Waitemata Health v. Attorney-General

[2001] NZCA 312; [2001] NZFLR 1122; (2001) 21 FRNZ 216

Country: New Zealand
Region: Oceania
Year: 2001
Court: Court of Appeal
Health Topics: Mental health, Public safety, Violence
Human Rights: Right to due process/fair trial, Right to liberty and security of person

Facts

The appellant, H, had a history of sexually violent behavior toward women, and he experienced his first imprisonment and compulsory treatment order in 1998. H had been receiving treatment at the Mason Clinic since prisoners were not permitted outpatient community treatment. In 1999, H completed his prison sentence, but none of his physicians initiated proceedings to have him transferred to outpatient, community-based care so he continued on as an inpatient subject to a compulsory treatment order. In response, H applied for a series of reviews by the Mental Health Review Tribunal, but each time the Tribunal determined he should not be released from compulsory treatment.

In January 2000, after H absconded from the clinic and attempted to leave the country, his treating physicians certified that H was a serious danger to the safety of others and not fit to be released and applied to the Director of Mental Health to have his status changed to a â€œrestricted patient.â€• Restricted patients were subject to particular control under the special supervision of the Director of Mental Health (the â€œDirectorâ€•). Â At the time of the initiation of this suit, the Director had not yet acted upon the application.

In February 2000, H again applied to the Review Tribunal to review his condition, and the Tribunal declared H to no longer be mentally disordered and thus capable of release despite evidence of a severe personality disorder. All clinicians and counsel accepted that H posed a danger to the public if released, but the Review Tribunal assumed that a finding of absence of mental disorder was determinative in whether H was â€œfit to be released from compulsory statusâ€•. The Director was not informed of the proceeding until after a decision was made, and she then applied for judicial review in November 2000.

The High Court, led by Justice Hansen, held that the Review Tribunal should have considered the issue of whether H was fit to be released distinct from the issue of whether H had a mental disorder. This essentially would create a two-part test ensuring that the patient is (a) no longer mentally disordered and (b) fit to be released from the requirement of assessment or treatment under the Act. Justice Hansen also held that, despite the fact that the Act did not require notice to the Director, there had been a breach of natural justice in not notifying the Director of the decision. Judge Hansen finally ordered the Review Tribunal to rehear Hâ€™s application for review.

Appellants, H and Waitemata Health, appealed the decision of the High Court to the Court of Appeal of New Zealand; H appealed as to the interpretation of â€œfit to be releasedâ€• and the breach of natural justice while Waitemata Health appealed only for review of the two-step test for discharge of mentally disordered patients.

Decision and Reasoning

The Court of Appeal held that the appeal from the determination of the High Court should be allowed. The first issue was â€œwhether a person subject to a compulsory treatment order under the Act must be released if found to be not â€˜mentally disordered.â€™â€• (Para. 2). Here, the Court accepted the less restrictive interpretation recommended by the appellants in regards to the test for whether a patient was fit to be released from the hospital. The primary issue was the meaning of â€œandâ€• within the Mental Health (Compulsory Assessment and Treatment) Act of 1992 (â€œno longer mentally disordered and fit to be released from the requirement of assessmentâ€¦under this Act.â€•) The Court ultimately determined the statute should be interpreted to mean â€œno longer mentally disordered and thereby fit to be releasedâ€¦.â€• (para 92).

The Court first cited past decisions that relied on the consequential definition of â€œandâ€• in interpreting similar statutes relating to divorce and a regulation with linked concepts. Next, the Court explained how the two-step

test adopted by the High Court would result in a different application of â€œfit to be releasedâ€• to be used in Part II and Part VII of the Act. Such a result would not only be unfair to patients but also be inconsistent with the intention of the legislation. Discharge from compulsory statusÂ should onlyÂ rest on whether an individual no longer suffered from a mental disorder, and such determination would inherently take into consideration the needs of the patient and the community. Moreover, the Court pointed out that the Parliament had established no standard for deciding when someone was unfit to be released despite no longer being mentally disordered, and this lack of standard could risk detention in conflict with New Zealandâ€™s Bill of Rights. The Court did disagree with the appellantâ€™s contention that the relevant phrase should be read disjunctively, so as to permit discharge where the patient was no longer mentally disordered or was fit to be released, andÂ noted that the standards for entry and exit from compulsory care need not be the same and that the structure of the Act indicated that not being mentally disordered was a requisite for release.

The second issue was â€œwhether the Director of Mental Health was entitled to be heard on an application for review of the condition of a patient subject to a compulsory treatment order in circumstances where the Review Tribunal knew that the Director was considering an application to the District Court for an order declaring the patient to be a â€˜restricted patient.â€™â€• (Para. 3). the Court of Appeal concluded the Director of Me Health should have been informed of Hâ€™s application to the Review Tribunal, and this failure resulted in a breach of natural justice. The Director did have an interest because the decision would affect her role as a public authority, and her knowledge of the patientâ€™s condition and submissions could have contributed to the Tribunalâ€™s decision-making ability. At the time, the Director was also actively seeking an order to change the patientâ€™s status to restricted and should have been informed that the patient was seeking to be released.

Justice Tipping concurred with the majority opinion but provided a narrower perspective on the issues. In regards to the language for fitness for discharge, he also decided â€œandâ€• should be interpreted as â€œtherefore argued that if Parliament had meant the provision to be interpreted otherwise, it would have written it differently and thus would need to amend the Act to change the meaning. Finally, Justice Tipping agreed that any third parties who have rights or interests affected by a decision should be informed of such decision. He justified his decision based on the New Zealand Bill of Rights that was intended to supplement existing legislation.

Decision Excerpts

â€œMoreover, no standard against which an additional judgment of â€œfitnessâ€• is to be made is contained in the Such wide power to detain for reasons of public interest is inconsistent with the careful scheme of the Act and its respect for the human rights of those subject to its provisions. And in application it would raise the risk of potential conflicts with the provisions of the New Zealand Bill of Rights Act, particularly the right recognised by s22 not to be arbitrarily detained.â€• Para. 26

â€œThe Applicant, however, has the right to have his case determined in accordance with the law. Parliament has not enacted legislation as has occurred in other jurisdictions directed at those persons who might be so dangerous that they require incarceration but who would otherwise fall between the criminal justice and mental health systems. The Applicant is entitled to have his case determined in accordance with what the law is, not what it could or might be.â€• Para. 27.

â€œ[The Act] permits intervention only where mental disorder is â€˜of such a degree that itâ€¦poses a danger to the health or safety of that person or of othersâ€¦or seriously diminishes the capacity of that person to take care of himself or herself.â€™ If that degree of danger or diminished capacity is present, there is a public interest in the compulsory status provided for by the Act.â€• Para. 30.

â€œRelease provisions which do not turn on whether the patient is â€œfit to be discharged from compulsory statusâ turn entirely on whether the patient is considered to be mentally disordered (ss10(3), 12(3), 27(2)). Section 14(3) directs release of a patient on final assessment if â€œfit to be released from compulsory statusâ€•, but that does not mirror an â€œentranceâ€• criteria of necessity such as is argued to be provided by s27(3). The â€œexitâ€• within the Act are not identical and they do not exactly correspond with the â€œentranceâ€• criteria. The greater consistency is achieved if â€œfit to be released from compulsory statusâ€• is interpreted as â€œno longer mentally disordered and thereby fit to be released from compulsory statusâ€•.â€• Para 91.