

THE HIGH COURT

[2014 No.4 CAT]

IN THE MATTER OF AN APPEAL UNDER SECTION 19 OF THE MENTAL HEALTH ACT 2001

BETWEEN

THE MENTAL HEALTH TRIBUNAL

APPELLANT

AND

S.P.

HEALTH SERVICE EXECUTIVE

RESPONDENT

NOTICE PARTY

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 12th day of May 2014

Factual Background

1. The respondent in this case was the subject of an involuntary Admission Order made under s. 14 of the Mental Health Act 2001, on 15th August, 2013. The respondent was involuntarily admitted with the schizoaffective disorder. The respondent was deemed to suffer from a mental disorder within the meaning of s. 3(1) (b)(i) and (ii) of the Mental Health Act 2001 (hereinafter "the 2001 Act").

2. The validity of the involuntary Admission Order was subsequently renewed by the Mental Health Tribunal which affirmed the order. No appeal was made to the Circuit Court.

3. A renewal order was then made by the then responsible consultant psychiatrist under s. 15 of the Mental Health Act 2001, on 4th September, 2013, for a maximum period of three months. The appellant sitting as the Mental Health Tribunal reviewed the making of the 3-month renewal order on 19th September, 2013, and affirmed the said order. No appeal to the Circuit Court was made in respect of same.

4. On 14th December, 2013, the then responsible consultant psychiatrist made a second renewal order under s. 15 of the 2001 Act, for the maximum 6-month period. That order would have expired on 4th June, 2014. It is that renewal order that was the subject matter of the within appeal.

5. The Mental Health Tribunal conducted a review of the making of the said renewal order on 13th December, 2013, and affirmed the making of the said renewal order. The respondent appealed the said order under s. 19(1) of the 2001 Act to the Circuit Court which heard the said appeal on 11th March, 2014. The said appeal was heard approximately three months after the original review conducted by the Mental Health Tribunal. As of the date of the hearing in the Circuit Court, the respondent still suffered from a mental disorder within the meaning of s. 3(1)(b)(i) and (ii) of the Mental Health Act 2001. Evidence was heard from a different but substitute responsible consultant psychiatrist in that regard. The psychiatrist indicated to the Court that it was her professional opinion that a further period of four to six weeks was required from that date in order to continue the respondent's treatment, and thereafter, he would be discharged back into the community. Judge Doyle affirmed the making of the renewal order under s. 15 of the 2001 Act, but pursuant to s. 19(5) of the 2001 Act, reduced the duration of the order from 4th June, 2014, to 28th April, 2014, being a period of six weeks from the date of the said hearing.

6. By notice of appeal dated 26th March, 2014, the appellant has sought to appeal the order of the Circuit Court on the basis that the Circuit Court is limited to affirming or revoking the renewal order and does not have jurisdiction to vary the duration of an order pursuant to s. 19(4) of the Act of 2001.

7. While the respondent raised a preliminary objection to the Mental Health Tribunal, in that the respondent submitted that the said Tribunal had no right of appeal to this Court under s. 19(16) of the Mental Health Act 2001. The said section provides as follows:

"No appeal shall lie against an order of the Circuit Court under this section other than an appeal on a point of law to the High Court."

I do not accept the submission of the respondent that the appellant is not entitled to bring such an appeal. I accept the submission of the appellant in this regard, in that the primary parties to the appeal in the Circuit Court were the patient, who was named as the appellant on the notice of appeal, and the Tribunal which was named as the respondent on the notice of appeal in accordance with Regulation 3 of the Circuit Court Rules (Mental Health) 2007 (S.I. No. 11 of 2007) which provides that "the patient shall be the appellant and the Tribunal concerned shall be the respondent".

