Neutral Citation Number: [2008] IEHC 160

THE HIGH COURT

2007 No. 1708 J.R.

BETWEEN

D. HAN.

APPLICANT

AND
THE PRESIDENT OF THE CIRCUIT COURT

RESPONDENT

AND
DOCTOR MALCOLM GARLAND
AND
DOCTOR RICHARD BLENNERHASSETT
AND
DOCTOR CONOR FARREN
AND PROFESSOR PATRICK McKEON
AND
THE MENTAL HEALTH COMMISSION
AND THE MENTAL HEALTH TRIBUNAL

NOTICE PARTIES

Judgment of Mr. Justice Charleton delivered on the 30th day of May, 2008

1. In the relatively recent past, the applicant was involuntarily committed to a mental hospital under the Mental Health Act 2001. The detention was reviewed by a Mental Health Tribunal and affirmed as correct. The applicant then appealed to the Circuit Court. Before he could process that appeal, he became well and was discharged from the mental hospital. Deery J., the President of the Circuit Court, struck the matter out from the hearing list as, the applicant then being well, he considered the matter to be moot. The applicant now challenges this decision.

Chronology

2. I now set out the relevant dates, all of which occurred in 2007. On the 7th June, the applicant's brother requested his involuntary admission to a mental hospital. A recommendation was made by a consultant psychiatrist in a particular hospital that he should be detained. This operated to confine him to the hospital for a period of seven days. On the 9th June an involuntary admission order was signed by a consultant psychiatrist in the hospital, on the basis that the applicant was suffering from a hypomanic disorder. He was detained for 21 days. On the 20th June, 2007, there was an independent medical examination. Eight days later, the Mental Health Tribunal met to review the applicant's detention and decided that the applicant was suffering from a schizo-affective disorder. An appeal against this determination was then lodged by the applicant to the Circuit Court. On the same day the first renewal order of the applicant's detention was made and this lasts for three months under s. 15 of the Mental Health Act 2001. On the 5th July, there was a further clinical assessment of the applicant, by reason of the renewal order, and paranoid schizophrenia was diagnosed, although some improvement was noted. The next day the appeal papers were lodged in the Circuit Court in respect of the first appeal. On 13th July, there was an independent medical examination of the applicant which indicated no improvement in his condition and further noted that there was a risk of non-compliance with what I understand was a regime of medication. On the 18th July, 2007 the Mental Health Tribunal met and affirmed the renewal order dated 28th June. On this occasion a doctor gave evidence that there was some improvement. On the 26th July the first appeal appeared before the President of the Circuit Court and the matter was put back for hearing until the 25th October. On the 30th July, 2007 the renewal order for three months from the 30th June was appealed to the Circuit Court. On 14th August, 2007, the applicant was transferred to St. Patrick's Hospital. Then, on the 22nd August, the first renewal order was revoked as the applicant expressed the wish to stay on as a voluntary patient. However, on the 3rd September, a new involuntary twenty-one days admission order was made. This was a completely new order and was made on the basis that the applicant wished to leave against medical advice. On the 19th September, 2007 the Mental Health Tribunal affirmed this second involuntary admission order. Two days later a renewal order was made which took effect on the expiry of the admission order and was to last for three months. On the 26th September the third set of appeal papers were lodged in the Circuit Court and this was in respect of the new twenty-one day admission order of the 3rd September, 2007. Then, on the 8th October, the second renewal order was revoked, meaning the one of 21st September, 2007. This happened because on examination by a consultant psychiatrist, the applicant was regarded as well. He left the mental health treatment system, certainly in terms of an being an in-patient.

Procedures

3. When a person suffers from a mental disorder as defined in s. 3 of the Mental Health Act 2001, he or she may be the subject of involuntary detention in an appropriate institution, which I will call a hospital for the sake of conciseness. Section 3 is the core definition section in the Act and it reads:-

> "3 (1) In this Act "mental disorder" means mental illness, severe dementia or significant intellectual disability where -
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> (a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or
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> (b) (i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and
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> (ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.
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> (2) In subsection (1)
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> "mental illness" means a state of mind of a person which affects the person's thinking, perceiving, emotion or judgment and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons;

"severe dementia" means a deterioration of the brain of a person which significantly impairs the intellectual function of the person thereby affecting thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical aggression;

"significant intellectual disability" means a state of arrested or incomplete development of mind of a person which includes significant impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct on the part of the person".

