



27 January 2016

PRESS SUMMARY

R (on the application of C) (Appellant) v Secretary of State for Justice (Respondent)
[2016] UKSC 2
On appeal from [2014] EWCA Civ 1009

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEAL

The issues in the appeal were (1) whether there should be a presumption of anonymity in civil proceedings in the High Court relating to a patient detained in a psychiatric hospital or otherwise subject to compulsory powers under the Mental Health Act 1983 ('the MHA 1983') and (2) whether there should be an anonymity order on the facts of this particular case.

The appellant, C, who had a history of severe mental health problems, was convicted of murdering his former girlfriend and her partner in 1997. He was sentenced to life imprisonment with a tariff subsequently set at 11 years. During his imprisonment he was transferred to a high security psychiatric hospital on the direction of the Secretary of State for Justice under the MHA 1983 for psychiatric treatment, with a restriction order which meant that the appellant could not be granted leave of absence, transferred to another hospital, or discharged without the consent of the Secretary of State. In July 2012 the appellant's responsible clinician applied unsuccessfully for consent for the appellant to have unescorted leave in the community to assess his suitability for discharge.

The appellant applied for discharge to the First-tier tribunal. On 25 April 2013 the tribunal notified the Secretary of State that conditional discharge (subject to supervision, supported accommodation and further treatment) would be suitable for the appellant, but that if he was not conditionally discharged he should remain in hospital. The Secretary of State referred the case to the Parole Board. The appellant's responsible clinician then made a further application for consent for the appellant to have unescorted community leave, which the Secretary of State refused on 18 October 2013. The appellant applied for judicial review of that decision. In December 2013 the High Court ordered that the appellant be anonymised in the proceedings and granted permission to bring the claim.

The claim was rejected by Cranston J, who also refused an application for the anonymity order to remain in force. The appellant appealed in relation to the refusal of anonymity, but the Court of Appeal upheld the judge's order. The appellant brought a further appeal on the anonymity issue to the Supreme Court. In the meantime the Parole Board approved the appellant's conditional release on life licence and he was released from hospital in October 2015.

JUDGMENT

The Supreme Court unanimously allows the appeal against the refusal to maintain the anonymity order protecting the appellant. It finds that there is no presumption of anonymity and the question in High Court proceedings relating to the compulsory powers under the MHA 1983 is whether an order for

anonymity is necessary in the interests of the patient. Such an order was necessary in the appellant's interests in this case. Lady Hale gives the only substantive judgment.

REASONS FOR THE JUDGMENT

The rules governing privacy and anonymity in all civil proceedings in the High Court are found in rule 39.2 of the Civil Procedure Rules [15]. The general rule that hearings should be held in public is subject to established exceptions in relation to whole classes of hearings such as those relating to children, which should normally be heard in private [17]. Most of the important safeguards secured by a public hearing can be achieved without the press publishing or the public knowing the identities of the people involved, but it is for the court and not the parties to balance the interests at stake [18].

It is necessary to distinguish between ordinary civil proceedings in which a mental patient may be involved, and proceedings concerning the compulsory powers under the MHA 1983 [21]. For the latter there is a presumption of privacy and anonymity in the rules governing applications to the First-tier and Upper tribunals [24]. Similar rules providing for anonymity are in place for the Court of Protection, the other specialist jurisdiction dealing with people with mental disorders or disabilities [25]. As regards the High Court, it was recognised by the House of Lords in the leading case of *Scott v Scott* [1913] AC 417 that the principle of open justice did not extend to proceedings relating to wards of court and to lunatics. The Court of Appeal in the present case wrongly treated this exception as limited to private law litigation concerned with the protection and administration of property, when in fact there were already statutory powers similar to the compulsory powers under the MHA 1983 at the time of the decision of the House of Lords, and the judicial safeguards for patients under those statutes were also conducted in private [29].

The closest analogy with the present case was with proceedings in the tribunals, which were concerned with risk as well as diagnosis when considering applications in respect of transferred prisoners and restricted patients [31]. The privacy rules in the tribunals were a proper and proportionate departure from the principle of open justice [32], as the hearings inevitably involved examination of confidential medical examination about the patient. Judicial review of the Secretary of State's decisions as to discharge of such patients was no different [33]. Fear of disclosure of confidential information might inhibit a patient from frank dealings with his medical team and from bringing proceedings to challenge his detention or treatment [34]. The question in all these cases was that set out in CPR 31.2(4), namely whether anonymity was necessary in the interests of the patient. There should not be a presumption in favour of anonymity in every case but a balance should be struck between the public right to information about decisions in respect of notorious criminals and the potential harm to the patient and all others whose treatment could be affected by the risk of exposure [36].

The present case concerned a horrendous crime which caused incalculable distress to the families of the victims, who have statutory rights to be informed about the arrangements made for the discharge of the appellant should they so wish [37]. The public interest in knowing how difficult and sensitive cases of this sort were decided was protected by holding a public hearing, even if the identity of the patient concerned was not disclosed [38]. In this case there was a risk to the appellant from members of the public. He was much more likely to lead a successful life in the community if his identity was not generally known [39]. Putting all these factors into the balance an anonymity order was necessary in the interests of the appellant, without which there was a real risk that his long years of treatment and reintegration into the community would not succeed [40].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>