

K.C. v Clinical Director of St. Loman's Hospital and Health Service Executive

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Judgement of Hogan J. Delivered on the 4th July 2013

Facts: The Applicant was admitted to the approved centre on the 24th April 2013 following an application and recommendation. She represented to the consultant Psychiatrist that her professional status would be compromised if she was admitted involuntarily. She agreed to stay as a voluntary patient. No admission order was made. However she refused all treatment and never expressed a wish to leave the hospital.

An authorised officer made an application under Section 9 on the 7th June 2013 and on the same day the applicant's registered medical practitioner attended the approved centre and examined her. He made a recommendation for an involuntary detention and she was then admitted pursuant to Section 14.

Issues: The two issues Judge Hogan had to deal with were as follows:-

- (a) Do the words "*involuntarily admitted to an approved Centre*" in Sections {8(1), 9(1),10(1) and} 14(1)(a) prevent the admission of a person to such an approved centre where they are already physically located there.
- (b) Do the provisions of Section 23 and Section 24 impliedly prevent the making of an Admission Order in respect of an otherwise voluntary patient.

Relevant sections of the Mental Health Act, 2001

8.—(1) A person may be *involuntarily admitted to an approved centre* pursuant to an application under [section 9](#) or 12 and detained there on the grounds that he or she is suffering from a mental disorder.

9.—(1) Subject to subsection (4) and (6) and [section 12](#), where it is proposed to have a person (other than a child) *involuntarily admitted to an approved centre*, an application for a recommendation that the person be so admitted may be made to a registered medical practitioner by any of the following.....

10.—(1) Where a registered medical practitioner is satisfied following an examination of the person the subject of the application that the person is suffering from a mental disorder, he or she shall make a recommendation (in this Act referred to as "a recommendation") in a form specified by the Commission that the person be *involuntarily admitted to an approved centre* (other than the Central Mental Hospital) specified by him or her in the recommendation

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, carry out an examination of the person and shall thereupon either—

(a) if he or she is satisfied that the person is suffering from a mental disorder, make an order 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 order.

23.—(1) Where a person (other than a child) 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.

24.—(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 [section 23](#).

(6) References in this section to the consultant psychiatrist responsible for the care and treatment of the person include references to a consultant psychiatrist acting on behalf of the first-mentioned consultant psychiatrist.

Reasoning by Hogan J.

The applicant stated that as they were already physically present in the hospital they cannot be involuntarily admitted to that approved centre in the manner contemplated by Section 14. Hogan J. believed that the concept of an involuntary patient is a legal concept designed to deal with the status of the patient. He found that the fact the patient has already been physically admitted the hospital as a voluntary patient was irrelevant. What mattered was that she was not involuntarily admitted already.

Judge Hogan separated the location and status and stated that the adverbial qualification “involuntarily” completely changed the sense and meaning of the relevant statutory provision. “*involuntarily*” changes the focus away from that of admission “physical admission” to that of status, as from that point on, it is the applicant’s legal status as an involuntary patient that is of significance.

Judge Hogan also observed that there was no express prohibition, in part II of the Act, excluding the use of involuntary admission procedures in the case of patient who was already voluntarily resident in the approved centre. He believed that if the Oireachtas intended to exclude the use of this procedure in such a case, it would have done so expressly.

Does Section 23(1) impliedly create a closed category of circumstances in which a voluntary patient can be compulsorily detained.

Judge Hogan examined the provisions of Section 23(1) and Section 24 in detail. He gave examples of cases where the enumeration of one set of circumstances may be taken impliedly to have an exclusionary effect, e.g. Article 16.1.1 of the Constitution states that all citizens aged 21 years are eligible for membership of Dáil Eireann and this creates a closed category of people eligible to stand. However, he did not believe that it was proper to interpret Section 23(1) and section 24 in an exclusionary manner. He states Section 23(1) caters for the special case where the voluntary patient who requires on-going treatment tries to leave the hospital. Judge Hogan finds that the Oireachtas has sought to cater for this special case by allowing for the temporary detention of the patient in those circumstances. Judge Hogan states that you cannot infer from this special provision dealing with the particular set of circumstances that an application for an involuntary admission of a patient currently staying voluntarily in the approved centre and who has not expressed a wish to leave is excluded. Hogan J. therefore found that the detention was lawful.

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