

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Nova Scotia (Health) v. L.M.N., 2003 NSSC 71

Date: 20030213
Docket: SFH No. A018016
Registry: Halifax

Between:

Minister of Health

Plaintiff

v.

L. M. N.
(by her litigation guardian, N. L.)

Defendant

Judge: The Honourable Justice Edward Scanlan
Heard: February 13, 2003 in Halifax, Nova Scotia
Written Decision: March 27, 2003
Counsel: Cindy Cormier, for the Plaintiff
Claire McNeil, for the Defendant

By the Court:

[1] I start by thanking counsel in terms of the assistance that they have rendered to the court. This is an Adult Protection matter wherein the Minister of Health seeks a court order extending the Adult Protection in relation to the Defendant, L. N.. Mrs. N. is 51 years of age, she is obviously a very intelligent lady, she has been able to achieve a Master's Degree. Through the 1980's she was able to hold some very respectable jobs and was able to provide for herself. I do not think there is any question, however, that Mrs. N. is also a person who does suffer from illnesses which have complicated her life and limited her ability to work.

[2] I start with the position that each and every adult should be entitled to make their own life's choices and life's decisions wherein they are able to decide where they live, where they work and basically have responsibility for making decisions as regards to their own day to day life. In order for that freedom and right to make decisions to be removed pursuant to the application now before the court, the court must be satisfied on the balance of probabilities as to a number of things. It is with great reluctance that the

court would ever remove from a citizen the right to make those life choices for and by themselves.

- [3] In this case I refer to the Adult Protection Legislation specifically and I should refer to it properly in terms of the name *Adult Protection Act*. R.S., c. 2, 1989. I refer in the beginning to the purpose of the *Act*. It states in s.2 of the *Act*:

2 The purpose of this Act is to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect.

- [4] The court must be satisfied in this case that it would be fulfilling those stated purposes in making any order or disposition pursuant to the terms of the *Act*.

- [5] We heard evidence from Dr. Bergin, a psychiatrist, who has a number of years experience in relation to treatment of psychotic and mood disorders. She expressed concern in relation to Mrs. N. and indicated that she is schizophrenic. Ms. N. lacks the capacity to understand the nature of her illness and to understand the effect or impact as regards treatment or non-

treatment of her illness through medication or other means. Dr. Bergin had noted that since Mrs. N. was initially hospitalized, she has made a great deal of progress in relation to her illness. That is evidenced by the fact that Mrs. N. currently gets extended leaves, wherein she is able to visit in the community with her family. She also manages much of her own money and has been allowed to go on an unsupervised basis to the maximum extent allowable pursuant to the Nova Scotia Hospital rules. She is quite free to come and go on unescorted passes from the Nova Scotia Hospital.

[6] I am satisfied after hearing the evidence from Dr. Bergin and also the evidence from Mrs. N. that much of her well-ness at this point in time is related to the fact that Mrs. N. is being medicated. The court is very concerned with the medical opinion from Dr. Bergin to the effect that Mrs. N. can and will go down hill very, very quickly if she does not continue with her medications. As I listen to Mrs. N., not just in terms of her plan but in relation to the issue of self-medication, I am convinced that Mrs. N. does not believe she does well or any better when medicated. She lacks an appreciation for her illness, she lacks an appreciation or an understanding as to the benefits she receives from the medication. I am satisfied, as indicated

by Dr. Bergin, that Mrs. N., given her present attitude towards medication and her illness, will probably not continue with her medication if she is in an environment which does not have some supervision and control. Whatever environment Mrs. N. finds herself in, it is a necessary component of that environment that she be in a situation where somebody can monitor as to the administering of the medication. In addition, it is just as important to monitor from time to time to see if she falls back into a difficult situation and again is at risk.

[7] I am satisfied, on the balance of probabilities that Mrs. N. is a person, who, at the time that she was first hospitalized, was a person in need of protection. She was not receiving adequate care and attention then as she was incapable of caring adequately for herself by reason of her mental infirmity or illness. She continues to be unable to make provision for her adequate care and attention without the assistance of some intervener.

[8] I am satisfied that because of her propensity to shun the medications and not understand the need and benefit of that medication, she is still in that

position whereby lack of appreciation makes her a person who is incapable of caring adequately for herself. She will not receive the adequate care and attention and she will not be able to provide adequately for herself if she does not have some supervision.

- [9] In relation to another issue that the court must consider, and counsel – without referring specifically to the number of tests that referred to in the various cases that have gone before, I would simply point out that I do take those tests into account. I also refer to the lack of appreciation as to her need for treatment and the extent of her illness, and the fact that without that treatment and assistance that she will, again, deteriorate very, very quickly. That same lack of understanding of her illness and an appreciation as to the extent of the illness robs Mrs. N. of the competence to decide whether or not to accept the services of the Minister. In that regard I refer to the *Act* s. 9 s-s. 3. I have already discussed 9(3)(a) and the fact she is not mentally competent to decide whether or not to accept the assistance of the Minister.
- [10] At this stage I now refer to the empowering section of s. 9 and it states:

...the court shall so declare and may, where it appears to the court to be in best interest of that person,

