Neutral Citation Number: [2008] IEHC 11

THE HIGH COURT

[2008 No. 46 SS]

BETWEEN

R.L.

APPLICANT

AND

THE CLINICAL DIRECTOR OF ST. BRENDAN'S HOSPITAL, DR. HASEEB KHAN ROHILL AND THE MENTAL HEALTH COMMISSION

RESPONDENTS

Judgment of Mr. Justice Feeney delivered on the 17th day of January, 2008

1. I am grateful to the parties for their assistance in the presentation of this case and for the written submissions and for the identification of the appropriate case law, it has greatly facilitated the Court in being able to address what is always a matter which must be dealt with in a speedy and efficient manner, and that is an application under Article 40.4.20 of the Constitution. This is such an application, being an inquiry into the lawfulness of the detention of the Applicant under the Mental Health Act 2001.

2. It is an application under the Constitution and relates to an issue in relation to the alleged restriction and alleged unlawful restriction on the liberty of the Applicant. The Constitution guarantees personal liberty and therefore the courts have always had regard, and careful regard, to the issue of any suggestion that a person's liberty is being unlawfully interfered with or if a person is being unlawfully detained.

3. In this instance it is clear that a person can only be detained in accordance with the law, but it is also the legal position, long established by the Courts, that an irregularity of the process does not necessarily make a detention unlawful, this is particularly so when one has regard to the particular scheme, and in particular the entirety of the scheme under the 2001 Act.

4. Here we are faced with a situation where if there is any unlawful detention, as contended for by the Applicant, it is only up to the time of the order, the Admission Order, which was made on the same day as the removal.

5. The sole complaints, other than a complaint concerning the manner in which Dr. Leader examined the Applicant, and I will deal with that later, all other complaints relate to the removal of the Applicant pursuant to the provisions of Section 13 of the Mental Health Act 2001.

6. There are three complaints made in relation to a suggested breach of Section 13(2) which relate to the removal of the Applicant to the First Named Respondent's hospital. It was suggested that there was a failure in a number of regards in relation to how Section 13(2) was applied in relation to the lack of evidence concerning the inability to arrange for the removal, in relation to the manner of the request of the registered medical practitioner and, particularly, in relation to the absence of members of staff of the approved centre being involved in the actual removal.

7. Inherent in the application and absolutely as a fundamental to the success of the application brought by the Applicant would be a contention that the unlawful removal pursuant to Section 13 infects and has the effect of rendering the Admission Order made under Section 14 invalid.

8. There is in fact no dispute but that the criteria required for a valid Admission Order, other than in relation to the circumstances of the removal and the manner in which the Applicant was received in the approved centre, applied in this case and that the Admission Order viewed in isolation, was properly and validly made on 22nd December 2007. Therefore it is inherent, on the arguments put forward on behalf of the Applicant, that the detention made pursuant to the Admission Order is infected by the suggested illegal act or acts under Section 13. The Court is satisfied that the only matter before the Court is the question of unlawful detention. The Court is satisfied that it properly considers same as of today's date, but even if the Court were to look at it as of the date upon which the matter first came before the Court the Court would have arrived at the same view, that the detention of this Applicant is a lawful detention.

9. The Complainant makes complaint of non-compliance with Section 13, and even if it was established the Court is satisfied that that does not vitiate or relate to a valid Admission Order made under Section 14. This view is significantly reinforced having regard to Section 18 of the Act of 2001, wherein Section 18(1)(a)(1) it is indicated that the provisions of Sections 9, 10 12, 14, 15 and 16 have been complied with is a matter which require consideration by the Review Tribunal, that is not so in relation to Section 13. When one looks at the scheme of the Act that is not surprising because Section 13 relates to the manner in which somebody is brought to the institution and received and not detained.

10. Once received, and the neutral term "received" is used in Section 14, it is at that stage where the possibility of Admission Order resulting in the detention of a person arises, and it is at that stage, having received the person, that then an examination must be carried out "as soon as may be", and it is that examination which can give rise to a qualifying medical practitioner being satisfied that the person is suffering from a mental disorder. That gives rise to a series of obligations on the institution and doctors and a series of protections for the person who is admitted. It is the Admission Order which is central to the scheme under the Act and that view which the Court has formed is, as the Court has indicated, reinforced by the provisions of Section 18 of the Act. The scheme under the Act recognises the real and significant step of an Admission Order and provides real and significant rights and obligations thereafter.

