

THE HIGH COURT

[2013 No. 1104 SS]

IN THE MATTER OF AN APPLICATION FOR AN INQUIRY PURSUANT TO ARTICLE 40.4.2. OF THE CONSTITUTION

BETWEEN

G.F.

APPLICANT

AND

CLINICAL DIRECTOR OF ACUTE PSYCHIATRIC UNIT, TALLAGHT HOSPITAL

RESPONDENT

AND

MENTAL HEALTH TRIBUNAL

NOTICE PARTY

JUDGMENT of Mr. Justice Hogan delivered on 4th July, 2013

1. In these Article 40 proceedings the applicants challenges the legality of his detention at the Adelaide and Meath Hospital, Tallaght, under the terms of the Mental Health Act 2001 ("the 2001 Act"). The applicant is detained pursuant to an admission order which was made under s. 14 of the 2001 Act on 11th June 2013. This order was affirmed by the Mental Health Tribunal on 21st June 2013.

2. The applicant is now aged in his early 30s and up to recently he was living with a long-standing partner with whom he has had two daughters, aged 2 years and 6 years respectively. In recent weeks he has become convinced that his wife has formed a romantic attachment with another man and that this man comes to their house and arranges to put indecent photographs of their daughters on internet websites. He is also convinced that the family home has been bugged with camera and listening devices and that his partner is part of this conspiracy.

3. On June 10th, 2013 Gardai became involved when passers-by telephoned Crumlin Garda station to report that the applicant was assaulting his partner on the street. Gardai arranged for the patient to be seen by a Dr. Moloney at Crumlin Garda Station. It seems clear that Dr. Maloney formed the view that the applicant needed acute psychiatric care because he filled out what is known as a "Form 5", i.e., the form supplied by the Mental Health Commission in respect of those cases where a registered medical practitioner seeks the involuntary admission of an adult patient. Part 8 of the form requires the registered medical practitioner to give a clinical description of the patient's medical condition and Dr. Maloney here stated "paranoid delusions, thought disorder".

4. Unfortunately, Dr. Maloney did not complete an entry for Part 7 which provides:

"In my opinion this person is suffering from a mental disorder where –

(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 to other persons,

OR

(b) (i) because of the severity, 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

(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.

OR

(a) (as above)

AND

(b) (as above)

5. Mr. F. was admitted to the respondent's psychiatric unit on 11th June 2013. A Mental Health Tribunal sat to consider his case and having heard evidence on the matter, concluded on June 21st, 2013 that it should affirm the making of the order under s. 18(1) of the 2001 Act. While the Tribunal accepted that the applicant's condition had improved, it nonetheless held that he continued to suffer from paranoid delusions.

6. Dealing with the submission that Dr. Maloney had not made a recommendation, the Tribunal nonetheless concluded that it was implicit that such a recommendation had been made. The Tribunal continued thus:

"It appears that although Dr. Maloney did give clinical reasons for his two recommendations, he did not tick any box at

paragraph 7. It appears to the Tribunal that there has been a breach of s. 10 of the Mental Health Act 2001 and although there was a failure to comply with this section it has not affected the substance of the Admission Order or caused an injustice. Consequently the Tribunal will continue to consider the substantive issue."

Section 18(1) of the 2001 Act provides:

"Where an admission order or a renewal order has been referred to a tribunal under section 17, the tribunal shall review the detention of the patient concerned and shall either—

(a) if satisfied that the patient is suffering from a mental disorder, and

(i) that the provisions of sections 9, 10, 12, 14, 15 and 16, where applicable, have been complied with, or

(ii) if there has been a failure to comply with any such provision, that the failure does not affect the substance of the order and does not cause an injustice, affirm the order, or

(b) if not so satisfied, revoke the order and direct that the patient be discharged from the approved centre concerned."

7. It is implicit in the Tribunal's conclusions that although there had been a breach of s. 10 of the Act by reason of Dr. Maloney's omission to specify an actual recommendation, it could nonetheless invoke its powers under s. 18(1)(a)(ii) and conclude that the failure to so comply did not affect the substance of the order and did not cause an injustice in the circumstances. While the Tribunal does not perhaps quite say so in as many words, it is also implicit in these conclusions that it considered that the substance of the safeguards provided for by s. 10 had been protected. I respectfully agree.

