INSANE PERSONS: Probate Court may make order recommitting person to State Hospital on original judgment of insanity if original judgment has not been vacated.

May 2, 1941

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Honorable W. Ed Jameson
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

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Dear Mr. Jameson:

This will acknowledge receipt of your letter of April 29, 1941, enclosing letter from Dr. Ralf Hanks, Superintendent, State Hospital No. 1, and asking for an opinion upon the following question contained in the letter of Dr. Hanks. The question is as follows:

"Occasionally the question has arisen as to whether or not the Probate Judge has the right to order the commitment to the State Hospital without a new hearing on a person who has previously been declared insane and sent to the Hospital and later discharged by the Hospital. I shall be grateful to you if you can get an opinion from the Attorney General clarifying this point.

"On April 18th the sheriff of Randolph County brought a patient, Aubrey H. Neil, to the hospital with the following order from the Probate Court:

'STATE OF MISSOURI) February 1941 Term
(SS.
COUNTY OF RANDOLPH)

In the Probate Court at Moberly, in said county on the 16th day of April, 1941, the following, among other proceedings, were had and placed on the Court Record.

IN RE: THE ESTATE OF AUBREY H. NEIL, A PERSON OF UNSOUND MIND, ORDER TO RE-COMMIT TO STATE HOSPITAL.

Now on this day, on the application of J. W. Tate, Guardian of the person and estate of said Aubrey H. Neil, a person of unsound mind, it is shown to the Court that said Aubrey H. Neil is a person liable to do damage to himself or to others, it is ordered that said Guardian have said Ward re-committed to State Hospital No. 1 at Fulton, Missouri, for safe keeping and treatment, until further orders of this Court.

W. O. Doyle,
Judge of Probate."

"Our records show that he was first admitted March 28, 1935, by order of the Probate Court of Randolph County. He was discharged from the institution on December 17, 1938.

"The Judge of the Probate Court took the position that since he had once been declared insane, regardless of the fact that the Hospital had discharged him, he was still legally insane and under the jurisdiction of the Court, and that he could return him to the Hospital without new commitment papers. I was of the opinion that since the Hospital had discharged him the Court should have a new sanity hearing on the patient before he was brought to the Hospital."

The sections of the statutes relating to insanity inquiries in the Probate Court which apply to the foregoing question are found in Article 18, Chapter 1, R. S. Missouri, 1939. Section 447 of this article and chapter confers upon the Probate Court jurisdiction to inquire into the sanity of persons. This section is as follows:

> "If information in writing, verified by the informant on his best information and belief, be given to the probate court that any person in its county is an idiot, lunatic or person of unsound mind, and incapable of managing his affairs, and praying that an inquiry thereinto be had, the court, if satisfied there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury: Provided, that if neither the party giving the information in writing, nor the party whose sanity is being inquired into call for or demand a jury, then the facts may be inquired into by the court sitting as a jury."

Section 451 authorizes the Probate Court to appoint a guardian of the person and estate of the person whose sanity is being inquired into, if it be found that such person is of unsound mind.

Section 474 authorizes the restraint of the person, and is as follows:

> "Every probate court, by whom any insane person is committed to guardianship, may make an order for the restraint, support and safekeeping of such person, for the management of his estate, and for the support and maintenance of his family, and education of his children,

out of his proceeds of such estate; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for any of the purposes above specified."

The procedure to be followed upon the recovery of a person previously found to be of unsound mind by the Probate Court is set out in Sections 492 and 493. These sections are as follows:

Section 492:

"If any person shall file in the probate court of any county in this state an allegation in writing, verified by oath or affirmation, that any person who has heretofore been declared by such court to be of unsound mind, or insane, has been restored to his right mind, the court shall hold an inquiry as to the insanity of such person: Provided, that if the court, upon such inquiry, shall find that such person is not restored to his right mind, and such person, or any one for him, shall, within ten days after such finding, file with the court an allegation in writing, verified by oath or affirmation, that such person is of sound mind and is aggrieved by the action and finding of the court, the court shall then cause the facts to be inquired into by a jury."