8. The right of appeal from the Circuit Court to the High Court is recognised in s. 19(16) of the Act. There are no words in this section limiting the right of appeal to one party only and the section simply places a limit of what would be the normal right of any party to a Circuit Court case to appeal to the High Court by stating that such appeal is to be on point of law only. Applying the plain and ordinary meaning of the words in the context of s. 19, there is no reason why it would be open to only one party and would not be open to any party to bring an appeal on a point of law in these circumstances. The respondent asserts that it is only the patient who should have a right of appeal on a point of law. It would not be in the best interests of the patient were the Mental Health Tribunal not in a position to bring an appeal on a point of law in these circumstances. The patient's constitutional right to liberty is protected by the obligation on the responsible consultant psychiatrist as set out in s. 28 where the patient must be released when the patient is no longer mentally ill or suffering from a mental disorder. That safeguard in the Act means that the patient cannot be unnecessarily detained.

9. The substantive issue before the Court in this case is whether or not the Circuit Court had jurisdiction to vary the duration of the renewal order made.

10. Having considered all of the submissions in this case, the first obligation of the Court is to give effect to the plain meaning of the provisions of the statute when it is clear. In *S.M v. The Mental Health Commission* [2008] IEHC 441, McMahon J. stated that "the first obligation of the Court in such a situation is to interpret the section and give effect to the plain meaning of the provision when it is clear". He continued "that there is no reason for the purposive approach to interpretation where a particular section is clear and unambiguous and that the literal approach is the first and proper rule of interpretation when one has to construe the meaning of an Act. It is only when the literal rule leads to an ambiguity or an absurdity that the other canons of interpretation are called in to assist".

11. It is quite clear that in accordance with s. 19(4), there were no words used such as "affirmation with modification" or "vary" or "substitute" used in the section. The submission is well made that had the statutory drafter wished to give the Circuit Court powers beyond affirming or revoking these orders, then the drafter would have inserted words intended to convey the capacity to vary the said orders. Reference is made to *Gallagher v. Mental Health Tribunal* [2013] IEHC 617, where O'Neill J. stated that:

"26. Another obvious difference in this appeal, as compared to the review before the Mental Health Tribunal, is that the court can only take cognisance of one issue and one issue only, and that is whether or not the patient is or is not suffering from a mental disorder."

12. O'Neill J. further noted:

"27. As is apparent from s. 19(4), the only outcome of the appeal provided for, is an affirming of the order where the patient fails to demonstrate that he is not suffering from a mental disorder or a revocation of the order if he does succeed in showing that he is not suffering from a mental disorder.

28. Where the sub-section refers to "*affirm the order*" or "*revoke the order*", the order here referred to is the renewal order and not the decision of the Mental Health Tribunal."

It is therefore accepted that under ss. 15 and 15 of the 2001 Act, it is only the responsible consultant psychiatrist and not the courts that can make renewal orders. It has been stressed in previous case law it is the clinical experts who have to apply and make clinical judgments and it would not be appropriate for the Court to interfere with the proper realm of clinical judgment or to cut down or limit the proper scope of clinical judgments. Had the legislature required otherwise, then such power would have had to have been included specifically in s. 19.

13. It has to be the case that in the context of the proper application of the legislation in the context of the legal point raised in this appeal, there could not be a question of a patient losing out on any right to a review by a tribunal or to a court. In any event, this matter was listed for mention on 28th April, 2014, because the order of Judge Doyle would have ended on 29th April, 2014. On behalf of the notice party, it was indicated to the Court that while the patient was still suffering from a mental disorder, nonetheless, it was anticipated that he would be no longer so suffering by 2nd May, 2014, and that a discharge plan, all going well, was in place. The intention was that he would be in a position to be released on that date.

14. Therefore, this Court finds that as a matter of law, the plain meaning of s. 19(4) limits the power of the Circuit Court to affirming or revoking the renewal order and does not provide any jurisdiction to vary the duration of the order. I confirm the order made when this matter was for mention before me on Monday 28th April, 2014, quashing the decision made by Judge Doyle of 14th March, 2014, insofar as it purported to vary the duration of the renewal order made on 4th December, 2013.

15. I make further order confirming the decision made by Judge Doyle insofar as she affirmed the renewal order made on 4th December, 2013, and I make a further order confirming that the duration of the said order remains until its original date, namely, 4th June, 2014.

16. I make no order as to costs.