EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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IN THE FAMILY COURT
AT WELLINGTON

I TE KŌTI WHĀNAU
KI TE WHANGANUI-A-TARA

FAM-2019-085-000367
[2019] NZFC 7540

IN THE MATTER OF	THE SUBSTANCE ADDICTION (COMPULSORY ASSESSMENT AND TREATMENT) ACT 2017
BETWEEN	SAM McBRIDE Applicant
AND	[SJ] Respondent

Hearing:	13 September 2019
Appearances:	Applicant appears in Person S Gill for the Respondent Dr S Robertson – Responsible Clinician A Colls – Authorised Officer N Knol – Authorised Officer L Sziranyi – District Health Inspector K Bell – in support
Judgment:	13 September 2019

ORAL JUDGMENT OF JUDGE A P WALSH

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[1] An application has been made for a compulsory treatment order for [SJ].

[2] I met with [SJ] today and carried out the requirements of s 75(4) of the Act.

[3] He was represented by Mr Gill. Ms Sziranyi, in her capacity as District Inspector, was also present.

[4] I consulted with the responsible clinician, Dr McBride, who had filed the application, and also Dr Robertson, a consultant psychiatrist and specialist assessor under the Act, who had prepared a comprehensive assessment of [SJ].

[5] As a result of that interview process, I have had regard to the criteria under s 7 of the Act. Dr Robertson confirmed [SJ] did have a severe substance addiction, his capacity to make informed decisions for addiction was severely impaired, and, for the reasons set out in his assessment, Dr Robertson considered compulsory treatment was necessary. It was confirmed appropriate treatment was available for [SJ] at Nova House in Christchurch.

[6] After conducting the interview, the matter proceeded to a hearing.

[7] Mr Gill had prepared a memorandum setting out [SJ]'s position. He had met with him in the detox unit at [location deleted] Hospital today. He recorded [SJ]'s clear instructions were that he opposed the requirement to attend a treatment centre at Nova STAR in Christchurch. [SJ] instructed he did not believe he needed to be confined to a rehabilitation centre. He claimed he had remained sober for three years, having attended the Bridge programme. He explained he had made up his mind then to stop drinking, as opposed to any of the treatment that he had received in the Salvation Army centre. [SJ] advised he had again decided to stop drinking and would achieve sobriety without being required to attend the treatment centre. He was prepared, however, to attend the Salvation Army Bridge programme. He acknowledged he had drunk methylated spirits as a "last resort" and was fully aware of the damage to him and to those that he loved. He emphasised he had a good relationship with his mother. He was also keen to develop a recently established relationship with his adult daughter who lived nearby. Mr Gill advised that if the proceedings were adjourned to a fixed date, [SJ] would voluntarily attend the Bridge programme.

[8] [SJ] also spoke about how he felt and said he would be very depressed and angry if directed to attend Nova STAR in Christchurch. He maintained he would abstain from alcohol and emphasised his wish to continue and develop his relationship with his daughter.

[9] In his application, Dr McBride recorded his belief [SJ] met the criteria as set out in s 7 of the Act. In that respect, I have had regard to the definition of "severe substance addiction" under s 8 and noted the features as set out at s 8(2).

[10] In considering this application, I noted the background as set out in the report prepared by Dr Robertson. Since the start of 2017, there had been 10 acute presentations to the emergency department relating to the direct and indirect effects of alcohol consumed by [SJ]. On a number of occasions, he had been found unconscious. On some occasions, he had required intubation. Admission had always been by ambulance. On two occasions, he was admitted to the intensive care unit. There was also concern that [SJ] had suffered injuries from falls and had been the victim of assaults. He was considered to be particularly vulnerable. When [SJ] had started withdrawal, there were complications resulting in tonic-clonic seizures.

[11] The concerns for [SJ] also arose from a perceived deterioration in his cognitive functioning. Testing carried out was suggestive of mild cognitive impairment, and there was concern about cerebral atrophy. Earlier this year, [SJ] had suffered a relapse. There was concern about family support to date. [SJ] has been helped considerably by his mother, but there is concern that she has been fully extended in that support and may not be able to provide further support.

[12] There was concern also that [SJ]'s description of how he was dealing with his alcohol addiction was "in clear contrast" to what others had described. The mental state examination indicated impaired insight into alcohol use disorder and a lack of understanding of the risks involved.

[13] In his assessment, Dr Robertson noted [SJ] had a well-established history of alcohol use disorder with significant use over time, including features of compulsive

use with an inability to contain his use, continued use despite harming and multiple demands, and issues relating to tolerance and withdrawal phenomena.

[14] As far as harm was concerned, Dr Robertson noted [SJ] was experiencing significant harm secondary to his alcohol use disorder, which included probable cognitive impairment, withdrawal seizures secondary to his alcohol use, and an inability to maintain activities of daily living, with direct risks in his home and potential for family conflict.

[15] When Dr Robertson assessed [SJ], he considered [SJ] lacked the capacity to make informed decisions regarding treatment for his alcohol use disorder. This likely reflected an underlying cognitive impairment; I note the testing carried out in that respect.

[16] When considering informed decision-making, Dr Robertson considered [SJ] was unable to provide a realistic description of either his alcohol use or an account of the extent of harms he was experiencing from such use. Whilst he was able to express a clear view about his preference regarding community treatment, and in particular going on the Bridge programme, there was concern about his capacity and his cognitive impairment. The problem with the Bridge programme is that it is a voluntary programme and is not designed to address issues relevant to cognitive impairment and capacity. The programme at Nova STAR is designed to address those particular concerns.

[17] When I had regard to those matters set out in Dr Robertson's report, I took into account the provisions of s 9 relating to capacity to make informed decisions. I note under that provision, "A person's capacity to make informed decisions about treatment for a severe substance addiction is severely impaired if the person is unable to – (a) understand the information relevant to the decisions; or (b) retain that information."

[18] I have to say, on the information now before me, I find [SJ] is unable to understand the information relevant to the decision and to retain that information. I make that finding having regard to the observations that have been made about possible impairment of cognitive function and also lack of capacity.

[19] I am also concerned, when I have regard to s 9(c), about [SJ]'s ability to weigh information as part of the process of making decisions. There is also concern about ability to communicate.

[20] I note under s 10 of the Act, "For the purposes of section 7(c), compulsory treatment is necessary only if voluntary treatment is unlikely to be effective in addressing the severe substance addiction."

[21] When I weigh the provisions of s 10, I have come to the view that compulsory treatment is necessary. I am not satisfied, on the evidence, voluntary treatment would be effective in addressing the severe substance addiction of [SJ], having regard to the observations I have made about cognitive impairment and lack of capacity at this time. I note in that regard, if [SJ] is subject to a compulsory treatment order, the issues of cognitive impairment and capacity will be monitored closely, and if there is an improvement in [SJ]'s condition, he would be discharged off the Act.

[22] As matters now stand, I am satisfied the criteria for compulsory status have been established and it is necessary to make a compulsory treatment order, and I now make that compulsory treatment order.

A P Walsh
Family Court Judge