

INSANE PERSONS: Insane person admitted to state hospital retains
PROBATE COURTS: residence had at time of admission.

July 26, 1949

8/10/49



Honorable D. R. Jennings
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

Your recent opinion request reads as follows:

"On the 30th day of April, 1940, a certain individual, who was 35 yrs. of age, was residing with her parents in Warren County, Missouri. On said date she was admitted to State Hospital No. One, at Fulton, Mo., as a private patient, upon the certificate of private physicians. She has been continuously confined there since that time. There has been no hearing before or a commitment by a County or Probate Court.

"About five years ago the parents moved to Montgomery County, Missouri. The said individual being then confined in the State Hospital. The said individual has never actually lived in Montgomery County.

"The parents have now encountered adverse circumstances and are unable to maintain her in said institution as a private patient. It is their intention to have her committed to State Hospital No. 1, as a County Patient.

"It is my contention that the said individual is not a resident of Montgomery County, but is a resident of Warren County and our Probate Court is without jurisdiction. She was emancipated from her parents at the time she was sent to the said hospital and was a resident at that time. I do not believe that her residence would follow her parents. I am sure

that if in 1940, she had been committed by the County or Probate Court of Warren County as a county patient, the Courts would not hold that her residence would change with her parents."

The individual in question was admitted to the state hospital as a pay patient under authority of Section 9322, R. S. Mo. 1939. She still remains an inmate of this institution, and, we assume, it shall be found that she has not sufficient estate to support her therein. She may therefore be made a county patient upon order of the probate court of the proper county, as provided in Section 9346, Mo. R.S.A. which reads as follows:

"If the probate court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate, under his official seal, setting forth that any patient in a state hospital has not estate sufficient to support him therein. Upon the receipt of such certificate by the superintendent, such person shall be a county patient of such county, and shall be supported by such county, as provided by this article in the cases of poor patients."

It is the probate court of the county of residence that is the proper probate court to issue this order. Section 9328, Mo. R. S. A., provides that the probate courts of the several counties shall have power to send to a state hospital such of the insane poor of their respective counties as may be entitled to admission thereto. The form provided for by Section 9335, Mo. R. S. A. to be used in proceedings for admission of insane poor persons by probate courts requires an allegation that such insane poor person is a resident of that county in which the proceedings are held. Section 9346, supra, supplements Section 9328, and is governing in those cases where the insane poor person is already an inmate of a state hospital. It therefore follows that the probate court of the county of residence is the proper probate court to issue the order provided for in Section 9346, supra.

The individual in this instant case was thirty-five years of age at the time of her admission to State Hospital No. One. She was an adult at the time of the onset of her insanity, and had been fully emancipated from her parents. Therefore she was at the time of her admission a resident in her own right of Warren County. This residence was not lost or changed when she was admitted to the state hospital. An insane person does not become

a resident of the county in which is situated the state hospital to which he is admitted; see Ex parte Zorn, 145 S.W. 62, 241 Mo. 267. The individual in question remains a resident of Warren County after her admission to the state hospital. Furthermore, an insane person is not mentally capable of making a change in residence; State ex rel. Taylor v. Wurdeman, 108 S.W. 144, 129 Mo. App. 263.

Nor was the daughter's residence changed by operation of law when her parents moved to Montgomery County. She had been emancipated from them upon becoming an adult. There has never been any guardianship proceedings, nor any court proceedings whatsoever. Therefore, the individual in question, being a resident of Warren County in her own right, retained such residence upon admission to the state hospital. There has been no change of residence by operation of law, and the insane individual was incapable of effecting a change of residence.

Conclusion

Therefore, it is the opinion of this department that an adult person who becomes insane and is admitted to a state hospital retains as his residence that county of which he was a resident prior to admission. Nor does a mere change of residence effected by the parents of such individual, with whom the latter had resided, operate as a change of the insane individual's residence. The probate court of the county of which the insane person was a resident prior to admission is the proper court to make the order provided for by Section 9346, Mo. R.S.A.

Respectfully submitted,

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APPROVED:

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RHV:mw