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(COMPULSORY CARE AND REHABILITATION) ACT 2003, ANY REPORT
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**IN THE FAMILY COURT
AT WELLINGTON**

**FAM-2015-085-001197
[2016] NZFC 1935**

IN THE MATTER OF	THE INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003
BETWEEN	NATIONAL INTELLECTUAL DISABILITY CARE AGENCY Applicant
AND	SILVER BECK Respondent

Hearing: On the Papers

Appearances: R Newberry for Care Recipient

Judgment: 14 March 2016 at 2.00 pm

**RESERVED JUDGMENT OF JUDGE A J TWADDLE
[Review of Compulsory Care Order]**

[1] This is a review of a compulsory secure care order in respect of Silver Beck. The review raises a difficult issue of statutory interpretation. For reasons given in this judgment, I find the Court has no jurisdiction to deal with the review or extend the order.

Background

[2] On 31 July 2014 an order for Person's Care on Conviction was made against Mr Beck under s 34 of the Criminal Procedure (Mentally Impaired Persons) Act. The effect of this order was that Mr Beck became a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act (the ID(CCR) Act). As the term of the order was 18 months, the order was due to expire on 31 January this year.

[3] A compulsory care coordinator applied on 21 January for an extension of the compulsory care order under s 85 of the Act, and for an order under s 87 of the Act, deferring the expiry of the order so that the extension could be considered. The applications were placed in box work for consideration by a Judge on 21 January, but did not reach a Judge until 1 February. On that date the Judge:

- (a) Deferred the expiry of the compulsory care order until 29 April 2016;
- (b) Reappointed Mr Newberry to act for Mr Beck and directed him to report within 21 days;
- (c) Directed that the parties could file submissions within 21 days.

[4] In his memorandum dated 23 February, Mr Newberry submitted:

- (a) On the face of the Court record, there was no jurisdiction to defer the expiry of the order on 1 February because the order had already expired;

- (b) It was possible that the order deferring expiry of the compulsory care order could be amended under Rule 11.10 of the District Courts Rules (the “slip rule”) to date the order, for example, 29 January;
- (c) In the event that the deferral order was amended, Mr Beck was not opposed to the care order being extended (Mr Newberry asked him what he would do if told that the door was open for him to go; he said he would be afraid and that he was not ready to walk out the door).

Section 87 of the ID(CCR) Act: 2 possible interpretations

[5] Section 87 of the Act provides:

87 Court may defer expiry of order if application for extension pending

- (1) If a care recipient's order is due to expire at any time when an application, under section 85, to extend the term of that order is pending before the Family Court, the Court may defer the expiry of the order by specifying a date as the last day of a period that, in the opinion of the Court, is sufficient for the application to be heard and determined;
- (2) The co-ordinator may apply without notice for an order, under subsection (1), to defer the expiry of a compulsory care order;
- (3) As soon as the Court makes an order under subsection (1), the co-ordinator must serve a copy of the order on every person who is entitled to be served with a copy of the application under section 85;
- (4) Every person served, or entitled to be served, under subsection (3) with a copy of an order under subsection (1) may apply to the Court for the cancellation or variation of the order.

[6] The crucial provision is s 87(1), which can be read in one of two ways:

- (a) That the Court may defer the expiry date of the care recipient's order where there is an application pending before the Court under s 85, and the order is “due to expire” but has not yet expired; or
- (b) That the Court may defer the expiry date of the care recipient's order, so long as:

- (i) An application under s 85 is pending; and
- (ii) The order was due to expire (but had not expired) at some point (“any time”) when the s 85 application was pending.

[7] Under the second interpretation, what is important is that the order had not expired at the time the s 85 application was filed. It would not then matter if the order expired after the s 85 application had been made; there would still be jurisdiction to defer so long as the s 85 application was “pending before the Family Court”.

Discussion

[8] The primary rule of statutory interpretation is set out in s 5(1) of the Interpretation Act, which provides that:

The meaning of an enactment must be ascertained from its text in the light of its purpose.

[9] The purposes of ID(CCR) Act are set out in s 3:

3 Purposes

The purposes of this Act are—

- (a) to provide courts with appropriate compulsory care and rehabilitation options for persons who have an intellectual disability and who are charged with, or convicted of, an offence; and
- (b) to recognise and safeguard the special rights of individuals subject to this Act; and
- (c) to provide for the appropriate use of different levels of care for individuals who, while no longer subject to the criminal justice system, remain subject to this Act.

