

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Health) v. C. R. , 2009 NSSC 89

Date: 20090313

Docket: SFHAPA-034880

Registry: Halifax

Between:

Minister of Health

Applicant

v.

C. R.

Respondent

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: March 13, 2009, in Halifax, Nova Scotia

Oral Decision: March 13, 2009

Written Decision: March 26, 2009

Counsel: John Underhill, for the Applicant
Colin Campbell, for the Respondent

By the Court:

[1] This is an application on behalf of the Minister of Health to renew an order made under the *Adult Protection Act*, R.S., c. 2, dated November 3, 2008 granted by Justice O’Neil of this court and which was itself a renewal of an order granted by Justice O’Neil dated May 9, 2008.

[2] C. R. was first found to be an adult in need of protection in October 2004. That finding has been reviewed periodically since then and on each occasion it was concluded that she was an adult in need of protection as defined by the Act.

[3] In the course of the reviews there have been a number of contested and lengthy trials where considerable evidence was presented to the court and on each of those occasions the court concluded that C. R. was in need of protection and the preceding order was renewed.

[4] I have a great deal of sympathy for the concerns expressed by and on behalf of C. R.. No one’s liberty should be restricted unless there is a very good reason for that restriction.

[5] The *Adult Protection Act* has a purpose. That purpose is outlined in s. 2 which says:

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.

[6] C. R. has been held to be an adult in need of protection because of her inability to care for herself adequately which is a consequence of her diagnosed mental illness and I have received no new evidence today to suggest that diagnosis is incorrect or has been remedied to such an extent that she is able to care for herself without the assistance of the Minister.

[7] As said by Justice MacDonald of this court in *Minister of Health v. R. (C.)*, 2007 NSSC 78, a written decision dated March 15, 2007:

“A review is not an appeal procedure. The Minister is not required on a review to once again prove previous findings. Those previous findings are the starting point. The inquiry is whether or not a change has occurred. The Minister must satisfy this court that on the review date C. R. continues to be an adult in need of protection and that she is “not mentally competent to decide whether or not to accept the assistance of the Minister”. Previous findings that C. R.’s mental illnesses are chronic may be considered in this proceeding.”

[8] I have concluded, based on the affidavit of Mr. McConnell and the exhibits referred to therein and attached, that C. R.’s mental illness has not improved since this matter was last heard by the court and, in fact, there are indications that it is worsening.

[9] I, therefore, find that C. R. is an adult in need of protection. She is incapable of caring adequately for herself by reason of her mental infirmity and I believe that if she was not under the protection of the Minister her medical and psychiatric needs will not be addressed adequately and she will not be able to care for herself.

[10] Justice MacDonald in *Minister of Health v. R. (C.)*, supra, at para. (20), concluded:

[20] On the facts of this case I have determined, on a balance of probabilities, that C. R. is an adult who would not receive adequate care and attention if she returned to live in her apartment, which I understand is no longer available to her, or to live in any residence independently. She is incapable of caring adequately for herself by reason of her mental infirmity which can cause her to refuse or be unable to make provision for her adequate care and attention.

That is my view today. C. R. resides in a small options home and from my review of the affidavit evidence and the reports attached to it, it appears to afford her a fair degree of “freedom”, if I can use that word loosely, but still provides her with the supervision and care that she requires.

[11] I am therefore granting the application of the Minister to renew the order. C. R. does not appreciate that she has a mental illness and that is another reason why

I fear that if she is not under the protection of the Minister she will discontinue taking her medications. She has as much as said so today.

Dellapinna, J.