Section 493

"If it be found that such person has been restored to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his ac-

> counts, and restore to such person all things remaining in his hands belonging or appertaining to him; and if it be found that such person has not been restored to his right mind, the person at whose instance the inquiry was had, may, in the discretion of the court, be required to pay the costs of the proceeding."

There are other sections of the statutes relating to setting aside the judgment and appeal which, for the purpose of brevity, we are not setting out or mentioning by number.

In connection with the adjudication of insanity by the Probate Court and its force and effect, attention is called to the case of Hamilton v. Henderson, 117 S. W. (2d) p. 379, a case in which petitioner who had been adjudged of unsound mind, was seeking release from restraint by a Writ of Habeas Corpus. The Kansas City Court of Appeals, in which court the case was decided, in discussing the effect of a judgment of insanity by a probate court, used the following language at l. c. 381:

> "As to the first ground the facts show that the petitioner was a resident of Jackson County, owning valuable property and living therein at the time that she was adjudicated an insane person by the Probate Court of Jackson County, Missouri, on May 7th, 1936. Under section 448, R.S. 1929, Mo.St.Ann. Sec.448, p.281, the Probate Court of the County of the residence of the person whose sanity is inquired into has exclusive jurisdiction of the proceedings and the fact that such a party is confined in an institution without the county does not change his residence and does not deprive the court of that jurisdiction. Ex parte Zorn, 241 Mo. 267, 145 S.W. 62; State ex rel. v. Mills, 231 Mo. 493, 133 S.W. 22; State ex rel. v. Wurde-

> man, 129 Mo.App. 263, 108 S.W. 144; Baker v. Estate of Smith, 223 Mo.App. 1234, 18 S.W. 2d 147. Consequently, petitioner was a resident of Jackson County on February 2nd, 1937. Moreover, this is a collateral attack upon the judgment of the probate court. 'If jurisdiction of the subject matter and of the person of the alleged lunatic attached in lunacy proceedings, the inquisition cannot be attacked collaterally for errors or irregularities in the proceedings; it remains valid until reversed or set aside. But if lunacy proceedings are void on their face, they are subject to collateral attack.' 32 C.J. p. 648; 29 C.J. pp.25-29; State ex rel. v. Brasher, 200 Mo.App. 117, 126, 201 S.W. 1150; Hartman v. Henry, 280 Mo. 478, 217 S. W. 987; Ex parte Dixon, 330 Mo. 652, 52 S.W. 2d 181. Though probate courts are of limited jurisdiction, yet, in matters where their original jurisdiction is exclusive, their judgments are entitled to all the presumptions which protect the judgments of courts of general jurisdiction. Crohn v. Modern Woodmen of America, 145 Mo.App. 158, 129 S.W. 1069." (Underscoring ours).

And further, at l. c. 382, is the following discussion:

> "Our statutes provide ample relief in the probate court to persons who have been adjudged insane and under guardianship, upon their restoration to sanity. Section 452, Mo.St.Ann. sec.452, p.285, provides for a guardian of persons adjudged insane by the probate court who, by section 461, Mo.St.Ann. Sec. 461, p. 288, is given charge of his person and is required to provide support and maintenance for the ward. Section 498, Mo.St.Ann. Sec. 498,