11. Section 14 is not dependent upon how a person arrived at an approved centre, the word used in the section is the word "received". The obligation which arises under Section 14 is "as soon as may be to carry out an examination" and to determine whether or not the consultant carrying out that examination has determined that the person is suffering from a mental disorder.

12. Removal or means of removal is not and cannot be read as a *sine qua non* to an Admission Order. An Admission Order is a separate and stand-alone matter.

13. In this instance the Court is satisfied that the Admission Order made on 22nd December 2007 was a properly made Admission Order and therefore as of the date of the application to the High Court in January of this year the Applicant was in lawful detention. That position continues to be the case as a Renewal Order has now been made and there is no issue raised in relation to the validity of that Renewal Order.

14. It is appropriate to identity certain authorities which have been of assistance to the Court in arriving at this particular view. The

Court shall start its review of the authorities by referring to the decision of Peart J. on 25th June 2007 in the unreported decision of *JH v. Professor Brian Lawlor*, clinical director of Jonathan Swift Clinic, St. James Hospital, Dublin. That was also an application for an inquiry pursuant to Article 40.4.2O of the Constitution and also related to the provisions of the Mental Health Act 2001.

15. There are two particular portions of the judgment of Peart J. which were of assistance to the Court in arriving at the view which it has formed today, the first is to be found on page 12 of his judgment where he states:

> "The Court must have regard to the best interests of the Applicant when balancing the nature of the failure to adhere strictly to the procedures and time limits referred to in the Act against the need in the Applicant's own best interests to be detained for care and treatment. It is therefore not every incident of non compliance which will render the detention of a person to be unlawful, particularly where no injustice has occurred and where no protection which the Applicant is entitled to under the Statutory Scheme has been denied to him."

16. That is a particularly appropriate quotation on the facts of this case given the immediate implementation in this instance upon the Applicant being received in the hospital of the Section 14 procedures concerning whether or not to make an Admission Order and the legal protections and obligations which immediately arose once that Admission Order was made, the consultant psychiatrist having been satisfied that the Applicant was suffering from a mental disorder.

17. Peart J. went on later in that judgment to state at page 14 of the judgment:

> "I believe that my conclusion that on the facts of this case the Applicant's detention is in accordance with law, despite the fact that on a very literal reading of one section of the Act rather than reading the scheme as a whole the order made which first admitted him under Section 24 of the Act was made a very short time later than it should have been, is consistent with what the position has been in the context of the legality of detention in prison following conviction for an offence. In that context the lawfulness of detention has not been successfully impugned unless there has been a default in some fundamental requirement. In this regard I can usefully refer to a passage in the judgment of O'Higgins C.J. in *The State (McDonagh) v. Frawley* [1978] Irish Reports, 131, at page 136."

18. He then quotes from the Chief Justice:

> "The stipulation in Article 40.4.10 of the Constitution that a citizen may not be deprived of his liberty save 'in accordance with law' does not mean that a convicted person must be released on habeas corpus merely because some defect or illegality attaches to his detention. The phrase seems to mean that there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law. For habeas corpus, therefore, it is insufficient for the prisoner to show that there has been a legal error impropriety or even that jurisdiction has been inadvertently exceeded."

19. In a further quotation from Peart J: he continues,

> "I see no reason why such reasoning should not extend to an application by a person whose detention is under the Mental Health Act 2001, whose purpose is to protect and care for a person rather than to punish and where those protections have been afforded without dilution."

20. The real and central protections, of the scheme under this Act, are provided for if and when an Admission Order is made. An Admission Order must be addressed as soon as a person attends at the approved centre. In those circumstances if there were to be a significant or real failure to comply with the provisions of Section 14 then one would be faced with a situation where the default would be of a fundamental requirement.

21. That does not appear to this Court to have arisen on the facts of this particular case.

22. The Court is further reinforced in the view that it has formed by having regard to the judgment of O'Neill J. delivered on 15th May 2007, again in an Article 40 application by *W Q v. The Mental Health Commission & Others*, that again related to the Mental Health Act 2001.

23. At page 17 of that judgment O'Neill J. stated:

> "The scheme of detention provided for in the 2001 Act is based upon the creation of short periods of detention, each disconnected from the other, so that on every renewal the detention has to be fully justified. This is achieved by the Admission Order in the first instance, followed then by the Renewal Orders under Section 15."

