Neutral Citation Number: [2010] IEHC 243

THE HIGH COURT

JUDICIAL REVIEW

2009 1069 JR

BETWEEN

B.F.

APPLICANT

AND

THE CLINICAL DIRECTOR OF OUR LADY'S HOSPITAL, NAVAN

AND

THE CLINICAL DIRECTOR OF THE CENTRAL MENTAL HOSPITAL, IRELAND

AND

THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Michael Peart delivered on the 4th day of June, 2010

The applicant is a thirty-six year old man who, it is accepted by all concerned, suffers from a serious mental disorder, namely, treatment-resistant Schizophrenia, with prominent and negative symptoms.

On 29th August, 2007, he admitted himself as a voluntary patient to St. Brigid's Hospital, Ardee, from where he was later transferred to Our Lady's Hospital, Navan. For much of the time since that date, though not entirely, the applicant as remained at Our Lady's Hospital as a voluntary patient. He has never sought to leave that hospital or refused any treatment recommended, such that the provisions of sections 23 and 24 of the Mental Health Act 2001, were required to be invoked in order to admit him on an involuntary basis. In due course, I will set out details of what orders have, from time to time, been made, renewed and, on occasions, revoked, because that history gives a valuable context for the present application.

However, what gives rise to the present application is that on **6th August, 2009**, the status of the applicant was changed from voluntary to involuntary, not by the invocation of sections 23 and 24 of the Act, but rather, by his treating psychiatrist discharging him even though he had not recovered, and then immediately thereafter, arranging the he be detained as an involuntary patient by way of an Admission Order under s. 14 of the Act.

His consultant psychiatrist at the approved centre, Dr. Rutledge, had, prior to 6th August, 2009, formed the view that the applicant was so seriously ill that he required psychiatric treatment in a specialist forensic hospital under conditions of medium security, such as exist at the Central Mental Hospital ("CMH"). It would appear that the medical view is that such treatment, in order to be appropriately administered, requires that the patient be an involuntary patient, and not a voluntary patient. That is the opinion of Dr. Rutledge and it is a view which has been expressed also by certain responsible consultant psychiatrists whose evidence has been available to Mental Health Tribunals which have, from time to time, reviewed Admission Orders and Renewal Orders made in respect of the applicant, as will appear hereunder.

There is a suggestion also made by the applicant that it is the policy of the CMH that only patients who are detained on an involuntary basis may, following a transfer to the CMH, avail of the specialist facilities and treatment there, which has been recommended for the applicant by, inter alios, Dr. Rutledge, and which he is willing to undergo there, but on a voluntary basis.

It would be helpful at this stage to refer to a report by Dr. Rutledge on the applicant's mental state, which she prepared on 18th August, 2008 (almost one year prior to 6th August, 2009). I do so in order to provide a context for consideration of the present application by way of judicial review where the applicant is seeking to quash the Admission Order made on 6th August, 2009, and the Renewal Order made subsequently on 27th August, 2009, and is seeking certain declaratory reliefs in relation to the alteration of his status from voluntary to involuntary.

In her report on the applicant's mental state, on 18th August, 2008, Dr. Rutledge stated the following:

> *"[The applicant] was dishevelled. He remained isolated and withdrawn on the ward. He had prominent negative symptoms of schizophrenia with apathy and amotivation and avolition. He displayed irritability at times. If he is stressed in any way, he can become irritable and sensitive to personal slights.*
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> *His mood objectively and subjectively is euthymic with no ideas of suicide or suicidal intent.*
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> *His mental state was guarded. He denied the presence of auditory hallucinations. He continued to hold a fixed delusional system relating to the ultimate and absolute psychiatrist whom he would like to harm. He also held to the delusional belief of the significance of particular Euro Millions Lottery numbers.*
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> *He discussed his fixed delusion of the ultimate psychiatrist being Daniel Wayne Ivory Rodriges. He told me that it just sort of clicked and came to him over a period of two weeks. When I asked had he thoughts of harming himself, this ultimate psychiatrist, he said, 'there is no point; he can't learn, it's impossible, he has a computer mind, he obeys three*

laws of robotics'.

In relation to insight, he told me that he was 'symbiot'. A symbiot, he explained, is 'when one or two organisms work to mutual advantage, when a heart and liver work together to keep one alive'. He told me he didn't believe that he needed to be in hospital. He said he had never been unwell except for when he had meningitis as a young child, and he also had ear and eye problems as a child. In relation to the medication, he told me that it helped him to get a good night's sleep, but it has no benefit other than that."

Of further benefit is Dr. Rutledge's opinion, following a HCR-20 Risk Assessment, which she carried out on 31st July, 2009, for the purpose of a report dated 18th August, 2009.

In her report on that occasion, she stated the following:

1. [The applicant] suffers from the severe mental illness of chronic paranoid schizophrenia, characterised by a delusional belief system which incorporates his treating consultant.

2. In my opinion, [the applicant] suffers from a mental illness within the meaning of the Mental Health 2001.

3. There is ongoing evidence of paranoid ideation, thought disorder and lack of insight into his condition. The severity of his mental illness has been such that, in the past, he has attempted to mutilate his eye in response to a belief that there was a camera in his brain. He has assaulted a previous treating consultant and he has expressed ongoing homicidal ideation towards the 'ultimate and absolute psychiatrist'.

4. His chronic paranoid schizophrenia is complicated by misuse of alcohol and substance abuse.

5. At the time of this report, [the applicant] scored 9/10 on the clinical items in his HCR Risk Assessment. This indicates that his illness remains untreated and it is likely that he continues to hold false beliefs on which he might act dangerously on, if in an open ward or in the community. This is despite regular supervision of medication and use of Clozapine.

6. It is my opinion that [the applicant's] mental illness is of a nature and degree which makes it appropriate for him to receive medical treatment in hospital for the protection of others from serious harm and for his own health and safety, and that such treatment cannot be provided unless he remains detained under the Mental Health Act 2001.

7. Given the level of risk that [the applicant] represents, it is my opinion that his mental illness is of a nature and degree which makes it appropriate for him to receive psychiatric treatment in a specialist forensic hospital under conditions of medium security, such as pertain to the Central Mental Hospital, for the protection of others from some serious harm and to allow him access to the specialist forensic care which he requires." [My emphasis]

The applicant's solicitor, Mr. Anthony Carmody, was appointed by the Mental Health Commission as the applicant's legal representative for the purpose of the review hearing before the Mental Health Tribunal.

Prior to that hearing, the applicant instructed Mr. Carmody that he, at all times, wished to be a patient at Our Lady's Hospital, Navan, on a voluntary basis, and of his own choice, rather than as an involuntary patient detained in hospital. Nevertheless, in spit of the submission that the procedure by which the applicant had been deprived of his voluntary status was unlawful, the Tribunal affirmed the Admission Order. In its decision, the Tribunal stated the following:

"On 6th August, 2009, [the applicant] was discharged from the approved centre to the Emergency Department of Our Lady's Hospital. A Discharge Summary Sheet was completed and a copy of this forwarded to [the applicant's] GP.

