Volume 41 | Number 2 Article 13

2-1-1963

Insane Persons -- Guardianship -- Restoration to Sanity After In re Wilson

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Insane Persons—Guardianship—Restoration to Sanity After In re Wilson

In *In re Wilson*[1] the North Carolina Supreme Court held that permanent commitment to a mental hospital without proper notice and hearing is a violation of due process.[2] In addition the court, by way of dictum, placed a construction on the North Carolina involuntary commitment and guardianship procedure which is the subject of consideration here.

The North Carolina procedure for involuntary commitment or hospitalization of insane persons is contained in Chapter 122 of the General Statutes. Section 122-46[3] authorizes the clerk of the superior court to hold an informal hearing upon the certification of two physicians that a person is in need of observation. At this hearing, which is preceded by notice to the allegedly deranged person, the clerk must examine any proper witnesses and the certificates and affidavits of the physicians. He may then issue an order of commitment for an observation period not exceeding sixty days.[4] If this period should prove to be insufficient, the clerk may order the person to remain at the hospital for another observation period not exceeding four months.[5] When the observation is completed, the hospital authorities must file with the clerk a written report stating their conclusions as to the patient's sanity. Upon the basis of this report the clerk may either order the person discharged or committed indeterminately, as the facts may warrant.[6] The subsequent discharge of a person indeterminately committed is upon certification by the superintendent of the hospital that the patient has regained his sanity.[7]

The guardianship statutes, quite distinct from the commitment procedure, are contained in Chapter 35. Mental incapacity[8] is the

[1] 257 N.C. 593, 126 S.E.2d 489 (1962).

[2] This note should be read in connection with Note, 41 N.C.L. REV. 141 (1962) which discusses the constitutional issues involved in this case.

[3] N.C. GEN. STAT. § 122-46 (Supp. 1961).

[4] If a person committed is found not to be mentally disordered the superintendent must immediately report this to the clerk who shall order his discharge. *Ibid.*

[5] N.C. GEN. STAT. § 122-46.1 (Supp. 1961).

[6] *Ibid.*

[7] N.C. GEN. STAT. § 122-66.1 (1958).

[8] Mental incapacity is the inability to legally manage and understand one's affairs. It should not be confused with the various medical terms describing types of mental illnesses.

only cause for appointment of a guardian under this Chapter.[9] Section 35-2[10] requires a jury finding of insanity before the clerk is authorized to appoint a guardian for one not confined in an institution. "Restoration to sanity"[11] for such person is also by jury trial under G.S. § 35-4[12] upon the filing of a petition in his behalf.

The certificate of the superintendent of a mental hospital declaring a patient already committed to be insane is sufficient evidence to authorize the clerk to appoint a guardian.[13] A certificate from the superintendent may also restore a patient to legal sanity.[14] Upon discharge from a mental institution the patient for whom a guardian has been appointed may petition the clerk for the guardian's discharge.[15] A hearing is then held, with or without a jury at the petitioner's option. One or more physicians are appointed by the clerk to examine the petitioner and make affidavits as to his mental state. Upon a determination of legal competency the clerk must discharge the guardian.

It should be noted that guardianship is not a necessary element of commitment. The two proceedings are complete in themselves. A person may be committed to a mental institution without the appointment of a guardian, just as a guardian may be appointed without commitment.

The 1957 General Assembly, in an effort to clarify the effect of involuntary commitment for observation under G.S. § 122-46 on legal competency, amended the statute by adding the following paragraph:

> Neither the institution of a proceeding to have any alleged mentally disordered person committed for observation as provided in this section nor the order of commitment by the clerk as provided in this section shall have the effect of creating any presumption that such person is legally incompetent for any purpose. Provided, however, that if a guardian or trustee has been appointed . . . under G.S. 35-2 or 35-3 the procedure

[9] N.C. GEN. STAT. § 35-2 (Supp. 1961). The adjudication of incompetency and appointment of a guardian are merged into one finding.
[10] N.C. GEN. STAT. § 35-2 (Supp. 1961).
[11] "Restoration to sanity" is used in the statutes to mean a return to mental capacity.
[12] N.C. GEN. STAT. § 35-4 (Supp. 1961).
[13] N.C. GEN. STAT. § 35-3 (Supp. 1961).
[14] N.C. GEN. STAT. § 35-5 (Supp. 1961).
[15] N.C. GEN. STAT. § 35-4.1 (1950).

