

THE HIGH COURT

[2023] IEHC 219

[Record Number 2023/ 619 SS]

IN THE MATTER OF AN APPLICATION PURSUANT TO ART 40.4.2 OF THE CONSTITUTION OF IRELAND

BETWEEN:

GR

APPLICANT

-AND-

**CLINICAL DIRECTOR OF DEPARTMENT OF PSYCHIATRY MIDLANDS REGIONAL HOSPITAL
PORTLAOISE**

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered *extempore* on 28th April, 2023

Introduction.

- 1.** This is a ruling in relation to an inquiry held pursuant to Article 40.4.2 of the Constitution into the legality of the detention of the applicant in the psychiatric unit of the respondent's hospital.
- 2.** The background to the case can be stated in the following way: on Friday, 14th April, 2023, at approximately 15.00 hours, the applicant arrived with members of his family at the respondent's hospital. The applicant was suffering from mental difficulties at that time. He was offered a voluntary admission to the hospital, but refused that and left the premises. At approximately 18.00 hours, the applicant was brought back to the hospital on an involuntary basis with the assistance of the Assisted Admissions Team. He was detained in the hospital pending an examination by a consultant psychiatrist.
- 3.** On the morning of Saturday, 15th April, 2023, an incident occurred in the ward where the applicant was detained. In particular, while taking a shower, he refused to leave the shower for a period of one hour. During this time the shower was running. It became necessary for members of the medical staff to restrain the applicant and remove him from the shower. Medication was forcibly administered to him by means of injection at that time.
- 4.** At approximately 13:00 hours that day, the applicant was examined by Dr. Hassan, a consultant psychiatrist. Prior to meeting the applicant, the doctor had reviewed the admission notes and records relating to the applicant. He also held a detailed consultation with the applicant. He came to the view that the applicant was suffering from a mental disorder within the meaning of the Mental Health Act 2001. However, he also came to the opinion that the paperwork which had grounded the initial admission of the applicant to the hospital was defective. On that account, he refused to make any formal admission order under the terms of the 2001 Act.

5. It is at this point that the essential conflict in this case arises. The evidence of Dr. Hassan, which will be looked at in more detail later in the judgment, was to the effect that he indicated to the applicant that there was a problem with the forms under which he had been admitted and that therefore, he could not be involuntarily admitted to the hospital; but he went on to indicate to the applicant that it would be in his best interests to remain in the hospital for treatment; and he asked the applicant would he do so, to which he stated that the applicant replied "Yeah, yeah, yeah". On that basis, it was submitted that the applicant remained in the hospital thereafter as a voluntary patient.

6. The applicant's evidence, which will be looked at in greater detail later, was to the effect that it was never made known to him that he was free to go. The applicant stated that because he had been forcibly brought to the hospital the previous evening, he assumed, in the absence of being told otherwise, that he was required to remain in hospital.

7. The applicant stated that if he had been told that he was free to go, that is exactly what he would have done. He further stated that during the course of the following day and a half approximately, he expressed a desire to leave the hospital on a number of occasions to various members of staff, but was always denied the opportunity to leave.

8. It is common case that on Monday, 17th April, 2023, the applicant was seen by Professor Henry O'Connell, consultant psychiatrist, who was carrying out a routine review of patients who had been admitted over the weekend, who came from his geographical catchment area. It is common case that at that consultation, the applicant expressed a desire to Professor O'Connell that that he would like to leave the hospital.

9. At that time, Professor O'Connell formed the opinion that the applicant was suffering from a mental disorder, which required his involuntary admission to hospital. Accordingly, he invoked the procedure provided for in ss. 23 and 24 of the 2001 Act. The opinion of Professor O'Connell was confirmed by a second consultant psychiatrist, Dr. Daly at 11.24 hours on 17th April, 2023.

10. Thus, the essential question for the court to determine on this inquiry, is whether the applicant was present in the respondent hospital as a voluntary patient between 13:00 hours on 15th April, 2023 and circa 09:00 hours on 17th April, 2023.

The Applicant's Evidence.

11. The applicant is currently 24 years of age. He is studying for a master's degree in Sports Science. He also works part-time in a supermarket. It was accepted in his grounding affidavit that he has some

history of mental illness, but he had never been treated or detained as an inpatient in a psychiatric hospital.

