

NOTE: PURSUANT TO S 130 OF THE INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE FAMILY COURT
AT MANUKAU**

**FAM-2013-092-001980
[2016] NZFC 2619**

IN THE MATTER OF	THE INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003
BETWEEN	PAUL HARVEY Applicant
AND	JIMMY BANNER Person In Respect Of Whom the Application Is Made

Hearing: 31 March 2016

Appearances: Applicant appears in Person
A Cooke for the Patient
B Wilson - District Inspector

Judgment: 31 March 2016

ORAL JUDGMENT OF JUDGE MAUREEN SOUTHWICK QC

[1] The application now before the Court is pursuant to s 86 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (“the Act”) in relation to Jimmy Banner.

[2] Mr Harvey, the Applicant, makes application for variation of the compulsory order so that Jimmy will be the subject of a supervised care order, rather than the secure care order extension originally sought.

[3] Subsequent to the original application for extension being filed, Dr Elder has provided an expert report in relation to Jimmy. That report concludes that a supervised care order is now appropriate, given the progress made by Jimmy. In addition to that report, yesterday there was filed an adaptive functioning report prepared by Ms Liz Cotton, clinical psychologist.

[4] Dr Cooke appears as counsel for Jimmy and also present is B Wilson, District Inspector. All are agreed, on the basis of the reports that have been filed, that there should be a further period of six months during which Jimmy is subject to a compulsory order but that that order should now be a supervised care order, rather than secure care order. That approach is supported by the reports now available.

[5] The submission of Mr Harvey is that, given Jimmy’s progress, it is appropriate to enable more options in regard to community participation and also to assist in Jimmy’s transition from the service. My understanding is that very shortly there is to be a whānau meeting in Whangarei, the proposal at this stage being that Jimmy will ultimately move to his uncle’s home.

[6] Accordingly, there is a variation of the current order pursuant to s 86 of the Act so that there is an extension for six months of the compulsory order but on the basis of the status of that order being a supervised care order.

Further Legal Issue

[7] A matter which has not been raised by Dr Cooke on two occasions in this case relates to the impact of s 7 and s 8 of the Act. His submission is that the Court needs to provide clearer guidance as to whether there is a first limb which must be satisfied before any orders are made pursuant to the Act.

[8] Reference is made in particular to Section 8 (2) of the Act which provides :

(2) To avoid doubt if –

(a) A person does not have an intellectual disability the provisions of this Act relating to compulsory care cannot apply to the person, whether or not the person has any other disability.

[9] Section 7 provides the definition of “intellectual disability”. This raises a question as to whether an applicant and supporting experts are required to clearly satisfy that limb of the Act before providing recommendations to the Court pursuant to the application.

[10] In considering Jimmy’s situation, I am satisfied that on the face of the documents before me, in particular the combination of Ms Moltzen’s report in 2014 and the very recent adaptive functioning report, the question is satisfactorily answered. This conclusion results in particular from the adaptive functioning report as it reflects the provisions of s 7(4) of the Act.

[11] However, I agree that it is an important question which the Court should tackle, and on that basis I make the following directions which are the subject of consent by all present:

(1) Within 21 days, Mr Harvey and Dr Cooke are to file submissions which address the point that has been raised. The point issue is a discrete one and, therefore, should not require very lengthy submissions.

(2) When those submissions have been filed, they are to be brought to me to consider before delivering a decision.

[12] Finally I direct that a copy of my decision delivered today is to be forwarded to the Ministry of Health, through Mr Harvey.

Maureen Southwick QC
Family Court Judge