

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2016-04370

IN THE MATTER OF THE ACTION OF THE CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO TO PLACE THE CLAIMANT IN A HOME THAT IS NOT A COMMUNITY RESIDENCE AND SUBJECT THE CLAIMANT TO CONDITIONS AMOUNTING TO SOLITARY CONFINEMENT

AND

IN THE MATTER OF AN APPLICATION FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE CONSTITUTION BY B (by his kin and next of friend K) A CITIZEN OF TRINIDAD AND TOBAGO ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN CONTRAVENED AND ARE BEING CONTRAVENED IN RELATION TO HIM

BETWEEN

B

(By his kin and next of friend K)

Claimant

AND

THE CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO

First Defendant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Wednesday 26th July 2017

Appearances:

Mr. Anand Ramlogan S.C. instructed by Mr. Alvin Pariagsingh leading Mr. Ganesh Saroop and Ms. Jayanti Lutchmedial for the Claimant

Ms. Sharlene Jaggernauth instructed Ms. Nazeera Ali for the First Defendant

Mr. Douglas Mendes S.C. instructed by Ms. Amrita Ramsook and Ms. Josephina Baptiste for the Second Defendant

JUDGMENT SUMMARY

1. This is the second chapter in a continuing story of the conditions in which B, a teenager in trouble with the law is being detained on remand pending the hearing of his criminal charges. The writing of this chapter would not have been necessary if the State had established community residences contemplated under the Children’s legislation¹ to detain “juvenile offenders” such as B.
2. B was remanded to the Youth Training Centre (YTC) since February 2014, a facility which was established under what was then known as the Youth Offenders Detention Act Chap 13:05. On 24th May 2016 the Court ruled in **BS v Her Worship Magistrate Ayers Caesar and the Attorney General of Trinidad and Tobago** CV2015-02799 (“the YTC proceedings”) that YTC was not a “community residence” under the Children’s legislation. Pursuant to that legislation juvenile offenders are to be remanded to a community residence.² His detention at YTC was also declared as unconstitutional. The Court ordered that B be placed in a community residence approved by the Children’s Authority of Trinidad and Tobago (“The Children’s Authority”) and in default to be placed in its custody until further order. However, no residence nor home was then approved as a licensed community residence by the Children’s Authority.
3. The order was made to protect B, to seek his best interests and to promote the fundamental rights of B as a child. Subsequent to making that order, B has been accommodated at a residence under the custody of the Children’s Authority. For the purposes of this judgment it will remain undisclosed and referred to as “the residence”.
4. B now contends in this claim for judicial review and constitutional relief that the conditions under which he is presently detained at the residence, amounts to solitary confinement and a

¹ On 23rd October 2000 the Community Residences Act was assented to and by proclamation dated 15th May 2015 specified sections of the Act came into effect. See LN 74 of 2015. On 6th August 2012 the Children’s Act 12 of 2012 was assented to by His Excellency and by proclamation dated 15th May 2015 specified sections of this Act were brought into effect. See LN 73 of 2015 Children’s Authority Act Chap. 46:10. The entire suite of legislation is referred to as the Children’s Legislation.

² Section 54(1) of the Children’s Act 12 of 2012 provides:

“54. (1) A Court, on remanding or committing for trial a child who is not released on bail, shall order that the child be placed in the custody of a Community Residence named in the Order for the period for which he is remanded or until he is brought before the Court.”

breach of his constitutional rights and freedoms guaranteed under Sections 4 (a), 4 (b), 5 (2) (b) and 5 (2) (f) of the Constitution of the Republic of Trinidad and Tobago.

