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IN THE FAMILY COURT
AT CHRISTCHURCH

I TE KŌTI WHĀNAU
KI ŌTAUTAHI

FAM-2019-004-000375
[2020] NZFC 1070

IN THE MATTER OF	THE SUBSTANCE ADDICTION (COMPULSORY ASSESSMENT AND TREATMENT) ACT 2017
BETWEEN	NOVA STAR AT HILLMORTON Applicant
AND	[MX] Person In Respect Of Whom the Application Is Made

Hearing: 11 February 2020

Appearances: J O'Connell – for the Patient
Dr K Shaw – Responsible Clinician
A Wright – Case Manager

Judgment: 11 February 2020

ORAL JUDGMENT OF JUDGE M J HUNT

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[1] This has been an application for an extension to a compulsory treatment order under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 in relation to [MX]. Dr Shaw is the responsible clinician and the second health professional present today is Ms Abby Wright. [MX] has been represented today by Mr O'Connell.

[2] The process adopted for the purposes of the hearing was I introduced myself to [MX]. Dr Shaw and Ms Wright set out their perspective on matters, subject to some enquiry and questioning from Mr O'Connell, and then I heard further from [MX] as to her circumstance and the reasons for her opposition to the order. The oral presentation was supplemented by extensive written materials that were prepared at the time of the initial order being made and updated to reflect ongoing progress through the treatment programme.

[3] The relevant history of matters is that [MX] has been the subject of a compulsory treatment order since 5 December of last year but was only transferred to the Nova Trust facility on or about 5 January, or the transfer was delayed until then. She is described as [an over 65]-year-old widow. She was formerly living on her own in an apartment in [location deleted]. She has an elderly mother – in the papers her age is given as [age deleted], although [MX] said in her early 90s – who lives in a separate apartment and a friend, [KA], who lives in the same apartment block as her mother. There is a daughter, [DX], and [grandchildren] and they live in [location deleted]. [MX]'s husband passed away some five years ago.

[4] The diagnosis proffered in the materials is of an alcohol use disorder with evidence of drinking despite the harmful consequences with neuro adaptation and marked discontrolling features. Her cognitive functioning deteriorates markedly when drinking, and there is a history of adverse events or concerns arising from her behaviour when drinking. In 2015 she was put into a secure dementia unit for a few months, then released. There was detoxification in 2016, and in 2017 she was assessed as having capacity and authority to act under the enduring power of attorney was suspended.

[5] However, by 2018, again the history suggests there was further heavy drinking, another admission for detoxification and treatment, and during 2019 there was a detoxification in April, a period in a rest home during 2019, but a relapse and a deterioration through the latter part of 2019 to the point of admission and a compulsory treatment order being made in December. Evidence supports the view that there have been severe consequences or significant health consequences from drinking, and high levels of vulnerability.

[6] What the evidence today addressed was the subsequent events from [MX]'s perspective inasmuch as she maintains that she has largely, I use the word recovered, but largely recovered from the pressure or the circumstances which led her to drink, has committed to an alcohol-free lifestyle and thinks that with some assistance, principally by medication that would give her an adverse reaction if she drinks, that she can maintain an alcohol-free lifestyle.

[7] She wishes to return to live with her friend, [KA], for a short period, the exact duration is indeterminant. The information that the health professionals have is that that might be for a limited period of two to three weeks and then potentially secure her own accommodation.

[8] There is a level of uncertainty about the plans because she is not clear about the nature or the security in duration of the arrangement she might make with [KA], but she is confident of an initial settling in period at least, and healthy financial resources and personal resources can enable her to secure her own accommodation. She is concerned that the wellbeing of her mother, who is elderly, and I gather somewhat frail with a recent kidney infection, and simply does not accept that there is ongoing value or benefit to her continued admission.

[9] From her perspective it seems she is of the view that the difficulties with alcohol can simply be resolved by way of the administration of an aversion type medication regime and that if she is adherent to that then the risk to her is minimised of any relapse.

[10] That is not a view shared by the health professionals. The concern is that the level of impairment to date means that there may be difficulties for compliance with a medication regime – that is, not remembering to take it or that if her drinking perseveres while using medication there is a risk to health. A return to drinking presents with it risk of health issues and vulnerability, and ultimately grave concern for [MX]'s wellbeing. There is, at the present point, considerable doubt about whether or not the recovery of [MX] has been adequate, or her present capacity is sufficient to enable her to live reliably and safely independently.

[11] The legal test that I must apply was explored quite carefully by Mr O'Connell. While s 46 of the Act permits an extension to the order, the circumstances under which an extension is to be granted is set out in s 47. What is required is that the criteria for compulsory treatment continue to be met and there are reasonable grounds to believe the patient suffers from a brain injury.

[12] The term "brain injury" is defined as being an acquired enduring neurocognitive impairment. The part of the report that addresses the brain injury refers to reduced cerebral and cerebella volume, smaller white matter, ischaemic changes was evident. What is noted, however, is that there was more evidence of brain injury from the observations of [MX] in functional assessments and cognitive testing, and these changes in the CT further reflect the direct toxic effects of alcohol and she is at risk of cerebrovascular disease because of her poor lifestyle and difficulty getting medical treatment for other conditions.

[13] Reference to the observations of her functional assessments and cognitive testing refer to low scores on the tests to measure that, although noted when they are improving in a period of consistent abstinence and support at Nova Star. The present most recent testing gave a result of 23 out of 30, a marked increase from the previous testing which was as low as 18.

[14] The evidence satisfies me that there is a brain injury of the kind described. It is not an accident-related injury, but an acquired enduring neurocognitive impairment that is referred to as associated with the use of alcohol or use of alcohol over time.

[15] So far as the compulsory treatment criteria are concerned, the grounds for that, or definition of that is set out at s 7 of the Act. The evidence satisfies me that [MX] does have a severe substance addiction and that her capacity to make informed decisions about treatment for that addiction is severely impaired. In that regard the initial admission was plainly at a crucial or acute point. Whilst [MX] is presently abstinent, her decision-making about her capacity to deal with the effects of alcohol and the risks is, I accept, limited. Her confidence about the medication has been a panacea for her current circumstance I think is misplaced. Her confidence about the ability to be abstinent in the face of access to alcohol, or others who might from time

to time drink, or at times when, as in the past, she has resorted to drinking, is also overly optimistic and misplaced. In short, her vulnerability to abstain and to maintain an alcohol-free lifestyle remains, and her capacity to make decisions about treatment for her addiction are, I accept, impaired and severely so.

[16] I acknowledge, in hearing from [MX], the genuineness of her views, the concern for her that ongoing treatment will achieve little, but one of the difficulties to date has been that [MX] has been slow and reluctant to engage with the treatment plan. The plan as set out in the previous report at page 3, articulates improvement at a cognitive impairment level, repeating the test, assessing and improving functional performance, ongoing reviews of physical health, but also ultimately, as I understand it, finding ways that might enable [MX] to be supported in the community and ensuring ultimately her safe release. Current thinking departs from [MX]'s inasmuch as that is thought to be likely to be a rest home or similar, but that is a matter for consideration as the treatment plan progresses.

[17] I am satisfied that the criteria for the making of an extension order are made out under the Act. I acknowledge [MX] is opposed to it. I think she and Mr O'Connell have said all that could be said in that regard, but I am persuaded and satisfied that an order is required, so I make the order accordingly.

M J Hunt
Family Court Judge