

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2009-404-004105

UNDER the Judicature Amendment Act 1972

BETWEEN DENNIS MILLER
Plaintiff

AND DIRECTOR-GENERAL OF HEALTH
First Defendant

AND GARY WYATT
Second Defendant

Hearing: 13 November 2009

Counsel: Graeme E Minchin for Plaintiff
Una R Jagose with J K Gorman for Defendants

Judgment: 13 November 2009

ORDERS OF HUGH WILLIAMS J

Solicitors:

Otene & Ellis, P O Box 13-138, Onehunga Auckland

Email: h.ellis@oelaw.co.nz

Crown Law Office, P O Box 2858 Wellington

Email: Una.Jagose@crownlaw.govt.nz

Copy for:

G Minchin, P O Box 121-464 Henderson Auckland

Email: minchin@pl.net

Case Officer: SusanJane.Parker@justice.govt.nz

[1] By consent, there will be an order rescinding the decision of Garry Christian Wyatt of 4 February 2008 not to seek a Compulsory Care Order under s 39 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

[2] By consent also there will be an order that the second respondent, Garry Christian Wyatt is ordered to delegate under s 142 of that Act his powers and duties under Part 4 in respect of the s 29 application dated 12 December 2007 to a Compulsory Care Co-ordinator responsible for the region in which the appellant is currently located, and that person will then commence the Part 3 assessment required by s 38(4) of that Act and, once that assessment has been completed, make a decision as required by s 39.

[3] In addition to the orders just made, the Director-General of Health seeks costs in accordance with an appendix attached to Ms Jagose's submissions. This is a case which could have been settled - although perhaps with some logistical difficulties - at least a month ago and it was only after counsel and the solicitors for the applicant declined the settlement offer - which is now the settlement ordered - that affidavits were required and the defendants needed to prepare for a hearing both along the lines of the issues raised in the pleadings as they stood and to ensure that the ultimate result was that the Director-General complied with the terms of the Intellectual (Disability Compulsory Care and Rehabilitation) Act 2003.

[4] Mr Minchin advises that Mr Miller has applied for Legal Aid but that application is not yet finally determined.

[5] If Legal Aid is granted, then it would be appropriate to make an order in terms of the Legal Services Act 2000 s 40 that in the exceptional circumstances of this case that it is reasonable for Mr Miller (through the Legal Services Agency) to pay.

[6] The amount sought by the Director-General was originally \$12,800 but that was erroneous in terms of the claim for appearance at the hearing. Ms Jagose accordingly seeks an order for costs of \$10,000 in accordance with the statutory

formula under the Legal Services Act. That does not seem to be inappropriate in the circumstances of this matter and there will be an order to that effect in terms of the statute. It is noted that the Director-General seeks no disbursements.

.....
HUGH WILLIAMS J.

13 November 2009