

'Next friend' not happy case thrown out



Attorney Stephen Lashley says Kim Medford had no legal standing in the matter and that her actions were an abuse of the process of the court.

A woman who brought an ex parte application before the High Court seeking a protection order for an elderly man who she perceived was the victim of elderly abuse is disappointed that her application was thrown out.

Kim Medford, who filed the action as a next of friend using the **Human Rights Act** believes Barbados needs legislation that would protect the elderly in situations where they are vulnerable and helpless.

Medford said she filed the case in March 2019 as an emergency application seeking to have the victim appear before the court so that he could be interviewed. He was also listed as the second claimant.

However, she lamented that the case never got before a judge until almost a year later in February 2020.

She claimed in her filings that the 72-year-old man was being denied access to his attorney; that he was being held against his will; that his money was being misused and that he was being prevented from exercising his overall civil liberties.

Had to serve summons

Medford said she was also disappointed to learn that she had to serve a summons on the same persons she was trying to protect the elderly man from, to appear before the court, adding that she was also informed that the matter would have to be dealt with under the **Mental Health Act**.

Three weeks ago, the judge threw out the case, finding that Medford's application was flawed and that she had no basis in law to bring the action.

Pointing out that this was the first time that a private citizen had brought such a case before the court, Medford said she would appeal the judge's decision.

She said she had attempted to complain to the police, the Welfare Department and the Ministry responsible for

Elder Affairs before she even contemplated bringing the legal action but each time she was informed that the elderly man would have to be the one making the

complaint. She found this incredible since her argument was that the man was being held against his will.

“One has to go through hoops and thorns to get aid or justice for the elderly,” Medford cried, as she questioned why the **Human Rights Act**, to which Barbados was a signatory, could not be used in the law courts.

However, attorney at law Stephen Lashley, who represented the family, pointed out that Medford had no legal standing in the matter and that her actions were an abuse of the process of the court.

Could not act

“The basic problem is that she could not act in this matter without adhering to the Rule 23 of the Supreme Court and the provisions of the **Mental Health Rules**.

In order to act as next friend, a person must be appointed by the court or must meet the requirements of the rules, which constitute that person’s authority to act.

He said after a review of Medford’s documents “it was clear she had not consulted the patient’s attorney at law as is required, neither did she have the requisite certificate as to her fitness and she clearly had not complied with the Rules of the Supreme Court.

He added that Medford “stubbornly refused to be legally advised on this matter”.

He explained that the court’s powers under the **Mental Health Act** were extensive and empowered the court to “do or secure the doing of all things as appear to be necessary or expedient for the maintenance or other benefit of the patient or members of the patient’s family and that the court may also,

at the instance of the Attorney General, make a number of orders and give directions relating to the patient’s property as well as investigate matters relating to the capacity of

any patient to manage and administer his property and affairs”, among other powers.

Without foundation

“Miss Medford’s claim that Barbados’ laws do not provide adequately for such matters is therefore without any foundation whatsoever. The court after hearing both parties made an order that Ms Medford’s application be dismissed since Ms Medford had no legal standing in the matter and that the proceedings she brought were bad in law and she was also ordered to pay costs to the patient’s family.”

“[Her experience] represents an instructive lesson to others who may wish to approach the court without the benefit of legal counsel,” Lashley said. **(MB)**