

2001

# Ward M v. State of Utah : Brief of Respondent

Utah Supreme Court

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J. Reuben Clark Law School

OF THE STATE OF UTAH

IN THE MATTER OF THE  
MENTAL CONDITION OF  
WARD M.,

Case No.  
13809

BRIEF OF RESPONDENTS

Salt Lake County

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FILED

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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IN THE MATTER OF THE  
MENTAL CONDITION OF  
WARD M.,

} Case No.  
13809

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## BRIEF OF RESPONDENTS

Salt Lake County

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### STATEMENT OF THE CASE

This is an action by one "Ward M" who was found to be mentally ill and in need of care and treatment, to determine (a) if the "beyond a reasonable doubt" standard should apply to involuntary hospitalization proceedings, (b) if Utah Code Annotated 64-7-36 (H) (3) as amended is unconstitutionally vague, and (c) if the evidence supported the finding of the Court.

## DISPOSITION IN THE LOWER COURT

On June 13, 1974, application was filed with the Third District Court, requesting involuntary hospitalization of the appellant. Hearing was held before Margaret K. Spratley, a special commissioner, who issued an order of hospitalization on June 26, 1974. Appellant petitioned for a new hearing which was held on August 2, 1974, before the Honorable Joseph G. Jeppson. The Court found the appellant to be mentally ill and in need of custody, care and treatment in a mental facility.

## STATEMENT OF FACTS

Three designated examiners testified concerning the mental condition of "Ward M". The three doctors were unanimous in their conclusion that "Ward M" was mentally ill. (Tr. 6, 8, 11) They were also unanimous in their conclusion that "Ward M" lacked sufficient insight to continue and maintain treatment begun during the period between his commitment and the hearing. (Tr. 5, 6, 8) The patient had indicated he might use LSD if it were legalized despite the fact it related to his early mental problems, (Tr. 5, 6) which were fairly long standing. (Tr. 2, 3) There was also concern regarding the patient's perception regarding the possible length of future treatment and future "cure". (Tr. 5) The patient also recognized that he had been "unwell" and had benefited from his term of hospitalization pending the hearing. (Tr. 19, 20)

## POINT I

INVOLUNTARY, HOSPITALIZATION PROCEEDING WAS CONSTITUTIONAL UNDER BOTH FEDERAL AND STATE CONSTITUTIONS AND DID NOT DENY DUE PROCESS OF LAW.

Involuntary hospitalization proceedings are not penal. They are equitable and designed for the benefit of a person who may be in need of hospitalization and treatment. *Bedford v. Salt Lake County*, 22 U 2d 12, 447 P2d 193. (1968)

The proceedings are not adversary in nature. The state acts in its role of *Parens Patriae*.

“Ordinarily, everyone connected with the proceeding is a friend of the patient. The doctors seek only to cure, if possible. The judge has no animosity towards the patient, nor has he any desire to cause the State to go to the expense of keep and treatment for one who does not need it. An attorney who would represent an insane patient would be remiss if he attempted to prevent his client from receiving needed treatment.”  
*Bedford v. Salt Lake Co. Supra.*

Under the provisions of Utah Code Annotated 1953 as amended Title 64 Chapter 7 Section 36(G) an individual is afforded the opportunity to counsel. The appellant availed himself of that opportunity. There was no “adverse party” seeking the commitment of the appellant. There were only the doctors, appointed pur-

suant to the provisions of UCA 64-7-36 to report to the Court their findings as to the mental condition of the patient. There is surely no advantage to either the doctors or the state to seek the hospitalization of the appellant.

It is in the context of this type of civil hearing that the appellants seek to have the Court impose the criminal law standard of proof applied to the determination of mental competency. It is true as appellant avers in his brief that the Mental Health Services Act, Utah Code Annotated, Title 64 is silent as to the degree of proof required. Respondent is also unable to find any Utah cases setting forth the degree of proof required in involuntary hospitalization proceedings; however, in the case of *Rawson v. Hardy* 88U 131, 48 P2d 473 (1935) the court held that where a deed was sought to be set aside on the grounds of the incompetency of the grantor,

... proof that a prior grantor was incompetent should be *clear and indubitable*, otherwise much harm could come to his grantees.”

*Rawson v. Hardy* p. 475 (emphasis provided)

If this degree of proof is a requisite in matters dealing with property, then certainly an equivalent degree of proof would apply to the prospective loss of liberty of an individual.

Further there exists a presumption of sanity which must be overcome. *McDonald v. McDonald* 236 P2d 1066, 120 U 573 (1951).



In a number of cases, as where an adverse presumption is to be overcome, clear and convincing evidence and more than a mere preponderance is required. 32A CJS Evidence Para. 1023.