4. Ó Néill J. analysed this section in *M.R. v. Bryne* [2007] I.E.H.C. 73. He held that the critical factor which must be given dominant weight in terms of the definition section was the propensity or tendency of the person concerned to do harm to themselves or others. He held that the standard contained in the definition requiring a "serious likelihood" of such harm required a standard of proof of a high level of probability which is beyond the normal standard of proof in civil actions of more likely, or probable, to be true but which fell short of the standard of proof required in a criminal prosecution, namely proof beyond a reasonable doubt. In summary, he said that what was required was "proof to a standard of a high level of likelihood as distinct from simply being more likely to be true". Ó Néill J. stated that there were three essential elements which must be present before a "mental disorder" was established under the section. These he defined as follows:-

(1) the severity of the illness mental, disability or dementia must result in the judgment of the person concerned being impaired to the extent that failure to admit the person to an approved centre is likely to

(2) lead to a serious deterioration in his or her condition or prevent the administration of appropriate treatment that can be given only on such admission and

(3) that the reception, detention and treatment of the person in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.

5. The Mental Health Act 2001, contains exacting and complex provisions. The Act is designed in order to ensure that there is no potential possibility for a person to be certified as mentally ill, detained in a mental hospital, and then forgotten. Under the previous legislation, the Mental Treatment Act 1945, as amended, there was no need for periodic review of whether a patient needed to be detained and for the renewal of detention orders. The Mental Health Commission oversees the operation of the Act. All of the treating and reviewing provisions of the Act are subject to s. 4 which provides:-

"4.—(1) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person), the best interests of the person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made.

(2) Where it is proposed to make a recommendation or an admission order in respect of a person, or to administer treatment to a person, under this Act the person shall, so far as is reasonably practicable, be notified of the proposal and be entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations duly made under this subsection.

(3) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person) due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy."

6. All of the provisions of the Mental Health Act 2001, are illuminated by the foregoing provisions as to the nature of a mental illness that can lead to detention and as to the role of the Mental Health Commission. In addition, a legal element is brought into play in the sense that a quasi judicial inquiry is held under s. 48 of the Act by the Mental Health Tribunal, appointed by the Mental Health Commission in order to ensure the proper operation of the detention provisions. The 2001 Act thus makes provision for an independent examination of the condition of every patient who is involuntarily held in a mental hospital. In a sense, this addresses the argument of the litigant that was rejected by the decision of the Supreme Court *In Re Philip Clark*, [1950] I.R 235, which held that the Constitution does not require that there should be a judicial inquiry or determination before a person can be placed, against their will, in a mental hospital. That case concerned s. 165 of the Mental Treatment Act 1945, which enabled the detention of certain persons with mental illness who were a danger to themselves or others. It is striking, however, that even though it is not required by the Constitution the Mental Health Act 2001, provides for a quasi judicial inquiry through a Tribunal set up under the Mental Health Commission as part of the mechanism for allowing the continued detention of those who had been thought to be seriously mentally ill. The Mental Treatment Act 1945, was regarded by the Supreme Court at p. 248 of that case as being "designed for the protection of the citizen and for the promotion of the common good". This purposive interpretation continues into every analysis of the successor of that Act namely the Mental Health Act 2001, which is under consideration here. In *M.R. v. Byrne* [2007] I.E.H.C. 73, Ó Néill J. made the following comment on that Act:-

"As is plainly obvious there are provisions included in the Act of 2001 which can be regarded as radical reforms of the Mental Treatment Act 1945. The principal reform is the establishment of the Mental Health Commission and Mental Health Tribunals, thus providing for a quasi-judicial intervention for the purposes of the independent review of detention of persons in approved centres alleged to be suffering from "mental disorders"."

Key Provisions

7. The Mental Health Commission is central to the oversight required under the Mental Health Act 2001. Under s. 33 of the Act it is declared that the purpose of the Commission is to promote, encourage and foster the establishment and maintenance of high standards and good practice in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres.