5. The decision in the YTC proceedings is presently under appeal. Notwithstanding the fact that said decision is under appeal, it is accepted by the parties that the conditions under which B is presently detained should not violate his constitutional rights. The main complaint in this claim is that B is being held in solitary confinement. If that is so and if that is a breach of his constitutional rights of due process and right not to be exposed to cruel and unusual treatment and punishment, then the question arises as to what should be the appropriate relief: whether declaratory relief, an award of compensation or in addition and/or the grant of bail on conditions.
6. This main issue of the conditions of solitary confinement of minors requires an examination of the conditions in which B is presently detained and balancing the “best interests of the child” with other legitimate competing interests.
7. There are however, preliminary issues also advanced by the Defendants. In particular, that the State is not a proper party in these proceedings, that leave ought not to have been granted as the proceedings are an abuse of process and that the Claimant is guilty of delay.
8. Notwithstanding these preliminary issues, I have chosen for the reasons set out in this judgment, to focus on the main issue first. In my view a Court which seeks to give effect to the “best interest principle” should always concern itself with the welfare of the child notwithstanding procedural preliminary matters. It is also therapeutic to the parties in disputes such as these for the Court to address this main question “head on” so that parties feel a sense of vindication on the substantive issues raised rather than left to wonder “what if?” in the event there is merit in the preliminary submissions.
9. I make it plain that B is not in a place that he would like to be. He is on remand facing the most serious charge in our criminal law. The consequences of being charged and having to await his day in Court must be agonising and distressing. In the meantime, he is separated from his mother and his siblings. He is placed in a residence that is unfamiliar to him. He has to make adjustments mentally and physically while he waits. No child wants this. Looking at this adult world through the eyes of the child must be unsettling.

10. This alone does not however, help in answering the question whether what has been put in place for B at the residence is an act of punishment, ill treatment or an act of such severity that it has offended his constitutional rights or the “best interest” principle. Put very simply, is the Children’s Authority torturing, punishing or taunting B? Are they mistreating him or subjecting him to cruel and inhuman conditions or exposing him to unacceptable levels of harm for children? Or are they protecting, caring for B and seeking to advance his best interest? I take this matter seriously as indeed until B is placed in a community residence we are all faced with these short hand measures to protect B searching for the best that can be done in the circumstances caused by the premature promulgation of the Children’s legislation.
11. In my view, solitary confinement in the real sense has been treated as a species of cruel and inhumane punishment. A summary of the applicable principles which will guide a Court in making a determination as to whether conditions of solitary confinement are indeed actionable or a breach of fundamental rights includes:
- (i) A level of sustained segregation of the detainee without contact with other human beings.
 - (ii) The degree to which the detainee is deprived of mental stimulation.
 - (iii) Whether the confinement is a means to degrade or denigrate, deface or humiliate the prisoner.
 - (iv) The impact on the detainee’s mental health.
 - (v) Complete sensory isolation, coupled with social isolation.
 - (vi) The prohibition of contact with other prisoners for disciplinary or protective reasons does not by itself amount to inhuman treatment or punishment.
 - (vii) Whether such measure falls within the ambit of inhuman or degrading treatment, the particular conditions and stringency of the measure, its duration, the objective pursued and its effects on the person concerned must be determined on a fact sensitive basis.

(viii) Whether the ill treatment has reached the minimum level of severity depends upon the age of the detainee and other circumstances unique to the individual.

(ix) Account must be taken of the fact that all confinement entails some element of distress, frustration and humiliation which will impact upon the detainee's mental state and well-being.

12. I have concluded that the conditions under which B is presently being detained can only amount to solitary confinement in a limited literal sense, that B has been segregated from his "peers", or other youngsters on remand. He is undeniably the only youth confined at the residence. But his detention is a novel one. He is the first of his kind to be housed at the residence having regard to the nature of the order made. If indeed there are no other alternatives and had the order in the YTC proceedings not been the subject of appeal, he may have been joined by other youths on remand until suitable community residences have been approved. At its highest, his stay at the residence is comparable to being segregated from the regular juvenile offender population. However, there is no insidious aspect of such a detention. It is a detention based upon a rational and thoughtful assessment. Conditions have been established to ameliorate his isolation. His health, educational and physical needs are being addressed. I am comforted by the expert's advice that he has suffered no serious harm by the conditions at the residence. His surroundings are generous and open. He has opportunities to communicate with and experience the wider world. His conditions are under assessment and review by specialists. His security arrangements are not invasive or oppressive. The conditions under which he is detained do not meet the minimum severity to be actionable nor amount to a breach of his constitutional rights nor do those conditions breach the "best interest of the child" principle.

13. It is therefore not necessary to determine the preliminary issues. In any event for the reasons expressed in this judgment, the State is a proper party to these proceedings. The question of bail was an issue raised by the Claimant. Additionally, the fact remains that his continued detention under the custody of the Children's Authority persists as a result of the delay of the State in providing community residences approved by the Children's Authority. B is not guilty of delay in moving this Court nor is his claim an abuse of process. The impact of the present conditions on B could not have manifested itself to his mother as unusual until B's escape from

the residence on 21st October 2016. His pre-action protocol letters were issued on 26th October 2016³ and 7th November 2016⁴ and the proceedings filed on 5th December 2016.

