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Legal brief *

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IS MY CONFINEMENT IN AN INSTITUTION NECESSARY? AM I DANGEROUS?

In matters of confinement in an institution, judges are called upon to decide on a person's dangerousness to himself or to others due to his mental state. Dangerousness is the only criterion on which a court must base itself in order to confine an individual in a hospital against his will. How do judges assess dangerousness? What happens if the psychiatric assessments are not sufficiently detailed or specific on the matter?

THE FACTS

The individual in question was subject to an order of confinement in an institution pursuant to a judgment rendered by the Court of Québec. The judge had concluded that she presented a danger to herself or to others due to her mental state and that her confinement in an institution was necessary. The individual was dissatisfied with the judgment and went before the Court of Appeal in order to have the decision overturned.

THE ISSUE

Did the judge of first instance commit an error when he concluded that the individual presented a danger to herself or to others due to her mental state and, consequently, that her confinement in an institution was necessary?

THE DECISION

The appeal was allowed and the judgment at first instance was overturned.

THE GROUNDS

In addition to the provisions of the *Civil Code of Québec* which deal with this subject, the legislature has enacted a specific statute to govern confinement of an individual against his will. The *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* expressly states what must be contained in the clinical psychiatric examination report prepared by the hospital in support of its application to confine an individual. The physician must, in particular, specify that he himself examined the individual, he must indicate the date of the examination and he must provide his diagnosis. Furthermore, the physician must give his opinion as to the gravity and probable consequences of the person's mental state and set out the reasons and facts upon which his opinion and diagnosis are based.

In the case of the individual in question, the judges of the Court of Appeal were of the opinion that the psychiatric evaluations prepared by the hospital did not specify at all how the individual's mental illness presented a danger to herself or to others. The psychiatrists who assessed her merely stated that she was dangerous, without providing an explanation. In fact, they simply used a form on which they ticked off that she had no violent, lethal or suicidal ideas. It should be noted that the two psychiatrists were not present at the hearing at first instance and did not testify in court to support their conclusions. As for the individual, she addressed the court and stated that she was not at all dangerous to herself or to others.

According to the three judges who heard the appeal, at no time did the judge of first instance substantiate his decision by indicating that he had sufficient reasons to believe that the individual presented a danger to herself or to others due to her mental state and that her confinement in an institution was necessary. The Court of Appeal emphasized that [TRANSLATION] "it is not possible for a judgment rendered in this manner to satisfy the court's obligation to set out the serious reasons it has for believing in the dangerousness of the person in question." Consequently, the judges allowed the individual's appeal.

References

N.B. v. Centre hospitalier affilié universitaire de Québec, Québec Court of Appeal (C.A.) 200-09-006105-073, October 11, 2007, Judges Pelletier, Dutil and Giroux. (www.jugements.qc.,ca).

An Act respecting the protection of persons whose mental state presents a danger to themselves or to others, (R.S.Q., c. P-38.001, s. 3).

Civil Code of Québec, (S.Q. 1991, c. 64), sections 26 and following.

The jugement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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