

M.K v Clinical Director of St. Patrick's University Hospital and Governors of St. Patrick's Hospital Dublin also known as St. Patrick's University Hospital and Health Service Executive

Judgement of Ms. Justice Laffoy delivered on the 28th August 2013.

<http://www.bailii.org/ie/cases/IEHC/2013/H409.html>

Facts: Application for relief under Article 40.4.2 of the Constitution.

The Applicant was admitted to the approved centre as a voluntary patient on the 11th July 2013. He repeatedly attempted to leave the ward and was uncooperative. At 17.50pm on the same day Section 23(1) was invoked by a nurse. At 23.50pm of the same day, he suffered a significant seizure which was a medical emergency and he was treated on an emergency basis and was taken from St. Patrick's by ambulance at 00.25am on the 12th July 2013 to St. James's where he was treated until the 19th July 2013. He was brought back to St. Patrick's on the 19th July 2013.

The Applicant states that he is currently not lawfully detained in St. Patrick's because of the mandatory requirements of Section 24 which were triggered by Section 23(1) on the 11th July were not complied with as the applicant was neither discharged or examined in accordance with Section 24(2). As a result the detention ceased to be lawful. The Applicant claims that he was transferred from St. Patrick's to St. James's, not discharged. The Hospital claims that when a patient is removed from one hospital to another for emergency medical treatment they are discharged from the care of the first hospital.

The hospital states that the applicant was readmitted to St. Patrick's special care unit on the 19th July 2013 as a voluntary patient. The applicant claims that he was an involuntary patient. On the 22nd July, the applicant asked to leave and Section 23(1) and Section 24 were invoked. It appeared that a Form 13 was completed on the 22nd July but no Form 13 was completed on the 11th July 2013. Judge Laffoy felt this fact was wholly irrelevant.

The legal rep for the applicant, Mr. Felton had submitted to the tribunal which took place on the 9th August 2013 that the capacity of the applicant should have been assessed prior to their re-admission to St. Pat's. The tribunal held that there is no statutory provision that requires an assessment of capacity to be carried out prior to an admission (as a voluntary patient).

Issues to be determined:-

1. Was there a failure to comply with section 24 and if so what effect does this have on the lawfulness of the admission order
2. Was the applicant a voluntary patient from 19th July 2013

Reasoning by Laffoy J

Judge Laffoy considered the decision of the Supreme Court *E.H v Clinical Director of St. Vincent's Hospital* as the most relevant. Judge Laffoy also referred to *R.L. –v- Clinical Director of St. Brendan's Hospital* and in particular Hardiman J's statement that

“the Court could simply see no reason whatsoever to be believe that an irregularity or direct breach of Section 13 would render what was on the face of it a lawful detention on foot of an Admission Order made under Section 14 invalid.

33. What this Court is concerned with is the application of the provisions of the Act of 2001 and, in particular, the application of ss. 23 and 24. Section 24 does not make provision for the situation which arose in the applicant's case, that an emergency arose within the twenty four hour period following the invocation of s. 23 which required that the applicant be moved by ambulance to St. James's and necessitated his admission, not using that word in any technical sense, to St. James's and his retention there for almost a week, which made it utterly impracticable and probably impossible for Professor McLoughlin, as the person charged with complying with the mandatory requirements of s. 24, to do so. There is no question but that the action taken in St. Patrick's was necessary and was in the best interests of the applicant. In terms of the application of the Act of 2001, in my view, the consequence of the impracticability and probable impossibility of complying with the requirements of s. 24 is that the applicant retained the status of a voluntary patient within the meaning of the Act.

34. The failure to comply with the requirements of s. 24 arose because of the intervention of the emergency. Such failure cannot be characterised as “a gross abuse of power”, nor can it be characterised as “default of fundamental requirements” such as was identified by Kearns J. in the E.H. case as a defect in an earlier period of detention which would justify release from a later one. While the requirements of s. 24 are unquestionably fundamental and not mere technicalities, it would be grossly unfair to find that failure to comply with them in the aftermath of the emergency was due to default, which would imply some form of wrongdoing. On the evidence, I am satisfied that there was no default on the part of the personnel in St. Patrick's or any abuse of power in relation to the treatment of the applicant around midnight on 11th July, 2013. On the contrary, there was an emergency which was appropriately dealt with.

