1978

# In the matter of the Mental Condition of Thomas Wahlquist : Brief of Respondent

Utah Supreme Court


Robert B. Hansen; Paul M. Tinker; Attorneys for Respondents;
James R. Hasenyager; Attorney for APpellant;

IN THE SUPREME COURT OF THE STATE OF UTAH

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In the matter of the Mental Condition of

THOMAS WAHLQUIST.

Case No. 15702

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# BRIEF OF RESPONDENT

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Appeal by patient from an order of hospitalization from the Second Judicial District Court, Weber County, the Honorable J. Duffy Palmer presiding.

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# BRIEF OF RESPONDENT

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## STATEMENT OF THE NATURE OF THE CASE

After a hearing held pursuant to U.C.A. 1953, §64-7-36 on August 1, 1977, appellant was hospitalized as a patient in the Weber County Mental Health Center by order of Judge J. Duffy Palmer, Second Judical District Court for Weber County. Upon appellant's petition for re-examination of the order of hospitalization, a hearing was held on February 21, 1978, at which time the order of hospitalization was continued, and appellant was transferred to the Utah State Hospital pursuant to U.C.A. 1953, §64-7-41. This appeal challenges the procedures followed in the February 21, 1978, re-examination hearing.

## DISPOSTION IN THE LOWER COURT

On August 1, 1977, appellant was found to be mentally ill, in need of care and treatment, and because of his

illness unable to carry through with a voluntary treatment program, U.C.A. 1953, §64-7-36. Consequently, by order of Judge J. Duffy Palmer, Second Judicial District Court, appellant was hospitalized in the Weber County Mental Health Center. That order was continued after a hearing on February 21, 1978, and appellant was transferred to the Utah State Hospital.

## RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the order of hospitalization and denial of appellant's request for a new hearing to be held on his petition for re-examination of the order of hospitalization.

## STATEMENT OF FACTS

Respondent agrees generally with the statement of facts presented by appellant. (Appellant's Brief, pp. 2-4).

## ARGUMENT

THE HEARING IN THE LOWER COURT WAS HELD IN ACCORDANCE WITH STATUTORY STANDARDS, AND APPELLANT WAS PROPERLY HOSPITALIZED AT THE UTAH STATE HOSPITAL.

As appellant states at page 5 of his brief, this appeal centers upon a single issue - - the procedural requirements of §64-7-45. This section allows a patient who has been committed to a mental health facility pursuant to §64-7-36 to have periodic reviews of the order of hospitalization, either upon his own petition or that of a relative or friend. The pertinent text of §64-7-45 follows:

> "Any patient hospitalized pursuant to section 64-7-36 shall be entitled to a re-examination of the order for hospitalization on the patient's own petition, or that of the legal guardian, parent, spouse, relative, or friend, to the district court of the county in which the patient resides or is detained. Upon receipt of the petition, the court shall conduct or cause to be conducted by a mental health commissioner proceedings in accordance with such section 64-7-36,. . . ."

Appellant focuses on the word re-examination in the first sentence of this statute, (Appellant's Brief, p. 5), but disregards the substance of the rest of the sentence. The rules of statutory analysis, as cited by appellant, require the court to presume that the words and phrases were chosen advisedly to express legislative intent. (Appellant's Brief, p. 5, citing Gord v. Salt Lake City, 434 P.2d 499, 451 (Utah, 1967)). However, it certainly would not comport with either legislative intent or rules of construction to analyze a statute

one word at a time, focusing on the general definition of one word without regard for the position and function of the word in the context of the sentence. Indeed, the rule cited by appellant states that words and phrases are chosen advisedly and must be given their clear and everyday meaning. "Phrase" refers to several words which, when taken together, express a single thought or idea. So in determining what re-examination means in the context of §64-7-45, it might be helpful to look at the complete sentence rather than the word standing alone.

Respondent does not dispute that the word "re-examination" has the dictionary definition of "a second or new examination". (Appellant's Brief, p. 6). But in the context of §64-7-45, it is important to look at the object of the re-examination. It is the order, not patient, which must be re-examined according to this statu "Any patient hospitalized pursuant to section 64-7-36 shall be entitled to a re-examination of the order for hospitalization. . . ." U.C.A. §64-7-45.

Section 64-7-36(6) requires evidence beyond a reasonable doubt that a proposed patient:

(a) is mentally ill, and

(b) is dangerous to himself or others, or

(c) is in need of custodial care and treatment, and because of his illness either

(i) lacks sufficient insight to make responsible decisions as to his need for care and treatment, or

(ii) lacks sufficient capacity to provide himself with the basic necessities of life, and

(d) there is no less restrictive alternative to a court order of hospitalization.

(See §64-7-36(6)).

Thus, the hearing held pursuant to §64-7-36 must be an extensive evidentiary procedure, and it requires that the mental condition of the proposed patient be thoroughly examined by impartial, court-designated examiners. On the other hand, the purpose of a hearing pursuant to §64-7-45 is to review and re-examine the order which was made after an affirmative finding, beyond a reasonable doubt, of all of the substantive elements of §64-7-36, to determine that those conditions are still present and the order remains valid. The court must determine that all of those conditions still exist, and that they have not altered sufficiently to warrant the patient's release. Whereas designated examiners are necessary

under §64-7-36 to facilitate the court's findings as to the mental illness and the capabilities of a proposed patient, they would not necessarily be required for that same purpose in a re-examination hearing. After a period of time in treatment in the mental health system, the patient's present condition and progress are best known by those who have cared for and treated him during that time. Because the whole purpose of having a re-examination hearing is to allow the court to evaluate the progress of the patient and to determine if he should remain hospitalized, it is to the doctors who have observed and participated in that progress that the court should look for testimony in a re-examination heari

It is therefore apparent that, contrary to appellant' assertions, it is not a requirement under §64-7-45 that the court even appoint designated examiners, especially examiners who have had no prior contact with the patient. The only basis that appellant has for claiming that designated examiners must be appointed for a re-examinati hearing is the language in §64-7-45 which states that upon receipt of a petition for re-examination the court "shall conduct or cause to be conducted by a mental healt commissioner proceedings in accordance with such section 64-7-36,. . . ." In other words, a re-examination hearin must conform to the same procedural standards as the

original commitment hearing must under §64-7-36. However, not every provision of §64-7-36 applies to a re-examination hearing.