Dr. Rutledge told the Tribunal that, although his stay in hospital was benefiting his condition, [the applicant] needs specialist treatment in the CMH. The CMH will only admit involuntary patients. Dr. Rutledge was unable to invoke sections 23/24 as [the applicant] had not expressed a wish to leave the approved centre. This was confirmed to the Tribunal by Mr. Carmody [the applicant's] legal representative, and also by [the applicant] himself. [The applicant] has no desire to leave and confirmed that if the order was revoked, he would remain. It is noted that negative symptoms of [the applicant's] condition include apathy and avolition. She said that he might well stay on for a period of 10 years, he is so passively compliant. She gave evidence of [the applicant's] mental illness which has been diagnosed as treatment resistant schizophrenia. His underlying condition has not changed since admission, although some symptoms have eased. She is very concerned about the risk [the applicant] poses to others. The Tribunal noted the forensic reports of Dr. Mohan, a forensic psychiatrist in the CMH, and notes his conclusions. Following a period of leave in April (which lasted a number of hours), Dr. Mohan wrote to the approved centre on 29/04/09 and recommended against any further leave, such were his concerns. The Tribunal noted the opinion of Dr. O'Keeffe who echoed these concerns in her s. 17 report and stated that, in her opinion [the applicant] suffers from a mental disorder within the meaning of s. 3.1 and s. 3.1.b. Evidence was given of the benefit [the applicant] has had to date from treatment and that he requires specialist treatment in the CMH.

It is clear to this Tribunal, from the evidence presented, that [the applicant] has a mental disorder within the meaning of that term in both s. 3.1.a and s. 3.1.b It is also clear to the Tribunal that because of [the applicant's] apathy, he would likely stay on in hospital for an indefinite period without seeking to leave. It is clear that Dr. Rutledge had, at all times, [the applicant's] best interests in mind. She said the only option available to her was to discharge [the applicant] and have him readmitted in the usual manner. It is noted that if [the applicant] was left as a voluntary patient, he would not be afforded the protection of the MHA and the provision for regular reviews contained therein. It is noted that he remained in hospital because of his apathy and avolition which are negative symptoms of his condition. In his best interests, Dr. Rutledge discharged him and arranged for an authorised officer to complete the application form. This seemed to be the appropriate action to take in the circumstances. Accordingly, this Tribunal is satisfied that the statutory provisions have been complied with. As noted above, the Tribunal finds that [the applicant] continues to suffer from a mental disorder within the meaning of s. 3.1.a and 3.1.b MHA. Accordingly, the Order is hereby affirmed."

As can be seen, the applicant has indicated that he wishes to remain as a voluntary patient and has expressed no wish to leave Our Lady's Hospital, save that the Court is informed that he is perfectly willing to be transferred to the CMH and to undergo the recommended treatment there. However, he wishes to do so as a voluntary patient. He accepts that he suffers from a serious mental disorder and accepts that he needs the treatment recommended.

In fact, the applicant has sworn an affidavit in these proceedings to which I have not yet referred, and I should do so. While Mr. Carmody's grounding affidavit was sworn on 19th October, 2009, so that this application could be moved, the applicant himself swore an affidavit on 24th December, 2009.

In his said affidavit, the applicant states that Mr. Carmody has acted for him since September 2007, and that he has read Mr. Carmody's affidavit and believes that it accurately sets out the relevant events since his admission to hospital in September 2007. He goes on to say that the statements of opposition and affidavits filed on behalf of the respondents in this case have also been explained to him. He then goes on to say that he knows that his status was changed from voluntary patient to involuntary patient in August 2009, but that he wishes to remain a voluntary patient and that he has at all times cooperated with hospital staff and does not think that he should be detained as an involuntary patient.

He states that, having discussed these issues with Mr. Carmody, he has instructed him to bring the present application.

At paragraphs 5 and 6 of his affidavit, he states the following:

> *"5. I am happy to remain in the hospital as a voluntary patient. I am also aware that if I am a voluntary patient and if I try to leave, that they can keep me in the hospital as an involuntary patient. At different times since I first came into hospital, I have been an involuntary and a voluntary patient. When I am a voluntary patient, I have more freedom to come and go on the ward, and I can go to the shops and around the hospital grounds o my own, which I enjoy. Each time that I have been allowed off the ward, I have come back; I have never attempted to leave the hospital without permission and I have always come back on time. When I am an involuntary patient, I am not allowed off the ward.*
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> *6. I would like, at some stage, to return home, however, I have always done what I have been asked by the hospital staff which includes coming back from my leaves and taking medication. I am well aware that if I did not, I would be made an involuntary patient and lose my off-ward leave." [My emphasis]*

Previous history

I refer to the fact that the applicant has stated in paragraph 5 that, at various times since he first was admitted to hospital as a voluntary patient, he has been an involuntary and a voluntary patient. I will set out some of that history and can do so from what is stated in that regard in the affidavit of Mr. Carmody.

1. On **29th August, 2007**, the applicant admitted himself to St. Brigid's Hospital, Ardee, County Louth, as a voluntary patient. Two weeks later, his treating doctors sought to change his status from voluntary patient to involuntary because they regarded this as necessary in order to facilitate his transfer to the CMH. The method adopted to achieve this change in status was to invoke the provisions of sections 23 and 24 of the Mental Health Act 2001, on 10th September, 2007. In a report to the Tribunal, Dr. Siddique, a consultant psychiatrist in St. Brigid's Hospital, expressed the view that in his "*professional opinion, this patient needs to be in hospital as an involuntary patient and needs to be transferred to the Central Mental Hospital as soon as possible for further management of risk*". However, the Tribunal subsequently revoked the Admission Order made on the basis that the applicant had never sought to discharge himself from the hospital. Mr. Carmody has exhibited the documentation relating to that procedure, including the decision of the Tribunal. The applicant remained at the hospital as a voluntary patient until the events described in the following paragraph.

2. On **8th October, 2007**, an Admission Order under s. 14 of the Act was signed which changed his status from voluntary patient to involuntary patient. That Order followed the signing of an application for a recommendation for involuntary admission by the applicant's mother on that date. That recommendation was signed by General Practitioner and it led to the signing of an Admission Order. It is clear from the available documentation that on the same date, a Notice to Transfer the applicant to Our Lady's Hospital, Navan, was also signed, and that on the following day, 9th October, 2007, a further Notice to Transfer the applicant to the CMH was signed. Clearly, the intention was that his status to involuntary patient was so that he could be transferred to CMH. In the Proposal to Transfer to the Central Mental Hospital dated 9th October, 2007, the reason given is that the applicant "*needs treatment in forensic setting, given the level of ongoing risk*". While the applicant was duly transferred to Our Lady's Hospital, Navan, at this point, he was not, and in fact, has never been transferred to CMH, even though all relevant professionals are convinced that the treatment which he needs, and presumably needs as soon as possible, is available only in the forensic setting of the CMH.