8. It is necessary now to turn to the provisions under Part II of the Act which deal with the involuntary admission of persons to mental hospitals, which are named approved centres in the Act. For the sake of clarity, I here repeat what I said in my earlier judgment in *T.O'D v. Harry Kennedy and Others* [2007] I.E.H.C. 129 as to the relevant detention provisions under the Act:-

"A recommendation may be made for an involuntary admission under s. 10 of the Act by a registered medical practitioner in the first instance. This remains in force for seven days. Under s. 13 of the Act a person may then be moved to a hospital. The Gardaí may become involved under s. 13 of the Act at the request of the clinical director of the hospital where the person recommended for admission is seriously likely to cause immediate and serious harm to himself or any

other person. Under s. 12 of the Act as a separate procedure, a member of An Garda Síochána who has reasonable grounds for believing that a person is suffering from a mental disorder and that there is a serious likelihood of that person causing immediate and serious harm to himself or others, may take that person into custody and then make an application for a recommendation under s. 10. An admission order under s. 14 of the Act is made by a consultant psychiatrist on the staff of the relevant hospital. If s. 3 of the Act is found to apply to the patient, in other words that they suffer from a mental disorder, there can be a detention of the patient for 24 hours. Then, a full examination must take place, but within that time. Under s. 15 of the Act where an admission order is made, it authorizes the reception, detention and treatment of the patient for twenty-one days and this then expires unless the matter is brought before a Mental Health Tribunal under s. 18 (4) of the Act. A renewal order can be made, but the Tribunal will have heard the matter by then, by medical means under s. 15 (2) of the Act for a further period not exceeding three months. This order may be extended under s. 15 (3) for a further a period of six months beginning on the expiration of the renewal order made by the psychiatrist under s. 15 (2). This may be further extended by a consultant psychiatrist for periods each of which must not exceed twelve months under s. 15(3). In order to make these orders, which are referred to in the Acts as renewal orders, the consultant psychiatrist concerned must examine the patient within a week before making the relevant order under s. 15(4).

When these orders are made, they are sent to the Mental Health Commission. Their job, in essence, is to monitor such detentions and ensure that the rights of the patient were upheld. As well as notifying the Commission, therefore, the consultant psychiatrist is obliged to give the patient a notice telling him that he is being detained pursuant to ss. 14 or 15; that he is entitled to legal representation; that he will be given a particular kind of treatment during a particular period; that he is entitled to communicate with an inspector from the Mental Health Commission; that his detention will be reviewed by a Tribunal under s. 18 of the Act; that he is entitled to appeal such review to the Circuit Court; and that he may be admitted as a voluntary patient if that is sought.

Under s. 17 of the Act once the Mental Health Commission is notified of an admission order or a renewal order, the Commission must refer the matter to a Tribunal; assign a legal representative to the patient; direct an independent examination of the patient; and review the patient's records. All of this is done in order to fairly determine whether the patient is indeed suffering from a mental disorder. The relevant report must be given within fourteen days of the examination, interview and review, to the Mental Health Tribunal to which the matter has been referred and a copy of the report is to be provided to the legal representation of the patient.

These provisions are exacting and complex. They were designed, however, by the Oireachtas in order to replace the situation whereby it was potentially possible for a person to be certified and detained in a mental hospital and then forgotten. The need for periodic review and renewal, and the independent examination of these conditions is not a mere bureautic layer grafted on to the previous law for the treatment of those who are seriously ill and a danger to themselves and others: it is an essential component of the duty of society to maintain the balance between the protection of its interests and the rights of those who are apparently mentally ill.

Under s. 48 of the Act the Mental Health Commission appoints Mental Health Tribunals, and these may sit in one or more divisions. When one turns to s. 49(2) which, as the side note indicates, defines the powers of such Tribunals, one is disappointed in one's expectation. This merely allows the Tribunals to hold sittings under the Acts; to make directions similar to a court in terms of the production of witnesses and documents; to compel co-operation; and to penalise untruth, which is categorised under the Act as perjury".