> for restoration to sanity shall be as is now provided in G.S. 35-4 and 35-4.1.[16]

It had been expressly held prior to this amendment that the procedure outlined in Chapter 35 did not apply to a person involuntarily committed to a mental institution under G.S. § 122-46. His remedy was by habeas corpus, not jury trial.[17]

The construction placed on the amendment by the North Carolina Supreme Court, however, appears to be contrary to the express language of the statute and inconsistent with the legislative intent. The court's dictum in the principal case reads the amendment to provide that restoration to sanity for one committed under G.S. § 122-46 may be had under G.S. §§ 35-3, 35-4, and 35-4.1. They said that "The amendment removes from G.S. § 122-46 the objection that a traditional trial by jury is not provided as a means of determining the issue of sanity. Apparently the requirement that a guardian be appointed and made a party is to give binding effect to an adverse verdict by the jury."[18] The court said a judgment that a person is lawfully detained and insane exceeds the scope of habeas corpus.[19] They concluded by saying that:

> As a more practical approach, however, a guardian may be appointed upon the basis of the superintendent's certificate as provided in G.S. 35-3. A petition, on the application of some relative or friend, may be filed invoking the procedure under G.S. 35-4 and have a jury pass upon Mrs. Wilson's sanity. The guardian should be a party to the end the finding of the jury, if adverse, may have finality until a material change in condition occurs.[20]

This interpretation by the court seems to embrace procedures not contemplated by the amendment. The basic steps suggested are

[16] N.C. GEN. STAT. § 122-46 (Supp. 1961). Prior to this amendment there had been some confusion among members of the bar, particularly those in title practice, as to whether commitment to a mental institution created a presumption that the patient was incompetent, and thus incapable of disposing of his property.

[17] *In re* Harris, 241 N.C. 179, 84 S.E.2d 808 (1954).

[18] 257 N.C. at 596, 126 S.E.2d at 491.

[19] This is a departure from *In re* Harris, 241 N.C. 179, 84 S.E.2d 808 (1954). The court's reasoning seems to be that the writ of habeas corpus can only test the legality of the petitioner's detention *assuming* he may be insane. Therefore a finding that petitioner is in fact insane is beyond the scope of the writ and may be made only by a jury.

[20] 257 N.C. at 597, 126 S.E.2d at 492.

the appointment of a guardian under G.S. § 35-3, followed by a petition by the patient under G.S. § 35-4 asserting his competency, thus resulting in a jury trial on the question of his sanity.[21] Analysis reveals that this would not accomplish the ends anticipated by the court. Even if the jury finds the patient competent, the guardian's removal does not result in the patient's discharge from the hospital. A court adjudication of incompetency is not a necessary element for detention in a mental hospital under our statutes.[22]

The strongest argument that can be made against the court's interpretation of the amendment, however, is that it reads into the statute a legislative intent to import guardianship procedure into involuntary commitment procedure, when in fact it was the intent of the proviso within the amendment to make it clear that G.S. § 122-46 would have no effect on guardianship proceedings, and vice versa.[23]

Despite the confusion of the principal case, it serves to point up two problems worthy of mention. One is the feasibility of a jury trial in hospitalization procedures, the other the relationship between hospitalization and guardianship or incompetency proceedings.[24]

The majority of jurisdictions have dispensed with jury trials in hospitalization cases since they are not necessary for due process.[25]

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[21] It is difficult to ascertain exactly what the court envisaged. The appointment of a guardian apparently is to enable the patient to invoke the procedures under G.S. § 35-4 for restoration to competency by jury trial. Even so, restoration under G.S. § 35-4 does not affect the patient's status in the hospital.

[22] N.C. GEN. STAT. § 122-46.1 (Supp. 1961).

[23] "I should like to state simply that the purpose of the amendment was to clarify the law in the following particulars, to-wit: . . . (2) To make it clear that G.S. 122-46 would have no effect on guardianship proceedings, and vice versa. . . . Again, I should like to state that the question of trial by jury, the appointment of a guardian and the purpose for such appointment was not contemplated under G.S. 122-46 by the amendment. It was the sole specific purpose and intent of the proviso within the amendment to provide that the procedure for the restoration to sanity for those whose cases come within the classifications embraced in G.S. 35-2 or 35-3 would be as provided by G.S. 35-4 and 35-4.1." Letter from Clyde A. Shreve to George C. Cochran, August 3, 1962. Mr. Shreve was co-introducer of the amendment.

[24] See generally Curran, *Hospitalization of the Mentally Ill*, 31 N.C.L. REV. 274 (1953); GUTTMACHER & WEIHOFEN, PSYCHIATRY AND THE LAW (1952); LINDMAN AND MCINTYRE, THE MENTALLY DISABLED AND THE LAW (1961); Ross, *Commitment of the Mentally Ill: Problems of Law and Policy*, 57 MICH. L. REV. 945 (1959); Slovenko & Super, *The Mentally Disabled, the Law, and the Report of the American Bar Foundation*, 47 VA. L. REV. 1366 (1961).