35. As regards the non-completion of the final question in Part B in the Clinical Practice Form, in my view, that is of no relevance to the issue the Court has to determine. The Clinical Practice Form, as is clear on its face, is merely a document which records the events which have happened which, when completed, is required to be filed in the patient's clinical file, so that it may be inspected at a later stage on behalf of the Commission, if that is necessary. I am satisfied that the non-completion of Part B had no bearing on the status of the applicant as a voluntary patient between

12th July, 2013 and 19th July, 2013 and did not in any way render what happened subsequently as unlawful detention.

36. Turning to the second limb of the case made on behalf of the applicant, namely, that he lacked the capacity to agree to be taken back into St. Patrick's to receive care and treatment on 19th July, 2013, so that he was unlawfully brought back into the hospital and unlawfully detained there, I am satisfied that that submission is at variance with what was decided by the Supreme Court in the E.H. case. If anything, there is even stronger evidence in this case than there was in the E.H. case upon which a finding can be made that the applicant was a voluntary patient within the meaning of the Act of 2001 from 19th July, 2013 until 22nd July, 2013, when s. 23 was once again invoked. Professor Lucey's evidence is corroborated by contemporaneous documentation, including a consent form signed by the applicant, even though his signature is difficult to decipher, and also Dr. Brady's medical record of what occurred during his examination of the applicant on 19th July, 2013.

37. Accordingly, the applicant remained a voluntary patient in St. Patrick's until 22nd July, 2013, when s. 23 was once again invoked and the process mandated by s. 24 was implemented. It was not suggested that that process was implemented in an improper manner, nor could it be. The process led to the making of the admission order of 22nd July, 2013. By virtue of the admission order, its affirmation by the Tribunal, and the renewal order made on 9th August, 2013, the applicant has been lawfully detained in St. Patrick's up to the hearing of the enquiry and that remains the position, unless, on the review, which I understand was to take place yesterday, the Tribunal which conducted that review has failed to affirm the renewal order.

Decision

38. On the assumption that that is not the case, on the authority of the decisions of the Supreme Court to which I have referred, and, in particular, the decision in the E.H. case, the Court must hold the applicant is being lawfully detained at St. Patrick's on foot of the renewal order dated 9th August, 2013 and will remain so until 9th October, 2013 and I so find.

Points arising:

1. Laffoy J. agrees that there was failure to comply with requirements of Section 24 but states that it cannot be characterised as default of fundamental requirements. She admits that the requirements of Section 24 are unquestionably fundamental but states it would be grossly unfair to find that failure to comply with them in the aftermath of the emergency was due to default and would imply some form of wrongdoing. She finds no fault on the part of the personnel in St. Patrick's or any abuse of power in relation to any treatment of the applicant round midnight on the 11th July 2013. However, it appear to be uncontested that as and from 17.50pm on the 11th July 2013 the applicant was detained in the approved centre. It appears to be stretching the definition of a voluntary patient under the Act almost to breaking point to consider them a voluntary patient. However, the definition of a voluntary patient means 'a person receiving care and treatment in an approved centre who is not the subject of an Admission Order or a Renewal Order.' The applicant was merely being held for 24

hours and was not the subject of Admission order or Renewal Order. A review of the law relating to the definition of voluntary patient is now long overdue.

2. No mention was made in the case of S.O. which may have been a helpful example of what a default of fundamental requirements looks like in practice. The cases of *EH* and *RL* are again guiding the jurisprudence of the High Court (business as usual).

Keith Walsh Solicitor

8 St. Agnes Road,

Crumlin Village,

Dublin 12.

keith@kwsols.ie

01 455 4723