IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 124/2019
[2020] NZSC 37

BETWEEN	LINDA JUDITH POND Applicant
AND	THE QUEEN Respondent

Court:	Glazebrook and O'Regan JJ
Counsel:	N Levy QC for Applicant R K Thomson for Respondent
Judgment:	20 April 2020

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was charged with the attempted murder of her daughter. The background to this was that the applicant suffers from a delusional disorder and on an occasion when she was suffering from an insane delusion, she stabbed her daughter in the back. Simon France J determined that the only available verdict at trial would be that the applicant was not guilty by reason of insanity and entered a verdict to that effect.[1]

[2] In a subsequent decision, Simon France J made an order under s 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the CPMIPA) that the applicant be detained in a hospital as a special patient under the Mental Health

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1 *R v Pond* [2018] NZHC 501 at [21].

(Compulsory Assessment and Treatment) Act 1992 (the MHA).[2] In the same decision, Simon France J refused an application by the applicant for name suppression. He noted that the victim opposed suppression.[3] He determined the matter under s 200 of the Criminal Procedure Act 2011 (the CPA).[4]

[3] The applicant appealed to the Court of Appeal against the High Court Judge's refusal to make an order suppressing her name. The essence of the argument before the Court of Appeal was that the High Court Judge had erred in determining the matter under s 200 of the CPA. Rather, it was argued, the application for name suppression should have been determined under s 11B of the Family Court Act 1980 (the FCA).

[4] As mentioned earlier, the order that the applicant be detained as a special patient was made under s 24(2)(a) of the CPMIPA, which refers to an order that a defendant be detained "in a hospital as a special patient under the [MHA]".

[5] Section 25 of the MHA provides that ss 11B to 11D of the FCA apply to the publication of a report of any proceedings under the MHA in the Family Court or in any other court. The argument for the applicant in the Court of Appeal was that because the order made under s 24 of the CPMIPA required that the applicant be detained as a special patient under the MHA, the proceeding in which the order was made was a proceeding "under" the MHA, and thus ss 11B–11D of the FCA applied. If that were correct, publication of the applicant's name would have been automatically restricted.

[6] The Court of Appeal recorded that there had been a divergence of view on this issue in the High Court.[5] The Court of Appeal concluded that the proceedings before Simon France J were not proceedings "under" the MHA and that s 11B of the FCA did not therefore apply.[6] The Court then considered whether a suppression order should

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2 *R v Pond* [2018] NZHC 1075 at [13].

3 At [15] and [18].

4 At [16] and [21].

5 *Pond v R* [2019] NZCA 555 (French, Brown and Collins JJ) [CA judgment] at [25]. In *R v Tampin* [2013] NZHC 2571 and *R v McGowan* [2014] NZHC 541, the High Court determined that similar proceedings were proceedings under the MHA for the purposes of s 25 of that Act. But in *R v Lam* [2016] NZHC 563, Moore J determined that s 25 of the MHA did not apply and that an application for name suppression should be determined under the CPA.

6 At [27] and [31].

be made under s 200 of the CPA and determined that the grounds for making an order were not made out.[7] It therefore dismissed the applicant's appeal.

[7] The applicant now seeks leave to appeal against the Court of Appeal judgment. She raises four broad grounds of appeal.

[8] The first is that, contrary to the decision of the Court of Appeal, the proceedings are proceedings under the MHA for the purposes of s 25 of that Act, and that the application for name suppression should therefore have been dealt with under ss 11B–11D of the FCA. This argument requires the Court to determine that the proceeding leading to the making of an order under s 24(2)(a) of the CPMIPA is a proceeding "under" the MHA because detention pursuant to the order is detention as a special patient under the MHA. The applicant wishes to argue the Court of Appeal took too narrow a view of the purposes of the CPMIPA and of the FCA suppression provisions, and failed to consider the New Zealand Bill of Rights Act 1990.

[9] Having considered the Court of Appeal judgment and the arguments made in support of this point by the applicant, we see no appearance of error in the Court of Appeal's analysis. Its decision has resolved the conflict between earlier decisions of the High Court and we do not see any need for further consideration of the point by this Court.

[10] The second argument is an alternative to the first. That is, it assumes that the relevant provision is s 200 of the CPA. The argument is that suppression is appropriate because s 200(2)(e) applies. That provision specifies as a ground for a suppression order that publication of a person's name would be likely to endanger the safety of any person. The "any person" in the present case is said to be the applicant herself because of the likely impact of publication on her mental health.

[11] Section 200(2)(e) was not argued below, so we would be considering it as the first and last court, and, as the respondent submits, none of the expert reports before the Courts below provide an evidential basis for a finding of endangerment in this case.

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7 At [59].

[12] Associated with this argument is the submission that the Court of Appeal's consideration of the application under s 200(2)(a) (extreme hardship) was flawed. But that is an essentially fact-based assessment that gives rise to no point of public importance. And we see no appearance of a miscarriage in the way the Court of Appeal addressed this.

[13] The third ground is that the policy reasons for suppressing the names of mentally disordered persons are relevant to both steps of the inquiry into a suppression application. These two steps are the assessment as to whether one of the thresholds in s 200(2) has been crossed and the discretion as to whether an order should be made.[8] We do not accept that this question truly arises in this case. The Court of Appeal did take into account the fact that the appellant had been acquitted on the grounds of insanity.[9] The weight that factor should be given will depend on the facts of the particular case.

[14] The fourth ground is that the applicant's daughter, who opposes suppression, is not a "victim". An alternative argument is that, even if she is a victim, her views should receive lesser weight than they would in a case where the perpetrator was convicted, given the applicant was acquitted on the grounds of insanity. The relevance of this point arises from the requirement in s 200(6) of the CPA, which requires the court to take into account the views of the victim in determining an application for suppression.

[15] "Victim" is defined under s 4 of the Victims' Rights Act 2002 as including "a person against whom an offence is committed by another person".[10] The applicant argues that, as she was not convicted, she should not be classified as an offender. This argument was fully evaluated by the Court of Appeal and rejected.[11] We do not consider the argument has sufficient prospects of success to justify the grant of leave for a further appeal. Nor do we consider that it gives rise to a point of public importance.

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8 *Robertson v New Zealand Police* [2015] NZCA 7 at [40]–[41].

9 See CA judgment, above n 5, at [53].

10 The definition of "victim" in s 5 of the Criminal Procedure Act 2011 adopts the definition of "victim" in s 4 of the Victims' Rights Act 2002.

11 CA judgment, above n 5, at [41]–[43].

[16] Having considered all of the points the applicant wishes to raise on a further appeal, we are satisfied that no matter of general importance arises and there is no risk of a miscarriage of justice if leave to appeal is not granted.[12]

[17] The application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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12 Senior Courts Act 2016, s 74(2).