

Number 12

Displacement of Nearest Relative

The power of the County Court to displace the nearest relative pursuant to section 29 of the Mental Health Act is well known. However, the Court has recently decided¹ whether it is possible to make a Displacement Order on an interim basis pending a final decision on whether to displace, and if it is, whether a patient can be detained in hospital under section 3 pursuant to an application based on that Interim Order.

The Facts

The Patient had a long history of schizophrenia with several previous admissions to hospital. His mother was the statutory nearest relative under s 26 of the Mental Health Act. An approved social worker applied under s 4 of the Act for emergency admission of the patient to hospital. The patient was then regraded from s.4 to s.2 for assessment. Two days later a County Court Judge, acting under s.29(3)(c) of the Act, made an Order, on the ground that she had unreasonably objected to admission for treatment. Neither the patient nor his mother were present or represented at the hearing. The Judge ordered that the matter be re-listed for a week later so that consideration might be given to the continuance of the Order.

When the Application to displace the mother was considered by another County Court Judge this time the mother was represented. The Judge made an order continuing the previous Order for another 2 ½ weeks. Before the next hearing, on the Application of the Social Services Department purporting to act as the nearest relative, the patient was compulsorily admitted to hospital for treatment under s. 3 of the Act, the hospital relying on the County Court Orders as giving the Social Services Department the necessary authority to apply for admission following displacement of the statutory nearest relative.²

The patient applied for judicial review of the County Court Orders on the ground that the County Court had no jurisdiction to make ex-parte or Interim Orders but only final Orders, and for judicial review of the decision of the hospital managers to admit him for treatment under s. 3 of the Act on the ground that, if the County Court Orders were void, the admission was unlawful.

The decision of the Court of Appeal

The Court of Appeal refused judicial review.

The Court held that the general power in s. 38 of the County Court Act 1984 to make any Order which could be made by the High Court if the proceedings were in the High Court was sufficiently wide and did apply to the 1983 Act. Although there was provision in s. 29(4) of the 1983 Act for the extension of the period for which a patient was liable to be detained under s. 2 until an Application under s. 29 (3)(c) or (d) for the displacement of the patient's nearest relative has been finally disposed of,

¹ R v Central London County Court and the Managers of Gordon Hospital ex parte Ax London

² Radcliffes acted for the Hospital Managers

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Parliament had to be taken to have enacted the 1983 Act in the light of the existing powers of the Court. Accordingly, the County Court had jurisdiction to make the interim Orders displacing the nearest relative and it followed that as the Court Orders were valid, the hospital's admission of the patient under s. 3 was also lawful.

The Court did, however say that it was preferable that, unless there were cogent reasons to the contrary, questions under s. 29 (3)(c) should, by the use of the machinery for extending the period of detention under s. 2 which was afforded by 2. 29(4), be finally determined before an Application for compulsory admission under s. 3 were made.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

BRIEFING

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