

A duty to provide medication?

Beazley and Macfarlan JJA and Handley AJA of the Court of Appeal recently held that a residential drug and alcohol rehabilitation facility does not owe a duty of care to its residents to “ensure” that they are provided with medication prior to leaving the premises.

Facts

The facts of *Swanson v Kedesh Rehabilitation Services Limited* [2010] NSWCA 25 were that the Appellant, Simon Swanson, was discharged on 21 April 2002 from the Caritas Unit at St Vincent’s Hospital and was admitted, voluntarily, to the Respondent’s (Kedesh Rehabilitation Services) drug rehabilitation program. The Appellant was a dual-diagnosis resident being a person with both a drug or alcohol addiction and a psychiatric illness.

On 17 May 2002, the Appellant went on weekend leave from the Respondent’s premises and failed to collect his medication prior to leaving. On 20 May 2002 (when the Appellant was returning to the Respondent’s premises) he sustained injuries after jumping off the F6 Berkeley Road overpass.

The Appellant alleged that he jumped because of “voices” in his head telling him to do so. The Appellant further alleged that the voices were present because of his failure to take his prescribed medication. The Appellant’s case at trial was that the Respondent should have “ensured” that he did not leave the Respondent’s premises without his medication and, as such, the Respondent was responsible for his injuries.

Decision of the District Court

The Trial Judge, in finding for the Respondent, accepted that the Respondent’s duty of care did not extend to ensuring that residents collect their medication. The basis for this finding was that:

- the Respondent was not a psychiatric hospital and had neither medical practitioners nor psychiatrists on staff,
- residents were admitted on a voluntary basis, and
- the Respondent’s objective was to assist residents to accept responsibility for managing their own medication to prepare themselves for independent drug-free living in the community.

Decision of the Court of Appeal

The Court of Appeal agreed with those findings. It also agreed with the Respondent's expert, Dr Bell, who gave evidence that "to alter the allocation of responsibility threatened to compromise the very basis on which such therapeutic communities operate."

Handley AJA found that the Respondent's reminder for residents to collect their medication at the "round up" meeting at the end of the week was reasonable in the circumstances and that the Appellant failed to show "what physical steps or procedures should have been put into place" to "ensure" that he [the Appellant] did not leave that Friday without his medication." Handley AJA said "Kedesh could have no duty to ensure a particular result, its duty was to take reasonable care for the safety of its residents."

Conclusion

This decision is the first of its kind to consider the duty of care of residential facilities concerning the provision of medication. The decision will be welcomed by rehabilitation organisations as they continue their important work in creating and implementing programs and courses designed to educate and assist people with drug and alcohol-related problems to better manage their addictions in the community setting.

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