Judicial Appeal

9. A patient will first know of his or her right to appeal against the decision of the Mental Health Tribunal to uphold their detention when they are given a statutory notice as to rights under s. 16 of the Mental Health Act 2001. This notice informs the patient about their rights to legal representation and gives a general description of the proposed treatment of the patient and tells them, under subs. (2)(f) that they are "entitled to appeal to the Circuit Court against a decision of a Tribunal under section 18 if he or she is the subject of a renewal order". Once the Tribunal has affirmed an order, the right to appeal to the Circuit Court arises. Section 19 provides for an in-camera hearing before the Circuit Court, subject to the attendance of the press and the non-identification of the patient. It provides in s. 19(14) that a report prepared by a psychiatrist under s. 17 concerning the condition of a patient is evidence before the Circuit Court of the matter stated in the document. This, however, does not mean that the Circuit Court hearing is a historical analysis of whatever condition that the patient was in when a detention order was made against him or her. By way of analogy; it is clear that if a person had a physical disease in the past, that this is a relevant consideration in attempting a diagnosis of a current condition. Where the Circuit Court has decided on an appeal, a further appeal lies on "a point of law" to the High Court under s. 19(16) of the Act.

10. It can happen, as it has happened in this case, that before an appeal can be pursued to the Circuit Court against a detention of a patient that an admission order or renewal order under the Mental Health Act 2001, would have been spent by efflux of time or by the patient becoming well. That is even more likely where an appeal to the Circuit Court continues on to the High Court on a point of law.

11. Central to any analysis of the issue of whether that patient who has been released from detention in a hospital, under an admission order or a renewal order, is entitled, nonetheless, to have an appeal to the Circuit Court decided on an historical basis is the actual wording of s. 19 of the Act. This provides:

"19.—(1) A patient may appeal to the Circuit Court against a decision of a tribunal to affirm an order made in respect of him or her on the grounds that he or she is not suffering from a mental disorder.

(2) An appeal under this section shall be brought by the patient by notice in writing within 14 days of the receipt by him or her or by his or her legal representative of notice under section 18 of the decision concerned.

(3) The jurisdiction conferred on the Circuit Court by this section may be exercised by the judge of the circuit in which the approved centre concerned is situated or, at the option of the patient, in which the patient is ordinarily resident.

(4) (4) On appeal to it under subsection (1), the Circuit Court shall—

(a) unless it is shown by the patient to the satisfaction of the Court that he or she is not suffering from a mental disorder, by order affirm the order, or

(b) if it is so shown as aforesaid, by order revoke the order.

(5) An order under subsection (4) may contain such consequential or supplementary provisions as the Circuit Court considers appropriate.

(6) Notice of any proceedings under this section shall be served by the person bringing the proceedings on—

(a) the consultant psychiatrist concerned,

(b) the tribunal concerned,

(c) the clinical director of the approved centre concerned, and

(d) any other person specified by the Circuit Court."

Interpretation

12. It seems to me to be impossible to ignore the express wording of s. 19 of the Mental Health Act 2001, when it states that the issue before the Circuit Court is whether a patient "is not suffering from a mental disorder", a phrase that occurs only in the present tense in s. 19(1) and (4)(a) . Further, any court in reviewing an order under appeal either quashes or affirms the order, whereas the wording in s. 19(4)(b) indicates that the burden of proof that is on the patient is to show that he or she "is not suffering from a mental disorder", and that if this is not shown then the Court affirms the order or, if the patient has met the burden of proof, the Circuit Court is required to revoke the order.

13. Primacy, though not total supremacy, has to be given to the actual and literal words of any statute; Bell and Engle, Cross - Statutory Interpretation, 3rd Ed. (London, 1995) pp. 1-20. When advising the House of Lords in *the Sussex Peerage claim*, (1844) 11 Cl. & Fin. 85 at 143, Tindle C.J. stated:-

> "The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary then to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe mean of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer, [in *Stowel v. Lord Zouch* (1569) 1 Plowd. 353 at 369], is 'a key to open the minds of the makers of the Act and the mischiefs which they intended to redress'".

