

COURT OF APPEAL FOR ONTARIO

CITATION: Simopoulos (Re), 2012 ONCA 772

DATE: 20121114

DOCKET: C55367

O'Connor A.C.J.O., MacPherson and Cronk JJ.A.

IN THE MATTER OF MASON SIMOPOULOS
AN APPEAL UNDER PART XX.1 OF THE *CODE*

Mason Simopoulos, in person

Jill R. Presser and Lucy Saunders, *amicus curiae*

James Thomson, for the Centre for Addiction and Mental Health

Mabel Lai, for the Crown

Heard: November 7, 2012

On appeal against the disposition of the Ontario Review Board dated, March 12, 2012.

ENDORSEMENT

[1] This is an appeal from a decision of the Ontario Review Board (the “Board”) dated March 12, 2012 ordering the detention of the appellant in the Secure Forensic Unit at the Centre for Addiction and Mental Health (“CAMH”) with the possibility of transfer to the General Forensic Unit with community living

privileges at the discretion of the person in charge (a “hybrid disposition”). A minority of the Board would have ordered the appellant be detained in the General Forensic Unit.

[2] We admitted fresh evidence on the appeal. That evidence disclosed that on June 29, 2012, the appellant absented himself from CAMH and refused to return or inform CAMH where he was. He surrendered to CAMH four months later on November 7, 2012, the day before the argument of this appeal. It is common ground that during his absence from CAMH, the appellant did not attempt to contact the complainant in the predicate criminal offence nor was he arrested or charged with any further criminal offences.

[3] The appellant, with the assistance of *amicus curiae*, argues that the Board’s disposition was not supported by the evidence, and, hence, that it is unreasonable, and further, that the majority made three legal errors in reaching its conclusion to make a hybrid disposition.

[4] We dismiss the appeal. We do not find it necessary to decide whether we would allow the appeal based on the record as it was at the time of the Board’s disposition. In our view, the fresh evidence relating to the appellant’s elopement from CAMH is sufficient to sustain the Board’s disposition.

[5] As CAMH points out in the fresh evidence, there is now a legitimate concern that the appellant may constitute a flight risk. Whether he does or not is a matter that warrants further assessment. Moreover, it appears from the record that the appellant may have little insight into his underlying medical condition, or into the correlation between his substance abuse and the predicate offence. Again, his present state, four months after he was last seen by the medical staff at CAMH, should be assessed. These concerns, it seems to us, support the wisdom of the hybrid disposition currently in place.

[6] We are informed by counsel for CAMH that there will be an immediate assessment of the appellant's condition. Should that assessment reveal that the appellant should be placed in the General Forensic Unit, those in charge of the hospital have the authority to make that placement. We are told that such a placement could be made in a matter of weeks. In the meantime, the appellant will be held in the Assessment and Triage Unit (the "ATU").

[7] We are concerned, however, that no matter what assessment is made of the appellant's present condition this matter be brought back before the Board as soon as possible. We note that after the Board's order on March 12, 2012, the appellant continued to be held in the ATU – a secure environment – with limited programming – until he eloped at the end of June. He was understandably upset.

[8] We realize that the appellant is due for an annual review before the Board in February 2013. However, we think it is important that the Board take a fresh look at the appellant's case in light of the present circumstances well before that annual review date, if at all possible.

"Dennis O'Connor A.C.J.O."

"J.C. MacPherson J.A."

"E.A. Cronk J.A."