



8 February 2012

PRESS SUMMARY

Rabone and another (Appellants) v Pennine Care NHS Trust (Respondent) [2012] UKSC 2
On appeal from [2010] EWCA Civ 811

JUSTICES: Lord Walker, Lady Hale, Lord Brown, Lord Mance and Lord Dyson.

BACKGROUND TO THE APPEALS

Melanie Rabone (“Melanie”) had a history of depression. On 4 March 2005, she tried to commit suicide and was admitted to Stepping Hill Hospital (“the hospital”) and she was diagnosed by Dr Meagher, a consultant psychiatrist, as suffering from a severe episode of a recurrent depressive disorder. By 18 March 2005, she had made a sufficient recovery to be discharged and she went on holiday for a week with her family: [2]. On 31 March, she cut both of her wrists with broken glass. Dr Meagher advised that she should be readmitted to the hospital, but no beds were available so on 6 April she was seen as an outpatient by Dr Cook, a senior house officer. On 11 April, Melanie tied a lamp flex around her neck. Melanie agreed to an informal admission to the hospital. Dr Cook noted that, if she attempted or demanded to leave, she should be assessed for detention under the Mental Health Act 1983. She was prescribed a course of drugs and kept under 15-minute observation. A full mental state examination was carried out on admission by a ward nurse, who assessed Melanie as a moderate to high suicide risk. On various occasions after 13 April, Mr Rabone, Melanie’s father, expressed his concerns that she was not improving and that she should not be allowed home too soon: [3]-[4]. On 19 April, Dr Meagher returned from leave. He was told that Melanie was requesting home leave. On his late afternoon ward round, he met Melanie and Mrs Rabone, Melanie’s mother. He agreed to allow Melanie to have home leave for two days and nights. Mrs Rabone expressed concern about Melanie coming home for the weekend, but Melanie was keen to do so. On 20 April 2005, Melanie, aged 24, hanged herself from a tree: [1].

On 11 August 2006, Mr Rabone issued proceedings claiming damages in negligence on behalf of Melanie’s estate and under Article 2 (the right to life) of the European Convention on Human Rights (“the Convention”) on behalf of himself and Mrs Rabone: [9]. The estate’s claim was settled in May 2008 for £7,500 plus costs: [11]. In relation to the Article 2 claims, six issues arise on this appeal: (i) whether the operational obligation under Article 2 can in principle be owed to a hospital patient who is mentally ill but not detained; (ii) if so, whether the Respondent Trust breached that duty; (iii) if so, whether Mr and Mrs Rabone were “victims” within the meaning of the Convention; (iv) if so, whether they lost their victim status by reason of the settlement; (v) whether their claims were time-barred; and, if not (vi) whether the Court of Appeal erred in holding that they would have awarded £5,000 each to Mr and Mrs Rabone if their claims had been established: [14].

JUDGMENT

The Supreme Court unanimously allows the appeal: (i) the operational obligation under Article 2 of the Convention is owed to a voluntary mentally ill hospital patient such as Melanie; (ii) the obligation was breached in this case; (iii) Mr and Mrs Rabone were victims for the purposes of Art 34 of the Convention; (iv) they had not lost this status by virtue of the settlement of the estate’s claim; (v) the

claims were not time barred; and (vi) the Court of Appeal was not wrong to interfere with the judge's assessment of damages in the sum of £2,500 to Mr and Mrs Rabone.

Lord Dyson gives the leading judgment, with which Lord Walker, Lady Hale, Lord Brown and Lord Mance agree. Lady Hale, Lord Brown and Lord Mance each add further comments of their own.

REASONS FOR THE JUDGMENT

This appeal concerns the positive duty imposed by Article 2 of the Convention on states to take preventative operational measures to safeguard an individual's life in certain circumstances: [12]. The central question in relation to the first issue is whether the admitted negligence of the Respondent in its treatment of Melanie is to be assimilated to the line of case law pertaining to negligent hospital treatment (in which case there is no duty under Article 2), or whether the fact that Melanie was a psychiatric patient (though not detained) means that this case should be assimilated to the class of cases where an operational duty arises: [20]. No European Court of Human Rights ("ECtHR") decision was cited to the Court which clearly articulates the criteria by which such a duty exists in particular circumstances, but there are certain indicia which point the way: [22]. While there are differences between detained and voluntary psychiatric patients, these should not be exaggerated: [27]. Melanie was admitted to hospital because she was a real suicide risk. By reason of her mental state, she was extremely vulnerable. The Trust assumed responsibility for her; she was under its control. The difference between Melanie's position and that of a hypothetical detained psychiatric patient would have been one of form not substance: [34]. The Trust owed Melanie the operational duty to take reasonable steps to protect her from the real and immediate risk of suicide. The risk of Melanie's suicide was "real"; it was real enough for the expert psychiatrists to give evidence that all ordinarily competent and responsible psychiatrists would have regarded Melanie as being in need of protection against the risk of suicide: [38]. The risk existed when Melanie left hospital and continued during the two day period of home leave. It was therefore also an immediate risk: [40]-[41]. As the decision to allow home leave was one that no reasonable psychiatric practitioner would have made, the Trust failed to do all that could reasonably have been expected to prevent the real and immediate risk of Melanie's suicide and it breached its operational duty: [43].

The ECtHR has repeatedly stated that family members of the deceased can bring claims in their own right under Article 2 of the Convention: [44]-[46]. A person ceases to be a victim where the domestic authority has provided adequate redress and has acknowledged, either expressly or in substance, the breach of the Convention: [49]. By settling the estate's claim, Mr Rabone did not renounce their article 2 claim for damages for non-pecuniary loss for their bereavement. No such claim was available in English law as damages for bereavement are only available for the loss of a child where the child is under 18: [58]. Nor was the £7,500 received by the estate adequate address: [59]-[63]. Mr and Mrs Rabone are therefore victims and have not lost that status.

A claim against a public authority for breach of a Convention right must be brought within a year of the act complained of or such longer period as the court considers equitable. The extension of time sought was less than four months, there is no suggestion that the evidence has become less cogent as a result of the delay, the Trust has suffered no prejudice by the delay, Mr and Mrs Rabone acted reasonably in not issuing proceedings and they have a good claim for breach of Article 2. Time should therefore be extended: [77]-[79]. This was a bad case of breach of the Article 2 operational duty which merited an award well above the lower end of the range of awards. The Trust's challenge to the Court of Appeal's assessment of £5,000 each therefore fails: [88].

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:

www.supremecourt.gov.uk/decided-cases/index.html