431 Mass. 101
Supreme Judicial Court of Massachusetts,
Norfolk.

ACTING SUPERINTENDENT
OF BOURNEWOOD **HOSPITAL**
v.
Lynda **BAKER**.

Argued Feb. 10, 2000.
|
Decided March 22, 2000.

Hospital **superintendent** filed petition for commitment of conditional voluntary patient. The District Court Division, Brookline Division, Herbert N. Goodwin, J., granted petition and entered order authorizing patient's treatment with antipsychotic medications. Patient appealed, and divided panel of District Court Department, Appellate Division, dismissed appeal. Granting application for direct appellate review, the Supreme Judicial Court, Spina, J., held that: (1) **superintendent** lacked authority to file commitment petition in absence of notice from patient of intention to leave, and (2) invalid commitment order rendered order authorizing treatment with antipsychotic medications invalid as well.

Orders vacated.

West Headnotes (11)

[1] **Mental Health**
Review

Supreme Judicial Court would exercise its discretion to consider whether **hospital** **superintendent** had authority to petition for commitment of conditional voluntary patient who had not given notice of intention to leave, even though patient's release had rendered her appeal from commitment order moot; issue was matter of public importance and was likely to arise again while evading appellate review. M.G.L.A. c. 123, §§ 7, 8, 11.

21 Cases that cite this headnote

[2] **Action**
Moot, hypothetical or abstract questions

Litigation ordinarily is considered "moot" when the party claiming to be aggrieved ceases to have a personal stake in its outcome.

15 Cases that cite this headnote

[3] **Appeal and Error**
Want of Actual Controversy

It is within Supreme Judicial Court's discretion to decide a moot issue where the question is one of public importance and is very likely to arise again in similar circumstances, and where appellate review could not be obtained before the question would again be moot.

8 Cases that cite this headnote

[4] **Mental Health**
Parties and application

Hospital **superintendent** lacked authority under relevant statutes to file petition for commitment of conditional voluntary patient, and thus district court lacked jurisdiction to hear petition, where patient had not given three-day written notice of her intention to leave. M.G.L.A. c. 123, §§ 7, 8, 11.

4 Cases that cite this headnote

[5] **Statutes**
Plain Language;Plain, Ordinary, or Common Meaning

Statutes
Statute as a Whole;Relation of Parts to Whole and to One Another

As a general rule, a statute must be construed according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.

17 Cases that cite this headnote

[6] **Statutes**
Statute as a Whole;Relation of Parts to Whole and to One Another

Statute should be read as a whole to produce an internal consistency.

5 Cases that cite this headnote

[7] **Statutes**
Plain, literal, or clear meaning; ambiguity

Where the language of the statute is plain and unambiguous, legislative history is not ordinarily a proper source of construction.

Cases that cite this headnote

[8] **Mental Health**
Persons subject to control or treatment
Mental Health
Parties and application

An element of proof in a petition for commitment of a conditional voluntary patient is the imminency of discharge of the patient from the facility. M.G.L.A. c. 123, §§ 7, 8, 11.

5 Cases that cite this headnote

[9] **Mental Health**
Persons subject to control or treatment

When **hospitalization** becomes an involuntary matter at the initiative of government, the result is a massive curtailment of liberty which requires a showing of imminent danger of harm.

2 Cases that cite this headnote

[10] **Statutes**
Superfluousness

Constructions that render language in a statute superfluous are disfavored.

1 Cases that cite this headnote

[11] **Mental Health**
Involuntary treatment or medication

Order that authorized **hospital** to treat patient with antipsychotic medications, predicated on invalid order of commitment, was also invalid. M.G.L.A. c. 123, § 8B.

1 Cases that cite this headnote

Attorneys and Law Firms

****553** ***101** Robert D. Fleischner, Northampton, (Leigh Mello with him) for the defendant.

Thomas H. Martin, Andover, for the plaintiff.

The following submitted briefs for amici curiae:

Jennifer Honig, Boston & Frank Laski, Philadelphia, PA, for Mental Health Legal Advisors Committee.

