

## P Y v R J S AND OTHERS

Protective Division: Powell J

May 5-7, 1982

*Mental health — “Mental Illness” — Mentally ill person — “Requiring care treatment or control for own good” — “Incapable of managing himself” — “Incapable of managing his own affairs” Mental Health Act, 1958, s 18.*

*Mental health — Discharge from mental hospital — By court — Onus of proof — Matters for proof — Mental Health Act, 1958, s 18.*

Under the *Mental Health Act, 1958, s 18*, the court may discharge a person detained in a mental hospital if “it appears to the Court that such person is not a mentally ill person”.

*Held:* (1) A person is “mentally ill” within the meaning of the section where:

(a) he is suffering from mental illness;

(b) a consequence of that illness is that he requires care, treatment or control for his own good or in the public interest, and

(c) a further consequence of that illness is that he is, for the time being, incapable of managing himself or his own affairs.

(2) A person who seeks to be discharged under s 18 bears the onus of proving that he is not a “mentally ill person” and proof of the absence of one of the matters in (1) above will suffice.

(3) Upon discharging the onus of proof, an applicant for discharge is entitled to an order of discharge.

*Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214, followed.

(4) A person requires care, treatment or control for his own good if (inter alia) there is reasonable prospect that by reason of care, treatment or control, the further progress of his mental illness can be halted, or the symptoms of his illness can be removed or the severity or impact on the person of those symptoms may be relieved and controlled.

(5) A person is incapable of managing himself if there is a real risk of:

(a) his inflicting upon himself serious injury;

(b) his sustaining serious injury by reason of being unable adequately to protect himself against risk, or

(c) serious deterioration in his general health or well-being through inability to take reasonably adequate steps to prevent it.

(6) A person is incapable of managing his own affairs:

(a) if he appears incapable of dealing in a reasonably competent fashion with ordinary routine affairs; and

(b) any lack of such competence may disadvantage him in the conduct of such affairs, or his money or property may be dissipated or lost.

## CASES CITED

The following cases are cited in the judgment:

*Case, In the Matter of* (1915) 214 NY 199.

*Incapable Person, Re an Alleged* (1959) 76 WN (NSW) 477.

*Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214.

*L and S, Re* (Holland J, 18th July, 1977, unreported).

A The following additional case was cited in argument:

*Watson v Marshall* (1971) 124 CLR 621.

SUMMONS

This was an application for the discharge of a mental hospital patient made pursuant to the *Mental Health Act*, 1958, s 18.

B *K Mason QC* and *M J Finnane*, for the plaintiff.

*A F Puckeridge*, for the defendants.

*Cur adv vult*

May 7

C POWELL J. Although I have not, in the time available to me since I adjourned yesterday afternoon, been able to prepare a detailed and fully reasoned formal judgment, I have, nonetheless formed a concluded view as to the proper disposition of so much of the present proceedings as has been argued before me. This being so, it seems to me that the fact that the matters which have been argued before me touch and concern the liberty of the subject dictates that I should dispose of those matters at the earliest possible time, leaving, until a later time, the publication of the detailed reasons which have led me to pronounce the orders which I propose. Nonetheless, it seems to me that it is proper — in order that the parties might appreciate, at least in outline, the course of reasoning which leads me to pronounce those orders — that I should first indicate the principles which I have adopted, and the basic facts which I find: this I now proceed to do.

D 1. I have accepted, as a principle of law, that the plaintiff who, pursuant to the provisions of the *Mental Health Act*, 1958, s 18 seeks an order for his or her discharge bears the onus of showing that he or she is not “a mentally ill person”: Myers J, *The Bar Gazette* (NSW) November 1961, p 4; *Re L and S* (Holland J, 18th July, 1977, unreported);

E 2. I have accepted that, upon its proper construction, the definition in the Act of the phrase “a mentally ill person” requires that, before a person can be held to be “a mentally ill person” it must appear:

(a) that he or she is suffering from mental illness; and

F (b) that a consequence of that illness is that he or she requires care treatment or control for his or her own good or in the public interest; and

(c) that a further consequence of that illness is that he or she is, for the time being, incapable of managing himself or herself or his or her affairs: *Re an Alleged Incapable Person* (1959) 76 WN (NSW) 477; *Re L and S*; *Briscoe: The Meaning of “Mentally Ill Person”* in the *Mental Health Act 1958-1965 of New South Wales* (1968) 42 ALJ 207;