3. A Renewal Order issued on **25th October, 200**7, which became the subject of a review by a Mental Health Tribunal on 14th November, 2007. This Renewal Order was revoked. In its decision, the Tribunal expressed itself as satisfied that the applicant was suffering from a mental disorder within the meaning of s. 3(b) of the Act, but went on to state that, "*the patient, however, has expressed an intention through his legal adviser that he is willing to remain in the approved centre as a voluntary patient".*

4. On **30th May, 2008**, the applicant's mother made a further application for a recommendation under s. 9 of the Act in a further attempt to change applicant's status from voluntary to involuntary, following which an Admission Order was signed. The opinion of the consultant psychiatrist who signed that Admission Order on 30th May, 2008, was that the applicant "*suffers with a mental disorder with delusional beliefs about psychiatrists he is responding to, and hallucinations. He poses a long-term unpredictable risk of violence and does not believe that he is being voluntarily detained*". Again, however, this Order was revoked by a Mental Health Tribunal on 19th June, 2008, as the procedures adopted were inconsistent with the Act, as, again, the Tribunal was of the view that, as the applicant was in the hospital as a voluntary patient, the only basis on which his status could be changed to involuntary was by the invocation of the procedures under sections 23 and 24 of the Act, if the applicant attempted to leave the hospital. It had been conceded by a member of the hospital staff at the review hearing that the applicant had never been actually discharged from the hospital prior to the making of the Admission Order.

5. On **4th July, 2008**, at 10.27am, an application to a registered medical practitioner for a recommendation for involuntary admission was signed by an authorised officer, namely, John Kelly of the HSE Dublin North East, and he stated at that time that the reason was that "*the above named person appears to be suffering from a mental disorder and requires hospitalisation*". Nevertheless, he had been technically discharged so that the process for involuntary admission could be commenced. He stated also that the reason he was seeking the recommendation was that there was no family member available to make the application. Half an hour later, at 10.55am, that recommendation was made by Dr. Jamal of Our Lady's Hospital, Navan, and at 12.00 noon that day, a s. 14 Admission Order was signed, the reasons being stated as that the applicant "*suffers from a mental disorder as defined under the Mental Health Act, and requires treatment in an approved centre*". According to the note of the review hearing before the Tribunal on 24th July, 2008, the consultant psychiatrist responsible for the care and treatment of the applicant stated, inter alia, that the status of the applicant prior to the Admission Order was involuntary in al but name since the applicant knew that if he tried to leave, he would be

admitted under the s. 23/24 procedure.

According to the summary of the proceedings at the Tribunal which was prepared by Mr. Carmody afterwards, the consultant psychiatrist confirmed that it was not his intention at that time to transfer the applicant to the CMH, and that other methods of treatment could be tried first, and, when asked, stated that none of the proposed treatments required that the applicant be an involuntary patient. It was also accepted at that hearing that the applicant had not attempted to leave Our Lady's Hospital. However, on 24th July, 2008, the Mental Health Tribunal affirmed that Admission Order, being of the view that the applicant was suffering from a mental disorder and, as appears from its decision:

> *"The Tribunal accepts that the treatment required by the patient can only be actioned (?) on an involuntary patient. Further, the best interests of the patient would be served by the patient remaining as an involuntary patient."*

That decision went on to state:

> *"In relation to the methodology of which the patient became an involuntary patient, the Tribunal accepts that the relevant and appropriate provisions of section 9 were complied with and were enacted in the best interests of the patient."*

6. Also, on **24th July, 2008**, a Renewal Order for three months was signed which, in due course, became the subject of a review hearing before a Mental Health Tribunal on 12th August, 2008. The Renewal Order was affirmed. According to the note of this hearing prepared by Mr. Camody, the evidence was that the applicant continued to pose a possible long-term and unpredictable risk of violence to doctors, and that if treatment failed, this risk could broaden to other persons. It was accepted that the applicant was compliant as an in-patient and had not attempted to leave, and according to Mr. Carmody's note, it was accepted also that the treatment then being given to the applicant could be given as a voluntary patient. However, this note goes on to state that the consultant psychiatrist responsible stated also that:

> *"If [the applicant] was to be detained as a voluntary patient, it would affect his treatment because they could not immediately invoke a transfer application to CMH and that [the applicant] would probably have to go to CMH to avail of other therapies, as a voluntary patient he could not be transferred."*

According to this note also, Mr. Carmody made submissions to the Tribunal to the effect that the applicant was willing to remaining the hospital as a voluntary patient and that the consultant psychiatrist had accepted in his evidence that the applicant had never tried to leave the hospital while a voluntary patient, and that it was also accepted that his current treatment plan could be administered as a voluntary patient.

It would appear that Mr. Carmody submitted also that it was therefore appropriate to revoke the Renewal Order since it was inappropriate that the applicant should be made the subject of involuntary admission simply to allow for the possibility that he might be transferred to the CMH.

It would appear that the view was taken that while the applicant had not made any attempt to leave, he nevertheless posed a sufficient level of risk to justify his admission as an involuntary patient. The decision of the Tribunal refers to the fact that all the reports before the Tribunal and the evidence given here have been considered and a conclusion was reached that it was in the applicant's best interests to remain as an involuntary patient, the reasons being that he was suffering from treatment-resistant chronic schizophrenia with a propensity to violence, is on a combination of medication which will require six to eight weeks to monitor before being able to deem this treatment is successful, and that, *"he currently remains insight-less, and according to his responsible consultant psychiatrist, still poses a long-term and unpredictable risk of violence".*

7. On **30th September, 2008**, a proposal to transfer the applicant to the CMH was issued and on 13th October, 2008, that transfer was duly authorised by a Mental Health Tribunal following a hearing, after which the Tribunal expressed itself as satisfied that it was in the applicant's best interests that he be transferred to the CMH. Thereafter, the applicant instructed Mr. Carmody to appeal this decision to the Circuit Court and an appeal was lodged. However, on 27th November, 2008, the applicant instructed him to withdraw that appeal.

8. On **23rd October, 2008**, a further Renewal Order for six months was signed, and on 3rd November, 2008, a replacement Renewal Order was signed. Each of these was affirmed by a Mental Health Tribunal, on 11th November, 2008. In its decision, the Tribunal was satisfied on the evidence adduced that the applicant was suffering from a mental disorder, as defined, and, having heard the evidence of the risk which it was considered that he posed to both himself and to others, and having been informed of the need that the applicant receive treatment at CMH - treatment which cannot be given to him at Our Lady's Hospital - the orders were renewed. It could, perhaps, be noted that in his note of what occurred at this review hearing, Mr. Carmody has stated that in his evidence, the responsible consultant psychiatrist confirmed that Our Lady's Hospital does not have facilities needed to treat the applicant, that the longer he stays there, he will not improve and will become institutionalised, and that in CMH he would have a more structured environment and treatment and that this will be necessary for his long-term progress. It appears that it was stated also that Our Lady's Hospital can prevent him deteriorating, but not to improve. He will, apparently, not improve simply by taking medication, and for any material improvement to occur, he needs to be in the CMH.