[10] Section 11 of the Act provides:

11 Principles governing exercise of powers under this Act

Every court or person who exercises, or proposes to exercise, a power under this Act in respect of a care recipient must be guided by the principle that the care recipient should be treated so as to protect—

- (a) the health and safety of the care recipient and of others; and
- (b) the rights of the care recipient

[11] As a matter of general approach there is a tension in s 87(1) between the right of the care recipient to be released from a secure care order at the date the order expires, and the ability of the Court to ensure that the health and safety of the care recipient and other people is properly protected. Although a compulsory care order is not a sentence (see s 34(1)(b)) CP(MIP) Act, it is still a curtailment of the care recipient's liberty.

[12] In determining the meaning of s 87(1), I take into account particularly the words, "the Court may defer the expiry of the order." I infer from these words that the order must not have expired and that there is an existing order, the expiry date of which can be deferred. Once an order has expired, there is no expiry date to be deferred. In this case, the order had already expired before the order deferring the expiry date was made, so there was no valid order with an expiry date to be deferred. This interpretation is consistent with the purposes and principles of the Act that the special rights of individuals subject to the Act are protected.

[13] I have considered whether an analogy can be drawn with the provisions of the Mental Health (Compulsory Assessment and Treatment) Act, and the extension of compulsory treatment orders after their expiry date.

[14] Section 33 of that Act provides:

33 Compulsory treatment order to expire after 6 months

Subject to section 34 of this Act, every compulsory treatment order shall continue in force for a period of 6 months commencing with the day on which it is made, and shall then expire.

[15] Section 34 of the Act provides:

34 Court may extend order

- (1) Within 14 days immediately preceding the date on which a compulsory treatment order is to expire, the responsible clinician may cause the case to be reviewed under section 76 of this Act.

- (2) If, following that review, the responsible clinician is satisfied that the patient is not fit to be released from compulsory status, that clinician may apply to the Court for an extension of the currency of the order for a further period of 6 months commencing with the day after the date on which the order would otherwise have expired.
- (3) The Court must treat the application as if it were an application made under section 14(4). Sections 15 and 17 to 33 apply with any necessary modifications.
- (4) If, on any such application, the Court extends the currency of the order for a further period of 6 months, on the expiry of that period the foregoing provisions of this section shall apply except that, if the Court then further extends the order, the extension shall have effect indefinitely and the patient shall remain subject to the order unless and until he or she is released from compulsory status.

[16] Section 15 of the Act sets out time limits within which an application for a compulsory order must be determined (14 days after the date on which the second period of assessment and treatment would otherwise have expired, or, for a further period not exceeding one month if extended by a Judge). Within the time limits, the patient remains liable for assessment and treatment. In the event that the time limits are not met, s 14(3) provides that the application shall be dismissed and the patient released from compulsory status.

[17] The scheme of the MH(CAT) Act therefore differs from the scheme of ID(CCR) Act, because the former envisages that an application for extension of compulsory order will be dealt with after the initial order has expired in accordance with strict timeframes. There is no similar provision in the latter. The implication is that the order must be dealt with before it expires.

Does the “slip rule” apply?

[18] Mr Newberry submitted that as the order for deferral could have been made on a working day during the week before it was actually dealt with, it could be backdated to a date within that week using the “slip rule”.

[19] Rule 204 of the Family Courts Rules provides:

204 Clerical mistakes and slips

- (1) This rule applies to a judgment—
 - (a) that contains a clerical mistake or an error arising from an accidental slip or omission, whether or not the mistake, error, slip, or omission was made by an officer of the Court; or
 - (b) that is drawn up in a way that does not express what was actually decided and intended.
- (2) The judgment may be corrected by the Court or, if the judgment was made by a Registrar, by the Registrar.
- (3) The correction may be made by the Court or the Registrar, as the case requires, on his or her or its own initiative or on an interlocutory application for the purpose.

[20] Under Rule 196, a judgment is defined as including a declaration or order of the Court which would include the order for deferral.

[21] In *C v L* (HC Auckland, CIV-2007-404-588, 9 April 2008), Keane J said that Rule 204 appears to be confined to correcting “slips” narrowly construed. In *Allan Scott Wines & Estates Holding Ltd v Lloyd* (2006) 18 PRNZ 199, Miller J said that “clerical mistake” connotes an error of transcription rather than one of judgement or decision.

[22] In my view the difficulty with the application of Rule 204 is that as the compulsory care order had already expired by 1 February, the Court lacked jurisdiction to defer the expiry date. The “accidental slip or omission” that is sought to be rectified is not the delay in the file reaching the Judge, but the Judge’s decision not to date the order with a date before 1 February. But the file was not actually considered until 1 February, and was correctly dated 1 February. There is no suggestion that the Judge made an accidental slip or omission, or that the order contains a clerical mistake or error; the problem is more fundamental than that. In these circumstances I find that Rule 204 cannot apply.

Result

[23] As the compulsory care order expired on 31 January 2016, the Court had no jurisdiction to defer the expiry of the order on 1 February, and there is no order to review or extend.

A J Twaddle
Family Court Judge