G 3. I have accepted that if, upon an application under the *Mental Health Act*, 1958, s 18, the plaintiff can demonstrate the absence of any one of these features he or she has discharged the onus cast on him or her;

4. It is my view that, upon the proper construction of the *Mental Health Act*, 1958, s 18, although the power of discharge conferred on the court by the section is conferred by the use of the word “may”, upon a plaintiff discharging the onus cast upon him, he or she is entitled to an order of discharge: *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214;

5. It is my view that a person requires care, treatment or control for his own good if (inter alia):

(a) it appears that there is a reasonable prospect that, by reason of care, treatment or control, the further progress of his or her mental illness can be halted; or

(b) it appears that there is a reasonable prospect that, by reason of care, treatment and control, the symptoms of his or her illness can be removed or the severity or impact on the person of those symptoms may be relieved and controlled;

6. It is my view that a person is incapable of managing himself or herself if it appears that there is a real risk of:

(a) his or her inflicting upon himself of herself serious injury;

(b) his or her sustaining serious injury by reason of his or her being unable adequately to protect himself or herself against such risk; or

(c) serious deterioration in his or her general health or well-being by reason of his or her being unable to take reasonably adequate steps to prevent such deterioration occurring;

7. It is my view that a person is not shown to be incapable of managing his or her own affairs unless, at the least, it appears:

(a) that he or she appears incapable of dealing, in a reasonably competent fashion, with the ordinary routine affairs of man; and

(b) that, by reason of that lack of competence there is shown to be a real risk that either:

(i) he or she may be disadvantaged in the conduct of such affairs; or

(ii) that such moneys or property which he or she may possess may be dissipated or lost (see *Re an Alleged Incapable Person*); it is not sufficient, in my view, merely to demonstrate that the person lacks the high level of ability needed to deal with complicated transactions or that he or she does not deal with even simple or routine transactions in the most efficient manner: see *In the Matter of Case* (1915) 214 NY 199, at p 203, per Cardozo J:

8. I find, as a fact, that the plaintiff is suffering from a mental illness, schizophrenia, which illness has manifested itself in the form of delusional experiences;

9. I find, as a fact, that since:

(a) there is a significant risk that, unless treated, the plaintiff's illness will progress; and

(b) there is a real prospect that, if treated, the plaintiff's illness can, at least, be stabilized; and

(c) there is a real prospect that, if the plaintiff be treated, his condition may be improved to the extent that he may thereafter be able to return to the workforce;

the plaintiff requires care and treatment for his own good;

10. I find, as a fact, that:

(a) although the plaintiff's normal personal hygiene and diet are not of a high standard, they are nonetheless reasonably adequate;

(b) there is no real risk, at the present time, that the plaintiff will inflict serious injury on himself or that the plaintiff will sustain serious injury by reason of his inability to take adequate steps to protect himself against the risk of such injury;

A (c) there is, at present, no real risk of a serious deterioration in the plaintiff's general health;

11. I find, as a fact, that, although suffering a mental illness, the plaintiff is not incapable of managing himself;

12. I find, as a fact, that:

B (a) although the plaintiff's affairs could be managed in a more efficient fashion than they are, at present, being conducted, and, in particular, although the plaintiff's capital could be invested, without significant risk, at a far higher rate of interest than at present, the plaintiff is able to deal, in a reasonably competent fashion, with the routine affairs of man;

(b) there is no real risk of the plaintiff's money or property being lost or dissipated;

13. I find, as a fact, that, although suffering a mental illness the plaintiff is not incapable of managing his affairs;

C 14. I therefore hold that the plaintiff has discharged the onus cast upon him of demonstrating that he is not, within the meaning of the *Mental Health Act, 1958*, "a mentally ill person" and that, in consequence, he is entitled to an order that he be discharged;

15. Since the plaintiff is represented in these proceedings by the Public Solicitor, while the defendants are represented by the State Crown Solicitor, I do not think that any order for costs to date is called for.

*Formal orders made*

Solicitor for the plaintiff: *G J Durie* (Public Solicitor's Office).

D Solicitor for the defendants: *H K Roberts* (State Crown Solicitor).

N J HAXTON,

*Barrister.*

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