

**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.GOV.T.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 WELLINGTON**

**FAM-2010-085-001269  
[2016] NZFC 2441**

IN THE MATTER OF	THE INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003
BETWEEN	NATIONAL INTELLECTUAL DISABILITY CARE AGENCY Applicant
AND	JOLEEN LEWIS Person in Respect Of Whom the Application Is Made

Hearing: 18 March 2016  
(Heard at Tawhirimatea, Porirua)

Appearances: P Robertson, A Comerford, G Sayer for the Applicant  
M L Overton for the Patient

Judgment: 18 March 2016

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**ORAL JUDGMENT OF JUDGE J JOHNSTON**

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[1] This is an application to extend a compulsory secure care order under s 85 of the Act.

[2] The secure care order was made on 24 January 2012, pursuant to s 25(1)(b) Criminal Procedure (Mentally Impaired Persons) Act 2003.

[3] The two charges were common assault under s 9 Summary Offences Act 1981 and wilful damage under the same Act.

[4] On 8 April 2014, I extended that order by a year. In 2015 the order was extended for a further year on the papers with Ms Lewis' consent. Today's application is to extend that order for a further 18 months.

[5] Ms Lewis does not consent. In fact she has written a note to say that she is sick of being here. She will be well when she gets out, she will take her medication and try to stay out of trouble. I met briefly with Ms Lewis with Ms Overton earlier today and she was very anxious to know the outcome of this hearing. She made it very clear that she very much wanted to be released.

[6] This is a difficult matter given the charges which gave rise to the order and also the time since the order was made.

[7] Ms Overton referred to the case of *M v RIDCA Central (Regional Intellectual Disability Care Agency)* (2009) 28 FRNZ 669 paragraph 104 France J. said:

[104] To summarise the various points discussed in the judgment in relation to extension applications:

(a) risk to self or others is a necessary precondition to any extension. If the risk is primarily to self, it needs to be remembered there is no general capacity to control people for their own good;

(b) the maximum penalty for the offence which led to the care recipient coming under the Act is not a measuring stick for how long the detention should be. However, the general seriousness or otherwise of the offence is a relevant factor in considering whether further detention can be justified;

(c) the statutory test of "needed" involves considering a variety of factors including the initial offence, the length of detention to date, the assessments of likely further progress and the timeframes attached to any projected progress; and

(d) the detention must be for as short a time as is necessary.

In other cases “necessary” has been interpreted or said to mean something between “expedient or desirable” and “essential”.

[8] Ms Lewis is now aged 47. She has now been in compulsory care largely continuously since 2010.

[9] Sentences for the summary offences charges even if she had been sentenced to maximum penalties would have expired by now. I need to bear that in mind now particularly given Ms Lewis’ very strong wish to be released.

[10] This is a case which highlights a very real difficulty of trying to balance risk with rehabilitation and re-integration. The options are very limited.

[11] Ms Lewis has family in [location deleted]. She is a member of a large family but at this time no family member is stepping up to take responsibility for Ms Lewis’ care. When I dealt with this matter in 2014, it was hoped that one family member might make an application under the Protection of Personal and Property Rights Act 1988 but there is no mention of that on this occasion.

[12] When I dealt with this matter in 2014, Ms Lewis was so focussed on returning to [location deleted] that she did not engage or it was very difficult to engage her in any rehabilitative programmes or activities with a view to assisting her to become more independent.

[13] The assessment very fairly refers to Ms Lewis’ offending as being low level. It is over-learned behaviour of a person with limited abilities. They are not purposeful acts of a person with criminal intent. It acknowledges that Ms Lewis is a free spirit and very unhappy with a care order in place and the care order is in place because of factors that are wholly beyond Ms Lewis’ control. The assessment also acknowledges that she will be very disturbed by the extension which will stop her from leading her life as she wishes.

[14] Although the order has been in place for five years, Ms Lewis’ ability to change has been very limited and the progress she has been able to make has not been significant.

[15] My reading of the specialist assessor's report and also of the report itself is that the hospital here is very aware of Ms Lewis' prolonged detention and wish to do all they can to find her a place in a less restrictive environment and more to her liking with a view to re-integrating her in the community.

[16] It is a concern that when Ms Lewis was released in 2012 when the earlier order made in 2010 had come to an end, that she only stayed in the community for a matter of days and then committed the two offences and returned into the system.

[17] While as short a detention period as possible should it be imposed, it would be irresponsible to release Ms Lewis in a way that sets her up to fail and re-enter the system and then proceed again through a similar process.

[18] There is a change in the rehabilitation plan and that is to assist Ms Lewis to move on from her fixed view of returning to [location deleted] and to demonstrate to her possible alternative living situations. There has been an attempt to find accommodation for her in [location deleted] which is closer to [location deleted], but despite the assistance that the personnel here would provide, the facility at [location deleted] did not consider that they could provide what was needed, which was the very intensive oversight and they could not provide the sort of management of Ms Lewis as she is able to obtain here.

[19] What is proposed however, is that she transitions out of her current accommodation to a part of the facility which will enable her to interact with more people. She has already shown some ability to move out into other social settings such as having coffee in other parts of the hospital. She will be in a less restrictive environment.

[20] Plans for her are set out on page 8. The rehabilitation goal is for her to be able to live in a RIDSAS level or mainstream care in the community closer to her family and she needs to be assisted to individuate from her parents and family. Her parents are deceased but she is still very much focussed on returning to her family. That is not feasible and so the rehabilitation plan will include showing her an alternative lifestyle that could be sustained in the community. The rehabilitation plan also sets out the skills and opportunities that she will need to have to replace what she currently does. It is accepted that for progress to be made the plan needs to

be less restrictive and the way Ms Lewis' absconding or other behaviours are responded to will need to be altered. It is also intended that she have more interaction with others. The staff will also be consistent in the way they work and interact with her.

[21] As for the period of time, Ms Lewis is anxious that there be an end time to her detention. The recommended period is 18 months. At present there is no clear option for her care. What is very likely unfortunately, is that if the order were to come to an end that Ms Lewis would very soon become either a perpetrator or victim of assault. On her previous return to her home area, she had a physical altercation with family members. If released now, there is unlikely to be any assistance from them. Given Ms Lewis' frame of mind, she is likely to return to that area and it seems more than likely that there would not be a good outcome and she would be back in this system.

[22] Short periods of reviews or reviews heighten Ms Lewis' anxiety, and she becomes very focussed on the reviews and that makes it difficult for her to settle and engage in the activities that are designed to assist her.

[23] Given the period that she has already been under the Act, I am reluctant to extend the current order for 18 months, but unfortunately I do not see any realistic alternative or other option which would not prove less beneficial to Ms Lewis.

[24] The hospital is aware that there must be an end date for Ms Lewis' detention, and I would hope that the 18 months would be used in the best way possible to transition Ms Lewis to a community facility.

[25] Having considered all matters and bearing in mind the decision of the High Court, I extend the care order for a further 18 months from the date the order would have expired if it had not been extended pending this hearing, so that the expiry date is now 23 July 2017.

J Johnston  
Family Court Judge