8. Here it must be stressed that Dr. Maloney clearly conducted a full examination of Mr. F. It is plain from a consideration of the form as a whole that Dr. Maloney formed the view that the applicant required urgent treatment and that he needed to be admitted on an involuntary basis for psychiatric care. The present case is accordingly very different from the facts disclosed in *SO v. Clinical Director of Adelaide and Meath Hospital* [2013] IEHC 132. In that case I held that the failure on the part of the medical practitioner who recommended the admission of the patient to conduct any personal examination of the patient was so fundamental that it invalidated the subsequent admission. If I might venture to repeat what I said in that case:

"It is rather the *complete failure* to comply with the requirement of s. 10 that there be a prior examination which renders invalid the subsequent admissions order. There is accordingly here a default of fundamental requirements in the sense canvassed by Kearns J. in *EH*. If it were otherwise, it would mean that a patient could be validly admitted on an involuntary basis without the necessity for an examination within the previous 24 hour period or even, perhaps, without a recommendation at all. If this were so, it would entirely set at naught the safeguards deemed to be fundamental by the Oireachtas."

9. It is probably unnecessary for the purposes of this case at least to pronounce definitively on the scope of the powers of s. 18. There is, admittedly, some authority for the proposition which appears to suggest that the section enables the Tribunal to rectify rather minor matters (see, e.g., the judgment of O'Neill J. in *WQ v. Mental Health Commission* [2007] 3 I.R. 755), while other cases suggest that the power is wider in scope (see, e.g., the judgment of Charleton J. in *TOD v. Kennedy* [2007] 3 I.R. 689 and the judgment of O'Keeffe J. in *AR v. Clinical Director of St. Brendan's Hospital* [2009] IEHC 143). In my view, while no procedural error is excluded ex ante from the scope of s. 18, the task of the Tribunal under this section is essentially to examine whether the substance of the procedural protections was satisfied and to ensure that any non-compliance did not cause an injustice.

10. Viewed thus, it would be hard to say that the Tribunal's conclusions could be faulted. The applicant had, after all, been examined by a registered medical practitioner who had clearly formed the view that he needed urgent hospitalisation in an approved centre. It is true that he had not specified the alternatives by ticking the appropriate box in Part 7 of Form 5, but here again it is obvious from the manner in which the form was completed that registered medical practitioner had indicated the nature of the symptoms ("paranoid delusions, thought disorder") from which the patient was suffering.

11. In my view, the present case is really indistinguishable from that of *AR*. Here, in a manner not entirely dissimilar to the present case, a consultant psychiatrist had failed fully to complete the relevant boxes in the prescribed form when dealing with an application to extend the duration of a renewal order under s. 15(4) of the 2001 Act. The Tribunal excused this oversight and invoked its s. 18 powers for this purpose. On this point O'Keeffe J. observed:

"Section 18(1) is capable of application to section 15(4) in circumstances such as arose in this case, where Dr. Kilbride failed to complete the forms specified by the Commission because he omitted to tick one of the boxes in paragraph 8 of the Form 7. In my opinion, the failure to comply with section 15(4) in this limited respect does not affect the substance of the order. Furthermore, the condition of the Applicant as determined by the Tribunal is such that no injustice would be caused to the applicant if the order is affirmed. It is equally consistent with the application of section 4 namely that affirming the order is in the best interest of the applicant having regard to his mental condition as determined by the Tribunal, having heard the evidence of Dr. Kilbride and having had the report of the Consultant Psychiatrist appointed under section 17(1), Dr. Brendan Cassidy. The decision of the Tribunal can also be viewed as having due regard to the interests of other persons who may be at risk of serious harm, having regard to the evidence of Dr. Kilbride, if the decision is not made. In my opinion, the Tribunal acted lawfully and was entitled to apply section 18(1)(a)(ii) in the manner it did."

12. As already indicated, this passage effectively governs the present case as well, if only by analogy.

Conclusions

13. In summary, therefore, the present case is one where the Tribunal was entitled to conclude that the substance of the important protections provided for the admitting patient had been safeguarded, even if imperfectly. In these circumstances, I am find myself obliged to conclude that the Tribunal was entitled to apply its s. 18(1)(a) powers to the present case. It follows, therefore, that as the legality of the present detention of the applicant has been established, I must therefore refuse to make an order for his release pursuant to Article 40.4.2 of the Constitution.