Lester D. Blumberg, Tewksbury, for Department of Mental Health.

***102** James T. Hilliard & Jason R. Talerman, Walpole, for The Massachusetts Psychiatric Society, Inc., & another.

Present: MARSHALL, C.J., ABRAMS, LYNCH, GREANEY, IRELAND, SPINA, & COWIN, JJ.

Opinion

SPINA, J.

Lynda **Baker** appeals from the order for her civil commitment to Bournewood **Hospital** (**hospital**) [1] pursuant to G.L. c. 123, §§ 7 and 8, and the order authorizing her treatment with antipsychotic medications pursuant to G.L. c. 123, § 8B. Her main argument is that the District Court judge erred by denying her motion to dismiss, in which she claimed that the **acting superintendent** of the **hospital** lacked authority to petition for her commitment and that the District Court lacked jurisdiction over the subject matter of the petitions because **Baker** was a "conditional voluntary" [2] patient of the **hospital** at all relevant times, and had not given notice of her intention to leave the **hospital** pursuant to G.L.

c. 123, § 11. Baker appealed to the Appellate Division of the District Court Department, where a divided panel dismissed her appeal. Baker then claimed an appeal to the Appeals Court. We granted her application for direct appellate review. We reverse.

The parties prepared an agreed statement of the case in accordance with Dist./ Mun. Cts. Appellate Division Appeal Rule 8B (1999), which we summarize. Baker was admitted to the hospital on August 29, 1998, for a period of ten days, pursuant to G.L. c. 123, § 12. During the ten-day period, she applied for care and treatment on a conditional voluntary basis, pursuant to G.L. c. 123, §§ 10, 11. The superintendent accepted Baker's application and she became a conditional voluntary patient. During treatment she accepted some medication, but refused to take antipsychotic medications that were offered. On September 2, 1998, the acting superintendent filed a petition in the Brookline Division of the District Court Department for Baker's civil commitment, pursuant to G.L. c. 123, §§ 7 and 8, followed the next day[3] by a petition under G.L. c. 123, § 8B, to authorize treatment with antipsychotic medication. Baker filed a motion to dismiss both petitions for lack of jurisdiction, based on her status as a conditional voluntary patient. Her motion was ***103** opposed ****554** by the superintendent, and on September 18, 1998, the motion was denied. Following hearings on the two petitions, the judge made findings of fact, ordered that Baker be committed to the hospital for six months, and ordered that she be treated with antipsychotic medications. Baker filed a motion for a stay of the orders pending appeal. That motion was denied.

[1] **[2]** **[3]** 1. *Mootness.* The parties report that during the appellate proceedings Baker has been released and is living in a supervised setting in the community. Accordingly, the case is now moot. The parties request that we decide the issue presented notwithstanding that the case has become moot. The acting superintendent advises that the procedures followed here are "repeated with regularity," and that mental health professionals need to know with a reasonable degree of certainty that they are proceeding lawfully in such cases. "Litigation ordinarily is considered moot when the party claiming to be aggrieved ceases to have a personal stake in its outcome.... Nonetheless, it is within our discretion to decide an issue which is [moot], where the question is one of public importance, is very likely to arise again in similar circumstances, and where appellate review could not be obtained before the question would again be moot." (Citations omitted.) *Attorney Gen. v. Commissioner of Ins.,* 403 Mass. 370, 380, 530 N.E.2d 142 (1988). Issues involving the commitment and treatment of mentally ill persons are generally considered matters of public importance. See *Guardianship of Weedon,* 409 Mass. 196, 197, 565 N.E.2d 432 (1991); *Hashimi v. Kalil,* 388 Mass. 607, 609, 446 N.E.2d 1387 (1983). "[I]ssues which involve the rights of the mentally ill are classic examples of issues that are 'capable of repetition, yet evading review.' " *Guardianship of Doe,* 391 Mass. 614, 618, 463 N.E.2d 339 (1984), quoting *Hashimi v. Kalil, supra.* In these circumstances, where appellate review is likely to occur after the expiration of an order of commitment, we shall exercise our discretion and decide the issue.