14. The claim would therefore be dismissed.

15. However, the matter does not end there. At the end of this judgment, in deference to the “best interest of the child” principle, I have volunteered non-binding thoughts on the way forward on the larger issues raised in this matter. It is also an attempt to prevent the parties from entering a revolving door of litigation in relation to B’s detention.

The way forward-A Non-Binding Guide

16. “In a practical and entirely unsentimental sense, children embody society’s hope for and its investment in its own future.”⁵ The story of B is but a chapter in the larger story of how we treat our vulnerable at risk children who also embody society’s future. With this in mind and with the task entrusted to Courts when faced with children to pay particular regard for their best interest, I offer this non-binding opinion for the benefits of all the parties.

17. Judgments of course should address the issues that are presented to the Court for its determination. This I have already done. However, in cases where the “best interest principle” is in play, care must be taken for the judgment to have a therapeutic effect on the child and parties in the dispute which may impact on the child’s future and our collective welfare. This can be achieved in this case by addressing some of the issues which clearly impact the parties in a practical way. Those are issues which did not fall for determination in the adversarial model of this litigation.

18. I am mindful that this is the second occasion that B has come to the steps of this Court seeking justice. I am mindful that the Defendants have demonstrated that they are trying to do their best to keep apace with a radical paradigm shift in the treatment of juvenile offenders. B and his mother have invested significantly in this dispute. Litigation itself has an emotional cost

³ Concerning access to B at Children’s Home.

⁴ Concerning the Freedom of Information Application.

⁵ I adopt Cameron J’s observations from **Centre for Child Law v Minister for Justice and Constitutional Development** [2009] ZACC 18.

and this family is, from the reports already received, not a family of means. It is not lost on this Court that half of the expenses of the Court's expert was paid by the Claimant's attorneys themselves. For this reason I set out a non-binding opinion of a way forward from this litigation.

The family: B and his mother K

19. To B and his mother. There is no party in this case nor counsel representing them who is not sympathetic to their plight. It has been said that isolating pieces of evidence, statutory rules or precedents from the context in which they arose is an impoverished way of comprehending reality. The picture painted by the Court's expert of B is that of a child coping with all that has overwhelmed him. The orders made in the YTC proceedings were made for his protection. The dismissal of this claim simply means that the Court is satisfied that the present conditions are not a breach of his constitutional rights. That is the finding in law. B is a teenager and with that comes all the dynamic challenges of growing up. His is an evolving picture.
20. No one has been denied access to B. I urge his mother to continue her regular visits as difficult as those may be and to include other members of his family. I had suggested that some interaction with other students of his age may be useful. Of course there must be security and other concerns. But the rehabilitation of juvenile offenders is a task for all, not for one. I had suggested matters such as "face time" in a class making such a class part of B's virtual world. But this presents an opportunity to work with other groups such as the Juvenile Court, Parents and Teachers Associations (PTAs), the Ministry of Education, the Trinidad and Tobago Unified Teacher's Association (TTUTA), NGO's, religious groups and other groups on how they can help.
21. I also commend Dr. Hollingsworth's useful recommendations, set out in the judgment, to the Children's Authority. This can pre-empt any future anomalies in B's behaviour as he evolves over time. She indicated that B's days should be more structured. Usefully a timetable of a more structured list of activity is set out at pages 37-39 of the YTC handbook. She recommended a plan be put in place to deal with self-harm. She also made practical suggestions to help his reading, spelling and comprehension skills by listening to audio books and computer reading programmes.

22. A clear complaint procedure should be implemented by the Children's Authority so that both K and B can know clearly to whom they can raise their concerns and who can help address them.
23. B wants to be a soldier. B told me this a long time ago and recently when I met him again. Are interactions with persons from the cadet force or scouts possible? He is good with his hands. His cognitive ability is not strong but he is trying, his is coping. He has passed his school leavers certificate. It is of course worrying that B has tried to escape and that there may be tantrums thrown. Which youth is a stranger to this? The task in rehabilitation is to continue to build the child's foundation. Dr. Hollingsworth has commented that his coping mechanism is based on his strong foundation, one built by love. No matter the walls of his residence or the paper upon which the best laid rules are inscribed, I remind everyone that it is the love in the human interaction with B as with other juvenile offenders which defines the rehabilitative exercise.

