

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0159

In the Matter of an Application under Section 19 of the Mental Health Act Chapter 294 of the Laws of Saint Vincent and the Grenadines Revised Edition

AND

In the Matter of an Application to appoint a new committee to manage and administer the property and affairs of ROBERT ANTHONY HAYDOCK under section 24 of the Mental Health Act Chapter 294 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009

BETWEEN

ANDREA KIM HAYDOCK

CLAIMANT

AND

**PHYLLIS NOREEN HAYDOCK
ROBERT ANTHONY HAYDOCK**

RESPONDENTS

Appearances:

Ms. Suzanne Commissiong for the claimant.

Mr. Bertram E. Commissiong Q.C. and Ms. Maia Eustace for the first defendant;
second defendant unrepresented.

2020: Apr. 6

ORAL DECISION

BACKGROUND

- [1] **Henry, J.:** This is an application by Ms. Andrea Kim Haydock for an order that Mrs. Phyllis Noreen Haydock be removed from the committee appointed to manage and administer the property and affairs of Robert Anthony Haydock; that she (Andrea Haydock), Kathy Arthurton, Rhonda Brisbane and Eleanor Haydock be the new guardians/receivers of Robert Haydock; and that any two of them be authorized to manage and administer his property. Ms. Haydock filed a Notice of Application and a Claim Form on 10th October 2019 in which she sought those reliefs. She claimed to be Robert Anthony Haydock's brother.
- [2] The claim and application are being pursued pursuant to section 19 of the Mental Health Act¹ ('the Act'). The underlying assertions are identical. Ms. Haydock pleaded that three receivers/guarantors were appointed by court order on March 22nd 2006 to manage her brother's affairs. They were his father Robert Otway Haydock and his mother Eleanor Kydd-Haydock. Ms. Haydock exhibited a court order (made on 22nd March 2006 in Claim Number 137 of 2006) by which Noreen Haydock, Eleanor Monica Haydock and Robert Otway Haydock were appointed the guardians/receivers of Robert Anthony Haydock pursuant to section 24 of the Mental Health Act.
- [3] Ms. Haydock averred that her brother's wife Eleanor resides in Canada. Ms. Haydock averred further that their father is deceased, while their mother who is now at the advanced age of 90 years resides in Saint Vincent and the Grenadines. She pleaded that the mother is no longer able to physically or mentally manage her son. She claimed that in December 2018 her brother threatened to burn down the family home and has been admitted to the Mental Health facility on three occasions between January 19th 2019 and 17th August 2019. She contended that it is now desirable that a new committee be constituted to properly manage her brother's affairs.
- [4] Mrs. Haydock filed an Acknowledgment of Service² in which she indicated that she intended to defend the claim; that she did not admit the entire claim and that she admitted part of the claim.

¹ Cap. 292 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

² On 7th November 2019.

She did not indicate which part she admitted and she filed no defence. At the first hearing on 20th January 2020, the parties represented that they intended to finalize and lodge a draft consent order for the court's consideration.

[5] By order made on 20th January 2020, the parties were ordered to file written legal submissions addressing the legal basis on which the court may make the order sought and approve the proposed draft consent order. No draft consent order has been forthcoming. Mrs. Haydock's legal practitioner has failed or refused to file any, although generous extensions were granted on 3rd February 2020, 9th March 2020 and 30th March 2020. Ms. Haydock filed her submissions on February 3rd 2020.

[6] At the hearing on April 6th 2020, Mrs. Haydock represented that she had no desire to cross-examine Ms. Haydock' or her witness. The affidavits sworn by Ms. Haydock and her sister-in-law Eleanor Haydock were accepted as the evidence pursuant to CPR 29.1, 29. 2(1) (b) and 30.1. The court has determined that there is no adequate legal basis to grant the orders sought.

ISSUE

[7] The issue which arises for consideration is whether the Ms. Haydock has established the requirements for the orders sought.

ANALYSIS

Issue - Has Ms. Haydock established the requirements for the orders sought?

[8] The Mental Health Act³ empowers the High Court to exercise control over the property and affairs of a person who in the opinion of the director of a psychiatric hospital:

1. is, or appears to be suffering from a mental disorder; and
2. who the hospital director admits to a psychiatric hospital:
 - a) voluntarily ('a patient'); or
 - b) on receipt of:

³ Cap. 294 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009; sections 4, 5, 6, 8 and 9 of the Act.

