

NOTE: PURSUANT TO S 80 OF THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTPS://JUSTICE.GOVT.NZ/FAMILY/ABOUT/RESTRICTION-ON-PUBLISHING-JUDGMENTS](https://justice.govt.nz/family/about/restriction-on-publishing-judgments).

IN THE SUPREME COURT OF NEW ZEALAND

**SC 24/2017
[2017] NZSC 49**

BETWEEN AN (SC 24/2017)
Applicant

AND BUPA CARE SERVICES (NEW
ZEALAND) LIMITED
Respondent

Court: Elias CJ, O'Regan and Ellen France JJ

Counsel: Applicant in person
P W Le Cren and C E J Deans for Respondent

Judgment: 12 April 2017

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
 - B The application for leave to allow the publication of the applicant's name and identifying particulars is dismissed.**
 - C There is no order for costs.**
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REASONS

Introduction

[1] AN suffers from dementia. She resides in a rest home pursuant to orders made by the Family Court under the Protection of Personal and Property Rights

Act 1988 on 17 August 2016.¹ The orders also provide that her caregivers may seek police assistance to transport AN to return her to the rest home. The orders restrict visits to AN in the rest home to times approved by the manager of the rest home. Finally, the orders provide that the manager's consent is required before AN can leave the home for trips or overnight stays.

[2] AN made an application to the High Court for a writ of habeas corpus under the Habeas Corpus Act 2001 in relation to the orders.² In a judgment delivered on 17 March 2017, Downs J dismissed the application.³ The Judge considered AN's detention was lawful⁴ and that habeas corpus was not the appropriate procedure for considering AN's complaints.⁵ AN seeks leave to appeal directly to this Court against the judgment of Downs J.

Grounds of application

[3] AN's proposed appeal would focus on the orders which give the manager of the rest home the ability to seek police assistance in transporting her and give the manager some control over visiting times and trips or overnight stays outside of the rest home (orders 3 and 4).

[4] AN wishes to argue that orders 3 and 4 are illegal because their effect is to authorise detention which is in breach of her rights under the New Zealand Bill of Rights Act 1990. She also questions the absence of any reference to the provisions in the Protection of Personal and Property Rights Act authorising orders 3 and 4.

¹ *Hewgill v DN and AN* FC Manukau FAM-2016-092-007, 17 August 2016. The orders also revoked the enduring power of attorney appointing AN's husband as attorney.

² The current orders were proceeded by interim orders which, with one change in relation to visitors, reflect the current orders. The interim orders were considered by the High Court in the context of an application for habeas corpus in [*AN and DN*] v *Chief Executive Officer Counties Manukau District Health Board* [2016] NZHC 277. An appeal from that decision to the Court of Appeal was struck out: *AN v Counties Manukau District Health Board* [2016] NZCA 226, [2016] NZFLR 468. Leave to appeal from that decision was declined: *AN (SC 56/2016) v Counties Manukau District Health Board* [2016] NZSC 74 and an application for recall dismissed: *AN (SC 56/2016) v Counties Manukau District Health Board* [2016] NZSC 78.

³ *N v Bupa Care Services (New Zealand) Ltd* [2017] NZHC 499 [*N v Bupa* (HC)].

⁴ Permitting refusal to grant the writ under s 14(1) of the Habeas Corpus Act 2001. The Judge noted that "detention" was defined "broadly" in s 3 of the Habeas Corpus Act: at n 1.

⁵ A separate ground to refuse to grant the writ under s 14(1A)(b).

Finally, AN alleges orders 3 and 4 give control to someone who is not subject to due process.

Our assessment

[5] No exceptional circumstances have been raised which would justify an appeal direct to this Court.⁶ In any event, the criteria for leave in s 74 of the Senior Courts Act 2016 are not met. We make the following points.

[6] First, there is nothing in the information before us to challenge the legality of AN's ongoing confinement in the rest home. As Downs J said, the complaint "is not really about the legality of [her] detention"; rather it is about other matters such as her ability "to have visitors whenever she pleases".⁷

[7] Second, the Protection of Personal and Property Rights Act provides for rights of appeal to the High Court under s 83 and for review under s 86.⁸ Alternatively, judicial review may provide an avenue of redress. Accordingly, if AN wishes to challenge the extent of the orders made there are other, more appropriate, avenues to do so than by habeas corpus.⁹ AN has not utilised these remedies.¹⁰

[8] Finally, as counsel for the respondent submits, if AN is concerned about her care there are other mechanisms available to her such as via complaint to the Health and Disability Commissioner.

Name suppression

[9] Orders suppressing the identification of AN have been made in related proceedings. AN filed in this Court an application for publication of her name. She

⁶ Senior Courts Act 2016, s 75.

⁷ *N v Bupa* (HC), above n 3, at [8].

⁸ The orders made require that the District Health Board must apply to the Court for a review of the orders before 17 August 2019. Unless the Court decides on a review to continue the orders they will expire on that date.

⁹ Counsel for the respondent notes that s 10(4) of the Protection of Personal and Property Rights Act 1988 enables the court to make other orders "as may be necessary or expedient to give effect, or better effect, to the personal order". The Law Commission expressed some doubts as to the ability to coerce compliance via personal orders in its report on *Protections Some Disadvantaged People May Need* (NZLC R80, 2002) at [18].

¹⁰ Downs J said an appeal had been lodged in the Family Court but abandoned: *N v Bupa* (HC), above n 3, at [10].

says name suppression is a form of discrimination against her disability. In response, the respondent filed an application asking this Court to continue name suppression.

[10] Based on AN's "condition and presentation" at the hearing in the High Court, Downs J expressed doubts whether AN knew what she was signing when she signed the application for habeas corpus.¹¹ A similar question arises in relation to her understanding of the application for publication. That said, in any event, we are satisfied that ongoing suppression is appropriate. That is consistent with the approach reflected in s 80 of the Protection of Personal and Property Rights Act which provides that ss 11B–11D of the Family Court Act 1980 apply to this case. AN meets the definition of "vulnerable person" in s 11D. Publication of her name is prohibited except with leave of the Court.

Result

[11] The application for leave to appeal is dismissed. We refuse to grant leave to allow publication of AN's name and identifying particulars.

[12] The respondent seeks costs. Given AN's circumstances, we decline to make an order for costs.

Solicitors:
Claro, Christchurch for Respondent

¹¹ At [5].