Neutral Citation Number: [2008] IEHC 283

THE HIGH COURT

[2008 No. 1245 SS]

IN THE MATTER OF AN APPLICATION FOR AN ENQUIRY PURSUANT TO ARTICLE 40.4 OF THE CONSTITUTION OF IRELAND

BETWEEN

F. W.

APPLICANT

AND

THE DEPARTMENT OF PSYCHIATRY JAMES MEMORIAL CONNOLLY HOSPITAL

RESPONDENT

Judgment of Mr. Justice Hedigan delivered the 18th day of August, 2008.

The applicant is a married lady of forty-five years with two adopted children. The applicant has been a patient of the respondent's out-patient service since November, 2007. She has a history of mental disorder and she has been assessed as suffering from paranoid delusions. She was admitted as a voluntary patient with a history of depressive disorder with psychotic features to St. John's of Gods Hospital in March, 2008.

She remained as an in-patient for approximately five weeks and was discharged on 15th April, 2008. According to her history at the time, she had through a series of significant life events developed a complex delusional system relating to a conspiracy involving neighbours and her sister. Upon discharge she seems to have improved considerably and was prescribed *inter alia* certain medication to continue for four to six months with out-patient department review. At some stage subsequent to discharge she ceased taking her medication. As a result of this, her psychiatric health deteriorated, and she was committed to the Psychiatric Department at Connolly Hospital, which is an approved centre within the Mental Health Act, 2001.

She was brought there on the evening of 31st July, 2008. An original admission order was signed on the morning of 1st August, 2008 following assessment pursuant to s. 14(2) of The Mental Health Act, 2001. As a result of the discovery by Dr. Jacqueline Benbow, Clinical Director of The Psychiatry Department, that the original admission order might be invalid, legal advice was sought by her. As a result of this advice Dr. Benbow revoked the order. The invalidity was due to the fact that the applicant for the original admission order was the applicant's spouse. Because the applicant had initiated some short while previously proceedings under The Domestic Violence Act against her husband he was rendered disqualified from making an application for an admission order, thereby invalidating the order under which the applicant was being detained. In a letter produced to the court, the applicant's family state that the applicant's marriage of twenty-two years has been a stable and happy one and with no known incident of domestic violence. Dr. Benbow considers the application under the Domestic Violence Act, to be a consequence of her paranoid delusions. Nonetheless, Dr. Benbow on legal advice considered the involuntary admission to be invalid. She however considered the applicant to be suffering from a mental disease and was greatly concerned for her well-being and safety if she were to leave the hospital. Dr. Benbow initially tried to persuade the applicant to remain. She explained that if she left there could be further applications for her detention. These could be made by a family member or the Gardaí, she explained. The applicant asked for a cup of tea and indicated a desire to speak to her solicitor. She used her mobile phone to leave a voice message for him. Despite being advised by Dr. Benbow that she was free to leave, the applicant did not do so. The applicant subsequently received a text message from her solicitor, advising her to leave the hospital. She approached staff at 23.00 and told them that she had received this message. At 23.30 she left the hospital, but was met outside by the Gardaí, with whom she went to the Garda Station at Blanchardstown. The Garda presence was as a result of Dr. Benbow's earlier notifying the Gardaí of the situation. They had indicated to her that if urgent problems did not preclude it, they would send a car if necessary and bring the applicant to the Garda station with a view to having her examined by a medical practitioner pursuant to s. 12 of The Mental Health Act to determine whether she should be admitted. At the Garda Station she was examined by Dr. Kahn. He had been first notified of the developing situation around 8 o'clock and had gone to the Garda station. Since nothing had transpired then, he left. He returned about 11 o'clock. He had previously spoken with Dr. Benbow and taken a medical history from her of the applicant. In his evidence given *viva voce* herein, Dr. Kahn stated that she seemed very vulnerable. He talked with her for about forty-five minutes. She did not give him much information. He felt she would not be safe if she was left alone. In answer to his question, as to what she would do if she left the Garda station on her own, she told him she would go to a bed and breakfast and would go abroad the following day. He formed the view on the basis of the history he had taken at his interview that she needed to be admitted in order to keep her safe from herself, by which he meant that she might put herself in harms way if she were to leave alone in her mental state as determined by him. He stated in cross-examination that perhaps he should not have ticked Box A on Form 5, but Box B or perhaps both. He also filled in the applicant's name where he should have filled in the name of Garda Sergeant Barry Collins.

As a result of Dr. Kahn's certification, the applicant was delivered back to Connolly Hospital at 01.10 and was there assessed, admitted and detained. At 16.30 on 9th August she was presented by Dr. Benbow with a patient notification form advising her of her detention and both signed this at 16.30. The case made for the applicant's relief from detention herein is:-