14. The function of the Circuit Court under s. 19 is more limited than that which the Mental Health Tribunal exercises under s. 18 of the Mental Health Act 2001. The only issue before the Circuit Court is whether or not the patient is suffering from a mental disorder. This contrasts with the wide powers set out in s. 18 of the Act whereby the Tribunal, reviewing the detention of a patient, is not only concerned with whether the patient is suffering from a mental disorder but whether the procedures and time limits set out in ss. 9, 10, 12, 14 and 16 have been complied with and, further, if they have not been so complied with whether there has been an injustice; *T. O'D v. Harry Kennedy and Others* [2007] I.E.H.C. 129.

15. It is argued that placing a literal construction on the Act whereby the review that must take place before the Circuit Court on appeal is concerned only with the present condition of a patient creates an absurdity and is inconsistent with the Act as construed as a whole. In the days when Tindle C.J. was speaking in the Sussex Peerage claim, the preambles to Acts of Parliament were astonishingly lengthy in comparison to the terse statement of intent inserted by the Oireachtas in current legislation. In contrast, and in the present day, Directives of the European Union contain multiple recitals as to the purpose behind the legislation which can be of great assistance in construing the legislative text. A section of an Act cannot be seen in isolation from the entire text. In deciding whether words are "in themselves precise and unambiguous", to use the wording of Tindle C. J., regard must be had to the whole of the enactment. It would be wrong for the literal rule to isolate a particular expression from the rest of the statute in which it is contained. That would offend the common law cannons of construction and modern statute law. Section 5(1) of the Interpretation Act 2005, provides that in construing a provision of any Act other than a penal provision, that is obscure or ambiguous, or that on a literal interpretation would be absurd or would fail to reflect to plain intention of the Oireachtas, or a foreign legislature, the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole. The Circuit Court, on the literal sense of the wording of s.19 of the Mental Treatment Act 2001, has no function in deciding on anything to do with the historical basis for detention. Its sole function is focussed, on the express wording of s. 19, on the current state of health of the patient. Nor does it have any function in awarding damages should it be the case that a patient is found at the time of the Circuit Court appeal not to be suffering from a mental disorder. The wording of the section excludes any issue as to whether a patient has been wrongfully detained in the past. Rather, the express purpose of the section is for the Circuit Court to review the determination of the Mental Health Tribunal that the patient is suffering from a mental disorder. Further under s. 73 of the Act no court has an entitlement to award damages except by civil proceedings outside the Act which can only be commenced with the leave of the High Court where it has been shown that there are reasonable grounds that an admission or renewal order was made "in bad faith or without reasonable care", and where the proceedings are shown not to be "frivolous or vexatious".

16. Section 28 of the Mental Health Act 2001 deals with the discharge of patients from involuntary treatment in mental hospitals. This happens where the consultant psychiatrist responsible for the care and treatment of a patient decides that they are no longer suffering from a mental disorder. This is what apparently happened in this case though it is regrettable that the form exhibited before this Court is far from clear. I quote s. 28:-

> "28.—(1) Where the consultant psychiatrist responsible for the care and treatment of a patient becomes of opinion that the patient is no longer suffering from a mental disorder, he or she shall by order in a form specified by the Commission revoke the relevant admission order or renewal order, as the case may be, and discharge the patient.
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> (2) In deciding whether and when to discharge a patient under this section, the
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> consultant psychiatrist responsible for his or her care and treatment shall have
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> regard to the need to ensure:

(a) that the patient is not inappropriately discharged, and

(b) that the patient is detained pursuant to an admission order or a renewal order only for so long as is reasonably necessary for his or her proper care and treatment.

(3) Where a consultant psychiatrist discharges a patient under this section, he or she shall give to the patient concerned and his or her legal representative a notice in a form specified by the Commission to the effect that he or she—

(a) is being discharged pursuant to this section,

(b) is entitled to have his or her detention reviewed by a tribunal in accordance with the provisions of section 18 or, where such review has commenced, completed in accordance with that section if he or she so indicates by notice in writing addressed to the Commission within 14 days of the date of his or her discharge.

(4) Where a consultant psychiatrist discharges a patient under this section, he or she shall cause copies of the order made under subsection (1) and the notice referred to in subsection (3) to be given to the Commission and, where appropriate, the relevant health board and housing authority.

