

SUPREME COURT OF ILLINOIS

In re Robert S.

213 Ill. 2d 30 (2004) · No. 96773 · Decided November 18, 2004

SUMMARY

The Illinois Supreme Court reviewed an order authorizing the involuntary administration of psychotropic medication to Robert S., a pretrial detainee found unfit to stand trial. The case concerns the constitutional application of Illinois Mental Health and Developmental Disabilities Code section 2-107.1, the qualifications of an independent examiner under section 3-804, and notice to the detainee’s criminal defense attorney. The opinion also addresses mootness and the public-interest exception, and distinguishes medication sought for treatment or dangerousness from medication sought solely to restore competency under *Sell v. United States*.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Rarick
JURISDICTION	Illinois
DECIDED	November 18, 2004
DOCKET	96773
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order authorizing the involuntary administration of psychotropic medication to a pretrial detainee found unfit to stand trial.
STANDARD OF REVIEW	Constitutional challenges and questions of statutory construction are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert S. v. The People of the State of Illinois

TOPICS

- health law
- procedural due process
- due process
- statutory interpretation
- criminal procedure

PRACTICE AREAS

- mental health law
- constitutional law
- criminal procedure
- health law

QUESTIONS PRESENTED

1. Whether the Sell criteria govern involuntary medication of a pretrial detainee found unfit to stand trial when medication is sought for treatment, dangerousness, or the detainee's welfare rather than solely to restore competency.
2. Whether due process requires the independent examination for an involuntary psychotropic-medication proceeding to be performed by a psychiatrist or other medical professional qualified to evaluate medications and their risks.
3. Whether section 2-107.1(a-5)(1) requires notice of the involuntary-medication proceeding to the respondent's criminal defense attorney.
4. Whether section 2-107.1 applies to pretrial detainees found unfit to stand trial.

HOLDINGS

1. The Sell criteria do not govern when involuntary medication is sought under section 2-107.1 for treatment, dangerousness, suffering, or deterioration rather than solely to restore competency. The section 2-107.1 criteria apply to pretrial detainees found unfit to stand trial in the same manner as to other persons in need of treatment.
2. Due process requires an independent examination by a medical professional qualified to prescribe psychotropic medication and evaluate its beneficial and harmful effects, ordinarily a psychiatrist or physician. An unlicensed psychology intern was not qualified to provide the meaningful independent medical review required in this proceeding.
3. Section 2-107.1(a-5)(1) requires notice of the involuntary-medication proceeding to the respondent's criminal defense attorney when the respondent is represented by counsel in a pending criminal proceeding.
4. Although the 90-day medication order had expired and the appeal was moot, the court could decide the issues under the public-interest exception to mootness.

KEY QUOTATIONS

“Harper seems to us the touchstone of due process when considering the propriety of forced medication with psychotropic drugs.”

“The procedure sanctioned by the Supreme Court in Harper addressed two essential features of due process in this context: (1) “independent review” of the treating psychiatrist’s evaluation and proposed course of medication, and (2) review by a “medical professional” who is qualified to prescribe psychotropic medications and trained in their possible side effects.”

“Only a physician—such as a psychiatrist—can prescribe medication; a psychologist cannot. An intern in psychology most certainly cannot.”

FACTUAL BACKGROUND

Robert S. was held at Elgin Mental Health Center after being found unfit to stand trial. His treating psychiatrist sought authorization to administer Risperidone or alternative medications, alleging paranoid schizophrenia,

deterioration in functioning, suffering, threatening behavior, lack of capacity to make a reasoned treatment decision, and the inadequacy of less restrictive alternatives. The circuit court authorized treatment after an independent examination by an intern with a master's degree in psychology who was not a licensed psychiatrist or physician. Robert S.'s criminal defense attorney was not notified of the medication proceeding.

PROCEDURAL HISTORY

The circuit court of Kane County granted the State's petition under section 2-107.1 of the Mental Health and Developmental Disabilities Code and authorized involuntary psychotropic medication for up to 90 days. The appellate court affirmed at 341 Ill. App. 3d 238. The Supreme Court of Illinois allowed respondent's petition for leave to appeal and affirmed in part and reversed in part.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The appellate court judgment was affirmed in part and reversed in part. The opinion does not state specific remand instructions.

CASES CITED

- People v. Burns, 209 Ill. 2d 551 (2004)
- In re Mary Ann P., 202 Ill. 2d 393 (2002)
- Hill v. Cowan, 202 Ill. 2d 151 (2002)
- In re Barbara H., 183 Ill. 2d 482 (1998)
- In re Andrea F., 208 Ill. 2d 148 (2003)
- Vitek v. Jones, 445 U.S. 480 (1980)
- Riggins v. Nevada, 504 U.S. 127 (1992)
- Sell v. United States, 539 U.S. 166 (2003)
- Washington v. Harper, 494 U.S. 210 (1990)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- In re C.E., 161 Ill. 2d 200 (1994)
- In re Detention of Trevino, 317 Ill. App. 3d 324 (2000)
- In re Detention of Kortte, 317 Ill. App. 3d 111 (2000)
- Beahringer v. Page, 204 Ill. 2d 363 (2003)
- United States v. Williams, 356 F.3d 1045 (9th Cir. 2004)
- In re Qawi, 32 Cal. 4th 1 (2004)
- Kulas v. Valdez, 159 F.3d 453 (9th Cir. 1998)