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Supreme Court critical of case taken against St Vincent's Hospital

Ed Madden

Ed Madden, BL, looks at a recent Supreme Court case in which the Court found that proceedings taken on behalf of a psychiatric patient were initiated and maintained on purely technical and unmeritorious grounds.

Ms E. H. is a single woman in her late sixties who lives alone in Dublin. Her only close relative is a brother, who lives elsewhere in the city. She was first seen by the psychiatric service in St Vincent's Hospital on May 16, 2008 when she was being treated for a fracture of her leg.

At that time, the medical team noted that she appeared to be paranoid, and was refusing treatment. One week later, she was assessed by Dr Aileen Freyne, a consultant psychiatrist at the hospital, who concluded that Ms H. was suffering from a mental disorder. She was prescribed antipsychotic medication.

Involuntary patient

Ms H. was admitted to Elm Mount Psychiatric Unit in the hospital on June 3, 2008 as an involuntary patient. At that time, she was not accepting medical treatment on the surgical ward as she did not believe she was ill. She was also refusing to eat or drink. She responded well to the course of antipsychotic medication, to the point where it was possible to discharge her from the Unit at the end of June, 2008 with a defined discharge plan in place to meet her continuing needs.

Regrettably, following her return home, Ms H. refused to co-operate with the discharge plan and she stopped taking essential medication. By mid-July, 2008 her personal circumstances had become critical. When health personnel called to see her at that time, they found her seriously ill and almost unconscious.

She was removed to St Michael's Hospital, where her clinical needs were treated and where she was further assessed by psychiatric staff. On August 7, 2008, she was transferred back to the Elm Mount Unit as an involuntary patient where she was noted to be depressed, with severe mood swings suggesting a bi-polar disorder. An involuntary renewal order was made on September 10, 2008.

Treated with lithium

Ms H. was treated with antipsychotic and antidepressant medication, and a specialised psychiatric nursing care regime was put in place. In October, 2008 she was treated with lithium, which was intended to make her mental condition sufficiently stable to facilitate her discharge into long-term care. However, there was also evidence that she was developing dementia.

On December 10, 2008 the renewal order under which Ms H. was being detained was revoked by the Mental Health Tribunal. Apparently, a date had been left out of a renewal form, and the Tribunal took the view that because of this omission, it lacked jurisdiction to further renew the order under which she was being detained.

This was explained to Ms H. who verbally agreed to stay in the Unit until her brother came to collect her at a future date. However, she did not sign the voluntary admission form and the hospital records indicated that she lacked the 'capacity' to sign such a form 'because of her dementia and mental illness'. The hospital records further noted that if she were to attempt to leave the Unit, she would require detention as an involuntary patient.

On December 22, 2008 Ms H. did try to leave the unit. The hospital invoked the relevant procedures under the Mental Health Act and once again, detained her as an involuntary patient. This detention enabled ongoing treatment to be provided for her. Ms H.'s mood gradually improved and she began taking oral medication.

The involuntary detention made on December 22, 2008 was reviewed by the Mental Health Tribunal on January 9, 2009. The Tribunal affirmed the admission order. At subsequent hearings, the Tribunal affirmed further renewal orders and Ms H. continued to be detained in the Elm Mount Unit on an involuntary basis.

Counsel on behalf of Ms H. took High Court proceedings challenging her detention in St Vincent's Hospital as being unlawful. In a judgment issued in February, 2009 Mr Justice O'Neill concluded that Ms H.'s detention from December 22, 2008 onwards was lawful.

Decision was appealed

He took the view that the issue as to whether the prior period of detention from December 10, 2008 to December 22, 2008 was otherwise than in accordance with law was immaterial to the outcome of the case before him. His decision was in turn appealed to the Supreme Court.

When the matter came on for hearing in the Supreme Court in May 2009, counsel for Ms H., in response to a direct question from the Court, said that Ms H., notwithstanding her mental illness, had been and was competent to give instructions to her legal advisers in the case.

He maintained, however, that at no time during her stays in St Vincent's Hospital was she a voluntary patient within the definition contained in the Mental Health Act.

He submitted that, properly understood, the definition of 'voluntary patient' in the Act had to be taken as meaning a person who freely and willingly consented to remaining in hospital. That was not the case with Ms H.

Furthermore, for a period of some 12 days, she had been deprived of the protections set out in the Mental Health Act, such as her statutory right to a review of her detention.

Counsel further submitted that this unlawful detention tainted, or had a domino effect, on the procedures subsequently deployed under the Act from December 22 onwards.

While accepting that Ms H. was a person with a serious mental illness, counsel stated that it was not for the Court to 'second guess' or speculate as to what would become of her if her release from St Vincent's was directed by the Court.

Giving the judgment of the Court, Mr Justice Kearns said he had difficulty in reconciling the assertions of counsel as to his client's lack of mental capacity on the one hand, with the contradictory assertion that Ms H. was and remained capable of instructing legal advisers.

It was disquieting, to say the least, that in a matter of such importance and sensitivity, no rational basis beyond mere assertion was advanced for these two apparently irreconcilable propositions.

The judge said that the terminology adopted in the Mental Health Act ascribes a very particular meaning to the term 'voluntary patient'. It does not describe such a person as one who freely and voluntarily gives consent to an admission order.

Instead, the express statutory language 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.

In addition, any interpretation of the term in the Act must be informed by the overall scheme and paternalistic intent of the legislation.

Mr Justice Kearns said that the High Court had ample evidence upon which to find that Ms H. was a voluntary patient within the meaning of the Act between December 10 and December 22, 2008, in circumstances where Dr Freyne had given evidence on affidavit to that effect, which was not contradicted. That finding was sufficient in itself to dispose of the matter.

The judge added that even if he had taken a different view of the status of Ms H. as of December 22, 2008, he would have arrived at the same conclusion. The admission order made on December 22, 2008 was in all respects valid. To the extent that Ms H. was at any time denied the benefit of certain procedural protections, it was 'absurd and unreal' to suggest that she was removed at any point from the protection of the Act.

Dr Freyne had maintained a very high level of supervision of her patient's condition and was at all times disposed to reinstate her status as a voluntary patient when, in her judgment, it was appropriate to do so.

Accordingly, the protection of the procedural requirements of the Act of 2001, even if suspended for a short period of time, was fully restored to Ms H. as a result of the admission order made on December 22, 2008.

In need of care

Mr Justice Kearns said that the legal proceedings taken on behalf of Ms H. were initiated and maintained on purely technical and unmeritorious grounds. It was difficult to see in what way they advanced the interests of Ms H., who was patently in need of psychiatric care.

Mere technical defects in a patient's detention should not give rise to a 'rush to court', particularly where, as in this case, any such defect could or had been cured. Only in cases where there has been a gross abuse of power, or default of fundamental requirements, would a defect in an earlier period of detention justify release from a later one.

The Court went on to dismiss the appeal.

Reference: [2009] IESC 46.

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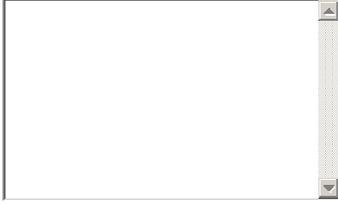
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