- i) an application in writing signed by a relative or friend of that person; and
- ii) a medical certificate issued by a medical practitioner; ('a medically recommended patient'); or
- c) being a person found wandering at large on a highway or in any public place, who by reason of his appearance, conduct or conversation, causes a police officer reasonably to believe that he is suffering from a mental disorder; as a result of which the police officer takes him into custody and conveys him to a psychiatric hospital or psychiatric ward; or
- d) having been found not guilty by reason of insanity; or guilty of manslaughter by reason of diminished responsibility; is ordered by a court to be detained at the Governor-General's pleasure; ('a hospital order patient'); or
- e) being a prisoner, is certified by a medical practitioner to the Minister of Health ('Minister'), to be a person suffering from a mental disorder; and in respect of whom the Minister issues a directive that for him to be transferred to a psychiatric hospital or ward.

[9] The Court may on application by a suitable person, appoint the applicant or any person to be a committee of the property of a person certified and/or admitted as a patient in accordance with the provisions of the Act.⁴ The applicant must produce a certificate of a director of a psychiatric hospital or one issued under the hand of any person having the powers of a hospital director (under section 2 of the Act) to the effect that the patient is suffering from a mental disorder, as a result of which he is incapable of managing his own property and affairs; and stating the probable duration of such disorder; and containing a statement by the applicant providing the name and address of the patient's next of kin, if any.

[10] The court may not appoint a committee unless it is satisfied that the originating process was served on at least one of the patient's next of kin or that the next of kin's whereabouts could not be ascertained⁵. The claimant Andrea Haydock relies on the determination made by the court in Claim No. 137 of 2006 as the basis for the present claim and application. This presupposes that the court

⁴ Section 19 of the Act.

⁵ Section 20 of the Act.

had made a finding that the established requirements were satisfied. This court takes judicial notice that the relevant court file reveals that no such evidence was presented before the court which heard and disposed of the claim on that occasion. No medical expert testified. The hearing was conducted in chambers without notice to the sole defendant who happened to be the subject of the application, Robert Anthony Haydock.

[11] No medical practitioner has presented evidence in this court regarding any examination conducted on or diagnosis made in respect of Robert Anthony Haydock. This court cannot make the determination prayed for in the absence of such evidence.

[12] The court notes that Ms. Haydock exhibited copies of documentation which she attested were received from medical officer Dr. Ishaad John and psychiatrist Dr. Mrinal Kanti Debnath. They filed no affidavit and did not testify at the hearing. The Evidence Act⁶ and rules of court⁷ require that a litigant provides originals or certified copies of medical reports if they are to be admitted into evidence. Furthermore, they must be produced by the author or relevant custodian of the record. Those requirements were not satisfied in respect of the reports. They are therefore not admissible.

[13] Ms. Haydock submitted that sections 19 and 20 of the Act respectively empower the court to exercise control over the property of a patient if satisfied that the patient is unable to do so by reason of a mental disorder. She acknowledged that she has not provided the statement required by section 20 (1) (b) of the Act. She asked the court to find that Mrs. Haydock's name and address have been supplied by virtue of the fact that her name and address were disclosed by reason that she is a party to this claim. She argued that the committee needs to be revised so that it can be replaced by persons capable of fulfilling their statutory obligations.

[14] Ms. Haydock argued that the court is concerned with what is in the best interest of the mentally ill person. She relied on the decision in **Leroy Silston v Edris Silston**⁸. She submitted that the court must take into account all the circumstances of the case and the fitness of the parties proposed.

⁶ Section 51 (1).

⁷ Made pursuant to section 55 of the Evidence Act; and CPR 30.4.

⁸ Claim No. ANUHCv2008/0678.

She contended that it is clear that her brother does not have the mental capacity to manage his own affairs. She has failed to supply the necessary evidence to establish this. There is therefore no legal basis on which the court may grant her the reliefs she has sought. Her claim must be dismissed.

Costs

[15] Mrs. Haydock filed only the acknowledgement of service. She filed no pleadings or submissions, and took no active role in the matter. In the premises, it is just that no order be made as to costs. It is appropriate that each party bears his or her own costs.

ORDER

[16] It is ordered:

1. The claim and application are dismissed.
2. Each party shall pay his or her own costs.

[17] I thank learned counsel Ms. Commissiong for her written submissions.

Esco L. Henry
High Court Judge

By The Court

Registrar