, her failure to budget properly, and her dangerous interactions with others all show her to be incapable of caring for herself.

What order is in V.S's best interests?

[18] In *Nova Scotia (Minister of Health) v. J.J.*, 2005 SCC 12 at paragraph 23, Justice Abella, writing for a unanimous Court, made clear that where I decide an adult is in need of protection (limiting her autonomous decision-making and liberty), I must ensure that the Minister intrudes in her life only in ways which are consistent with her best interests. I'm obliged to consider the "availability of services and the Minister's capacity to provide them."

[19] Ms. S sought freedom from the repeated renewal applications and argued that she knew she was required to take her medication.

[20] Ms. S did testify that she knew she had to take her medication and would not stop taking it without a doctor's instruction. Her comments are at odds with her conduct: when she is not supervised or hospitalized, she has stopped taking her medication. When left to her own devices, Ms. S has stopped taking her medication and, as a result, been re-hospitalized. She lacks insight into her illness, her need for the medication, the consequences of taking it and, more

significantly, of not taking it. For example, she testified that she wasn't hospitalized because she stopped taking her medication, but because she "just didn't feel well".

[21] Ms. S argued that there are alternatives to an adult protection order. She said her finances could be managed by the Public Trustee, and that the *Involuntary Psychiatric Treatment Act*, S.N.S. 2005, c. 42, or even provisions of the *Criminal Code*, R.S.C. 1985, c. C-46 could be brought into play if her mental health deteriorates in the absence of an adult protection order.

[22] The Minister disputed whether terminating the order and relying on alternatives was in Ms. S's best interests. In particular, the Minister referred to the opinion of Dr. Gordon that if Ms. S stopped taking her clozapine she would "decompensate significantly". Mr. Tufts testified that Ms. S will become permanently ill and will be permanently hospitalized if she misses her medication. He also testified that Ms. S's current circumstances provide a great deal more freedom than she would have if she was hospitalized at the Nova Scotia Hospital.

[23] A permanent deterioration of Ms. S's mental health is not in her best interests. Her current circumstances, which entail some limiting of her liberty and autonomous decision-making, are the least intrusive intervention in her life that meets her needs and, I conclude, in her best interests.

Conclusion

[24] Ms. S is an adult in need of protection. Her schizophrenia renders her incapable of caring for herself adequately, and she is unable to make provision for her adequate care and attention. It is in her best interests that the Minister provide her with services that will enhance her ability to care and fend adequately for herself. I renew Justice MacDonald's order.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia