IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
(CROWN OFFICE LIST)

CO/3773/96

Royal Courts of Justice
Strand
London W2A 2LL

Wednesday, 29th April 1998

B e f o r e:

MR JUSTICE LATHAM

R E G I N A

- v -

RIVERSIDE MENTAL HEALTH TRUST
Ex Parte Gary Charles Alfred Huzzey

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(Transcript of the computer aided Palantype notes of
Smith Bernal Reporting Ltd, 180 Fleet Street
London EC4A 2HD
Tel: 0171 421 4040
Official Shorthand Writers to the Court

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MR K GLEDHILL (instructed by Messrs Anthony Stokoe Solicitors, Surrey KT2 6PW) appeared on behalf of the applicant.

MR G CLARKE (instructed by Messrs Radcliffes Crossman, Westminister, SW1P 3SJ) appeared on behalf of the respondent.

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J U D G M E N T
(As approved by the Court)

JUDGMENT

MR JUSTICE LATHAM: On the 22 June 1996, the applicant was taken to the secure unit at Horton Hospital, Epsom, which is managed by the respondent, and detained there until discharged by decision of the Mental Health Review Tribunal dated 24 October 1996. On the 20 July 1996, the applicant's mother had asked for his discharge; the responsible medical officer provided the respondent with a report certifying that in his opinion the applicant, if discharged, would be likely to act in a manner dangerous to other persons or to himself. As a result, the respondent convened a meeting of managers to review the applicant's continued detention. The managers concluded on 30 July 1996 that the detention should continue. The applicant contends in these proceedings that this decision was unlawful and irrational, and that the managers failed, as was their duty, to give proper reasons for it. It is accepted that if the decision was so flawed that I should quash it, the applicant's continued detention between 30 July 1996 and 24 October 1996 was unlawful: if I so find, the applicant seeks directions as to the trial of his claim for damages which is made in these proceedings.

In order to understand the nature of the case, it is necessary for me to set out the relevant provisions of the Mental Health Act 1983 ("The Act") and the Code of Practice prepared by the Secretary of State for Health for the guidance of, inter alia managers of hospitals, pursuant to section 118 of the Act.

By section 2 of the Act, a patient may be admitted to hospital and detained there for no longer than 28 days "for assessment" which, by sub section (2)(a) includes assessment followed by medical treatment.

By section 3 of the Act, a patient may be admitted to hospital and detained there "for treatment" on the grounds set out in sub section (2) namely:

> "(a) He is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
>
> (b) In the case of psychopathic disorder or mental impairment such treatment is likely to alleviate or prevent a deterioration of his condition; and
>
> (c) It is necessary for the health or the safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section."

By section 20 of the Act, detention under section 3 is in the first instance for a period of 6 months, but can be extended if the necessary conditions continue to apply for a further 6 months and thereafter from year to year.

By section 23 of the Act, an order for discharge may at any time be made in respect of a patient either by three members of a body such as the respondent, or by the nearest relative of a patient. The section does not expressly identify what criteria have to be applied before any such order for discharge may be made.

However, by section 25 of the Act, an order for the discharge of a patient by his nearest relative cannot be made without giving 72 hours notice in writing to the managers of the hospital, and is of no effect if within that period, the responsible medical officer furnishes to the managers a report certifying that in the opinion of that officer the patient, if discharged, would be "likely to act in a manner dangerous to other persons or to himself", sometimes described as a "barring" report.

Chapter 22 of the Code of Practice, expressed as giving "guidance" to relevant authorities, provides in 22.2:

> "Managers should undertake a review (that is the process by which the managers decide whether a patient can still be detained or can be discharged) at any time at their discretion, but must do so:
>
> (c) Where a patient's responsible medical officer makes a report to the managers in accordance with section 25(1), barring a nearest relative's discharge application."

By 22.5, guidance is given as to the way in which a review is to be conducted. By 22.6, Managers are instructed that they should ensure that their decision and the reasons for it are communicated immediately both orally and in writing to the patient and to any relative who has expressed views.

By section 66 of the Act, the nearest relative in a case where a barring report has been furnished under section 25 may apply to a Mental Health Review Tribunal. And by section 72 (1)(b)(iii) the Tribunal shall discharge the patient in the case of such an application if satisfied that the patient, if released, would not be "likely to act in a manner dangerous to other persons or to himself."

The applicants mental problems started at the end of 1992, when he sustained a serious injury to the soft tissues of the forehead which produced a wound which did not heal. Plastic surgery was unable to resolve the problem and was thought by the applicant to have exacerbated it. He became convinced that he was the victim of medical negligence. His behaviour became obsessive and threatening particularly to those who were treating him. It was for these reasons that he was originally detained under section 2 of the Act on the 21 June 1996, which was the basis of

his detention at Horton Hospital from the 22 June 1996 to 17 July 1996. Thereafter he was detained purportedly pursuant to the provisions of section 3 of the Act. His nearest relative, his mother, wrote a letter to the respondent on the 20 July 1996, which was treated as an order for release pursuant to section 23 of the Act, and which resulted in the responsible medical officer, Doctor James, furnishing the respondent with a barring report under section 25. Unfortunately neither the letter nor the report are in the papers before me. But the application has been argued on the basis that there was both a section 23 order for release, and a barring report under section 25. This is consistent with what was recorded in the joint report of Doctor Hopley and Doctor James of the 29 July 1996, in which the applicant is recorded as having said on the 23 July 1996:

"Whoever the R M O is who barred me from being discharged I will get legal aid and sue the R M O....."

It is also consistent with the fact that the managers ultimate decision was notified to the applicant's mother by letter of the 30 July 1996 in the following terms:

"As the nearest relative to Gary Huzzy (sic) I write to inform you that at a recent meeting at Horton Hospital Managers gave careful consideration to your application to discharge your nearest relative who is currently detained under section 3 of the 1993 Mental Health Act...."

In accordance with the Code of Practice, the Respondents convened a meeting of managers to carry out a review. At the review, which was held on the 30 July 1996, the managers received the joint report of Doctor James and Doctor Hopley, a report from Doctor Gray a psychologist, a nursing summary from Staff Nurse McKinney and the minutes of a case conference of 13 June 1996. They also heard from Doctor James, and from Mr Stokoe, a solicitor acting on behalf of the applicant.

The managers determined not to discharge the applicant. The reasons given on the relevant form were as follows:

"In our opinion Gary Huzzy (sic) requires treatment following further assessment as a detained in-patient, for the protection of others and his own well being. We therefore reject the appeal."

In his second affidavit, dated the 19 May 1997, Mr Hill, who chaired the meeting states:

"In particular it can be seen that the Managers decision reflected and was based upon the conclusions of the report submitted to the Managers..... and should be considered in that context."

This refers to the conclusions and recommendations of the joint report of Doctor James and Doctor Hopley which

reads, so far as relevant, as follows:

"1. Mr Huzzey is suffering from an organic personality disorder which is a mental disorder under the terms of part 1 of the Mental Health Act 1983. This is characterised by a significant alteration of the habitual patterns of his premorbid behaviour subsequent to a frontal head injury in 1993. The expression of his emotional needs and impulses is particularly affected. Impairment of cognitive functioning is also present. Collateral history supports a significant change in Mr Huzzey's personality and behaviour subsequent to 1993.

2. The specific features of organic personality disorder as defined in the international classification of diseases (ICD-10) which Mr Huzzey exhibits are:.... short lived outbursts of anger and aggression.....

3. Mr Huzzey's threatening behaviour to various professionals involved in his care was one of the major concerns leading to his detention in hospital for assessment under section 2 of the Mental Health Act 1983. It is evident from our assessment that Mr Huzzey remains, at times, verbally threatening. His threats centre on those whom he believes to be persecuting him and as such he justifies his behaviour to himself. This tendency to minimise his threats remains of significant concern.

4. Mr Huzzey requires further specialist neuropsychological/neurological investigations, specifically an EEG (which he has previously refused) and a SPECT scan. These will assist in indicating the appropriate steps for treatment for his mental disorder which will require a trial of medication and/or specific psychological intervention.

5. We recommend that Mr Huzzey be further detained in hospital under section 3 of the Mental Health Act 1983 for further assessment and treatment of his mental disorder which is of a nature and degree which makes it appropriate for him to receive medical treatment in hospital."