(c) make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself(/herself in this case sic.) or which will protect the adult from abuse or neglect;

[11] Counsel for Mrs. N. suggests that section empowers and mandates the court to direct what it considers is the optimal treatment for the defendant, in this case suggesting that there should be some guarantees in terms of the placement of Mrs. N.. During the evidence there was reference to an R.R.C. placement which is basically an institutionalization of Mrs. N.. Based on the evidence I am satisfied that in terms of Mrs. N. and her situation, that type of placement would not be in her best interest. The suggestion was in relation to the R.R.C. placement is that it would be in a location other than her own community. There was suggestions of W. and/or P. as being two possibilities for the institutionalization of Mrs. N.. The evidence clearly indicated that her caregiver's feel that it is very important that Mrs. N. have access to her family. Dr. Bergin and others gave evidence by way of affidavit and *viva voce* evidence as to the importance of those people to Mrs.

N.. They are an important aspect of her successful treatment. Stated another way it is an essential aspect of her treatment that Mrs. N. be allowed to live the fullest life possible. To remove her from this area geographically may, therefore, be contrary to a successful treatment plan. When I say this area, I recognize we are talking about Dartmouth specifically. I am satisfied, it would probably be contrary to the best interest of Mrs. N. to remove her from Dartmouth. She speaks of visiting her family daily, or them visiting her daily. They are part of her life and very important to her. I am satisfied they are also part of her treatment and according to Dr. Bergin they are very important to her treatment.

[12] In addition to the family being important to her in terms of her treatment, the proximity to the Nova Scotia Hospital is also indicated as being an important part of her treatment. Because of her condition it is essential that she have immediate and ready access to that facility so as to allow them to intervene should she start to slip again or even to assess her on a regular basis.

- [13] Geographically I suppose, P. is not that far from Dartmouth in terms of getting that type of intervention, nor is W. that far. In terms of out-patient treatment, it certainly sounds as though Dartmouth would be a more appropriate place for Mrs. N..
- [14] We heard evidence from the Department of Community Services and the Department of Health as regards to placements. Rod McCarron, Adult Protection Worker, said that the Department of Health doesn't have the responsibility for actually making arrangements or any of the placements but they work in partnership with the Department of Community Services so as to keep Mrs. N. safe in the community. I am not satisfied that the test is simply to keep her safe in the community but rather the care providers and in this case, the Adult Protection Services should assess in an on-going basis the best interests of the person for whom they have responsibility in terms of the Adult Protection legislation.
- [15] This court has decided that it would be contrary to the best interests of Mrs. N. not to have Adult Protection Services making decisions for her. This

court also has indicated that it is satisfied that it would be contrary to her best interest to remove her from this locality, this jurisdiction.

[16] The *Act* does not say that Adult Protection has carte blanche authority to do whatever they want once a person loses their right to make choices as regards to their own life. The *Act* says, and I refer specifically to s. 9(3)(c) that the court may “...make an order authorizing the Minister to provide the adult with services,...” and it goes on, and I emphasize these words “...including placement in a facility approved by the Minister,...” the court in other words is given an incremental power pursuant to that section. In terms of exercising that power, the court must be satisfied that whatever they authorize the Minister to do, it “...will enhance the ability of the adult to care and fend adequately for himself/herself, or which will protect the adult from abuse or neglect.”

[17] As I have indicated, this is a very unique case in the sense that this is not a case wherein somebody is abusing Mrs. N. at this time. The potential for abuse is there but there has not been any evidence of abuse. This is a case

where Mrs. N. as much as anything, needs protection from herself because of her limited ability to care for herself as a result of her illness; If the Minister places her in a facility to enhance her ability to care and fend for herself, I am satisfied that it would include a community placement in this area because one would expect that all involved in making decisions for Mrs. N. have her best interest in mind.

[18] I do note that it's not the court's function to micro manage each and every file. We, indeed, empower Adult Protection Services to exercise their discretion from time to time so as to meet the changing circumstances of the individual for whom they have responsibility. It may well be that once we have placed Mrs. N. under the guidance or authority of the Minister, that, from time to time she needs increased assistance or supervision. If the needs increase then a community setting they might choose in the first instance is not sufficient to meet her needs.

[19] The order that I make, certainly envisages that they can make that decision to increase the level of protection or supervision. By the same token, Adult

Protection Services may decide that she needs less care and attention. If it is in her best interest, I expect that they can exercise their authority to decrease the level of care and supervision that is given to Mrs. N.. For the time being I can simply say that, I am satisfied I must make an order authorizing the Minister to provide her with services which by all accounts should include placement in a facility in this community. It would be inappropriate for the Minister to simply turn her out on the street tomorrow and say “here this is where you are going” it has to be part of the plan as developed in concert with the other members of the team and the ultimate responsibility as to placement rests with the Minister.

[20] I would note that since the date of the oral decision in this case the Nova Scotia Court of Appeal in *Nova Scotia (Minister of Health) v. J.J.* [2003] NSCA 25 has ruled that it would exceed the jurisdiction of this court to restrict the placement to a facility within HRM in that case, or Dartmouth in this case. The decision I made confirms the ultimate decision as to placement is with the Minister.

J.