12. The applicant gave evidence to the court via video link. He stated that on the evening of 14th April, 2023, he had been asleep in his bedroom, when a number of medical personnel entered his bedroom and removed him to the respondent's hospital. He stated that on arrival at the hospital, he was waiting in a waiting room for some period. He stated that he was then seen by Dr. Hassan. He stated that he knew that he was detained at that time. He stated that he also saw the doctor on the following day, or on the day after. The applicant stated that Dr. Hassan asked him a number of general questions about his mood, and in particular whether he felt elated. He told the doctor that he felt fine and did not want to be in hospital. He stated that the doctor did not mention any difficulty with any forms.

13. The applicant stated that he was never told that he was free to go home. He stated that any time that he made known that he wanted to leave the hospital, he was always told by some medical personnel that he had to stay in the hospital. He stated that he told medical personnel that he did not see any reason why he should be in hospital and that he wanted to leave. He stated that he said that to "a large number of staff".

14. The applicant stated that on one occasion when he approached a door to leave the ward, a number of security staff, possibly four in number, stopped him from leaving and told him that he could not leave the hospital. They said that they would call the gardaí if he attempted to do so.

15. The applicant stated that when he saw Professor O'Connell on the Monday morning, he made it known that he did not want to stay in the hospital.

16. In cross-examination, the applicant accepted that the first doctor that he had seen on his arrival in the hospital on the Friday evening, was a female doctor, and therefore could not have been Dr. Hassan. The applicant accepted that that was the case.

17. The applicant denied that he was told by Dr. Hassan that there had been a problem with any forms governing his initial admission to the hospital on the previous day; or that the doctor asked him to remain in the hospital as a voluntary patient. The applicant stated that if it had been made clear to him that he could have left the hospital, he would have done so. He agreed that he did not think that there was anything wrong with him at that time.

18. When it was put to the witness that a number of nurses, who were on duty in the ward on that weekend, would say that he never expressed any desire to leave the hospital; the applicant disagreed with that. He accepted that he was reasonably content during the night, but only because he had been told that he could not leave. The applicant accepted that a lot of people in the hospital and doctors were concerned about his mental health. He accepted that he had been given medication. He stated that he was forcibly given an injection against his will and thereafter, he had to take tablets, otherwise it had been indicated to him that the staff would give him further injections.

19. When it was put to the witness that his recollection about that weekend was unclear, due to his mental condition and the medication that had been administered in respect of that, the applicant stated that he thought that the hospital was trying to cover things up, as they had done in relation to documents on the file, but he would rather not say any more on that subject.

20. It was put to the witness that the hospital staff would say that at lunchtime on 15th April, 2023, he was told that he could not be admitted as an involuntary patient due to a problem with the forms that had been filled in, and that he was also told that he required treatment in the hospital, and that while he was reluctant to do so, he did not ask to leave; the witness disagreed with that version of the evidence.

The Respondent's Evidence.

21. Dr. Mubashar Hassan gave evidence on behalf of the respondent. He stated that having reviewed the applicant's admission notes and hospital records, he carried out an interview with the applicant at approximately 13:00 hours on 15th April, 2023. He formed the view that the applicant was suffering from a serious mental illness, which included grandiose delusions, such as that he was being scouted by a top professional football team, and other delusions, such as that there were cameras in the shower and that the water was "spiked". He stated that the applicant also exhibited signs of mental distress, in the form of poor eye contact and agitated behaviour.

22. Dr. Hassan dated that he formed the view that it was not possible for him to make an admission order due to defects in the paperwork concerning the initial admission of the applicant to hospital. He stated that while he had not used the words "You are free to go" to the applicant, he had made it clear to the applicant that there had been a problem with the underlying paperwork, and that he could not be the subject of an involuntary admission to the hospital. However, he stated that he had gone on to indicate to the applicant that he required treatment and care in the hospital, and he asked him whether

he would consent to such treatment, to which the applicant stated "Yeah, yeah, yeah". He stated that the applicant's main concern at that time, was to return to his room to sleep.