On the 31 July 1996, application was made to the Mental Health Review Tribunal, but it is unclear from the papers whether or not it was an application made by the applicant's mother in relation to her attempt to obtain the release of the applicant, or whether it was an application on any other ground. In the event, the Tribunal came to the conclusion on the basis of the material before it, and in particular a report from Doctor Andrews, that the applicant should be discharged; the reasons given were:

"We accept the evidence that the patient suffers from mental illness. We noted that the SOAD (second opinion admission doctor) had declined to sanction compulsory medication. We felt it inappropriate to continue liability to detention because treatment options are so limited. Containment by itself appears counter therapeutic."

It is relevant to note that the conclusion of Doctor Andrews was that the mental disorder from which the applicant suffered was a delusional disorder, and not the organic personality disorder originally diagnosed by Doctor James and Doctor Hopley.

Mr Gledhill, on behalf of the applicant attacks the managers' decision of the 30 July 1996 on 3 grounds. First, he submits that on its face, the decision to detain purportedly under section 3, for treatment, was in truth an unlawful attempt to extend detention under section 2, for assessment. Second, he submits that since the review was in the

context of the barring report to the applicant's mother's order for discharge, the sole, or at least an issue, was whether or not the applicant would be likely to act in a manner dangerous to other persons or to himself, which was an issue which was not addressed by the managers. Third, he submits that the managers failed to give any adequate reasons for the decision.

As for the first, Mr Clarke, on behalf of the respondent, submits that the argument is a semantic argument. He points out that by section 145 of the Act, "medical treatment" includes nursing, and also includes care, habilitation and rehabilitation under medical supervision. It follows, he submits, that on any sensible view of the decision of the managers both as expressed in the reasons for the decision, and in Mr Hill's affidavit, the "assessment" referred to is merely the normal process of "assessing" the applicant's condition as an inevitable concomitant to the provision of that treatment. The wording of the decision, may, he submits, have been unfortunate in that it suggested that a further period of assessment was required, whereas in truth, read in conjunction with the report from Doctor Hopley and Doctor James, it was merely seeking to paraphrase the report from Doctor Hopley and Doctor James which, properly understood, asserted that medical treatment as defined by the Act was required, which would include the normal process of assessment to which I have already referred.

I am afraid that I cannot accept these submissions. It seems to me to be clear that the report from Doctor Hopley and Doctor James did not indicate that the mental condition from which the applicant suffered was one which, whatever the natural process of assessment might be, required treatment. It was a report which operated from the premise that further assessment was required in order to determine the appropriate treatment which would be required. It follows that, even though the doctors who wrote the report may have been of the view that treatment was required, which included further assessment, that was not the view expressed in the report. The managers could not properly have concluded, on the material before them, that the applicant was detained other than for assessment, followed by treatment. As this would not justify admission under Section 3, it could not justify continued detention, as I shall explain when I deal with Mr Gledhill's second point.

As to the second point, Mr Clark submits that on a review by the managers, the only relevant considerations are the criteria set out in section 3 for admission for treatment. He submits that these criteria remain the only criteria which justify detention even where a nearest relative has sought to make an order for discharge which has resulted in a barring report under section 25. He submits that section 25 does not add any further requirement which has to be satisfied in order to justify continued detention, but merely provides the mechanism whereby a nearest relative can be

prevented from obtaining an order for discharge.

In my view, this argument fails to address the fact that section 23 provides, inter alia, a general discretion in the managers to discharge a patient. No criteria are set out as to what should or should not be taken into account by managers when considering a decision as to whether or not to discharge. The question of what are the relevant considerations has to be answered by looking at the general scheme of the Act. Clearly the criteria set out in section 3 of the Act are of fundamental importance. If the criteria for admission no longer exist, I cannot see how any decision by managers not to discharge could be other than perverse hence my conclusion on Mr Gledhill's first point. But that does not mean that the managers are restricted to considering those criteria. Section 23 implicitly recognises that managers have a discretion to discharge even if those criteria have been met. Where, as in the present case, a nearest relative has sought to obtain a discharge order but has been confronted by a barring report, those facts must equally be relevant and material considerations. In my view, the managers are not only entitled to, but must, consider whether or not they are persuaded by the barring report that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself. For if they are not so persuaded, they will have reached the position that the nearest relative would have been entitled to an order for discharge if the responsible medical officer had not come to what they have decided was an erroneous conclusion as to the danger presented by the patient. That cannot be anything other than a relevant and material consideration, and would be likely, in almost all circumstances, to mean that discharge should be ordered. In the present case, the Managers do not appear to have addressed their minds to this question at all. If they had, it may be that they would have concluded that the responsible medical officers opinion was correct. But their failure to apply their minds to this question means that, in my view, the decision was irrational and must be quashed on that ground.