9. Even though these orders were renewed on 11th November, 2008, and the applicant's transfer to the CMH had already been authorised, and even though all relevant professionals were clearly of the view that the applicant needed to receive treatment at the CMH and would not improve until this occurred, the applicant had not been transferred to the CMH by **23rd April, 2009**, when a further Renewal Order was signed by the responsible consultant psychiatrist. However, when that order came before the Mental Health Tribunal for a review on 12th May, 2009, the Tribunal decided that as the period of renewal under that order exceeded (by one day, through a clerical error) the permissible twelve-month period, it had to be revoked. The applicant, through his solicitor at the review hearing, had confirmed that in the event of the order being revoked, he was willing to remain in Our Lady's Hospital as a voluntary patient.

10. Following the revocation of that Admission Order, the applicant, in fact, remained at Our Lady's Hospital until he was "discharged" to the Emergency Department of that hospital on **6th August, 200**9. The Discharge Summary Form, which was signed by Dr. Rutledge, states, firstly, that he "*remains psychotic, shown little improvement on Clozapine and Clozapine Augmentatin with Aripiprazole*. *Patient discharged on legal advice*". [My emphasis]

Two paragraphs later, that form states, "*Lately, unwell with paranoid delusion intent of harm to others and no insight*". Following that "discharge, he was speedily made the subject of an Admission Order of that date, as described at the outset of this judgment. A

Renewal Order was made on **27th August, 2009**, and that was affirmed by a Mental Health Tribunal on 8th September, 2009. It is these two orders which are sought to be quashed in these proceedings.

Part of the applicant's submissions on the present application include/rely on an argument that the procedure by which he was discharged and then immediately made subject to the Admission Order procedure under s. 14 of the Act, was unlawful, inter alia, because the applicant was discharged even though it is quite clear that he was not recovered such that he ought to be discharged in a true sense. In fact, it would appear from what is stated by Dr. Rutledge in her report dated 18th August, 2009, a portion of which I set out hereunder, that not only had he not recovered, but that his condition was deteriorating or had deteriorated such that it was seen as necessary to have him admitted as an involuntary patient so that he could be transferred to the CMH to avail of the necessary services and treatment there.

It would appear that in a period shortly before the Admission Order was made on 6th August, 2009, the condition of the applicant may have been considered to be deteriorating. I say that because the reasons given for the making of that Admission Order refer to "*an acute relapse of psychotic symptoms . . .*" It is also notable that Dr. Rutledge, in that Order, stated that it was her opinion that the applicant was at that time *suffering from a mental disorder as defined in s. 3(1)(a) of the Act (i.e. "where . . 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 . . .*), as well as under s. 3(1)(b) thereof. The evidence for that can be seen in her report to the Mental Health Tribunal dated 18th August, 2009. That report states, *inter alia*, the following:

> *"In May 2009, he was noted to have a female patient's name written on his hand and he couldn't explain how this had happened or why. In May 2009, [the applicant] was reviewed by the Forensic Consultant Psychiatrist, Dr. Mohan. At that time, he continued to express delusional beliefs about a psychiatrist. Dr. Mohan noted that the order could not be transferred to the Central Mental Hospital under section 21. Mr. Mohan noted that this was a case where rights had superseded risk and that this was a cause for concern. He noted that his report would follow. Over the following weeks, [the applicant] remained unwell. He shaved his scalp and told staff that this was 'more low maintenance'.*
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> *On 2nd July, 2009, in view of his partially treated mental state, his Clozapine was again increased. On a ward round on 6th July, 2009, [the applicant] in discussing his previous 'experiences', he told me 'he went into the future, into 2020, and saw brains and then went through a metal door'. He told me this was not a dream and it could not have been his mind playing tricks on him. He remained acutely psychotic at that time.*
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> *On 20th July, 2009, [the applicant] wanted to shake my hand at a ward round and when I told him that wasn't necessary, he was irritated by it and spoke to nursing staff about this afterwards, saying he wasn't happy and saw it as a personal slight.*
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> *On 27th July, 2009, [the applicant] wrote a letter which reflected his acutely psychotic state of mind. See Appendix 1.*
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> *A case conference was held on 31st July, 2009, with the aim of discussing [the applicant's] diagnosis, his treatment plan, updating his risk assessment and the management of that risk. This case conference was attended by the treating team and by ward staff. The latter part of the case conference was attended by [the applicant], his mother and aunt."* [My emphasis]

Legal submissions

Colman Fitzgerald S.C. for the applicant has submitted that there are two issues principally arising for determination. Firstly, whether the changing of the applicant's status from voluntary to involuntary by discharging him, and then readmitting him immediately thereafter as an involuntary patient by means of the procedure provided for in s. 14 of the Act is lawful; and secondly, whether what he describes in his submissions as "the requirement" of the CMH that before a patient is transferred to that hospital for the sort of treatment required by the applicant, he/she must be an involuntary patient, is a lawful requirement.

By way of response to a preliminary point of opposition pleaded by the first and second named respondents, namely, that the applicant should be disentitled to seek reliefs by way of judicial review in these proceedings because he has not sought to challenge the decision of the Mental Health Tribunal which affirmed the Admission Order and subsequent Renewal Orders, Mr. Fitzgerald submits that such ought not be regarded as a prerequisite to the applicant seeking the reliefs which he seeks, and further submits that in any event, it would have been inappropriate for the applicant to do so since he is not impugning any order made by the Mental Health Tribunal, but rather, is seeking to have quashed the Admission Order itself, which has been affirmed and renewed.

Mr. Fitzgerald accepts that in view of the limited jurisdiction and function of the Mental Health Tribunal under the provisions of s. 18 of the Act, the Tribunal, when reviewing the Admission Order and any subsequent Renewal Orders, was obliged to affirm same since it is accepted that the applicant suffers from a mental disorder, as defined. He is at pains to stress that it is the manner by which the making of the Admission Order was achieved on 6th August, 2009, and therefore the lawfulness of that order that is at issue, and submits that that is an issue which the Tribunal could not concern itself with and could not decide.

In answer to a point of objection raised by the third and fourth named respondents in their Statement of Opposition that the applicant has not appealed the decisions of the Mental Health Tribunal to the Circuit Court, as he would be entitled to do under s. 19 of the Act, Mr. Fitzgerald has submitted, firstly, that it has not been submitted by those respondents that any particular consequence flows from the applicant not having brought such an appeal, and also that in any event, the Circuit Court's jurisdiction is circumscribed by the provisions of s. 19, namely, that once it is established that the applicant suffers from a mental disorder (that being not in dispute in the present case), the Court must affirm this order.

Before dealing with other issues, I should indicate at the outset that I accept the applicant's submissions in relation to these two preliminary points and that neither presents an obstacle to the present application for reliefs sought.

Lawfulness of the Admission Order

Mr. Fitzgerald, referring to the fact that immediately prior to 6th August, 2009, the applicant was a voluntary patient, refers, in that regard also, to the provisions of s. 2 of the Act, which defines a voluntary patient, as "*a person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order*".

He refers also to the provisions of s. 4 of the Act, which provide, *inter alia*, that when making any decision concerning the care and treatment of a person, including a decision as to whether to make an Admission Order, not only must the best interests of the person be the principal consideration, but also that any such decision must have regard to "*the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy*" [my emphasis]. Mr. Fitzgerald, in his submission, has placed much emphasis on the applicant's rights to autonomy and dignity and suggests that the statutory scheme under the Act is designed to safeguard and protect these rights in a balanced way, taking account of the fact that in some cases, a person may require to be "detained", but only in circumstances where that course of action is necessary.