[25] *E.g.*, Clough v. Clough, 10 Colo. App. 433, 51 Pac. 513 (1897); People v. Niesman, 356 Ill. 322, 190 N.E. 668 (1934); *In re* Brewer, 224 Iowa 773, 276 N.W. 766 (1937); *Ex parte* Higgins v. Hoctor, 332 Mo. 1022, 62 S.W.2d

Contemporary writers[26] on the subject have cited Alaska and Kentucky as the only states that require a jury trial in every case; however, recent statutory changes in these two states now require a jury trial only if requested by the patient.[27] Thus Alaska and Kentucky have now joined approximately thirty per cent of the states which provide optional jury trials.[28]

Admission procedures to a mental hospital should be as simple as possible. As a means to this end authorities, both medical and legal, have strongly urged dispensing with jury trials.[29] The detrimental effect a trial may have on a mentally unbalanced person is readily apparent. If he is required to sit through a trial and listen to his physician, his family, and other witnesses testify against him it may make psychiatric treatment even more difficult.[30] Also, the use of a lay jury to determine such a highly technical question as insanity has been compared to "calling the neighbors to diagnose meningitis or scarlet fever."[31] A paranoiac, for example, can be lucid and convincing one instant and completely deranged the next.[32] The mentally ill person is much more likely to fool a jury than an expert, while the truly sane person should have no greater difficulty convincing a judge and expert physician of his sanity than he would a jury.

The relationship between hospitalization and incompetency differs

410 (1933); *In re* Boyett, 136 N.C. 415, 48 S.E. 789 (1904); *Ex parte* Dagley, 35 Okla. 180, 128 Pac. 699 (1912). See Wagner Elec. Mfg. Co. v. Lyndon, 262 U.S. 226 (1923); Montana Co. v. St. Louis Min. & Mill. Co., 152 U.S. 160 (1894). *Cf.* Maxwell v. Dow, 176 U.S. 581 (1900), Strauder v. West Virginia, 100 U.S. 303 (1880).

[26] See Ross, *supra* note 24, at 970.

[27] ALASKA COM. LAWS ANN. § 51-4-4 (1949) required a jury trial in commitment proceedings. This was repealed by an Act of Congress, July 28, 1956. The proclamation issued by the Acting Governor of Alaska on June 19, 1957, made this effective July 1, 1957. The new law requires a jury trial only upon written request at least two days prior to the hearing. ALASKA COM. LAWS ANN. § 51-4-20h(f) (Supp. 1958). KY. REV. STAT. § 202.080 (1952) required a jury trial in every case. This section was repealed in 1960. Ky. Laws 1960, ch. 67, § 35. KY. REV. STAT. § 202.140 (1962) now provides that a jury trial is still required in all instances if the petition requests the person be adjudged incompetent.

[28] For a table showing the statutory provisions as to jury trials in the other states, see LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 58-62.

[29] See GUTTMACHER & WEIHOFEN, *op. cit. supra* note 24, at 300; LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 27, 41; Ross, *supra* note 24, at 970.

[30] See generally Ross, *supra* note 24.

[31] STERN, MENTAL ILLNESS: A GUIDE FOR THE FAMILY 37 (1952).

[32] See Ross, *supra* note 24, at 970.

greatly among the states.[33] There is considerable controversy over whether a person in need of confinement in a mental hospital is necessarily incapable of managing his own affairs.[34] Incompetency may be the result of independent judicial action, as it is in North Carolina, or it may be one of the issues decided at a hospitalization proceeding.[35] The appointment of a guardian, however, is a consequence of an adjudication of incompetency in North Carolina.[36] The legislative trend appears to be toward complete separation of hospitalization and incompetency.[37] The Draft Act[38] prepared by the National Institute of Mental Health states that an order of hospitalization decides no more than the *need* for hospitalization. Several states have adopted modified versions of this act.[39]

The separation of the two procedures is based upon the presumption that a person in need of hospitalization may still be quite capable of handling certain of his affairs, just as an incompetent may not need hospitalization. In support of this view, it has been espoused that "from a medical viewpoint, there is no necessary relationship between commitability and competency."[40] Mental disabilities vary to such a degree that any connection between hospitalization and incompetency seems unjustified.

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[33] See Ross, *supra* note 24, at 980-95; LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 220, 235-8. Hospitalization and incompetency are two distinct legal concepts fulfilling different purposes. Although both result in a loss of rights, hospitalization affects the person's freedom to be at large while incompetency results in a loss of civil rights and gives the incompetent the legal status of a minor.

[34] See Ross, *supra* note 24, at 980-95; LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 220, 235-8.

[35] *Ibid.*

[36] N.C. GEN. STAT. §§ 35-2, -3 (Supp. 1961). In some of the states which merge hospitalization and incompetency a guardian is not always appointed. Thus the incompetent is in the position of being unable to manage his own affairs and yet has no one to do so for him. See LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 220, 235-8.

[37] See LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 221.

[38] NATIONAL INSTITUTE OF MENTAL HEALTH, FEDERAL SECURITY AGENCY, A DRAFT ACT GOVERNING HOSPITALIZATION OF THE MENTALLY ILL, SCOPE OF THE DRAFT ACT 2, PUBLIC HEALTH SERVICE PUB. NO. 51, 1952. For a brief summary of the act by one of its authors, see Felix, *Hospitalization of the Mentally Ill,* 107 AM. J. PSYCHIATRY 712 (1951). See also Ross, *supra* note 24; Slovenko & Super, *supra* note 24.

[39] See LINDMAN & MCINTYRE, *op. cit. supra* note 24, at 221; Ross, *supra* note 24, at 949 n. 19, 991.

[40] GUTTMACHER & WEIHOFEN, *op. cit. supra* note 24, at 339.