As to the third point, Mr Clarke submits that the reasons, although perhaps not most felicitously expressed, were nonetheless sufficient. I agree. They adequately identified the basis of the managers decision, and indeed exposed both defects in the decision which I have held render it unlawful and irrational.

For the reasons I have given, the managers decision of the 30th July 1996 must be quashed.

MR JUSTICE LATHAM: For the reasons which have been set out in the judgment, which I hand down and copies of which have been made available to the parties, this application succeeds and the decision of 30th July 1996 to

continue to detain the applicant under section 3 of the Mental Health Act 1983 is quashed.

I have before me a draft order dealing with the consequential directions which are necessary to deal with the remaining part of the application, namely the claim for damages.

I have not read them yet. Are you both satisfied, Mr Gledhill and Mr Clarke, that it sets out the appropriate procedure?

MR GLEDHILL: My Lord, yes.

MR CLARKE: They are agreed directions. If my Lord turns the page to direction 4, this is the one that your Lordship will have to give due determination.

MR JUSTICE LATHAM: Then I will read out the order.

By consent these proceedings shall continue as if begun by writ pursuant to Order 53 rule 9(5); that there should be the following directions for the continuation of these proceedings:-

(1) the Applicant (referred to from now on as the Plaintiff) shall serve a Statement of Claim within 21 days after the Order;

(2) the Respondent (referred to from now on as the Defendant) shall serve a Defence within 14 days thereafter;

(3) the Plaintiff shall serve a reply, if so advised within 14 days thereafter;

(4) the Plaintiff shall serve written statements of oral evidence which he intends to adduce at the trial in accordance with RSC Order 38, rule 2A two months after close of pleadings;

(5) the Defendant shall serve written statements of the oral evidence which it intends to adduce at the trial in accordance with RSC Order 38, rule 2A within three months after service of the Plaintiff's witness statements;

(6) the Plaintiff shall set down the proceedings for trial after service of the Defendant's witness statements and within two months of that date;

(7) the Plaintiff shall apply within the same period for the place and mode of trial to be determined by a Master;.

(8) the parties shall be at liberty to apply to the Master for further directions.

Finally, the legal aid taxation of the Plaintiff's costs of the application for judicial review and that otherwise the costs of such application be reserved to the trial judge.

So far as those orders are concerned those should be included in the order as drafted, not as said by me.

MR CLARKE: The remaining outstanding question is leave to appeal. I ask my Lord to grant the respondent leave to appeal. This is the first case so far as I am aware upon which the relationship between section 23 and section 25 of the Code of Practice has been considered by the court. My Lord, it is also the first occasion upon which the question of the extent to which treatment and assessment can overlap and still fall within the umbrella of section 3, as has been

considered by a court.

My Lord, certainly the first issue is one which will be of concern to a large number of authorities in a similar position to my client and indeed have some general interest in the application and bears upon the exercise by managers of their powers of section 23 in a sense that goes beyond the narrow confines of this case.

My Lord, for all of those reasons, in my submission, it is an appropriate case for the court to grant leave and the matter to be tested further, if that is considered appropriate by the respondent.

MR JUSTICE LATHAM: Mr Gledhill?

MR GLEDHILL: I am neutral on the point, my Lord.

MR JUSTICE LATHAM: I do not dissent at all from the proposition that this case raises issues that are significant and which were not, as far as counsel were aware, the subject matter of previous authority. However, I came to pretty firm conclusions about the appropriate statutory construction of the relevant provisions and as to the scheme which was intended by the act and essentially, at the end of the day, the case itself revolved round the particular expressions used in the report of the two doctors who reported for the purposes of the hearing on 30th July, which is therefore a matter which is particular to this case. I therefore refuse leave to appeal.

If there is to be an appeal, then clearly the Court of Appeal will have to be asked for its leave.

MR CLARKE: My Lord, that completes the order. We will then make an appropriate marking and the order is complete.

MR JUSTICE LATHAM: Thank you both very much indeed, it was an interesting case.

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