He emphasises the word "necessary" and submits that it cannot be a matter of necessity to detain the applicant in circumstances where he has, at all times, clearly expressed a wish to remain as a voluntary patient, and has at no stage in the past number of years, while a voluntary patient, ever indicated a wish to leave the approved centre or attempted to leave the approved centre, such as would warrant the staff of the hospital availing of the provisions of sections 23 and 24 of the Act, in order to detain him as an involuntary patient.

In such circumstances, it is submitted that the change of his status from voluntary to involuntary is not "necessary" since he is willing to undergo any recommended and necessary treatment, but on a voluntary basis, even that treatment which is recommended by his doctors and which is available to him only at the Central Mental Hospital.

Mr. Fitzgerald submits that it is essential not to overlook the fact that a patient's right to dignity and autonomy is not to be diluted or in any way given less force and effect simply because a patient has a mental disorder. He refers to the fact that the existence of a mental illness alone is not sufficient to justify the involuntary admission of a patient to an approved centre, since such persons often are treated, as indeed the applicant has been, as voluntary patients who are free to leave when they wish (subject, of course, to sections 23 and 24 of the Act).

For involuntary admission, it is a requirement that, in addition to having a mental disorder, it must be necessary for the proper care and treatment of the patient that he/she be made the subject of an Admission Order.

In the present case, Mr. Fitzgerald submits that it cannot be considered necessary for the applicant's care and treatment that he be detained involuntarily, in circumstances where he has at all times, and is, willing to receive that treatment as a voluntary patient. It is submitted that the element of "necessity" cannot arise from the mere fact that there appears to be a policy on the part of the CMH that they will only provide the treatment which the applicant requires if he is the subject of an Admission Order, and that this element of "necessity" must arise only from the patient's own circumstances and needs, rather than any policy by any particular approved centre.

It is submitted that to conclude otherwise would set at nought the rights to dignity and autonomy recognised by the Act, given the recognition in the Act of the right to be a voluntary patient. In that regard, as has already been set out above, a voluntary patient is defined in s. 2 as, "*a person receiving care and treatment in an approved centre who is not the subject of an admission order or a renewal order*".

Mr. Fitzgerald refers also to the provisions of s. 16 of the Act, which provides, inter alia, that where a consultant psychiatrist makes and Admission Order, he/she must first of all send a copy of same to the Mental Health Commission, and secondly, give the patient a notice which must contain certain specified information, including (see s. 16(2)(g)) that, "*the patient . . . may be admitted to the approved centre concerned as a voluntary patient if he or she indicates a wish to be so admitted*". It is submitted that in the present case, the procedure adopted has set at nought this entitlement, and that it has, in effect been denied to the applicant against the express statutory entitlement to choose to be a voluntary patient.

It was noted by the Tribunal, which sat in September 2009 to review the Renewal Order made at the end of August 2009:

> *"That negative symptoms of [the applicant's] condition include apathy and avolition. She [i.e. Dr. Rutledge] said that he might well stay on for a period of 10 years, he is so passively compliant. She gave evidence of [the applicant's] mental illness which has been diagnosed as treatment resistant schizophrenia. His underlying condition has not changed since admission, although some symptoms have eased. She is very concerned about the risk [the applicant] poses to others."*

In her affidavit sworn on 27th November, 2009, Dr. Rutledge has, at paragraph six thereof, expressed the view that the applicant does not believe that he suffers from a mental disorder and does not consider that he requires treatment, medication or hospitalisation. At paragraph eight of that affidavit, she accepts that the applicant has expressed no wish or intention to leave Our Lady's Hospital. She goes on to say:

> *"However, this is an aspect of the applicant's illness. In fact, it is one of the negative symptoms of his condition referred to above and the applicant could conceivably remain in hospital for years on a voluntary basis because the illness for which he is being treated itself makes him compliant. This is an issue of capacity. In my view, the applicant's non-expression of intention or desire to leave the hospital is not because he is actively engaged with the issue and has made a choice, but arises from the illness itself. In my judgment, the applicant does not have capacity to make a free and conscious decision as to whether he wishes to remain in hospital. The significance of this is, of course, that his non-expression of a desire to leave is not the giving of consent to his admission or retention in hospital."*

At paragraph nine of her affidavit, Dr. Rutledge has expressed concerns also that if the applicant simply remains in Our Lady's Hospital as a passive voluntary patient who never expresses any intention to leave, he will not have the benefits which would otherwise be available to him as an involuntary patient, such as an independent review of his condition, and that he could therefore remain in hospital for years without his case being reviewed by a Mental Health Tribunal.

At paragraph ten, she expresses her opinion that the applicant needs treatment which requires input from a specialised forensic, multidisciplinary team, and that he needs to be so treated in an environment where both his illness and risk are managed in a specialised, structured and supported way, and that it can be provided only at the CMH where, it appears, she has worked while completing her studies and training. She is aware that patients will be treated in this way only if they are there as involuntary patients, and she states that she is fully aware of the clinical reasons for that.

She goes on to say that his need for such treatment at the CMH is a matter of "absolute necessity" and also that he does not have the capacity to consent to remaining in hospital, and she describes the applicant as being a person whose status is voluntary in name only. At paragraph twelve, she states, *inter alia*, the following:

> *". . . [on] 6th August, 2009, I was of the view that the applicant suffered from a mental disorder where there was a serious likelihood of him causing immediate and serious harm to himself or to other persons, and that the failure to admit him to an approved centre would be likely to lead to a serious deterioration in his condition or would prevent the administration of appropriate treatment that could be given only by such admission, and that the reception, detention and treatment of him in an approved centre would be likely to benefit or alleviate the condition of that person to a significant extent."*

She states also that because, due to the very nature of his illness, he has not shown any intention to leave Our Lady's Hospital, "*there is . . . no prescribed mechanism by which the applicant's status could be changed from that of voluntary patient to an involuntary patient*" and that it was in those circumstances that, "*it was necessary for me to discharge the applicant as I could not continue to effectively detain him*". She says that she was having regard to the best interests of the applicant and to the safety interests of the public by discharging him when and how she did, and invoking the admission procedures leading to an Admission Order and Renewal Order. She referred also to Dr. Mohan's view that the applicant needs the treatment which is available only at CMH, as already described, and that, accordingly, the procedure under s. 21 of the 2001 Act, was invoked to achieve the applicant's transfer as an involuntary patient from Our Lady's Hospital to the Central Mental Hospital.