The Children's Authority

24. The Children's Authority has been placed in an unenviable position. But no doubt the Children's Authority has diverted their resources strictly from being a regulator to providing for B a function normally of a community residence. It is not lost on the Court that these funds are needed in other aspects of the Children's Authority's operations.
25. However, this is an opportunity for them to lead by example and ensure from their own experience that the care afforded to juvenile offenders in community residences ascribe to that minimum standard and give effect to the "best interest principle" based on their own experience. They can be better equipped to judge others based on this experience to advise on the challenges which are met with the detention of young offenders. One hopes that they use this time wisely with B to properly document the responsiveness of juvenile offenders to a rehabilitative environment.

The State and YTC

26. The State needs to be commended for introducing the new regime which revolutionised the treatment of juvenile offenders. Unfortunately, its implementation of the new regime is not ideal and putting the cart before the horse is a flattering description of what has unfolded. Since

the last proceedings, steps have been taken to now rehabilitate existing structures and institutions. The YTC is now known as a Youth Rehabilitation Centre. New regulations have been implemented. In Mr. Scanterbury's evidence a number of steps have been taken and have to be taken to meet a target date of 12th September 2017.

27. I observe that regulations 51 and 52 of the Child Rehabilitation Centre Regulations 2017 provides for punishing a child by referring him to the "Reflection Unit". See also Schedule 3 regulations (f) and (g). The "Reflection Unit" is defined as a "place where residents can engage in quiet activities for the purpose of reflecting on their behaviour"⁶. Regulation 52(8) provides that such punishment shall not be deemed to be solitary confinement. I hope that this judgment would prove useful to the parties in determining how such provisions are to be implemented, if at all.
28. Mr. Scanterbury has stated that the facility should be ready by 30th September 2017. To make a rehabilitatory environment a reality needs support for their infrastructural development and intervention strategies to help their juveniles and let it be done consistent with the best interest principle. The best interest of the child which cuts through all administrative machinery to safeguard and protect B and other juvenile offenders. Administrators must never lose sight of this and I emphasise that it is the human interaction with the child offender which makes the difference in rehabilitative efforts.
29. I had started this chapter in the earlier proceedings enquiring about the other young men in YTC. We of course have not addressed our young girls in these proceedings and indeed B's sister attaining the age of maturity is no longer a juvenile and is housed in an adult prison. When we visited B he was drawing a card for his sister S, now in prison. The issue of dealing with girl offenders also need urgent collaborative attention.
30. The emphasis in these judgments have been on juvenile offenders but we should not lose sight and should also spare a thought for the victims of the crimes and what steps can be made for healing between victim and offender.

⁶ Regulation 2 of the Child Rehabilitation Centre Regulations 2017.

The attorneys, and the Overriding Objective

31. To the attorneys. For counsel on opposite sides I wish to commend them for their industry in their quick preparation, their extremely helpful submissions and their civil and accommodating disposition to one another. More importantly, there were several procedural applications which came before this Court which were dealt with in a collaborative atmosphere for which I thank them as it assisted me greatly in managing this case and helped us all to focus on the greater issues at stake in this dispute.
32. They have demonstrated in real and practical terms what it means by the concept that both the judiciary and attorneys are enjoined in the joint enterprise of dealing with cases justly, affording citizens access to justice and upholding the rule of law. This matter commenced by filing an application for leave on 5th December 2016. This first procedural hurdle of leave was dealt with consensually despite vigorous opposition. A second procedural hurdle of appointing experts was also dealt with collaboratively. Consensus building not only has a place in substantive law by producing settlements but procedurally to create the proper environment within which calm decisions can be made which has an impact on the lives of others. In such an environment it encourages Judges and attorneys alike to truly deal with live issues and see through the briefs to deal with more human aspects of disputes.
33. It was this collaborative atmosphere created by the civility and non-adversarial approach by the attorneys that has encouraged me to produce for them this postscript.
34. Finally, nothing of course stops the parties from continuing to engage in discussions in light of these guidelines. Nothing further stops any of them to enter into voluntary undertakings and to signal same to this Court. Nothing prevents joint applications to deal with any issue. Nothing prevents the appointment of child advocates to represent the “voice of the child”, to assist the administration in making the transition into the new regime. Nothing stops even the attorneys from making an enquiry of the welfare of B, victims of crime or other detainees and stop by to visit, of joining together in presenting B with a gift of a book or board game or an inspirational talk. The village needs to be reconstructed in whatever fashion to raise our children and more so our children in trouble with the law.

Vasheist Kokaram
Judge