(5) Where a patient is discharged under this section—

(a) if a review under section 18 has then commenced, it shall be discontinued unless the patient requests by notice in writing addressed to the Commission within 14 days of his or her discharge that it be completed, or

(b) if such a review has not then commenced, it shall not be held unless the patient indicates by notice in writing addressed to the Commission within 14 days of his or her discharge that he or she wishes such a review to be held,

and, if he or she requests that a review under section 18 be completed or held, as the case may be, the provisions of sections 17 to 19 shall apply in relation to the review with any necessary modifications".

17. The legislative purpose of one part of this section is unclear. It provides that a patient who is being discharged, and that can only happen when he or she is no longer suffering from a mental disorder, and who has commenced a review, is entitled to have that review completed by the Mental Health Tribunal where they request it. Where a review has not been commenced it is not to be held unless the patient requests such a review, in which case there is a statutory entitlement to the review. Where a patient has been discharged and a review is held at the request of a patient then ss. 17, 18 and 19 of the Act apply "with any necessary modification". What is the purpose of such a review? The sole ground for discharging a patient under s. 28 is that "the patient is no longer suffering from a mental disorder". A review by a Mental Health Tribunal is concerned with that issue and with whether the relevant procedures under ss. 9, 10, 12, 14, 15 and 16 have been complied with and, if they have not, with whether an admission or renewal order should justly be affirmed notwithstanding a breach of one or more of those sections. It can, therefore, happen that a patient has been detained pursuant to an admission order or renewal order and has become well, but is entitled under s. 28, upon being discharged to have a review of these issues by the Tribunal. It is clear that such a review is historical since the relevant sections are not only concerned with whether the patient is suffering from a mental disorder but whether the administration sections leading to a patient's detention have been complied with. Since the operation of all of these the sections depends on whether or not a patient was, at the time they were used against them, suffering from a mental disorder, one cannot remove that issue from the review before the Mental Health Tribunal insisted on by a patient, notwithstanding his or her discharge, no more than one can remove the technical operation of the relevant detention sections.

18. It is argued that it would be absurd not to allow for an appeal to the Circuit Court from a review conducted by the Mental Health Tribunal at the request of a discharged patient. I do not agree that just because a discharged patient can insist on the Mental Health Tribunal looking at the issues surrounding his or her detention as a patient that an appeal must lie in respect of all of those issues to the Circuit Court. Expressly, the Circuit Court on appeal from the Mental Health Tribunal, and the High Court on appeal from that on a point of law, can only consider one issue: is the patient suffering from a mental disorder at the time of the hearing and if he or she is not the court must order his or her release from detention under the Act. As to what modification of s. 19 is necessary as a result of s. 28, the answer to that is that s. 19, is limited by its express words to the current condition of the patient and that the power of appeal under s. 28, is expressly stated as being to a Mental Health Tribunal. The modification necessary is that a patient being discharged can seek to have what happened to him or her as to detention in a mental hospital reviewed by the Mental Health Tribunal. They have no further power to appeal any decision of that Tribunal once they are released. They do have a power to appeal the decision of that Tribunal to the Circuit Court, but only where they are still detained, solely on the grounds that they are no longer suffering from a mental disorder; but they cannot do this if they are no longer detained under the Mental Health Act 2001, because a psychiatrist treating them has decided that they are well and so must be released. There is nothing in the Constitution which requires all and every, or any, decision, of the Mental Health Tribunal to be reviewed by the courts under a statutory scheme. The legislation limits the powers of the Circuit Court on appeal from the Mental Health Tribunal to a single narrow issue on the current state of the health of a detained patient. The legislation limits the statutory right to appeal of a person who was once detained as a patient but has been discharged to the ample powers as to review given to the Mental Health Tribunal. It is also noteworthy that the powers of the Mental Health Tribunal, whether the patient has been discharged or not, cover not only his or her current state of health but the historic matters of how the relevant sections of the Mental Health Act were operated. The Circuit Court, as I have pointed out, never had such a power of historic review.