As to Dr. Rutledge's view that the applicant, in reality, has no capacity to make an informed decision to be a voluntary patient, Mr. Fitzgerald has referred to the definition of a voluntary patient in the 2001 Act, at s. 2 thereof, which provides simply that he/she is a person who is receiving care and treatment in an approved centre and who is not subject to an Admission Order or Renewal Order and to the absence of any requirement as to capacity to make a decision to be voluntary. He has referred also to what I have stated in this regard in my judgment in *Mc.N. v. Health Service Executive*, Unreported, High Court, 15th May, 2009, and to what is stated also by Kearns J. (as he then was) in the Supreme Court in *E.H. v. Clinical Director of St. Vincent's Hospital*, 28th May, 2009. Mr. Fitzgerald submits, therefore, that simply because Dr. Rutledge is of the view that the applicant cannot make an informed decision to remain as a voluntary patient, he can be admitted lawfully as an involuntary patient by the means adopted in this case. Mr. Fitzgerald accepts, of course, that the question of capacity is an important one, but that if it is to be disputed and determined, it must be done in an appropriate manner consistent with constitutional and Convention rights, thereby affording the applicant the required level of procedural safeguards. But he submits that Dr. Rutledge's opinion as to his capacity, however it was made, is of no legal effect, given the definition of a voluntary patient in s. 2 of the 2001 Act.

In this regard, Mr. Fitzgerald has referred to a number of judgments of the European Court of Human rights in which it is decided, firstly, that the determination of mental capacity is the determination of a civil right, thereby engaging rights under Article 6 of the Convention, including the right to be heard in relation to the question, as well as engaging privacy and family rights under Article 8, with any restriction on liberty being the least restrictive necessary, and respecting the principle of proportionality.

It is submitted that if it is the case that under the 2001 Act, or otherwise, the applicant's status can be changed from that of voluntary patient solely on the opinion of a doctor, that the applicant lacks the capacity to decide to be a voluntary patient, then the law in this country, in that respect, is not compatible with the Convention.

Mr. Fitzgerald has referred to the comments of Hamilton C.J. in *Re a Ward of Court (No. 2)* [1996] 2 I.R 79:

> *"The loss by an individual of his or her mental capacity does not result in any diminution of his or her personal rights recognised by the Constitution including the right to life, the right to bodily integrity, the right to privacy, including self-determination, and the right to refuse medical care or treatment. The ward is entitled to have all these rights respected, defended, vindicated and protected from unjust attack and they are in no way lessened or diminished by reason of her incapacity."*

I have already touched upon the submission being put forward by the first respondent to the effect that the applicant's presence at Our Lady's Hospital as a voluntary patient was inconsistent with his need for a specific treatment necessitated by the nature of his particular illness, given that such treatment is necessitated by the nature of his particular illness, given that such treatment is available only at the CMH but only under conditions of involuntary detention. Dr. Kennedy, the second named respondent, has sworn an affidavit in which he describes in detail the regime of treatment which is available at the CMH and the reasons why such treatment cannot be provided to patients unless they are there as an involuntary patient, and accordingly, not in a position to leave the CMH, even if they wished to do so.

I have also referred already to the submission that, while the applicant is at Our Lady's Hospital as a voluntary patient, both by reference to his own wishes, as expressed by him, and as a matter of fact, by reference to the definition of a voluntary patient contained in s. 2 of the 2001 Act, the reality, as expressed by Dr. Rutledge, is that he has not the capacity to make a fully informed decision to remain as a voluntary patient and that this lack of capacity is a direct consequence or result of the very illness from which he suffers.

Mr. Felix McEnroy S.C. for the first and second named respondents, has submitted, regardless of what is contended for by the applicant, as to the irrelevance of capacity with regard to the question of whether a person is a voluntary patient, that the test for whether a person is detained or not as an involuntary patient is not a test of capacity or consent, and in that regard, has referred to the definition of a mental disorder in s. 8 of the 2001 Act, and to the provisions of s. 14(1) of the Act, for the making of an Admission Order. Those provisions provide as follows:

> *"8. -(1) A person may be involuntarily admitted to an approved centre pursuant to an application order under sections 9 or 12 and detained there <u>on the grounds that</u> <u>he or she is suffering from a mental disorder</u>.*
>
> *14. - (1) Where a recommendation in relation to a person the subject of an application is received by the clinical director of an approved centre, a consultant psychiatrist on the staff of the approved centre shall, as soon as may be, <u>carry out an examination</u> of the person and shall thereupon either-*
>
> *(a) <u>if he or she is satisfied that the person is suffering from a mental disorder, make an order</u> to be known as an involuntary admission order and referred to in this Act as 'an admission order' in a form specified by the Commission for the reception, detention and treatment of the person and a person to whom an admission order relates is referred to in this Act as 'a patient', or*
>
> *(b) if he or she is not so satisfied, refuse to make such an order."* [My emphasis]

Mr. McEnroy has referred also to the definition of "mental disorder" contained in s. 3(1) of the Act, which provides:

"3. - (1) In this Act, 'mental disorder' means mental illness, severe dementia or significant intellectual disability 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 or to other persons

or

(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

(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."

Mr. McEnroy has submitted that arising from this definition, the provisions as to admission are dependent not only on any question of capacity or consent, but rather, whether or not there exists a mental disorder, as defined in either (a) or in (b)(i) or (ii). It is submitted that the Oireachtas has not provided that the admission of a patient is dependent upon the patient's own view of the need to detain him, and that this is not affected by whether or not the applicant in the present case has indicated that he wishes to remain as a voluntary patient.

It is submitted that where Dr. Rutledge was of the view that while the applicant was present at Our Lady's Hospital as a voluntary patient, and has stated a wish that he should retain that status, whether there or at the CMH, that does not disentitle her to consider it necessary to discharge the applicant in order to invoke procedures necessary to detain him under and Admission Order where that need is necessitated by his mental disorder, as defined. It has been submitted that the circumstances in which a person may be discharged by medical staff are not the subject of statutory provision in the 2001 Act or elsewhere, and decisions of that kind are made by responsible professionals, and in this case, reference has been made to the overriding provision in s. 4 of the 2001 Act, whereby, when making an Admission Order or any other decision (including a decision to discharge), the best interests of the person must be the principal consideration, but with "due regard" to other persons who may be at risk, and to the need to give "due regard" to other persons who may be at risk, and to the need to give "due regard" to the right of the person to dignity, bodily integrity, privacy and autonomy.

Mr. McEnroy has submitted that there can be no doubt from the medical evidence given in the case from Dr. Rutledge, Dr. Mohan and Dr. Kennedy, that the applicant is a person in need of medical care and treatment which is available in this country only at the CMH, and that this care and treatment is only capable of being administered and provided under conditions of involuntary detention. It is submitted that where his mental illness requires this treatment, the decision to discharge him and the decision leading to the Admission Order and its renewal are decisions which are clearly in the applicant's best interests, in that they provide a prospect of ameliorating his illness, and where this cannot be achieved if he simply remains at Our Lady's Hospital as a voluntary patient for an indefinite period of time, albeit from where he has never made any attempt to leave and has not failed to comply with any treatment made available to him there.

It is submitted that in circumstances where Dr. Kennedy and others have described the treatment regime at the CMH which the applicant requires, and in particular, the need that such treatment be given and experienced under conditions of involuntary detention only, it is not an unlawful, arbitrary or disproportionate deprivation of liberty such as would constitute a violation of the applicant's rights under either the Constitution or the Convention that he should be made the subject of an Admission Order in the manner that occurred herein, where the applicant was considered by the relevant medical experts to fulfil the definition of a mental disorder under s. 3 of the 2001 Act.