23. Dr. Hassan proved the entries in the medical records that had been made by him and in particular, the notes that had been made by him therein concerning his interview with the applicant on 15th April, 2023 at 13:00 hours. In his contemporaneous notes, Dr. Hassan had noted, *inter alia*, "No insight into his mental illness. Agreed to stay". Further on in the notes, he had recorded "Review by NCHD if needed and if he tries to leave, he may need detention under the MHA".

24. The court also heard evidence from Ms. Maeve Dollery, who was a nurse attached to the ward on which the applicant was a patient. She was also his designated key worker. She stated that she had worked on the ward between 08:00 hours and 17:30 hours on Saturday, 15th April, 2023 and between 08:00 hours and 21:00 hours on Sunday 16th and Monday, 17th April, 2023.

25. She stated that at no stage during the time that she was on duty in the ward had the applicant ever indicated to her that he wished to leave the hospital. Furthermore, she stated that no other member of staff on duty in the ward at that time, reported to her that any such statement had been made by the applicant to them. She confirmed that the ward was an acute admissions ward, on which there would be 20/22 patients at a time. There would have been approximately 7/8 nurses on duty.

26. Ms. Dollery made a number of entries in the medical notes relating to the applicant. In her note made on 15th April, 2023 at 15.15 hours, she recorded "(G) to remain as a voluntary patient. Detainable under the MHA 2001 if he looks to leave the DOP". She accepted that in the fairly extensive notes that she had made concerning the applicant, there was no reference therein to him having expressed any desire to her to leave the hospital.

27. The witness stated that she was aware of the s. 23 procedure under the 2001 Act, and that there was no reason why that could not have been invoked at any time during the weekend, if it was necessary to do so.

28. Evidence was given by Mr. Joe Lafferty, who was the Assistant Director of Nursing at the relevant time. He stated that in such capacity, he was mainly office-bound, but he did do a number of ward rounds that day. He recalled interacting with the applicant on two occasions. The applicant did not express any desire to leave the hospital. He stated that if the applicant had expressed a desire to leave the hospital to other members of staff, he would have expected that to have been reported to him; but no such report was made to him.

29. Evidence was given by Mr. Ciaran Murphy, who was a psychiatric nurse on the ward in the period Friday, 14th April, 2023 to Sunday, 16th April, 2023. He stated that he had had a number of interactions with the applicant while he was on the ward. These were informal interactions. He was aware that the applicant had refused breakfast on the morning of Saturday, 15th April, 2023 and was recorded in the notes as stating that he would not eat again until he was back home. The witness stated that there was nothing unusual in the interactions that he had with the applicant during his time on the ward. He thought that the applicant had partaken of some food after the time that he had refused breakfast on the Saturday morning.

30. The witness stated that he was aware of the s. 23 procedure. He had been involved in cases where it had been utilised in the past. He stated that the applicant was somewhat quieter and reserved during the weekend.

31. Finally, evidence was given by Professor Henry O'Connell, consultant psychiatrist, who had examined the applicant at 09:00 hours on 17th April, 2023. He stated that this was a routine examination, because the applicant came from the geographical catchment area that was under his control and he had been admitted during the weekend.

32. He confirmed that the applicant expressed a desire to him to leave the hospital, when he spoke to him on that occasion. However, Professor O'Connell was satisfied that the applicant was suffering from a mental disorder at that time. Accordingly, he activated the procedure provided for under s. 23 of the 2001 Act. His opinion in relation to the applicant's mental illness, was confirmed by a second consultant psychiatrist later in the morning. Following which, an admission order was made in respect of the applicant.

Conclusions.

33. Having considered the oral and documentary evidence in this matter, I am satisfied that the applicant was present in the respondent's hospital as a voluntary patient between 13:00 hours on 15th April, 2023, until he expressed a desire to leave the hospital, which statement was made to Professor O'Connell at 09:00 hours on 17th April, 2023.

34. I have reached that conclusion for the following reasons: first, I am satisfied that Dr. Hassan has given his evidence in a fair and honest manner. He accepted that he had not use the words "You are free to go", when he spoke with the applicant at 13:00 hours on 15th April, 2023. However, he was equally clear that as a result of what he told the applicant, the applicant understood that he was free to

go, but also understood that he required treatment in hospital, and when the request was made, as to whether he would remain in the hospital, he replied "Yeah, yeah, yeah". I accept that evidence.

