Neutral Citation [2013] IEHC 310

THE HIGH COURT

[2013 No. 1129 SS]

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

BETWEEN

K.C.

APPLICANT

AND

CLINICAL DIRECTOR OF ST. LOMAN'S HOSPITAL AND HEALTH SERVICE EXECUTIVE

RESPONDENT

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

1. In what circumstances (if any) is an approved centre entitled to take steps to have the status of a voluntary patient altered to that of an involuntary patient under the terms of the Mental Health Act 2001 ("the 2001 Act")? That is the essential issue which arises in these Article 40 proceedings. The problem arises in the following fashion.

2. The applicant is a professional person was originally brought to St. Loman's Hospital on 24th April, 2013, on the application of a family member and following the recommendation of a general practitioner. It appears that she had been acting in an erratic fashion in the weeks and months leading up to this point. She had become convinced that a notorious criminal gang was following her and for this purpose insisted on exchanging notes with family members lest their conversations be overheard.

3. On the following day she was assessed by a consultant psychiatrist. In the course of that assessment the applicant strenuously maintained that her professional status would be seriously compromised if she were to be admitted on an involuntary basis. It was therefore agreed that she would stay as a voluntary patient.

4. It was at this point that the Hospital's practical difficulties began, since the applicant refused all treatment. By mid-May, 2013 the applicant had been examined by a variety of professionals who concluded that she was urgently in need of treatment. The applicant had never expressed a wish to leave the hospital, so it was concluded that the powers conferred by ss. 23 and 24 of the 2001 Act could not be utilised.

5. Nevertheless, faced with this quandary the Hospital explored various options. One option was that the applicant might be discharged and then immediately re-admitted pursuant to either s. 12 or s. 14 of the 2001 Act. This would have involved contacting An Garda Síochána in order to arrange either for the applicant to be detained upon her release pursuant to s. 12 or for a medical practitioner to make a recommendation pursuant to s. 10 as a prelude to an involuntary admission pursuant to s. 14. In view, however, of the applicant's steadfast opposition to a discharge of this nature, this, in practice, was never likely to be a realistic option. The Clinical Director took the view that as this would have involved the forcible removal of the applicant to the gates of the centre before the steps for her re-admission were then put in train, this was a course which did not commend itself to her.

6. The other option which was considered was the one which was ultimately adopted. An authorised officer made an application under s. 9 on 7th June, 2013, and later that day the applicant's registered medical practitioner attended the unit and medically examined her. He then made a recommendation for involuntary detention and the applicant was then admitted pursuant to s. 14. A Mental Health Tribunal is currently deliberating on whether that admission order should be confirmed.

7. The net issue, therefore, which I am required to consider is whether the applicant's status was lawfully changed from that of a voluntary patient to that of an involuntary patient by virtue of the s. 14 admission order made on 7th June, 2013. These in turn presents two issues, one of which I have already adverted to. First, do the words "involuntarily admitted to an approved centre" in s. 14 prevent the admission of a person to such an approved centre when they are already physically located there? Second, do the provisions of s. 23 (and, by extension, s. 24) impliedly prevent the making of an admission order in respect of an otherwise voluntary patient. We now proceed to consider these issues in turn.

The concept of involuntary admission in s. 14

8. Part II of the 2001 Act draws a clear distinction between involuntary and voluntary admission to an approved centre. "Voluntary patient" is defined by s. 2(1) as meaning "a person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order". Quite apart from the special circumstances contained in ss. 23 and 24, s. 29 deals with the position of a voluntary patient. The rest of Part II deals with the involuntary patient.

9. The gist of the applicant's argument on this point is that as she was already physically present in an approved centre as a voluntary patient, she cannot then be physically "admitted" to that centre in the manner contemplated by s. 14. It is true that s. 14 contemplates the physical admission of a patient to an approved centre, but it is more fundamentally concerned with legal status of such a patient.

10. Thus, s. 8(1) provides that:

> "A person may be involuntarily admitted to an approved centre pursuant to an application under s. 9 or s. 12 and detained there on the grounds that he or she is suffering from a mental disorder."

11. Section 9 allows a select class of persons to apply "to have a person....involuntarily admitted to an approved centre" and s. 10 deals with the power of a registered medical practitioner to make a recommendation that that person "be involuntarily admitted to an approved centre..." It is clear, therefore, that these provisions are concerned with the involuntary admission of a patient.

12. The concept of an involuntary patient is fundamentally a legal concept designed to deal with the status of such a patient. While such a patient enjoys a range of legal rights and protections under Part II, the defining feature of that status is that the patient is compulsorily detained against his or her will. In the present case, the fact the patient has already been physically admitted to the hospital qua voluntary patient is essentially irrelevant. While this is obviously so, what matters for present purposes is that she was not *involuntarily admitted* in the sense in which this term is used in s. 8(1), s. 9(1), s. 10(1) and s. 14(1)(a).

13. Counsel for the applicant, Mr. Smyth SC, contended that the 2001 Act necessarily envisaged that a patient could only be involuntarily admitted when such a patient was resident in the community and that it could not embrace persons who were already physically located within the approved centre. While this argument is to some degree bound up with arguments based on s. 23 and s. 24 (which I will consider presently), it is sufficient at this juncture to say in response that here one must separate the concepts of location and status.

