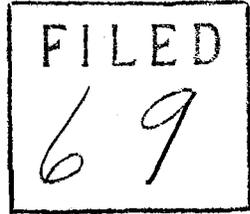


STATE ELEEMOSYNARY INSTITUTIONS:

A person previously a patient at a Kansas State Hospital for epileptics is not a proper charge of the state of Missouri in its state hospital for the insane.

November 2, 1945



Mr. W. R. Painter, President,
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Painter:

We acknowledge receipt of your request for an opinion of this department in your letter of October 24, 1945, which letter reads as follows:

"Enclosed find papers from Dr. Ralph Hanks, Superintendent at State Hospital #3, Nevada, concerning Noel Luther Ryman. Please return the letter to me after it has served its purpose.

"As you will note, Mr. Ryman was a patient at State Hospital for Epileptics at Parsons, Kansas, for thirteen years. He escaped and came to Missouri. His father, who previously lived in Kansas, had moved to Dallas County, Missouri. His father had the boy committed through the County Court of Dallas County to State Hospital #3, Nevada, Missouri. The State Hospital at Parsons, Kansas, is willing to take the boy back provided his father wants to send him.

"Please give us your opinion as to whether or not this is a just charge to the State of Missouri, or if the boy should be returned to the State Hospital in Kansas. We would appreciate your opinion as early as possible because the matter has caused quite a bit of flurry in that section of the State."

The provisions for commitment of poor persons to state hospitals of Missouri are contained in Article II, Chapter 51, R. S. Mo. 1939. This Article makes provision for the county courts to send insane poor persons to a state hospital when they are entitled to admission thereto, and provides the procedure for accomplishing this commitment.

Section 9328 of this Article reads, in part, as follows:

"The several county courts shall have power to send to a state hospital such of their insane poor as may be entitled to admission thereto. * * *"

Section 9335 of this same Article reads as follows:

"For the admission of county court patients the following proceedings shall be had: Some citizen residing within the county, of which the alleged insane person is a resident, shall file with the Clerk of the County Court of such county a verified statement in writing which shall be substantially as follows:

"State of Missouri)
County of _____) ss.

The undersigned, a citizen residing in the county and state aforesaid, on his oath, according to his best information and belief states; that _____, a resident of the county and state aforesaid is insane; that his insanity is less than _____ year's duration; the said _____ has not sufficient estate to support him at a state hospital for the insane; that the said _____ (is or is not) so deranged as to endanger himself or others and _____ (will or will not) be dangerous to the safety of the community by being at large and that he _____ (is or is not) now being confined or restrained; and that the foregoing facts can be proved by _____ and _____ (naming at least two persons one of whom shall be a reputable physician).

Dated this _____ day of _____, 19_____.

Subscribed and sworn to before me this _____ day of _____ 19_____.

County Clerk."

(R. S. 1929, Sec. 8643. Reenacted, Laws 1937, p. 509).

Section 9356 of the Article reads, in part, as follows:

"No person shall be entitled to the benefit of the provisions of this article as a county patient, except persons whose insanity has occurred during the time such person may have resided in the state, and except the insane poor under sentence as criminals, as provided in Sections 9348 to 9352, inclusive of this article.* * *"

Under the provisions of Section 9328, supra, the county court is authorized to commit insane poor to state hospitals when they are entitled to admission. A careful examination of Article II, Chapter 51, R. S. Mo. 1939, reveals that there are two sections setting out the conditions which entitle such person to admission to a state hospital. They are sections 9335 and 9356, supra. The statute places in the county court the authority to determine whether these conditions have been met. The county court, in committing Mr. Ryman must have found that these conditions were all complied with.

Our opinion must, therefore, deal with whether or not the county court committed error in finding as they did on certain of these conditions. An examination of the facts of the present situation, as set out in the correspondence referred to us, leads us to the conclusion that we would be logically correct in questioning only two of the county court's findings. They are (1) the matter of the residence of Mr. Ryman and (2) that Mr. Ryman's insanity occurred in the State of Missouri.

Therefore, we think the determination of the matter presented in your letter of October 24, 1945, depends upon the answers to the following questions:

1. Was the patient a resident of the State of Missouri and the County of Dallas at the time of his commitment?
2. Did the patient's insanity occur while he was a resident of the state which committed him?

In order to commit an insane person to the state hospital the county court must find not only that the person is insane but also that he is a resident of the county which commits him. (Thomas v. Macon County, 74 S. W. 999, 175 Mo. 68.

Your letter of October 24, last, with the attending correspondence, shows that Mr. Ryman had been in a state hospital for epileptics in the State of Kansas for thirteen (13) years immediately preceding his commitment by the Dallas County court, that his father had formerly

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lived in Kansas, and that Mr. Ryman had escaped from the Kansas hospital around September 4, 1945, and was committed by the Dallas County Court on September 5, 1945, to the Missouri state hospital. It also shows that Mr. Ryman is now twenty five (25) years of age. This would have made him twelve (12) years old when he was committed to the Kansas Hospital and, of course, would make him a minor at that time. The question of his residence must be discussed in two phases. The first is that of what his residence would be if he had been adjudged insane in Kansas at the date of his commitment to the Kansas hospital for epileptics while he was still a minor.