[4] 2. *The order of commitment.* Baker argues that the superintendent had no authority to petition for her commitment under G.L. c. 123, §§ 7 and 8, because she was a conditional voluntary patient at the hospital and had not given notice of her intention to leave. She contends that the statute authorizes the superintendent to petition for the commitment of a conditional voluntary patient only if the patient has given a three-day written notice pursuant to G.L. c. 123, § 11, of her intention to leave or withdraw from the facility.

***104** Section 7 (*a*) of G.L. c. 123 states that:

> "The superintendent of a facility may petition the district court ... for the commitment to said facility and retention of any patient at said facility whom said superintendent determines that the *failure to* ***hospitalize*** would create a likelihood of serious harm by reason of mental illness" (emphasis added).

Section 8 (*a*) of G.L. c. 123 states:

> "After a hearing ... the district court ... shall not order the commitment of a person at a facility or shall not renew such order unless ... *the discharge* of such person from a facility would create a likelihood of serious harm" (emphasis added).

Section 11 of G.L. c. 123, describing conditional voluntary patients, states that:

> "[P]ersons ... [required] to give three days written notice of their intention to leave or withdraw ... may be

retained at the facility beyond the expiration of the three day notice period if, *prior to the expiration of the said three day notice period, the* **superintendent** *files with the district court a petition for the commitment of such person at the said facility* " (emphasis added).

[5] **[6]** **[7]** As a general rule, a statute must be construed "according to the intent of ****555** the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Industrial Fin. Corp. v. State Tax Comm'n,* 367 Mass. 360, 364, 326 N.E.2d 1 (1975), quoting *Hanlon v. Rollins,* 286 Mass. 444, 447, 190 N.E. 606 (1934). "At the same time, a statute should be read as a whole to produce an internal consistency." *Telesetsky v. Wight,* 395 Mass. 868, 873, 482 N.E.2d 818 (1985). "[W]here the language of the statute is plain and unambiguous ... legislative history is not ordinarily a proper source of construction." *Hashimi v. Kalil, supra* at 609, 446 N.E.2d 1387, quoting ***105** *Hoffman v. Howmedica, Inc.,* 373 Mass. 32, 37, 364 N.E.2d 1215 (1977). Applying these rules of construction, it is apparent that the **superintendent** was without authority to petition for **Baker's** commitment, and that the District Court judge was without jurisdiction to hear the commitment petition.

[8] Sections 7 (*a*), 8 (*a*), and 11 must be read together when reviewing an order for commitment of a conditional voluntary patient. Section 11 contemplates the filing of a petition to commit such a patient *after* the patient gives notice of an intention to leave or withdraw. Section 7, while referring to a "failure to **hospitalize**," must be read in conjunction with § 8, which requires a finding that a "*discharge* " of the patient "would create a likelihood of serious harm" (emphasis added). An element of proof in such cases is the imminency of discharge of the patient from the facility, something which cannot arise in the case of a conditional voluntary patient absent notice of intent to leave.

[9] When **hospitalization** becomes an involuntary matter at the initiative of government, the result is "a massive curtailment of liberty" which requires a showing of "imminent danger of harm." *Commonwealth v. Nassar,* 380 Mass. 908, 917, 406 N.E.2d 1286 (1980), quoting *Lessard v. Schmidt,* 349 F.Supp. 1078, 1093 (E.D.Wis.1972) (three-judge court), vacated and remanded on other grounds, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974). The aspect of immediacy of harm arises from the imminency of discharge as well as from the mental illness. As the dissent to the Appellate Division's opinion noted, "[§ 7 (*a*)] clearly requires [proof of] a threat of harm from 'the failure to **hospitalize**.' " Section 11 speaks to this by requiring the conditional voluntary patient to give advance notice of an intention to leave or withdraw. Absent such notice, there is no discharge as would create a likelihood of serious harm. The conditional voluntary patient is not at risk of imminent danger because she is not free to leave the **hospital** without first giving a three-day notice of an intent to leave.

