

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR: 805/09

IN THE MATTER

BETWEEN THE CROWN

A N D NGAMATA BRYSON

Date: 23 April 2010
Court: Weston J
Appearances: Mr Solicitor for Crown
Mr N George for defendant

ORAL JUDGMENT OF WESTON J
AS TO SENTENCE

- [1] Mrs Bryson, you were charged with an offence against Section 175 of the Crimes Act which is manslaughter by negligence. You should have used sterile water to dilute the vaccine. But instead, you used a drug that is normally administered only by doctors and used as a neuromuscular blocking agent. As Mr George says, this was a drug that should not have been on the island of Mitiaro and no satisfactory explanation has been received as to how it came to be there. Suffice it to say no-one has suggested that this is a matter for which you should be held responsible.

- [2] The time line is that on the 28th October 2009 you administered the vaccine and regrettably later that day the child died. On the 6th of November 2009 you were charged with manslaughter and initially you entered the plea of not guilty. Then in February of this year you entered a guilty plea and the Crown accepts that in reality you did so on the first day available to you to do so.
- [3] The Police statement makes it pretty clear to me that you were in fact responsible for dobbing yourself in for this. It was you that worked backwards through what had happened on that day and told the Police that you were the one who had made the mistake. So there has been no attempt by you to cover this up and its indeed possible if you hadn't come clean on this no-one would have ever found out what the cause of the problem was.
- [4] There has been a very detailed and very helpful probation report. It refers to the exemplary service you have given to the Cook Islands, 40 years as a nurse, including many years on Mitiaro, and you were in charge at Mitiaro for quite a few of those years. From my own experience in the Outer Islands I can say what a high responsibility is placed on nursing staff in the Outer Islands and how important they are to the community's wellbeing. It seems you discharged those duties with great skill and care. Many people speak in glowing terms of what you have done and I have read the various letters that Mr George was instrumental in obtaining, and indeed also the Probation Service spoke to a number of these people and their comments are recorded in the probation report.
- [5] Mr George has emphasized how a number of factors have impacted on the tragedy that occurred on 28th October 2009. How the vaccination occurred on a different day to the usual pattern and as a result you were the only nurse available. There wasn't your colleague Mrs Patia there. Mr George has also emphasized how the wrong drug was in the cabinet and the probation report makes it clear that in any event an adult drug such as that neuromuscular blocking agent should not have been in the children's side of

the cooler. And it seems to me a complete mystery how staff from the Pharmacy Department of the Ministry of Health apparently overlooked finding this very serious drug stored in the Mitiaro cooler. It also seems that you were distracted by talking to Verona's mother during the course of administering the vaccine.

- [6] The Probation Report makes it clear that you have accepted full responsibility for your mistake. You have apologised as much as apologies can be given in these circumstances. You say you are remorseful and in my estimation that would be an understatement. The parents of the deceased girl have explained how this has been a very emotional time for them. They are still grieving and will continue to do so but, nevertheless, they have shown a very generous spirit towards you Mrs Bryson and the mother, in particular, says she's forgiven you for what has happened. The Probation Report also makes clear you are the grandmother of six grandchildren. The Report concludes by recommending twelve months community service be imposed by this Court.
- [7] Included within the materials before the Court is a letter from the Mayor of Mitiaro. He writes that letter in support of you and says he does so on behalf of the people of Mitiaro. There's a letter also from the maternal families who said they wished to be present in Court to support you but couldn't for various health reasons. They refer to your tireless work for the people of Mitiaro. They ask for you to be given a second chance and say that Verona should be left to lie in peace without rendering further tragedy on your life. That won't make any difference to Verona, they say.
- [8] The Crown's submissions were very responsibly put recognising that, while manslaughter is a serious offence, this offending was at the lower end of the scale. The Crown's researches located a New Zealand decision which bears a striking resemblance to the present. This is the case of the Queen v. Yokosakaran, a decision from 1990, and in that case an anaesthetist, in an emergency situation, took a drug from a storage place but someone had placed the wrong drug in the usual location. The anaesthetist didn't

properly check the drug and administered it and the patient died. The High Court Judge entered a conviction and discharged the anaesthetist. The anaesthetist then appealed that decision and the Court of Appeal upheld the conviction, describing how the offence of manslaughter by negligence should work. The relevant aspect of the decision, however, is how both the High Court and then the Court of Appeal seem to have thought it entirely appropriate that an offence of this sort could be marked by a conviction but then a discharge so that a formal conviction is entered but there is no penalty imposed beyond that. In several places, the learned President, Cooke, one of the greatest Judges New Zealand has produced, referred to the exceptionally wide judicial discretion as to the penalty in cases such as this.

[9] The factors that I have mentioned were all touched on by Mr George in his helpful submissions and, to the extent necessary, I have already dealt with the points raised by him. Mr George sought a discharge without conviction under Section 112 of the Criminal Procedure Act. Mr George submitted that community work would humiliate Mrs Bryson.

[10] As part of my preparation for this case, I made enquiries as to whether (and assuming I was to order community work) that there was some possibility of Mrs Bryson working within the Health community as her form of community service should I order that and those enquiries indicated yes, that there would be such scope. However, I have reflected hard and long upon the submissions that I have received and the Probation Report and I believe the appropriate sentence is to enter a conviction and then discharge you and that is the sentence of this Court Mrs Bryson. I want to stress that this is not to be regarded as a licence to the Health community to administer incorrect drugs. It reflects the peculiar circumstances before me and the exceptionally high qualities of the defendant that I have had the misfortune to have to sentence.

[11] For the avoidance of doubt, although it was not discussed with Counsel, I want to make it clear that any earlier suppression of name is now at an end and the defendant's name and the contents of this sentencing can be made public.

A handwritten signature in black ink, appearing to be 'Weston J', written above a horizontal line.

Weston J