19. The legislative purpose behind s. 19 of the Mental Health Act 2001, is to allow those patients who are still detained, following on a hearing before the Mental Health Tribunal, to have the condition of their mental health reviewed before a judge of the Circuit Court. It is not to engage in a historical analysis. Whether there would be a point, or would not be a point, to such an historical analysis is irrelevant given the express wording of the section. I am obliged to give grammatical and ordinary sense to the use of the present tense in s. 19, and to the choice given to the Circuit Court of either affirming an admission or renewal order or revoking it. Grammatical sense can only be modified so as to avoid an absurdity and even there, the modification can go no further than is

necessary in that regard; *Grey v. Pearson* (1857) 6 H.L.Cas. 61 at 106 per Lord Wensleydale.

Mootness
20. For the sake of completeness I finally refer to the argument advanced by the applicant that the issue as to his mental health was never moot and that, in consequence, the learned President of the Circuit Court should never have refused to hear his case. A court does not make a decision when to do so would be an academic exercise; *Condon v. Minister for Labour* [1981] I.R. 62 at 71 per Kenny J. The test for deciding mootness has not been fixed in this jurisdiction. However, useful guidance was given in the judgment of McKenna J. in *Southern Pacific Terminal Co. v. Interstate Commerce Co*. 219 U.S. 498, 515 (1911):-

> "The question involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar), and there considerations ought not to be, as they might be, defeated, by short terms orders, capable of repetition, yet evading review, and at one time the government, and at another time the carriers, have their rights determined by the Commission without a chance of redress."

21. Here it is said that the detention of the applicant on an admission order or a renewal order could reasonably be expected to recur just as in Roe v. Wade 410 U.S 113 (1973), although the applicant had delivered her baby, she might reasonably expect to become pregnant again, and to seek an abortion then. In that case the Supreme Court of the United States reaffirmed the test of the currency of an issue as being that it should be capable of repetition yet evading review.

22. It is possible that the applicant will fall mentally ill again. It may be said that given his history, his chances in the future of being found on examination to have a mental disorder are greater than those in the preponderance of the population. However, should that occur, his rights under the Mental Health Act 2001, not to be the subject of an admission order or a renewal order are secured by the detailed provisions of the Act which require that he be independently examined, independently legally advised and that any issue as to whether he is suffering from a mental disorder, or whether the Act has been complied with, or whether a non-compliance may be excused because it does not cause an injustice, is properly to be dealt with by the Mental Health Tribunal and not by the Circuit Court. If he fails in a review before the Mental Health Tribunal to secure his release and is still detained as a patient when any appeal to the Circuit Court that he may take comes up, he has the further comfort that there will be a review by a judge of that court as to whether he is then continuing to suffer from a mental disorder.

Decision
23. A patient detained by an admission order or a renewal order under the Mental Health Act 2001, automatically has their case reviewed as to their state of mental health and as to the operation of the detention provisions in the Act by the Mental Health Tribunal. The provisions of the Act allow for independent clinical examination and independent legal representation. Where a decision has been made by the Mental Health Tribunal, on such review, that a patient is suffering from a mental disorder and is in consequence detained under the Act then a patient may appeal that decision, and that decision only, to the Circuit Court. The Circuit Court has no jurisdiction to decide any such appeal unless the person is then the subject of an admission order or a renewal order, and is thus detained in a hospital. The sole issue that can come before the Circuit Court under the Mental Health Act 2001, is whether or not at the time of the hearing the patient is or is not suffering from a mental disorder.

24. I would finally comment that the Circuit Court in dealing with an issue as to whether or not a detained patient who is subject to an admission order or a renewal order is, or is not, suffering from a mental disorder should be dealt with as promptly as possible. I note that a Tribunal reviewing such an order under the Act should make a decision within twenty one days of such an order and that this can be extended only for a further period of fourteen days on its own motion. To adjourn a live issue as to whether a patient who has been the subject of an admission order or a renewal order is or is not suffering from a mental disorder for a matter of some months appears to go outside the strictures as to time imposed by the Act which are all in favour of a speedy review of these matters. The same comment arises in the context of an appeal on a point of law from the Circuit Court decision to the High Court, under s. 28 of the Act.

25. The decision of the learned President of the Circuit Court to refuse to hear an appeal where there was no statutory jurisdiction to do so, by reason of the recovery of the patient and his release from detention under the Mental Treatment Act 2001, was correct.