[10] The **acting superintendent's** claim that the statute gives him the authority to seek commitment of any patient at any time without having to prove the likelihood of serious harm on "*discharge* " would render that word in the statute superfluous, a result that is disfavored. See *Bynes v. School Comm. of Boston,* 411 Mass. 264, 267–268, 581 N.E.2d 1019 (1991), and cases cited. Further the **acting superintendent's** reading of the statute would permit him to file a petition simply by presupposing a patient's discharge, thereby eliminating any requirement of an actual controversy, ***106** see *Caputo v. Board of Appeals of Somerville,* 330 Mass. 107, 111, 111 N.E.2d 674 (1953), and catapulting commitment proceedings into the hypothetical sphere.

[11] 3. *The order for treatment with antipsychotic medication.* **Baker** contends that the order for her treatment with antipsychotic medications is invalid because it is predicated on an invalid commitment order. We agree. General Laws c. 123, § 8B (*a*), authorizes the **superintendent** of a facility to file a petition for treatment of a patient with antipsychotic ****556** medications. Section 8B (*b*), however, expressly provides that such a petition "shall not be heard or otherwise considered by the court unless the court has first issued an order of commitment on the pending petition for commitment." The directive of § 8B (*b*) is clear.

The **acting superintendent** argues that it is unlikely that the Legislature intended to make § 8B inapplicable to the entire class of patients like **Baker** who elect conditional voluntary status under § 12 (*c*), but then refuse medications. The plain and unambiguous language of § 8B suggests otherwise. The District Court judge

is empowered to order treatment of a patient with antipsychotic medications pursuant to § 8B, but only if the patient first has been involuntarily committed. The **acting superintendent** also misstates the circumstances in which **Baker** came to be a conditional voluntary patient. She did not elect that status, but applied for it. The **acting superintendent**, or those authorized by him, accepted **Baker's** application. See G.L. c. 123, § 12 (*c*); 104 Code Mass. Regs. § 27.06(1)(c) (1998). Further, **Baker** did not refuse to take all medications; she refused to take antipsychotic medications, as was her right absent appropriate court intervention. See *Rogers v. Commissioner of the Dep't of Mental Health,* 390 Mass. 489, 491, 458 N.E.2d 308 (1983); 104 Code Mass. Regs. § 27.10(1)(b) (1998).

The **acting superintendent** took no action to terminate **Baker's** status as a conditional voluntary patient. He was bound, therefore, to work within the framework of rights afforded a patient of that status. If he were of the opinion that, as a conditional voluntary patient, **Baker** required treatment with antipsychotic medications and was not competent to make informed decisions about such treatment, a comparable proceeding was available through the Probate and Family Court Department pursuant to G.L. c. 201, § 6. See *Rogers v. Commissioner of the Dep't of Mental Health, supra.* While the requirements ***107** for obtaining an order of substituted judgment under G.L. c. 123, § 8B, are similar in most respects to one under G.L. c. 201, § 6, the former requires, as a condition precedent to the petition, an order of commitment under G.L. c. 123, § 8. The petition under §§ 7 and 8, as discussed, *supra,* may not be maintained against a conditional voluntary patient who has not given the three-day notice under § 11. The **acting superintendent** acknowledges that he pursued the matter in the District Court essentially as a matter of convenience. That decision, which resulted in a needless and "massive curtailment of [**Baker's**] liberty," *Commonwealth v. Nassar, supra,* cannot be justified in the name of administrative expedience, much less as a matter of statutory interpretation.

We do not reach **Baker's** constitutional claims, having decided the case under principles of statutory interpretation.

The orders of the District Court are vacated.

So ordered.

All Citations

431 Mass. 101, 725 N.E.2d 552

Footnotes

1 It is not disputed that the **hospital** is a "facility" within the meaning of G.L. c. 123, § 1.

2 A conditional voluntary patient is one accepted by the **superintendent** on a voluntary basis, with the proviso that the patient must give three days' notice in writing before leaving or withdrawing from the facility. See G.L. c. 123, §§ 10, 11.

