

BETWEEN AUDREY JEAN CAMERON

Appellant

AND DEPARTMENT OF HEALTH

Respondent

Hearing: 1 October 1984

Counsel: Mr K. Ryan for Appellant
 Mr Morgan for respondent

Judgment: 1 October 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal against a decision given in the District Court at Hamilton on 1 February 1984 by District Court Judge A.D. Richardson, who convicted the appellant of breaches of regulations 41 and 43(2) of the Old People's Homes Regulations, 1980.

The appellant was charged with wilfully obstructing Derek William Thompson from inspecting premises at 2 Ruakiwi Road which were reasonably believed to be a home, he being so authorised in writing by the Medical Officer of Health.

A home is defined in S.2 of the Act and regulation 41 is as follows :

"41. Inspection: For the purposes of these regulations the Director-General, the Medical Officer of Health, or any other person authorised in writing for the purpose by the Director-General or the Medical Officer of Health, may at any time during the hours of daylight, and at any other time if he suspects on reasonable grounds that these regulations are not being complied with in the home, enter and inspect any home, or any premises reasonably believed to be a home, and may question any person found in the home or premises in respect of matters relevant to these regulations."

Regulation 43 (2) is as follows :

"Every person who wilfully obstructs, hinders, or resists any person in the execution of any powers conferred on him by or pursuant to these regulations commits an offence against these regulations."

The essential elements therefore of the offence are first that the person attempting to inspect had been authorised in writing by a person with authority to give that authorisation, who reasonably believed that the regulations were not being complied with in any premises reasonably believed to be a home.

The question, whether in fact the premises were a home does not matter, the question is whether the Medical Officer of Health did have the suspicion or the belief on reasonable grounds.

Before me Mr Ryan has made a number of criticisms of the basis on which Dr Penniket, who was the Medical Officer of Health who issued the authority formed his belief. He commented that some of the evidence was prejudicial, some of it was hearsay. In determining whether the Medical Officer of Health has reasonable grounds, it is proper for such evidence to be given. It is not a question of whether the premises were or were not a home, it is a question of whether there were grounds for believing them to be a home.

The evidence that came before the learned District Court Judge was that on a previous occasion the appellant had applied for a licence at other premises, and that a subsequent visit to the premises which were occupied by the appellant by a district nurse, indicated that old people were living there. In those circumstances the Medical Officer of Health was entitled to issue an authority addressed to one of his officers, authorising that officer to inspect the premises and question people found in them.

The second essential element of the charge was whether the officer so authorised was obstructed. The Medical Officer of Health's authority had been issued to a Mr Thompson.

Mr Thompson called at the premises at 2 Ruakiwi Road and was told that the appellant did not have authority to permit him to see the whole of the premises, or to speak to any of the people there. It is clear in my view on the evidence that was given, that the appellant refused to allow Mr Thompson to inspect even the premises which it is admitted she occupied. It does not matter whether she occupied the whole of the house or not. It does not matter whether there were several flats in the house. She clearly did have the right to permit inspection of some part of the house, and she refused that. She further, it appears refused to allow Mr Thompson to speak to others who were living there.

Obstruction is defined in Hinchcliff v Sheldon (1955) 3 All ER.56 as "Making it more difficult" and there is no doubt in my mind that the learned District Court Judge was quite justified in coming to the conclusion he did, that the appellant made it more difficult for Mr Thompson to inspect the premises. That being so, the appeal is dismissed with costs to the responder of \$50.

P.G. Hillyer J
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P.G. Hillyer J

Solicitors:

Mr K. Ryan for appellant
Crown Law Office for respondent