24. In this case the first instance of detention is the Admission Order and if complaint is to be made in relation to a suggested breach of Section 13 it is a matter to be taken under Order 84 and a matter to be pursued by means of Judicial Review. This Court makes no finding in relation to the suggested breaches of Section 13. If, as is suggested, there were breaches of Section 13 it does not contaminate and it does not interfere with the validity of the Admission Order made. The Applicant having been received in hospital the fundamental requirement is that at that stage detention must be considered in the first instance under Section 14.

25. O'Neill J. went on at page 20 of the same judgment to indicate:

> "In this case the defects in the Section 184 Order or the defects in the Renewal Order of 2nd January 2006 are neither cured, excused or ignored. What has occurred is that in the process of events the Applicant has lost competence to lay claim to or place reliance on these defects to challenge the validity of the Renewal Order of 28th March 2007. In this regard the domino effect much feared by the Respondents is voided."

26. That equally applies in this case if there is any true complaint in relation to the alleged unlawful removal of the Applicant, that is cured in that the provisions of Section 14 have been fully applied. As soon as the Applicant was received by the Clinical Director an examination for the purposes of an Admission Order took place.

27. O'Neill J. went on on page 20 of his judgment to state:

> "The principle that a legal or statutory provision which is subsequently found to be invalid may be sheltered from nullification and thus accorded the continuance of legal force and effect, where its invalidity is not asserted at the

> appropriate time and where those affected by it and concerned with it in good faith, have treated it as valid and acted accordingly is now well established in our jurisprudence following the judgment of the Supreme Court in *A. v. The Governor of Arbour Hill Prison*, unreported 12th July 2006."

28. The facts herein demonstrate the very limited nature of the alleged wrong. There is no evidence before the Court that the suggested breaches in relation to Section 13 were made other than in good faith. In this instance any wrong which might potentially have been done to this Applicant is cured by the complete and proper implementation of the provisions in relation to an Admission Order and, as the Court has already indicated, it is the Admission Order which is the order which in the first instance results in the detention of this particular Applicant. There has been no breach of fundamental requirements causing a wanting in due process of law.

29. The one further point which has been raised during the course of argument relates to the examination which was carried out by Dr. Leader. To some extent that is not directly relevant because the Court is satisfied with the lawfulness of the detention. In this instance, firstly, it is lawful as and from the valid Admission Order being made and, secondly, as of today's date is valid as and from the renewal order being made in January of this year. Insofar as issue has been raised concerning Dr. Leader it is appropriate to identity averments contained in paragraphs, four, five and six of her affidavit, where she indicates in paragraph four she interviewed the Applicant without the assistance of an interpreter. She goes on to state that she found the Applicant to have reasonable English and Dr. Leader was satisfied that she was able to achieve an objective examination without the need of an interpreter and if she had been of the view that she could not have effectively examined the Applicant without the benefit of an interpreter she would have sought such assistance.

30. She went on to aver in paragraph five that she interviewed the Applicant for 35 minutes and that the Applicant's English was comprehensible. She explained herself clearly to Dr. Leader and the Applicant was able to give a personal history in some detail, and indeed that personal history is recorded in paragraph 25 of Dr. Leader's report.

31. At paragraph six of Dr. Leader's affidavit she indicates that an important part of her function under Section 17 of the Act is to interview the consultant psychiatrist responsible for the care and treatment of the patient, and that is indeed a correct statement of the statutory position, and she states:

> "and to review the records relating to the patient."

32. Dr. Leader said that she carefully reviewed the applicant's medical records and noted the history of her behaviour and paranoia in the past several months. She read the diagnosis of Dr. Kilbride and she had been diagnosed as having a psychiatric disorder.

33. Dr. Leader goes on to state that she interviewed Dr. Kilbride, which is again what is required by the statutory scheme, and crucially Dr. Leader avers that she was satisfied that the Applicant's behaviour prior to admission demonstrated that she was most unreliable in engaging in treatment and had no insight into her condition and was grandiose and deluded and most probably elated. She stated, I formed the view that if discharged the Applicant was likely to stop her medication, that her psychotic condition would relapse and she would require involuntary admission in the future.

34. That is the expert view of Dr. Leader. She has averred as to how she formed that view and the Court is satisfied on the evidence before this Court that no criticism can properly be laid at Dr. Leader in relation to her conduct in carrying out the required examination and expressing her opinion pursuant to the statute.

35. In all of the circumstances of this case the Court is satisfied that the Applicant is both as of the date upon which the initial matter came before Hedigan J. in early January of this year and as of today's date is in lawful custody and therefore the relief sought in relation to Article 40.4 should be declined.