Section 64-7-45 outlines its own petitioning process, so the provisions of §64-7-36(1) do not apply. Most of the provisions of §64-7-36(2) are applicable only to prospective patients who are not currently hospitalized or under the care of a mental health facility, and thus have no relevance to §64-7-45. Similarly, §64-7-36 (3) can only logically be applied to the prospective patient, not to one who, as appellant, is already in a hospital and under the custody of the Division of Mental Health.

It is obvious, then, that appellant cannot argue that all provisions of §64-7-36 must be applied in an identical manner to a re-examination hearing under §64-7-45. Just as sub-sections (1), (2), and (3) of §64-7-36 cannot be applied to the re-examination procedure, neither can sub-section (4), which discusses the appointment of designated examiners. In the original commitment process, the court has had no experience with the patient, and must appoint two examiners to facilitate the evidentiary findings required by §64-7-36. However, as previously discussed, after at least six months in the custody of a mental health institution, the best evidence as to

the patient's present condition is going to come from those who have treated him during his hospitalization or confinement. There is no longer any real purpose to be served by court-appointed designated examiners. Thus, just as sub-sections (1), (2), and (3) of §64-7-36 are not incorporated in §64-7-45, neither is sub-section (4), and designated examiners need not be appointed for a re-examination hearing.

The phrase in §64-7-45 which states that proceedings must be held in accordance with §64-7-36 undoubtedly was intended to incorporate those provisions of section 36 which could logically and usefully be applied in a re-examination hearing. For example, sub-section (5) of §64-7-36 guarantees to mental patients the procedural rights afforded to parties to criminal proceedings by the United States Constitution. Sub-section (5) sets forth the basic procedures for a mental health hearing which would be equally applicable to both initial commitment hearings and re-examination hearings. Likewise, the substantive aspects of sub-section (6) are also applicabl to a re-examination hearing. However, at least portions of sub-sections (7) through (10), when read closely, can only logically apply to the original commitment proceedi for proposed patients, and cannot be utilized in a re-examination proceeding. It is thus clear that when the

legislature said in §64-7-45 that the proceeding should be conducted in accordance with §64-7-36, it did not mean that section 36 was to be incorporated part and parcel into section 45. One of the unincorporated portions must be sub-section (4), because designated examiners are unnecessary in a re-examination hearing.

Because the court was not required to appoint designated examiners at all, there was no error in the present case when Dr. Hansen and Dr. Schmidt were appointed to testify in the present case. Their testimony was undoubtedly helpful to the court in determining that the conditions which originally necessitated the appellant's hospitalization (of which Dr. Hansen had particular knowledge) still existed and that hospitalization was still necessary (to which fact Dr. Schmidt was particularly qualified to testify). These two doctors were called "designated examiners" because of the judge's apparent assumption that because appellant requested designated examiners, he had to appoint them, as he does in a commitment proceeding under §64-7-36. However, as has been seen, there is no such requirement for a re-examination hearing. Nevertheless, the testimony of Dr. Hansen and of Dr. Schmidt was certainly admissible in the February 21 hearing simply in their capacities as doctors who had knowledge of the appellant's condition, and there was no error

in admitting their testimony.

Appellant's second point in his brief (p. 11) is really only an extension of his first, and must fall on the same basis. Appellant argues that Dr. Hansen was required to re-examine him, and because he did not do so that the statutory process was violated. That argument fails in two ways. First, it was not even necessary that designated examiners be appointed, and thus appellant cannot base his argument on the duties of a designated examiner because they are not applicable in a §64-7-45 hearing. Second, §64-7-45 states that the order, not the patient, must be re-examined, so appellant's lengthy discussion regarding the meaning of "re-examination" is not applicable to the patient and the condition of his mental health. Dr. Hansen was certainly competent to testify as to appellant's condition when the original hospitalization order was entered, and as the court had to determine that appellant's condition had not changed significantly, Dr. Hansen's testimony was relevant and helpful. Again, no error was committed by the trial court in conducting the hearing under §64-7-45.

## CONCLUSION

Appellant was hospitalized in August because his mental condition required that he receive custodial care

and treatment. As allowed by statute, appellant was granted a hearing after six months in the mental health system to determine whether he was still in need of such care and treatment. That hearing was conducted in accordance with the requirements of §64-7-45, and the appellant remains properly hospitalized at the Utah State Hospital.

Respondent therefore requests that the order of the lower court be affirmed.

Respectfully Submitted,

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MAILING CERTIFICATE

This is to certify that I mailed two true and exact copies of the foregoing Brief of Respondent, postage prepaid, to James R. Hasenyager, Utah Legal Services, Inc., Attorney for Appellant, at 453 - 24th Street, Ogden, Utah, 84401, on this the 21st day June, 1978.

Sandra Sundquist

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