

SOUTH AFRICA / JUDGMENT

Steenkamp and Another v Camphill Farm Community (2319/10) [2010] ZAWCHC 46 (18 March 2010)

[2010] ZAWCHC 46

COURT

Western Cape High Court, Cape Town

BEFORE

S Olivier

CASE / FILE NUMBER

2319/10

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IN

THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE HIGH COURT, CAPE TOWN)

Case No:

2319/10
In the matter
between
PROF
DANIEL JACOBUS STEENKAMP First
Applicant
ELISABETH
JOHANNA STEENKAMP Second
Applicant
and
CAMPHILL
FARM COMMUNITY Respondent

JUDGMENT

DELIVERED ON 18 MARCH 2010

S OLIVIER AJ

1. The applicants are the parents of Anneli Steenkamp who is 28 years of age. As a result of having suffered cerebral hypoxia during birth, Anneli is severely mentally retarded and partially autistic. She is unable to function independently and is not educable. At the age of 10 Anneli was also diagnosed with type 1 diabetes. As a result of her mental disability, Anneli is unable to manage her diabetes by herself and requires constant assistance and supervision by trained persons. It would be preferable that she resides in a facility where this level of care is available to her at all times.
2. Anneli was enrolled at Camphill School, Hermanus at the age of 14. She resided on the Camphill Farm premises in a homely setup with 8 to 12 other children, a few co-workers and a "house parent." During May 2003, at age 20, she was accepted at the Camphill Farm Village conducted by Camphill Farm Community, the respondent "(Camphill)".
3. Camphill in Hermanus was founded in 1978. It is part of the International Camphill Movement which caters for and works with people with special needs. There are more than one hundred like-minded communities all over the world.
4. The Camphill Farm Village boasts excellent care-giving facilities, a homely atmosphere, and various workshops (which include outdoor activities such as gardening) as well as social activities that provide mentally handicapped persons with a feeling of belonging, being able to contribute and are designed to maximise their social inter-action within a safe and secure environment.
5. Anneli's admission to the Village was in terms of an agreement between her father and Camphill. Germane to this agreement is the "Undertaking and Indemnity" signed by her father in his capacity as the natural guardian of Anneli on 19 February 2003.1 Clause 5 provides as follows

"I hereby acknowledge that the CAMPHILL FARM COMMUNITY cannot guarantee to keep the Villager for the rest of his- life although it is the intention of the CAMPHILL FARM COMMUNITY to keep the Villager for as long as the Villager's attitude and general behaviour is acceptable and for as long as the Villager wants to live in the CAMPHILL FARM COMMUNITY, irrespective of the Villager's financial resources or efficiency as a worker, and I hereby undertake to find alternative accommodation for the Villager upon receiving written notice from the CAMPHILL FARM COMMUNITY. I also undertake to abide by any decision taken by the CAMPHILL FARM COMMUNITY in this regard."

6. It is common cause that the problems and difficulties with Anneli escalated when, at the beginning of 2009, her diabetes medication was changed from the long-acting insulin to another form of insulin. Her father, in his replying affidavit,² stated the consequences of the change in medication (and the subsequent failure of Camphill to accommodate Anneli) to be the crux

of the matter.

7. By May 2009 Camphill's employees found that they were unable to take care of Anneli as before, and her parents were requested to take Anneli from the Village.³ Camphill's letter dated 8 July 2009⁴ stated that there was "one more option. This would involve moving Anneli to a smaller house community and having a specialist carer as house leader. However, this too would have to be on a trial basis, with due regard for all other residents in that house. If that option fails, we don't see a way out except to give notice." And further "(w)e do feel that the family should be alerted to the situation in case our next plan is not successful"

8. The situation came to a head on 17 November 2009 when Camphill sent a letter,⁵ stating that the last option of moving Anneli to Pollux House was unsuccessful and that she would have to leave the community with

effect from 17 December 2009.⁶

9. An interim arrangement was entered into in December 2009 in terms of which Anneli would return to Camphill on 2 January 2010 and be accommodated there until 31 January 2010. She did not return on that date, and when her parents sought to return her later, Camphill refused to accept her.