In *Chew v. Nicholson* (1922, District Court, Dist. of Del.) 281 Fed. 400, a girl was adjudged insane at the age of twenty two (22) years. She had been living in Delaware but her mother put her in an asylum in Pennsylvania. The mother was appointed by a Delaware court as trustee of her person and estate. The question in the case was whether she was a resident of Delaware or of Pennsylvania at the time of her death in the Pennsylvania hospital. The court, in discussing the question of domicile said at l.c. 403:

* * * * *

"It has likewise been held that, where an infant is of unsound mind and remains continuously so, the incapacity of minority continues, so as to confer on the father the right of choice in the matter of the domicile of the child, and that the father's change of domicile effects a change in the child's domicile. *Sharpe v. Crispin*, L. R. 1 Prob. & Div. 611; *Wharton's Conflict of Laws*, Sec. 53."

* * * * *

The court in this case approved of this rule but refused to extend it to the situation regarding the change of domicile by a guardian of a person who was adjudged insane after attaining majority. This case has not been overruled and we do not find any contrary authority on this proposition. The fact that Mr. Ryman had been in a hospital in Kansas would not affect the matter of his residence since the courts hold that commitment to a state hospital does not work a change in the domicile or residence of a person. (*Chew v. Nicholson*, supra; *Kuphal v. Kuphal* (1941 Supreme Court) 29 N. Y. Supp. (2d) 868; *Squire v. Vasquez* (1936 Ga. App.) 184 S. W. 629.)

Therefore, we are of the opinion that, if Mr. Ryman was adjudged insane before his majority, his domicile would follow that of his father. Your letter shows that his father was a resident and dom-

iciled in Missouri when the boy was committed by the Dallas County court. If Mr. Ryman was adjudged insane before majority the Dallas County Court had the authority to find that the residence requirement for commitment to a Missouri hospital was complied with.

The second phase is that arising if Mr. Ryman had never been adjudged insane before he came to Missouri, under such circumstances the question of residence would depend upon his ability to form the intent and to choose a domicile for himself, these being the two elements necessary to acquire domicile or residence. (Bradshaw v. Bradshaw, 166 S. W. (2d) 805; Lewis v. Lewis, 176 S. W. (2d) 556.)

It is the duty of the county court committing a person, to determine whether he had such requisite intent to establish a residence. We are of the opinion that, under the facts of your letter of October 24, 1945, it is highly probable that Mr. Ryman was adjudged mentally incompetent in the State of Kansas and that his residence, therefore, would have followed that of his father and that he was a resident of Dallas County at the time of his commitment by that county court. If the facts thus assumed are incorrect, the county court of Dallas County evidently found that Mr. Ryman was competent to choose Missouri as his residence and that he was a resident of that county, since this was necessary for a valid order of commitment. If the county court did not find such residence as required by Section 9335, supra, its order of commitment would be invalid.

Assuming, since the County Court so found, that Mr. Ryman was a resident of Dallas County, Missouri at the time of his commitment, we proceed to the second question of whether Mr. Ryman falls within the terms of Section 9356, supra, which provides that no person may be entitled to enter a state hospital as a county patient unless his insanity occurred while he was a resident of the State of Missouri. Your letter shows that Mr. Ryman was committed as a county patient. His case, therefore, would be subject to the provisions of Section 9356, supra.

Under Section 9328, supra, the county court is authorized to determine whether a person is entitled to admission to the state hospital as a county patient. One of the requirements, under Section 9356, supra, necessary for such commitment is that the insanity of the patient occurred while he was a resident of Missouri. If the county court failed to find that Mr. Ryman's disability occurred while he was a resident of Missouri, we are of the opinion that the order of commitment would not be valid. Further, the county court would have no authority to make a valid order of commitment if, in fact, Mr. Ryman's disability did not occur while he was a resident of the State of Missouri.

Under the facts set out in your letter and recited above in this

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opinion, we believe that we can logically assume that Mr. Ryman's disability did not occur while he was a resident of this state. It is difficult to conceive of the mental disability of a person, who has been in a state hospital for epileptics for the preceding thirteen years, occurring during a three or four day interval in which he was in this state. If we are correct in an interpretation of the facts as revealed in your letter of October 24, 1945, we are of the opinion that Mr. Ryman's mental disability did not occur while he was a resident of Missouri.

While we think it highly improbable, under the facts as set out in your letter, that Mr. Ryman's insanity occurred in the State of Missouri, it should be kept in mind that if there were sufficient facts showing that such insanity did occur in Missouri, that Mr. Ryman had sufficient capacity to exercise choice and intention as to his residence and that he did so intend to make Missouri his residence, then he would be a proper charge upon the State of Missouri as a county patient. As stated at the outset of this opinion, the county court, by its commitment order, has evidently found that Mr. Ryman is a proper charge upon the state as a county patient. He, therefore, remains such until the order of the county court committing him has been attacked and set aside. If, and when the order of the county court is set aside, as we think it might well be on the grounds discussed above in this opinion, Mr. Ryman would then cease to be a proper charge upon the state.

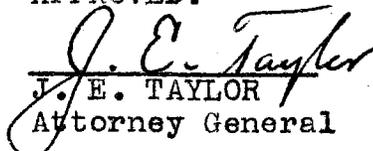
CONCLUSION

It is, therefore, the opinion of this department that under the facts presented in your letter of October 24, 1945, Mr. Noel Luther Ryman is a proper charge to the State of Missouri as a county patient in State Hospital No. 3 at Nevada, Missouri. However, it is our further opinion that under said facts, the order of the county court committing Mr. Ryman to State Hospital No. 3 might be successfully attacked and said order set aside. In such event, we are of the opinion that Mr. Noel Luther Ryman would not be a proper charge upon the state as a county patient in State Hospital No. 3.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:


J. E. TAYLOR
Attorney General

SNC:mw