3 However, the dockets indicate that both petitions were filed on September 3, 1998.

451 Mass. 777
Supreme Judicial Court of Massachusetts, Middlesex.

NEWTON–WELLESLEY **HOSPITAL**
v.
Robert MAGRINI.

Argued May 6, 2008.
|
Decided July 10, 2008.

Synopsis

Background: Patient requested emergency hearing concerning his temporary involuntary recommitment to psychiatric unit of **hospital** following a court order that he be discharged. The District Court Department, Newton Division, Middlesex County, Dyanne J. Klein, J., denied request. Patient appealed. The Appellate Division, District Court Department, Northern District, 2007 WL 2199628, Brennan, J., dismissed appeal.

Holdings: Granting application for direct appellate review, the Supreme Judicial Court, Ireland, J., held that:

[1] person who is admitted to **hospital** by way of temporary involuntary commitment is entitled to an emergency hearing if the admission resulted from any abuse or misuse of the admission process set forth in subsection of relevant statute;

[2] patient was entitled to emergency hearing;

[3] unless request for emergency hearing after temporary involuntary commitment is patently frivolous on its face, the obligation to hold hearing is mandatory; and

[4] involuntarily committed person has right to be present and may be heard at emergency hearing, but hearing does not necessarily have to be an evidentiary one.

Decision and order of Appellate Division vacated; order of District Court vacated.

West Headnotes (7)

[1] Mental Health
Disposition;consideration of alternatives

Facility that petitions for involuntary commitment of a person alleged to be mentally ill must demonstrate that no less-restrictive alternative to **hospitalization** is appropriate. M.G.L.A. c. 123, §§ 7, 8.

4 Cases that cite this headnote

[2] Mental Health
Review

Supreme Judicial Court would exercise its discretion and address the merits of appeal from order that denied patient an emergency hearing concerning his temporary involuntary recommitment to psychiatric unit, though patient's agreement to conditional voluntary admission had rendered the appeal moot; even if patient had not agreed to a conditional voluntary admission, appellate review of the denial of his request for an emergency hearing would not have occurred prior to the expiration of his temporary commitment or prior to the filing of a petition by the **hospital** for his continued commitment. M.G.L.A. c. 123, §§ 7, 8, 12(b).

2 Cases that cite this headnote

[3] Mental Health
Hearing and determination in general

Person who is admitted to **hospital** by way of temporary involuntary commitment is entitled under governing statute to an emergency hearing if the admission resulted from any abuse or misuse of the admission process set forth in subsection of that statute; right to hearing is not limited to instances in which the person alleges an abuse or misuse of rights specifically enumerated in the subsection, such as examination by a designated physician. M.G.L.A. c. 123, § 12(b).

1 Cases that cite this headnote

[4] **Mental Health**
Hearing and determination in general

A person who has been admitted to a **hospital** by way of a temporary involuntary commitment is not entitled under governing statute to an emergency hearing in order to challenge the substance of the designated physician's determination that failure to **hospitalize** a person would create a likelihood of serious harm by reason of mental illness, as legislature has determined that appropriate time for such a challenge is at the hearing afforded to a person when a **hospital** is seeking continued commitment beyond the three-day **hospitalization**. M.G.L.A. c. 123, §§ 7, 8, 12(b).

4 Cases that cite this headnote

[5] **Mental Health**
Hearing and determination in general

Patient was entitled under governing statute to emergency hearing when, after he successfully moved to dismiss petition for his continued involuntary commitment on basis that it had not been filed within three business days of his admission by way of temporary commitment, **hospital** proceeded to restrain and admit patient a second time after receiving court's discharge order; patient made required minimal showing that his second commitment resulted from a misuse or abuse of the admission process. M.G.L.A. c. 123, §§ 7, 8, 12(b).

4 Cases that cite this headnote

[6] **Mental Health**
Hearing and determination in general

Unless a request for emergency hearing by a person who has been admitted to **hospital** by way of temporary involuntary commitment is patently frivolous on its face, the obligation to hold an emergency hearing is mandatory. M.G.L.A. c. 123, § 12(b).