10. The applicants approached this Court on an urgent basis for an order that Camphill forthwith restore all Anneli's rights of residency at "Pollux House" at Camphill Farm Village and that Camphill permit Anneli to continue to so reside at Camphill Farm Village and to provide her with the same level of care as that provided to her by Camphill prior to the 16th day of December 2009.

11. The applicants predicated their application on four grounds, namely:

- (a) That Camphill had breached the written agreement concluded between the parties when Camphill agreed to accept Anneli as a resident in their community;
- (b) That Camphill had breached the agreement reached between the parties respective attorneys in December 2009 in terms whereof Anneli would be accommodated by Camphill until 31 January 2010;
- (c) That Camphill had contravened certain provisions of the Mental Health Act No, 17 of 2002 (the Act);

- (d) That Camphill had unlawfully deprived Anneli from her lawful occupation of Pollux House and that she is entitled to be restored in her occupation of Pollux House or equivalent accommodation at Camphill Farm Village in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act No, 19 of 1988.
12. The respondent has opposed the relief sought by the applicants. It filed its opposing affidavit on 11 February 2010. The application was set down for hearing for an interim order on 12 February 2010, but the applicants requested a postponement to enable them to file replying papers.
13. The application became before me on 19 February 2010. Mr Newton, instructed by Mr Luitingh, appeared for the applicants and Mr Ulyate of Vaughan Ulyate & Associates appeared for the respondent.
14. The first applicant will turn 68 in April of this year and he is concerned that he will not be able to provide Anneli with any form of care for very much longer. The second applicant will turn 64 in March and is currently a full time employee contracted to Woolworths. In the event of the task of caring for Anneli falling upon her alone and given the difficulties associated with caring for someone like Anneli, on a full time basis, it will be an all but impossible task for her.
15. The respondent is a non-profit organisation that is run by a board of directors with the assistance of a limited number of permanent staff members, who are mainly the house leaders of the different houses, workshops and other long term co-workers in the Camphill Farm community. There are 8 houses and approximately 58 residents.
16. There are two problems with regard to Anneli. The one is the medical aspect and the other one is the disability aspect.
17. The respondent states that the change in medication resulted in
- (a) The respondent's employees who were tasked to take care of Anneli being put under immense strain, as Anneli often had to be monitored 24 hours a day. The respondent's staff are not able to cope with frequent night shifts and 24 hour supervision as they all have daily tasks and responsibilities;
- (b) Anneli having mood swings and challenging behaviour, such as uncontrollable outbursts, that were far worse than before, this caused instability and a disruption of the living environment for the other residents of the Pollux house. Anneli's needs cannot be met under the current circumstances and lead to constant overload on the respondent's staff.
- (c) The other residents of Pollux house, who all have particular needs, were detrimentally affected by Anneli's behaviour. Her imbalances are difficult for other residents to cope with, and are most disturbing and unsettling for them. Most of them tended to react with

consternation and distress, and withdrew into their own space when Anneli had outbursts, which condition takes a while to remedy and puts a further strain on the care workers.

- (d) The respondent coming to the conclusion that the respondent is not able to cater for Anneli's manifold needs and that Anneli is not benefiting from the Camphill lifestyle.

18. In the answering affidavit the position was thus described:⁷

The situations described by Ms Grimm interfered with the normal running of the complex household environment at Pollux House and influenced the atmosphere in the house, as the other residents reacted negatively on Anneli's moods and also became agitated and unhappy. An enormous amount of time and energy was spent on attempting to rectify the situations. This is a further indication that Anneli requires for more intensive care than what is offered and given at Pollux House or any of our other houses.

The decision that was made to dismiss Anneli was made for her own welfare and for the welfare of the other five residents of the house. The personnel at Pollux House cannot provide for Anneli's special needs and simply cannot cater for her demands. Anneli requires full time (24 hours) supervision for her condition. The Respondent is not equipped to treat her medical condition, and needed to make special interim arrangements in this regard in order to cater for her special needs. The co-workers of the Respondent are not medically trained.