“Clear and convincing” and “clear and indubitable” are higher degrees of proof than a mere preponderance. “Indubitable” proof has been held to be proof that makes out facts without a reasonable doubt. *Olinger Mutual Benefit Association v. Christy, Colo.*, 342 P2d 1000, 1004, 139 Colo 425 (1959) “Clear and convincing” proof must have reached a point where there is no serious or substantial doubt *Jardine v. Archibald* 279 P2d 454, 3 U2d 88, (1955).

If then the requirement of proof is “clear and indubitable” does this satisfy the requirements of due process? This burden of proof is much greater than a preponderance. Further it is, appropriately, a civil measure of proof for a civil action; the case of *In the Matter of Levias* 517 P2d 588, 83 Wash 2d 253 (1973) decided by the Supreme Court of Washington, cited by appellant in his brief, has held the standard of “clear, cogent and convincing” evidence to satisfy the requirements of due process.

The fact that the court failed to apply the “beyond a reasonable doubt” standard is not a violation of due process.

## POINT II

### THE LACK OF CAPACITY STANDARD OF § 64-7-36 (H) (3) IS NOT CONSTITUTIONALLY DEFICIENT.

Appellant admits in his brief that “it [U.C.A. § 64-7-36 (H) (3)] does not, on its face, violate the traditional rationale of the Vagueness Doctrine.” However, he urges it is unconstitutional because it allows too much discretion with the fact finder.

The involuntary hospitalization statute provides for examination of the proposed patient by two “designated examiners” who by definition are licensed physicians designated by the division of mental health as being specially qualified by training or experience in the diagnosis of mental or related illness. Utah Code Annotated 1953 as amended Title 64 Chapter 7 Section 28 (d). If the Court after hearing the evidence, including the testimony of the designated examiners find (a) that the proposed patient is in need of custody, care or treatment in a mental health facility, and (b) because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization, it may order hospitalization. The need for hospitalization is based on a finding of mental illness in the proposed patient, basically a medical decision, and his state of mind at the time of hearing relating to his own perception of his problem and his ability to deal with it. Absent a finding of mental illness, which is a determination based upon the findings of two expert witnesses, the

Court would have no opportunity to impose its predilections upon anyone.

In the case before the court three qualified medical examiners concurred in the recommendation that the appellant receive further supervised treatment. This was not a case of the court penalizing what was merely a different behavior pattern. It was treatment for what was diagnosed as a long standing mental problem (Tr. 2, 3). The courts findings, under the statute, must be based on a finding of mental illness, plus the lack of insight of the patient to make responsible decisions with regard to hospitalization for that illness. These criteria are as objective as one can hope for in such a subjective area, and certainly not so vague as to render the statute unconstitutional.

### POINT III

#### APPELLANT MET THE STATUTORY GROUNDS FOR COMMITMENT AT THE TIME OF HEARING.

The examiners agreed that the appellant required further supervised treatment. (Tr. 5, 6, 8) They further agreed that he lacked the insight to follow up on that treatment on his own. Although the contingencies the examiners were concerned about were in the future, the court and examiners were concerned with the appellant's state of mind at the time of the hearing. The Court was obviously concerned with the appellant's

present perception of his problem and whether he fully appreciated and understood his vulnerability and the likelihood of regression if he failed to maintain proper treatment. The lack of insight related to appellants present perception of his illness as well as future contingencies.

## CONCLUSION

Respondents submit that the standard of proof in a commitment proceeding is governed by the facts that the state is acting in its role as *Parens Patriae* and the proceeding is civil not criminal in nature. Therefore, the attempts to graft on the criminal standard as in *In Re Gault* 387 US 1 (1967) and *In Re Winship* 397 US 358 (1970) are improper. The potential deprivation of liberty is of at least equal concern to the requirements of certainty in real property conveyances, therefore greater than a preponderance is necessary. It is submitted that the appropriate civil standard of proof would be the equivalent of that set forth by Justice Wolfe in *Rawson v. Hardy* supra, i.e. "clear and indubitable". The use of this standard would not violate the requirements of due process.

The criteria of UCA 64-7-36 (H) (3) as amended are sufficiently objective, particularly the general requirements of the law appointing designated examiners to provide objective, expert testimony, to overcome the allegation that they allow an unconstitutionally

broad area of judicial discretion.

The evidence in the case before the court, being essentially uncontroverted, clearly sustained the finding of the court. Further it was “clear and indubitable” and “clear and convincing” leaving no serious or reasonable doubt as to the appellants need for hospitalization.

The finding of the Lower Court should be sustained.

Respectfully Submitted,

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