1 Cases that cite this headnote

[7] **Constitutional Law**
Commitment and proceedings therefor

Mental Health
Hearing and determination in general

Mental Health
Evidence

To ensure meaningful review and due process to a person whose liberty is at stake, a person who has been temporarily involuntarily committed by reason of mental illness has the right to be present, and may be heard, at emergency hearing on whether the person's admission resulted from an abuse or misuse of the admission process for temporary commitment, but hearing does not necessarily have to be an evidentiary one, and judge conducting the hearing will have the discretion to decide whether evidence should be required in light of the abuse or misuse alleged in the request for emergency hearing. U.S.C.A. Const.Amend. 4; M.G.L.A. c. 123, § 12(b).

1 Cases that cite this headnote

Attorneys and Law Firms

****930** Robert D. Fleischner (J. Paterson Rae with him) for the respondent.

Michael T. Porter, Boston, for Newton-Wellesley **Hospital**.

Beth L. Eisenberg & Stan Goldman, Committee for Public Counsel Services, & Jennifer Honig, Boston, William Landers, Frank Laski, & Karen Owen Talley, for Mental Health Legal Advisors Committee & others, amici curiae, submitted a brief.

Present: MARSHALL, C.J., GREANEY, IRELAND, SPINA, COWIN, CORDY, & BOTSFORD, JJ.

Opinion

IRELAND, J.

***778** This appeal involves the scope of the statutory right to an emergency hearing afforded under G.L.

c. 123, § 12 (*b*), in connection with the temporary involuntary commitment of a person with mental illness. Robert Magrini, who has a schizoaffective disorder, was involuntarily restrained and temporarily committed, pursuant to G.L. c. 123, § 12 (*a*) and (*b*), to a psychiatric unit of Newton–Wellesley **Hospital** (**hospital**) despite an order discharging him from that unit. Magrini previously had been restrained and temporarily committed to a psychiatric unit of the **hospital**, and had obtained a court order directing his discharge because the **hospital** did not, with respect to his initial temporary commitment, timely file a petition for his continued involuntary commitment pursuant to G.L. c. 123, §§ 7 and 8. Faced essentially with a recommitment ****931** and continued restraint on his liberty, Magrini requested an emergency hearing under G.L. c. 123, § 12 (*b*). The request was denied by a District Court judge. Pursuant to G.L. c. 123, § 9 (*a*), [1] Magrini appealed to the Appellate Division of the District Court Department (Appellate Division), where a divided panel entered a decision and order dismissing his appeal. We granted Magrini's application for direct appellate review. We vacate the orders of the District Court.

1. *Statutory overview.* General Laws c. 123 pertains, as is relevant here, to the involuntary civil commitment of persons with mental illness. Section 12 of G.L. c. 123 addresses the emergency restraint and temporary commitment of persons with mental illness. Section § 12 (*a*) provides, in pertinent part, "[a]ny physician who is licensed pursuant to [G.L. c. 112, § 2,] or qualified psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to [G.L. c. 112, § 80B,] or a qualified psychologist licensed pursuant to [G.L. c. 112, §§ 118–129], who after examining a person has reason to believe that failure to **hospitalize** such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person...." Once the person has been restrained, the licensed or ***779** qualified provider under § 12 (*a*) may "apply for the **hospitalization** of such person for a three day period at a public facility or at a private facility authorized for such purposes by the department [of mental health]." [2] G.L. c. 123, § 12 (*a*). "An application for **hospitalization** shall state the reasons for the restraint of such person and any other relevant information which may assist the admitting physician or physicians." *Id.*

Section § 12 (*b*) pertains to **hospital** admissions. It authorizes a "designated" physician temporarily to commit a person by admitting him "immediately after his reception" [3] to a facility "[i]f the physician determines that failure to **hospitalize** such person would create [4] a likelihood of serious harm by reason of mental illness...." G.L. c. 123, § 12 (*b*), first par. The statute defines the term "[l]ikelihood of serious harm" as including:

> "(1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior ****932** and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community."
>
> *Id.* at § 1. [5]

[1] ***780** The commitment authorized under § 12 (*b*) is temporary and may last only three days. [6] *Id.* at § 12 (*d*). By the end of the three days, the statute requires the **hospital** to (1) discharge the person who had been involuntarily committed; (2) accept the person's application for a conditional voluntary admission [7]; or (3) file a petition for a continued commitment under §§ 7 and 8, which would be valid for a period of either six or twelve months. [8] *Id.* at §§ 7, 8, 12 (*d*).

