IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 169/97

BETWEEN HEALY

Appellant

A N D THE POLICE

Respondent

Hearing: 24 July 1997

Counsel: J Aickin for Appellant
P J Shamy for Respondent

ORAL JUDGMENT OF PANCKHURST J

This is an appeal against the refusal of interim name suppression in the District Court. The appellant faces three charges. The first is that in October 1996 she administered a noxious substance to a child aged eleven months. The next and most serious of the charges is that in January of this year she neglected to provide the necessities of life to a baby of similar age and thereby caused its death and committed manslaughter. Lastly there is a charge that in April of this year she did injure a third child with intent. All of the alleged offences arise from a time when the appellant was engaged as a professional child minder.

Counsel Mrs Aickin has indicated that the charges will be denied and the matter will proceed to trial. She has of course proceeded from the

premise that at this point the appellant is entitled to the presumption of innocence. The appellant first appeared in Court in mid June. However matters really came to a head quite recently when an original holding charge was re-laid on a purely indictable basis and additional charges were preferred to give rise to the three matters I mentioned earlier.

The appellant has at all stages been on bail, albeit subject to stringent terms : that she reside at an address where she is subject to some element of supervision by family members, that she not have sole care of her two year old son and that she not associate with the families of the complainant children. She is also subject to a curfew and ordered not to enter licensed premises.

Initially interim suppression was granted in the District Court while a psychiatric report was obtained. That report, a detailed one of some five pages, was before the learned District Court Judge when the present decision, which is subject to appeal, was made on 22 July. It is not appropriate to go into the detail of that report. In any event it is sufficient for present purposes to say that the present indications are that the appellant is fit to plead and does not have a formal psychiatric illness. For all that there are also indications in the closely reasoned report which show a disturbed background and which raise the possibility that she may be suffering from a rare condition Munchausen Syndrome by Proxy. At least to my mind the submission of her counsel that further expert examination is called for is a responsible one.

Counsel in supporting the appeal relied as I have already said on the presumption of innocence. It was further argued that it is *"early days"* as it will be some considerable time before this case comes to Court. She relied also on the need for further psychiatric evaluation and upon the need for both the appellant, whom she described as in a fragile condition, and her extended family to have some further space in which to deal with the present problems. For example the Children and Young Persons Service is involved in the matter in relation to the appellant's child and a Family Group Conference is to be held in the near future. In the final analysis Mrs Aickin sought either continued interim suppression until 6 August when the appellant is next to appear or interim suppression without such a time limitation.

On the other hand the Crown opposes a suppression order of any kind. Realistically it was acknowledged that given the stringent terms of bail there was little scope for further offending. However the principal ground raised was that inquiries are continuing and that there may well be the possibility of further complaints coming to light.

The background is that in July of 1996 the appellant became qualified as a child minder and cared for children under the auspices of a professional organisation. However in January of this year, following the death of the child which has given rise to the manslaughter charge, the appellant was on her own. Thereafter she apparently advertised locally and not surprisingly it is not known how many children came under her care between January and

June when she first appeared in Court. It was primarily this factor which was relied upon by the Crown.

The principles to be applied are well known. There is a prima facie presumption in favour of openness of reporting in relation to the cases before our criminal Courts. Suppression is very much one of judicial discretion. There is no code of principles to which one can have regard. Since the decision is discretionary this Court should only intervene where the District Court Judge has proceeded on a wrong principle or been shown to have clearly approached the matter in an inappropriate fashion by giving insufficient consideration to important matters. I do not have the benefit of a full decision in this instance but it is plain enough that interim suppression was granted for a time while the comprehensive psychiatric report was obtained. After a consideration of that, the Judge formed the view that there was no longer a basis for ongoing suppression.

I do not regard the case as an easy one. The alleged offending is not only serious but unusual in nature. Despite the final conclusion in the psychiatric report there is a basis for concern as to the mental health of the appellant. Ordinarily those factors might well justify interim suppression in a case such as this, but in my judgment the factor which must be determinative in the end result is the one relied upon by the Crown that there is a need for openness here on account of the possibility that other complainants may come to light.

I therefore conclude that it would be inappropriate to differ from the learned District Court Judge and grant suppression, either on a short term basis or without a time limitation. Accordingly the appeal is dismissed.

Solicitors:
Jeanette Aickin, Christchurch, for Appellant
Crown Solicitor, Christchurch, for Respondent