

1987 October 23

[DEMETRIADES, LORIS, STYLIANIDES, JJ.]

IN THE MATTER OF PHOEBUS P. MAVROMMATIS,  
MENTAL PATIENT,

and

AGNI CHRISTOFIDOU, ADMINISTRATRIX OF THE PROPERTY  
OF THE ABOVE MENTAL PATIENT,

*Appellant-Applicant.*

*(Civil Appeal No. 6948).*

*Mental Patients — Administration of property of — The Mental Patients Law, Cap. 252, as amended by Law 62/70 — Mental Patient under section 29A — Ambit of section 29B — Principles governing the exercise of the power of the Court thereunder.*

*Appeal — Power of Court of Appeal to interfere with the exercise of the discretion of the trial Court — Principles applicable.* 5

The Administratrix of the property of a Mental Patient under section 29A applied to the Court for authorization to withdraw from the bank a deposit of the patient bearing interest at 6%, subjected to income tax, and invest it in Government security bonds, which yield a non-taxable interest 8% per annum. 10

The trial Judge dismissed the application on the ground that the provisions of section 29B empower the Court only and mainly to give directions for the maintenance of the patient and his family and the administratrix should not act as a shrewd investor for the purpose of increasing the property of the patient, especially when such increase is unnecessary for the maintenance of the patient. 15

Hence this appeal.

Held, allowing the appeal:

(1) Section 29B has to be read and interpreted as a whole. The enumeration of specific objects in sub-section 2 is not exhaustive 20

(2) The paramount consideration is the patient's interest. The guiding principle for the exercise of the jurisdiction is that the Judge enables that to be done, which the patient would himself be likely to do, if capable of managing his affairs and properly advised. 25

(3) The investment of funds of the patient in a more secure or advantageous way is for the benefit of the property of the patient and it comes within the ambit of the Law.

5 (4) Having in mind the principles governing the interference by this Court with the exercise of the discretion of a trial Court and in the circumstances of this case, the appeal should be allowed.

*Appeal allowed.*

*Costs out of the estate.*

*Cases referred to:*

10 *Alltrans Express Ltd. v. CVA Holdings Ltd. [1984] 1 All E.R. 685.*

**Appeal.**

15 Appeal by applicant against the judgment of the District Court of Nicosia (Artemides, P.) dated the 27th May, 1985 (Appl. No. 47/65) whereby her application for leave to withdraw the amount of £3,250.- deposited with the Bank of Cyprus in the name of mental patient Phoebus P. Mavrommatis and invest it in Government security bonds was dismissed.

*A. Pandelides*, for appellant - applicant.

20 DEMETRIADES J.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES, J.: The appellant is the administratrix of the property of Phoebus P. Mavrommatis, of Morphou, who now is staying at a clinic in Nicosia.

25 *Phoebus P. Mavrommatis is a mental patient («the patient»)* under section 29A of the Mental Patients Law, Cap. 252, as amended by the Mental Patients (Amendment) Law, 1970 (Law No. 62/70).

30 In the Mental Patients Law there was no provision regarding persons incapable, by reason of mental disorder, of managing, and administering their property and affairs, who were not subject of confinement.

35 This lacuna was filled by Law 62/70, which is almost a replica of the corresponding provisions of the English Mental Health Act 1959, by the addition of three new sections - Nos. 29A, 29B and 29Γ - under a new Part VA with the subhead «Administration of the Property and Affairs of Mental Patients not Subject to Confinement».

The patient has an amount of £3,250.- deposited at a bank of Cyprus at 6% rate of interest. The income derived from this investment is taxable, as the patient draws other income from other sources.

The administratrix applied to the Court to authorize her to withdraw from the bank this amount and invest it in Government security bonds, which yield a non-taxable interest 8% per annum. 5

The application was dealt by a Judge of the District Court of Nicosia, who dismissed it on the ground that the provisions of section 29B empower the Court only and mainly to give directions for the maintenance of the patient and his family and the administratrix should not act as a shrewd investor for the purpose of increasing the property of the patient, especially when such increase is unnecessary for the maintenance of the patient. 10

Section 29B reads as follows:- 15

«29B - (1) Notwithstanding the previous provisions of this Law, the District Court, having territorial jurisdiction where the patient resides, has power with respect to the property and affairs of the patient to take all necessary measures and make the necessary directions- 20

(a) for the maintenance or other benefit of the patient or members of his family;

(b) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or 25

(c) otherwise for administering the patient's property and affairs.»