p. 301, provides for the confinement of his ward by the guardian and section 496, Mo.St.Ann. Sec. 496, p.300, for the removal of the guardian. To safeguard the rights of any person who may claim to have been improperly adjudged insane, provision is made by section 456, Mo.St.Ann. Sec.456, p.286, whereby the court may, at any time during the term in which an inquisition is had, set same aside and cause a new inquiry into the facts. Sections 493 and 494, Mo.St. Ann. Secs. 493, 494, pp.298, 299, provide that any person may file in the probate court an allegation that a person, who has theretofore been declared by such court to have been of unsound mind, has recovered and, thereupon, the court shall hold an inquiry as to the sanity of such person and, upon such inquiry, if such person is found to be not restored to his right mind, such person, or any one for him may, within 10 days after such finding, file an allegation, in writing, that such person is of unsound mind and is aggrieved by the action and finding of the court, whereupon, the court shall cause the facts to be inquired into by a jury. Section 494 provides for the discharge of a person found to be sane, from the care and custody of his guardian, and that the latter shall immediately settle his accounts and turn over all property and accounts to him. Sections 1938, 285 and 292, Mo.St.Ann. Secs. 1938, 285, 292, pp. 2605, 181, 184, provide for appeals from judgments of probate courts against a finding of restoration, as well as from the original adjudication of insanity, and that a trial de novo of his sanity shall be held in the appellate (circuit(court. Baker v. Estate of Smith, supra, loc. cit. 1241, 18 S.W. 2d 147.

> "Section 486, Mo.St.Ann. sec.486, p. 296, provides: 'No contract of any person found to be of unsound mind, as hereinbefore specified, which shall be made without the consent of his guardian, shall be valid or binding, and such guardian may sue for and recover any money or property which may have been sold or disposed of by his ward without his consent.' Under this section it is held that an adjudication of insanity is conclusive on the question until set aside and cannot be questioned in a collateral proceeding on the ground that restoration of sanity has taken place. Kiehne v. Wessell, 53 Mo.App. 667; Herman v. St. Francois County Bank, supra; Cockrill v. Cockrill, C.C., 79 F. 143; Wadsorth v. Sharpsteen et al., 8 N.Y. 388, 59 Am. Dec. 499; Imhoff v. Witmer's Adm'r, 31 Pa. 243."

From a reading of the above cited sections of the statutes and considering them in connection with the above case, it is apparent that when a judgment of insanity is rendered by a Probate Court it is a valid and enforceable judgment until vacated or set aside in the manner prescribed by statute.

The law pertaining to the discharge of persons from State hospitals for mental patients who have been lawfully committed is found in Section 9321, Article 2, Chapter 51, R. S. Missouri, 1939. This section is as follows:

> "Persons afflicted with any form of insanity shall be admitted into the hospitals for the care and treatment of same. Any patient so admitted may be discharged or paroled whenever in the judgment of the Superintendent and his staff such person should be discharged or paroled. The decision of the Superintendent and his staff on such matters

> shall be final and the respective counties of this State are hereby prohibited from removing any indigent insane person unless such insane person is discharged as herein provided."

In order to answer the question contained in the letter of Dr. Hanks, it is necessary for us to assume that the original judgment of the Probate Court of Randolph County had never been vacated by appropriate legal steps, and this is indicated by the doctor's letter. This places the matter in the position of apparently having a later dated order of the court based on an existing, enforceable judgment coming into conflict with an order of the Superintendent of the State Hospital, who had full authority to make the order, discharging such person from the Hospital. After careful consideration of the matter we do not believe there is any conflict. The judgment of the probate court never having been vacated, the court may make all necessary orders based on it. Attention is called to the date of the discharge from the Hospital, as set out in the letter of Dr. Hanks, December 17, 1938, and the date of the present order of the Probate Court, April 16, 1941. It is quite well known that the condition of persons who are mentally ill does change. If, as we assumed, the original judgment has not been vacated, then upon a proper showing to the court that the condition of the person had changed between December 17, 1938 and April 16, 1941, so that it was found by the probate court the person again needed to be restrained, the court could make the present order based on its original judgment.

CONCLUSION.

It is our opinion that under the present order, as set out in the letter of Dr. Hanks, the patient should be received.

Respectfully submitted,

APPROVED:

W. O. JACKSON
Assistant Attorney General

VANE C. THURLO
(Acting) Attorney General

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