19. Mrs Grimm stated⁸ as follows

There were actually two problems which we had to deal with: the one is the medical side and the other one is the disability side.

The medical side is her diabetes (Type 1). Anneli receives insulin injections (quick and long acting) three times a day. Therefore her blood sugar must be measured at least seven times a day (before and after meals and bedtime). But her diabetes seems to be badly adjusted, because her blood sugar level was very inconstant. It varied- from 1,8 to 28 (!), which is very unhealthy. Values in that extreme low and high areas could be life threatening. ... These situations show that Anneli needs a very intensive care which cannot be provided at Camphill Farm Community.

Caused by the blood sugar fluctuations and of course as a part of her disability her moods, also changed a lot. When the blood sugar level was low, Anneli was quite apathetic. But of course it is easier to deal with a low sugar level and to make her a snack than to deal with a- high sugar level. When the sugar level was high, Anneli was very excited, restless and noisy. She got upset quickly, screamed, peed all over her bed and it was difficult to

get her down. Especially on meals the situation escalated. We tried a lot (walking, singing, whispering, sent her to her room, eat with her on a separate table, talk nicely to her, talk strictly to her, ignore her, etc) but sometimes it was not possible to calm her down and that interfered and influenced the atmosphere in the house because there are other residents who react on Anneli's moods and who took up her agitation. It also used all of our energy. This shows again that Anneli needs to have a more intensive care.

So the decision which was made to dismiss her is really to (sic) her welfare. We as Pollux House cannot provide and, ensure anymore what Anneli needs. We don't (do) justice to her demands anymore. ..."

20. Miss Roux, in her affidavit stated as follows

I confirm that Anneli's behaviour as described in my said report⁹ was the beginning of Anneli's regression. Her behaviour became increasingly violent and more frequent than ever before, and she

became virtually impossible to control. This obviously caused a huge disruption in the house for the other residents who were emotionally

and physically affected by her behaviour and further put an enormous strain on the Respondent's employees and volunteer co-workers.

According to the psychiatric reports Anneli has the emotional characteristics of a child of three years old. She can get stubborn if she does not get her way. However, in my opinion, the main reason for her wayward behaviour is that she wants to be with her family, in particular her sister and her mother. The only time she verbalised her own thoughts was when she knew that she would be staying with her family. She would then say that she is going home and that she is going to sleep in her sister's bed) then she would be very excited with eyes sparkling.

21. Though there was an extensive response to these allegations, their

substance, insofar as it pertains to Anneli's condition and the inability of the respondent to take care of her, was not placed in dispute in the replying affidavit.

22. The applicants view matters somewhat differently. The first applicant states as follows in his replying affidavit¹⁰

- "As a result of these developments,¹¹ the second applicant and I consulted a psychiatrist (Dr. C. Christie) in Hermanus, who concluded that, apart from her mental retardation,

there was actually nothing wrong with Anneli and that the circumstances at Pollux House were at the root of the problem."

23. They contend that the respondent accepted Anneli as a member of

its community over a decade ago in full knowledge, and on the basis, that she was mentally disabled and a diabetic. The respondent has furthermore ably dealt with Anneli's conditions ever since until early 2009.

Lack of locus standi

24. The first point in limine raised by the respondent was that the applicants do not have the necessary locus standi to bring the application for the relief that is sought, as Anneli was a major having been born on 11 September 1982.

25. To the extent that the application is predicated upon the agreement between the first applicant and the respondent, the first applicant has the necessary locus standi.
26. Insofar as reliance was placed on, in particular, the interim agreement, the provisions of section 6 of the Act, as well as the Prevention of Illegal Eviction and Unlawful Occupation of Land Act No, 19 of 1988, (PIE) the position is somewhat different.
27. The first applicant sought to rely on the fact that he has been appointed to act as the administrator to Anneli's estate by the Master of this Court.
28. Mr Ulyate submitted that the applicants cannot merely assume the role of curator ad litem. The appointment of the First Applicant as the administrator of Anneli's estate in terms of section 60 of Mental Health Act No, 17 of 2002 (the Act) does not afford him locus standi to act on her behalf. The powers and functions of the administratorso appointed are set out in section 63(3) of the Act, and do not include the power or authority to represent the person in legal proceedings.
29. The other provision of the Act that deals with representation, set out in section 15 thereof, only entitles the "mental health care user" to a representative, such as "next of kin" when
 - (a) submitting an application for admission (to a health care facility); (b) lodging an appeal; or
 - (c) appearing before a magistrate, judge or a Review Board, subject to the laws governing the rights of appearances at a court of law.
30. In Road Accident Fund v Mdeyide (Minister of Transport intervening)