In this regard, also, Mr. McEnroy refers to the existence of provisions in s. 21 of the Act, for the transfer of patients to the CMH in certain circumstances for this very purpose.

Conclusions
This application is by way of judicial review to quash the Admission Order made on 6th August, 2009, and the later order renewing same on the basis that the former order is not one that is lawfully made in the circumstances of this case.

The application is predicated upon the fact that on 6th August, 2009, he was at Our Lady's Hospital as a voluntary patient who had made no effort to leave, nor expressed any intention of leaving, and who was cooperating in every way with the care and treatment being given to him.

He wishes to remain as a voluntary patient, even in circumstances where a recommended treatment not available at Our Lady's Hospital is available at the CMH. He says that he is willing to go to the CMH for that treatment and to remain there, but only as a voluntary patient. Unless his status is altered to involuntary, or unless the CMH can be required by order of this Court to take him as a voluntary patient, this required treatment will be unavailable to him.

It is submitted that he has an absolute right to retain his voluntary status as long as he expresses a desire to do so, and that the device whereby he was discharged, in a formal sense only, and immediately made the subject of an Admission Order, is an impermissible invasion and violation of that right; and furthermore, that what is referred to as the policy of the second named respondent of only treating patients who are the subject of an Admission Order, cannot justify the alteration of the applicant's voluntary status, simply so that he can access treatment at the CMH which he accepts he requires.

This right to retain his voluntary status is said to derive from his rights to dignity, bodily integrity, privacy and autonomy, being rights recognised in the Act itself, as well as being constitutional rights and rights under the Convention.

Voluntary status

It is an obvious feature of the 2001 Act that it does not provide for the regulation of care and treatment of voluntary patients. Its focus is very clearly on persons suffering from a mental illness and who need to be involuntarily admitted to an approved centre. The Act makes little reference to voluntary patients except for:

(i) the provisions of s. 2 which defines a voluntary patient as being one who is receiving care and treatment who is not the subject of an Admission or Renewal Order;

(ii) the provision in s. 29 providing that nothing in the Act prevents a person from being admitted voluntarily or remaining as a voluntary patient after he/she has ceased to be liable to be detained, and

(iii) the provisions in sections 23 and 24 whereby a voluntary patient who attempts to leave may, in certain circumstances, be made the subject of an Admission Order and thereby prevented from leaving, even though he/she appears to wish to do so.

But there are no provisions in this Act which regulate or otherwise provide for how a voluntary patient is to be cared for and treated, and neither are there any provisions in this Act or otherwise for the review of a voluntary patient's illness, care and treatment, or in respect of the discharge of a voluntary patient.

A voluntary patient is a person who, by definition, but subject to sections 23 and 24 of the Act, is free to discharge himself/herself from hospital. It is not the case that a hospital is obliged to take in any person who presents, expressing a wish to be admitted as a voluntary patient. Neither is it the case that a hospital may not discharge a voluntary patient, even in circumstances where the person is not cured of whatever illness caused admission in the first place.

For example, it might be concluded by the hospital that while the person has not been cured, there is no treatment available at that hospital which can be usefully administered with any prospect of improvement, and/or that he/she can be treated at home or on an outpatient basis. There would be professional obligations which would deter a hospital from discharging a person to circumstances where such a discharge would place the person in danger, but such a person could, on the other hand, be discharged into the care of responsible family members.

I say this simply to demonstrate that just because a person expresses a wish to remain in a hospital, including an approved centre, as a voluntary patient, does not mean that the hospital may not properly discharge the patient when it can no longer ameliorate the illness through any interventions available at the hospital.

What happened in the present case is that a view by the relevant professionals was taken, at least by the end of July 2009, and probably much earlier, given the events shown on the papers, that the applicant's illness was such as to require treatment, but of a type which was not available at Our Lady's Hospital. That treatment is available only at the CMH and is available to the applicant only if he is transferred to the CMH as an involuntary patient.

There has been no evidence that Our Lady's Hospital had decided to discharge the applicant in the sense of sending him home. In fact, all the evidence is that, should the applicant attempt to leave the approved centre, or express an intention of so doing, the provisions of sections 23 and 24 would be invoked by his treating consultant psychiatrist as it is considered that he suffers from a mental disorder, as defined, and that at least in the public interest, he needs to remain in an approved centre.

But he is not going to get better simply by remaining at Our Lady's Hospital. He needs a particular regime of treatment. That treatment is available only at CMH and only on certain conditions, namely, that he is not a voluntary patient since that treatment is inconsistent with voluntary status. It has therefore been decided that he should become an involuntary patient so that in his best interests he could avail of that treatment at the CMH. The problem has been how to achieve that situation within the provisions of the 2001 Act. Previous attempts to bring his voluntary status to an end by making an Admission Order have been unsuccessful as the history of the case has shown.

Nevertheless, everybody concerned has acted in what they consider to be the best interests of the applicant, as indeed they are bound to do. They want him to be able to access this particular treatment as it provides the only hope of long-term improvement in his chronic illness. As Dr. Rutledge has stated in her affidavit, the failure of the applicant to access this treatment would lead to a situation whereby the applicant would simply remain at Our Lady's Hospital as a voluntary patient, passively going from day to day in complete compliance with any treatment being provided, and demonstrating no wish or intention to leave. It is clear, also, that this would be open-ended and would do nothing to advance the applicant's health from its present state. The passivity and cooperation demonstrated by the applicant, and expression of his wishes to remain as a voluntary patient, is considered by the experts to be a symptom or consequence of the very illness from which he unfortunately suffers.

I am of the view that the decision to discharge the applicant in the way that occurred on 6th August, 2009, and then immediately have him made the subject of an Admission Order is a decision which the first named respondent was entitled to make.

The Act contains no provision which prohibits such a discharge in the case of a voluntary patient, and I have no doubt that, if under their professional and ethical guidelines for discharging patients, responsible medical personnel were not permitted to act in this way, they would not have done so. On the other hand, of course, s. 28 of the Act makes certain provisions in respect of the discharge of detained patients. They are not relevant to the present case.

Attempts, again in the best interests of the applicant, as he sees them, to admit the applicant under sections 23 and 24 of the Act, had been made previously, but these had been unsuccessful and the orders in question were revoked by the Tribunal, inter alia, on the basis that there was no evidence that there was no evidence of any attempt or intention to leave the approved centre. It is clear that the applicant's family was anxious that he be made the subject of an Admission Order so that he could access the treatment he needs at the CMH.

By discharging the applicant, albeit other than by sending him home, they were facilitating his admission as an involuntary patient so that he could be provided with care and treatment considered necessary, since he fulfilled the criteria for admission as an involuntary patient. Nobody disputes that he has a mental disorder, and indeed, there is no dispute that he needs the treatment available at the CMH.

It cannot, in my view, be the case that a person suffering from a mental disorder must, in all circumstances, having first admitted himself/herself as a voluntary patient, always be allowed to remain at an approved centre on a voluntary basis for as long as he/she expresses a wish so to do.