14. It is accordingly important to observe that the use of the adverbial qualification "involuntarily" completely changes the sense and meaning of the relevant statutory provisions. This adverbial qualification entirely changes the focus away from that of admission (in the sense of physical admission to an approved centre) to that of status, since that from that point onwards it is the applicant's legal status as an involuntary patient is what counts.

15. One might also pertinently observe that there is no express prohibition in Part II which excludes the use of the involuntary admission procedures in the case of a patient who is already voluntarily resident in the approved centre. Had the Oireachtas intended to exclude the use of this procedure in such a case, it might be thought that such would have been expressly so provided.

Whether s. 23(1) impliedly creates a closed category of circumstances in which a voluntary patient can be compulsorily detained?

16. Section 23(1) of the 2001 Act provides:

> "Where a person...who is being treated in an approved centre as a voluntary patient indicates at any time that he or she wishes to leave the approved centre, then, if a consultant psychiatrist, registered medical practitioner or registered nurse on the staff of the approved centre is of opinion that the person is suffering from a mental disorder, he or she may detain the person for a period not exceeding 24 hours or such shorter period as may be prescribed, beginning at the time aforesaid."

Section 24 then sets out the sequence of events which occurs following the detention of the voluntary patient in such circumstances:-

> "(1) Where a person (other than a child) is detained pursuant to section 23 , the consultant psychiatrist responsible for the care and treatment of the person prior to his or her detention shall either discharge the person or arrange for him or her to be examined by another consultant psychiatrist who is not a spouse or relative of the person.
>
> (2) If, following such an examination, the second-mentioned consultant psychiatrist—
>
> (a) is satisfied that the person is suffering from a mental disorder, he or she shall issue a certificate in writing in a form specified by the Commission stating that he or she is of opinion that because of such mental disorder the person should be detained in the approved centre, or
>
> (b) is not so satisfied, he or she shall issue a certificate in writing in a form specified by the Commission stating that he or she is of opinion that the person should not be detained and the person shall thereupon be discharged.
>
> (3) Where a certificate is issued under subsection (2)(a), the consultant psychiatrist responsible for the care and treatment of the person immediately before his or her detention under section 23 shall make an admission order in a form specified by the Commission for the reception, detention and treatment of the person in the approved centre."
>
> (4) The provisions of sections 15 to 22 shall apply to a person detained under this section as they apply to a person detained under section 14 with any necessary modifications.
>
> (5) For the purpose of carrying out an examination under subsection (2), the consultant psychiatrist concerned shall be entitled to take charge of the person concerned for the period of 24 hours referred to in s. 23..."

17. These provisions lie at the heart of the applicant's case, since it is contended that they create an implicitly closed category of circumstances in which a voluntary patient can be detained. The argument here is that as the Oireachtas has here specified one set of circumstances in which a voluntary patient may be detained against her will and then admitted as an involuntary patient to the approved centre, it impliedly excludes any other such circumstances.

18. There are undoubtedly cases where the enumeration of one set of circumstances may be taken impliedly to have an exclusionary effect. Thus, for example, when Article 16.1.1 of the Constitution states that all citizens aged twenty-one years are eligible for membership of Dáil Eireann, it impliedly creates a closed category of casers regarding eligibility to stand. The obvious corollary of this proposition is that only persons who are aged 21 and Irish citizens may stand for election and that all others were thereby excluded. Indeed, it was for this very reason that the Supreme Court held that with regard to Article 16.1.2 as originally enacted that the Oireachtas could not extend the franchise beyond Irish citizens: see *Re Article 26 and the Electoral (Amendment) Bill 1983* [1984] I.R. 268.

19. If s. 23(1) and s. 24 could be interpreted as enumerating by implication the only circumstances in which a voluntary patient could be compulsorily detained, then there would be a great deal to be said for the applicant's argument. But I do not think that it should properly be interpreted in this manner. The sub-section rather endeavours to cater for the special case of where the voluntary patient who requires on-going treatment may seek to leave the hospital, possibly in an unplanned and abrupt manner. If, therefore, a voluntary patient could leave at a moment's notice, it could mean that a person who might well be in need of urgent treatment could re-enter the community before the approved centre could put in place the necessary procedures enabling the patient to be admitted on an involuntary basis.

20. The Oireachtas has thereby sought to cater for this special case by allowing for the temporary detention of the patient in those

circumstances. One cannot, however, infer from this special provision dealing with a particular set of circumstances that an application for the involuntary admission of a patient currently staying voluntarily in the approved centre and who has not expressed a wish to leave is thereby excluded.

Conclusions

21. In summary, therefore, I cannot accept the thrust of the applicant's argument to the effect that the 2001 Act impliedly precludes alteration in the status of a voluntary patient to that of an involuntary patient save in the special circumstances set out in ss. 23 and 24 of the 2001 Act. Nor is the fact that the patient already physically located within the approved centre of any particular relevance, since admission under s. 14 is concerned with the status of the patient so admitted, rather than his or her physical location at the time the admission process was put in train under ss. 9 and 10 of the 2001 Act.

22. It follows, therefore, that the applicant's detention must be adjudged to be a lawful one and I must accordingly refuse to make an order for her release pursuant to Article 40.4.2 of the Constitution.