[2007] ZACC 7; 2008 (1) SA 535 (CC) Navsa AJ held as follows at paragraphs [37] - [38]:

- [37] If at the time of the trial the plaintiff had indeed been of unsound mind, he would, without the assistance of a curator ad litem, have lacked locus standi with the possible consequence that the entire proceedings in the trial court might be rendered void. It would also call into question his instructions to Mr Niehaus. In Kotze NO v Santam Insurance Ltd¹² the curator subsequently appointed persuaded the High Court to permit him to ratify such steps as had already been taken. The present case might well, if the course set out later is followed, in the end be similarly decided.
- [38] If the plaintiff does not have the capacity to litigate, the law requires the assistance of a curator ad litem. In a useful discussion of instances where the appointment of a curator is called for, and of how proceedings in terms of Uniform Rule 57 should be initiated, it is pointed out that:

If it is suspected that a person is of unsound mind and as such incapable of managing his affairs, proceedings can be instituted for a declaration b the court to that effect and for the appointment of curators to his person and his property.¹³

It is clear that the very least that was called for in the court below was an inquiry in terms of Uniform Rule 57.¹⁴"

31. Accordingly, where the applicants seek to rely on the provisions of the Mental Health Act, (or where they rely on the interim agreement, or the provisions of PIE) it would, in my view, be necessary for a curator ad litem to be appointed to assist Anneli. Only Anneli would have the necessary locus standi to rely on those rights - and she needs to be represented by a curator ad litem. The mere fact that the applicants are the natural parents of Anneli would not suffice. This, of course, is no criticism of their conduct. They have clearly acted in the best interest of their daughter - what is required legally, however, is for a curator ad litem to represent her. To eventually have these proceedings declared void because of a lack of proper legal assistance to Anneli, or to simply dismiss

the application because of a lack of locus standi, would do an injustice to her.

32. Mr Newton requested that, were I to uphold the point taken on locus standi, to postpone the instant application in order for the curator ad litem to consider, and if so advised, to pursue it.
33. It is important at this juncture to point out that it became apparent during the argument that neither the applicants nor the respondent had adequately presented on the papers their respective endeavours to find alternative accommodation for Anneli. If it turns out that the respondent is indeed subject to the provisions of section 6 of the Act, it may very well have to do just that, namely to properly refer Anneli to another institution. I, at this stage, express no view on this. Insofar as the applicants also rely on the agreement entered into between the first applicant and the respondent - and in respect of which they have the necessary locus standi - it is not appropriate to deal separately with that aspect of the application nor have either party asked me to do so.
34. In the premises I make the following order:

The application is postponed sine die in order for the applicants to make an application for the appointment of a curator ad litem for Anneli. Costs are to stand over for/later

determination.

1 Annexure FS2 to the opposing affidavit, to which it appears the second applicant signed as a witness.

2 At par 15.3, record p 131

3 see record par 13 on p. 10

4 annexure "E", page 38 of the record

5 annexure "F," page 39 of the record

6 See 4th paragraph on page 45 of the record

7 Answering affidavit par 24.2 - 24.3, record p 81 - 82.

8 Affidavit FS1 at record p 97.

9 The report was annexed to the affidavit and dated 23 March 2009

10 Replying affidavit, par 15.7, record p 133

11 The interaction between Anneli and one Poppie

12 1994

(1) SA237 (C) at 248F - J

13 Van Winsen ef al The Civil Practice of the Supreme Court of South Africa 4th ed (Juta, CapeTown 1997) 1126

14 Rule 57(1) reads as follows: [insert]

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