> That she has never been released in reality from an admitted unlawful detention.
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> If she was, then her subsequent removal by the Gardaí to Connolly Hospital on the recommendation of Dr. Kahn was not valid because the Gardaí's initial belief under s. 12(1) of The Mental Health Act, was not an independent judgment and neither was the recommendation made by Dr. Kahn. Both were made entirely at the behest of Dr. Benbow. As to the first of these grounds, the Court cannot ignore the situation surrounding the events of the night of 8th August; the applicant was then an in-patient who had a few months previously been an in-patient in St. John of Gods, for a five week period. She was being treated for serious mental problems involving paranoid delusions. She was clearly a highly vulnerable person who needed care. The psychiatric hospital was not responsible for the fact that her admission had been invalidly made and in fact had discovered this fact themselves. The hospital had then acted promptly to obtain legal advice to clarify the situation and had notified the applicant that she was free to go. Dr. Benbow and her staff however remained deeply concerned for the applicant's safety and well-being in the light of her mental problems which were well known to them. Dr. Benbow tried unsuccessfully to persuade the applicant to remain voluntarily. Rather than allow her depart into the night with no arrangements made to ensure her safety or continuing care, Dr. Benbow contacted the Gardaí with a view to having them act under s. 12 of The Mental Health Act. They delayed her departure until the Gardaí could come and when she left the hospital, she was immediately taken into custody by them under s. 12(1)(a). It is clear from the evidence given both on affidavit and viva voce that the applicant was told at 8 p.m. on 8th August that she was free to leave. She did not do so. When she did finally decide to leave she was allowed to do so but not until she had been delayed by staff insisting she talk to Dr. Benbow first. There is no evidence that she was restrained in any physical way. She was delayed for about forty minutes, albeit she could have ignored all requests to talk to Dr. Benbow and could have

just walked out. The forty minutes delay period was used to alert the Gardaí, who in fact did have a car available and dispatched it to the hospital. In my view the applicant was free to leave from 8 p.m. on 8th August. Her solicitor's evidence on affidavit at para. 4, is that she had been told she was was free to leave, albeit the process of recommitting her would probably start again; if she did leave. The fact that she was told there would be likely be a recommital process does not invalidate her release. She ultimately did leave and the process did in fact recommence at Dr. Benbow's request because she was of the view that the applicant was in need of care. I consider the action of Dr. Benbow and her staff to be highly creditable in the circumstances. Dealing with a very difficult situation, their predominant interest was the care and safety of the applicant. Their action ensured as best they could that when the applicant did leave their care, she did not depart into the night with no arrangements to ensure her safety and well-being. The actions of Dr. Benbow and her staff and those of the Gardaí at Blanchardstown Garda Station may well have prevented a tragic outcome to the day's event.

Section 12 of The Mental Health Act provides as follows:-

> "(1) Where a member of the Garda Síochána has reasonable grounds for believing that a person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons, the member may either alone or with any other members of the Garda Síochána -
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> (a) take the person into custody, and …"
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> "(2) Where a member of the Garda Síochána takes a person into custody under subsection (1), he or she or any other member of the Garda Síochána shall make an application forthwith in a form specified by the Commission to a registered medical practitioner for a recommendation."
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> …
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> "(5) Where, following an application under this section, a recommendation is made in relation to a person, a member of the Garda Síochána shall remove the person to the approved centre specified in the recommendation."

In this case the Gardaí were informed by the Clinical Director of the Psychiatry Department of Connolly Hospital, who was a Consultant Psychiatrist and under whose care the applicant was that she was suffering from a mental disorder and might come to harm. It is hard to imagine more compelling information than this upon which to base a reasonable belief. The fact that the department itself is precluded under s. 9(2)(c) of The Mental Health Act from making an application for involuntary admission to their own centre, does not in my view preclude them from being an informant. In certain circumstances, notably present in this case, they may well be the very body with the greatest responsibility to do so. Because they act on information of great weight does not mean that the belief of the Gardaí is *ipso facto* not an independent one, no other evidence or submission being made against the belief of the Gardaí in this case, I consider their taking the applicant into custody at Connolly Hospital was in accordance with law. As to Dr. Kahn's role in this matter, the criticism made of him is that he acted at Dr. Benbow's behest and did not exercise an independent judgment. It is further argued that he did not fill out the form properly.

It is clear that Dr. Kahn did in fact make contact by telephone with Dr. Benbow earlier in the evening of the 8th when he was first alerted to the possibility that he would be called to the Garda station for a s. 12 investigation. It was in my judgment perfectly correct and proper for him to do so, indeed I would have thought it something he was bound to do where possible. The fact that he accepted her view of the applicant's mental state is hardly surprising but does not show a failure to exercise an independent judgment. He interviewed her for forty-five minutes and on the evidence he gave herein, showed considerable compassion and sympathy for her situation. His charade of pretending to leave to consult with Dr. Benbow when he had already done so, I take to be an innocent one; its purpose was probably to enable him to admit to her that he had talked to Dr. Benbow. Nothing in this affected the judgment he was bound to make. It seems to me that there is no evidence that Dr. Kahn failed to exercise an independent judgment and in this regard his recommendation was properly made. As to the complaint that Dr. Kahn did not tick the right box and incorrectly noted the applicant herein as to the applicant to him, I do not consider either to be points of either weight. It is clear that the substance of the order is unaffected and no injustice is caused because the choice of (a), (b) or (c) was in my view open to Dr. Cann in this case. I note in particular that where (a) refers to "causing immediate and serious harm to himself or herself", this phrase must have a meaning that includes putting oneself in harm's way. As to the writing in of the applicant's name where on the evidence Garda Sergeant Barry Collins' name should have been inserted, it was quite clear from the evidence that Dr. Cann was not in any doubt that the applicant herein was not the applicant to him under s. 12. He stated in his evidence that the applicant was in fact Garda Sergeant Barry Collins.

It is for these reasons that I refuse the application for the relief sought by the applicant.