Sub-section 2 provides that in the exercise of these power regard must be had to the satisfaction of the patient's requirements and his welfare, but in the administration of his affairs, the interest of his creditors shall, also, be taken into consideration and, without prejudice to the generality of the functions mentioned in sub-section 1, the Court may make such orders and give such directions as the Judge thinks fit for the purposes of those functions and, in particular, for the following purposes:- 30 35

(a) The control and management of the property of the patient.

(b) The sale, exchange, charging, or other disposition of any property of the patient.

(c) The acquisition of any property in the name or on behalf of the patient.

5 (d) The carrying on by a suitable person of any profession, trade, or business of the patient.

(e) The dissolution of a partnership of which a patient is a member.

10 (f) *The carrying out of any contract entered into by the patient.*

(g) The conduct of legal proceedings in the name of, or on behalf of the patient, provided that, for the filing of any action or the taking of any proceedings in respect of the conjugal status of the patient, the prior consent of the Attorney -  
15 General of the Republic is required.

(h) The appointment of administrator of the property and affairs of the patient under such conditions, including the remuneration of the administrator, as the Court may determine.

20 Section 29B has to be read and interpreted as a whole.

Law 62/70 created an entirely new statutory jurisdiction for a special category of mental patients, persons incapable by reason of mental disorder of managing and administering their property and affairs, but who are not subject of confinement.

25 For the exercise of this power regard must be had to what is in the interest of the patient and his property and affairs. The enumeration of specific objects in sub-section 2 is not exhaustive.

30 The paramount consideration is the patient's interest. The guiding principle for the exercise of the jurisdiction is that the Judge enables that to be done which the patient would himself be likely to do if capable of managing his affairs and properly advised.

The administration of the property and affairs should be such as a prudent person would do for his own affairs.

35 The Court and the administrator appointed by the Court is in a sense a trustee of the property and affairs of the patient. The investment of funds of the patient in a more secure or advantageous way is for the benefit of the property of the patient and it comes within the ambit of the Law.

Even the permanent improvements of immovable property of a patient, simply to mention an example, come within paragraph (c) of section 29B.

In the present case the benefit accruing to the property of the patient is obvious. There will be a 2% increase in the interest and the whole interest will not be the object of taxation. Such investment is one of those authorized under section 4 of the Trustee Law, Cap. 193. 5

This appeal attacks the exercise of the trial Judge's discretion. It is the function of this Court to review the exercise of the Judge's discretion and not to entertain an appeal in the sense of being invited to substitute its own discretion for that of the Judge. 10

This Court intervenes when there is a misdirection as to Law; when the Judge has not exercised his discretion at all, or exercised it otherwise than judicially; when there was a purported exercise of the discretion, without any materials on which the discretion could be exercised, or the Court below has taken into consideration wholly extraneous and irrelevant matters. 15

Stephenson, L.J., in *Alltrans Express Ltd., v. CVA Holdings Ltd.* [1984] 1 All E.R. 685, at p. 690, succinctly and aptly stated the principles on which an Appeal Court interferes with the exercise of a Judge's discretion, as follows:- 20

«We must be very careful not to interfere with the judge's exercise of the discretion which has been entrusted to him. We can only do so if he has erred in law or in principle, or if he has taken into account some matter which he should not have taken into account or has left out of account some matter which he should have taken into account, or, and this is an extension of the law which is now I think well recognised, if the Court of Appeal is of opinion that his decision is plainly wrong and therefore must have been reached by a faulty assessment of the weights of the different factors which he has had to take into account.» 25 30

Having regard to the afore principles, the Law governing the matter of the administration of the property and affairs of a patient and the facts of the case, we allow the appeal. 35

Order is made as per application.

With regard to costs, we observe that it is unfortunate that this case had to go through the two tiers of the administration of justice

and thus the costs have increased. The costs to be paid out of the property of the patient, but we trust that counsel would exercise restraint in preparing his bill, in view of the fact that he has stressed before us that this was an application made bona fide for the benefit of the patient.

*Appeal allowed.  
Costs to be paid out  
of the property of the  
patient.*