35. The notes that were made by Dr. Hassan at the time support this evidence. In particular, those notes, which were made contemporaneously, contained a direction that the applicant had agreed to stay in the hospital, but that if he expressed a desire to leave the hospital, he may have to be detained pursuant to the provisions of the 2001 Act.

36. Thirdly, I accept the evidence given by Ms. Dollery that she, as the applicant's key worker, was aware of the direction that had been given by Dr. Hassan, that the applicant was on the ward as a voluntary patient; but that if he should express the desire to leave, it may be necessary to invoke the procedure for an involuntary admission pursuant to s. 23 of the 2001 Act.

37. I accept her evidence that she was aware of the s. 23 procedure and would have activated it over the course of the weekend, if necessary.

38. I accept her evidence that the applicant did not express any desire to leave, while she was on duty in the ward, which was effectively for the entire of the weekend.

39. I accept the truth and completeness of the notes made by Ms. Dollery. There is no note therein that the applicant wanted to leave the hospital. This contemporaneous note is supportive of her oral evidence.

40. Insofar as it is recorded in the notes that the applicant had declined breakfast on the morning of Saturday, 15th April, 2023, and had stated that he would only eat again when he was back home; I am satisfied that that statement is not indicative of a desire to immediately leave the hospital. It is perhaps indicative of a reluctance on his part to be there, or perhaps an oblique statement that he did not see the reason why he needed to be there; but it is not a clear statement that he wished to leave the hospital. Furthermore, I accept the evidence given that the applicant did in fact partake of meals subsequently during his admission in the hospital.

41. I accept the evidence given by Mr. Lafferty and Mr. Murphy that the applicant did not express any desire to leave to them, when they had interactions with him during the course of the weekend.

42. While it is the case that the respondent has not called each and every member of staff that was on duty in the ward during the relevant period, I am satisfied that in calling Dr. Hassan and Ms. Dollery, the respondent has called the two main witnesses, who had significant interaction with the applicant during the relevant period. As stated already, I accept their evidence that the applicant did not express

to them a desire to leave the hospital. As already noted, their contemporaneous records are entirely supportive of the oral evidence that they have given.

43. If I were to hold with the evidence given by the applicant, that he had expressed a desire to leave the hospital to many members of staff, I would have to hold that the for some unknown reason, these medical personnel decided to breach the law and to ignore his express desire to leave the hospital, for no good reason; other than that they did not want to bother invoking the s. 23 procedure, as had been directed by Dr. Hassan. There is no good reason why they would have chosen to have acted in that way.

44. The court has to have regard to the fact that the applicant was very unwell at the relevant period. He was also on an amount of medication. His evidence to the court has been wrong in certain respects: he thought that he was seen by Dr. Hassan on the Friday evening, when in fact he was seen by a female doctor. He told his solicitor that he had been stopped from leaving the hospital by a number of security guards; there are no security guards employed in the hospital. His evidence that he told a number of members of staff of his desire to leave the hospital is quite vague. He has not described any of these people, either by name, or by description. He has not stated at what locations within the hospital, or at what times he made these alleged statements during his stay in the hospital that weekend.

45. Finally, if the hospital staff had been acting illegally by ignoring the applicant's expressed request to be allowed to leave the hospital and had detained him unlawfully over the weekend, there is no reason why Professor O'Connell would have broken ranks and recorded the applicant's desire to leave the hospital, and proceeded then to invoke the s. 23 procedure.

46. On balance, I am satisfied that that happened because the applicant expressed the desire to leave the hospital to Professor O'Connell; he recorded it, as he was obliged to do; and having regard to the opinion that he formed of the applicant's mental state, he invoked the s. 23 procedure. All of that was entirely correct conduct on the part of Professor O'Connell.

47. I find that the applicant was a voluntary patient in the hospital between 13:00 hours on 15th April, 2023 and 09:00 hours on 17th April, 2023. He was not unlawfully deprived of his liberty during that period. Accordingly, his involuntary admission thereafter was lawful, as it was effected pursuant to the provisions of ss. 23 and 24 of the 2001 Act.