There must be circumstances where a person who has a mental disorder admits himself to an approved centre and remains there voluntarily, yet whose condition deteriorates to a point where different treatment is required to be administered, perhaps at the CMH. Capacity to consent is not a requirement for being a voluntary patient, as has been made clear in the two decisions already referred to. The definition makes that clear. It could not be said, therefore, that once a person is a voluntary patient, he/she must forever remain a voluntary patient, even though no attempt is made to leave, or intention expressed to do so. The treating consultant psychiatrist must be entitled to make a decision in a patient's best interests in order to facilitate access to recommended required

treatment. Neither could it be the case that simply because a voluntary patient asserts a wish to remain as a voluntary patient, such an assertion must trump an expert medical opinion that he or she is incapable of making such a decision on an informed basis, particularly where it is thought that the very illness itself disables the person from making a properly informed decision in that regard. That would produce an absurd situation whereby an ill person could, because he/she is so ill, make a decision, the result of which is a denial of treatment which his doctors believe will assist the condition. The right to autonomy, dignity, privacy and bodily integrity could never justify such a scenario. The applicant's stated wish to remain as a voluntary patient has the effect of denying to him treatment which he needs, given the fact that those at the CMH in charge of providing such treatment have stated clearly and categorically that it can be provided only to persons who are not there under an Admission Order. This Court cannot decide that such a policy is unlawful. It is not a question of it being lawful or not. It is a medical opinion that it is a form of treatment which cannot be otherwise provided.

It is necessary, first of all, to disentangle the applicant's voluntary status at Our Lady's Hospital, from the decision to invoke the provisions of the Act, leading to the making of the Admission Order under s. 14 of the Act, and to decide, firstly, was it permissible for the first named respondent to discharge the applicant on 6th August, 2009, and then to separately consider whether he fulfilled the requirements for admission under section 14. It is somewhat missing the point to consider matters in terms of whether or not it is permissible to alter a person's voluntary status to involuntary, against his express wishes, simply because there is a policy at the CMH as to who they admit for treatment.

It was permissible to discharge the applicant as a voluntary patient, evening the manner achieved in this case, in spite of the fact that the applicant did not wish to be so discharged, or perhaps is presumed, for the purpose of this case, not to have so wished, since there has been no evidence of any objection being voiced by him. That discharge was not contrary to any law.

His wish, be it a properly informed wish or otherwise, to remain at the hospital, may have to yield to other considerations and decisions being made in his best interests by medical personnel in whose care he is. His right to remain as a voluntary patient is not, therefore, an absolute right, and it does not follow that his discharge, even one for the purpose of enabling him to be admitted as an involuntary patient, constitutes a violation of his rights to dignity, bodily integrity, privacy or autonomy. Of course, those rights are recognised and must be appropriately protected and vindicated, but they are limited to the extent that may be consistent with his best interests, as determined by relevant medical personnel, and provided that such limitations as are imposed, are imposed in accordance with laws enacted for the protection of the patient from any arbitrariness or caprice on the part of those detaining him.

I appreciate that Mr. Fitzgerald has submitted that making the applicant involuntary when he has stated that he will cooperate and has never showed signs to the contrary must mean that involuntary detention is not "necessary". But, in my view, the element of necessity arises form the fact that the treatment which he needs is available to him only if he is involuntarily detained and, therefore, regardless of his own wishes in that regard. In saying that, I am overlooking the fact that Dr. Rutledge is of the view that he, in reality, is incapable for properly making a decision to be voluntary, due to the illness from which he suffers.

The next question is whether, having been discharged and therefore no longer a voluntary patient, the applicant, at that point in time, fulfilled the criteria for admission as an involuntary patient under and Admission Order, and whether the prescribed procedures were followed.

There can be no doubt that he suffered at that time from a "mental illness" as defined in s. 2 of the Act. That is not disputed. The question, then, is whether it was such as to amount also to a mental disorder and that is determined by reference to s, 3(1)(a) or (b) of the 2001 Act. Again, there is no doubt that the expert view was that the criteria for mental disorder is fulfilled. There is evidence that his illness fulfilled the criteria in both paragraph (a) and paragraph (b)(i) and (ii).

Of particular importance, in my view, is the provision in s. 3(1) paragraph (b)(i) and (ii) which includes as a mental disorder a mental illness where:

> *". . . a failure to admit the person to an approved centre . . . 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."*

It seems to me that there is no room for doubt, on the evidence, that the applicant's situation fitted foursquare within that provision. Section 8 of the Act provides that a person may be involuntarily admitted to an approved centre and detained on the grounds that he or she is suffering from such a "mental disorder". There is no suggestion that the steps taken leading to the making of the Admission Order on 6th August, 2009, were other than in accordance with the statutory provisions in that regard. Once the personnel concerned were entitled to discharge the applicant as a voluntary patient, then there was nothing to prevent his being made the subject of an Admission Order, provided, of course, that the correct procedures were followed.

I am satisfied, therefore, that it was permissible to discharge the applicant on 6th August, 2009, and that, having done so, the requirements for making an Admission Order were fulfilled and the required steps taken. None of that, in my view, constitutes a violation of the applicant's constitutional rights to dignity, autonomy, privacy or bodily integrity, since everything that occurred did so in his own best interests from a medical point of view, and in circumstances where there was an expert view that his own capacity to make a fully informed and appropriate decision regarding his status is impaired by the very illness it sought to treat, and where his own wish to remain a voluntary patient will result in a denial to him of necessary recommended treatment available only at the CMH.

As to the so-called policy at CMH that this treatment will be given only to involuntary patients, I have already said something about that. I do not regard it as a policy arising from some arbitrary decision on the part of the CMH that it will not admit and treat voluntary patients. All the evidence adduced in this case makes it clear that the reason why a voluntary patient cannot access this treatment is that a patient receiving this treatment must, if necessary, be prevented from leaving the CMH and must be capable of being restrained in other ways, perhaps, by reason of the very nature of the treatment, as described. I appreciate that sections 23 and 24 of the Act provide for the detention of a voluntary patient who might attempt to leave an approved centre. But I such a circumstance, the initial detention under s. 23 is for not more than twenty-four hours, and there is then a procedure to go through under s. 24 of the Act which requires another consultant psychiatrist to carry out an examination of the patient, who must then issue a certificate as to the need to detain.

Thereafter, an Admission Order is made and the procedures and safeguards set forth in sections 15 to 22 of the Act apply as if the patient had been the subject of an Admission Order made under section 14. I can well understand that, given the intensive nature of the treatment being undertaken at the CMH, it would be desirable that it should not have to be interrupted by reason of having to adopt procedures under sections 23 and 24, should the voluntary patient decide or try to leave the CMH.

For that reason, I can fully understand that from a medical treatment point of view, the formalities for involuntary admission might need to be completed prior to admission or transfer to the CMH. There seems to me to be nothing irrational or arbitrary, less still, discriminatory, about having a requirement that such patients accessing this particular treatment at CMH be there on an involuntary basis.

I am not satisfied that in circumstances where I am of the view that such procedures as were adopted in this case, and the reasons for them are in accordance with the statutory provisions, such a statutory regime is unconstitutional. For the reasons stated, I am satisfied that it does not violate the applicant's constitutional rights, as submitted.

For these reasons, I refuse the reliefs sought.