In 2000, the Legislature amended § 12 (*b*) by adding the second and third paragraphs. See St.2000, c. 249, § 6. These paragraphs afford certain protections to persons temporarily committed. On a person's admission, the **hospital** must inform the person that, on the person's request, it will notify the Committee for Public Counsel Services (CPCS) of the name and location of the person. G.L. c. 123, § 12 (*b*), second par. Unless the person waives the right to counsel, or has or desires private counsel, CPCS is then obligated to appoint an attorney for the person. *Id.* ***781** The appointed attorney is required to "meet with the person." *Id.* In addition, the statute provides:

> "Any person admitted under the provisions of this subsection, who has reason to believe that such admission is the result of an abuse or misuse of the provisions of this subsection, may request, or request through counsel an emergency hearing in the district court in whose jurisdiction the facility is located, and unless a delay is requested by the person **933 or through counsel, the district court shall hold such hearing on the day the request is filed with the court or not later than the next business day."

Id. at § 12 (*b*), third par. [9]

2. *Background.* Magrini was first temporarily committed to the **hospital** under G.L. c. 123, § 12 (*b*), on Friday, June 9, 2006. [10] On Thursday, June 15, 2006, the **hospital** filed a petition, under G.L. c. 123, §§ 7 and 8, for Magrini's continued involuntary commitment for a six-month period. A hearing on the petition was set for Tuesday, June 20, 2006.

On Monday, June 19, Magrini moved to dismiss the petition on the ground that it had not been filed within three business days after his admission, as required by the statute, which would have been on or before Wednesday, June 14. A District Court judge allowed the motion and ordered Magrini discharged. [11]

On Monday, June 19, on receiving the order of discharge, the **hospital** proceeded to restrain and admit Magrini a second time pursuant to G.L. c. 123, § 12 (*a*) and (*b*). The paperwork on *782 this commitment was signed by the attending psychiatrist, [12] fifteen minutes *before* the attending psychiatrist's note of discharge. During this time, Magrini remained in a locked psychiatric unit. Through his counsel, Magrini filed a request for an emergency hearing pursuant to G.L. c. 123, § 12 (*b*). The request alleged unlawful detention, specifically citing a "misuse of § 12 (*a*) and § 12 (*b*) to effectively countermand a court order [of] discharge." On Tuesday, June 20, the judge who had **acted** on the plaintiff's motion to dismiss summarily denied Magrini's request. On Wednesday, June 21, Magrini agreed to a conditional voluntary admission pursuant to G.L. c. 123, § 10. On Wednesday, June 28, Magrini filed an appeal from the judge's denial of his request for an emergency hearing.

By a divided panel, the Appellate Division dismissed the appeal. Relying on a memorandum, dated February 23, 2007, and designated Transmittal No. 945, from the Chief Justice of the District Court Department to District Court judges and clerk-magistrates (transmittal 945), the Appellate Division concluded that the judge had discretion to permit an emergency hearing or to decline the request for a hearing based solely on the papers submitted. Although the Appellate Division stated that the "better practice" would be to hold an emergency hearing on request, it found that the **hospital** had **acted** in good faith.

Magrini appealed from the decision of the Appellate Division. As has been noted, **934 we granted his application for direct appellate review.

[2] 3. *Mootness.* Before Magrini filed his appeal from the order denying his request for an emergency hearing, he agreed to a conditional voluntary admission. In view of Magrini's conditional voluntary status, the order appealed from no longer has effect, and the appeal is moot. See ***Acting*** *Supt. of Bournewood Hosp. v.* ***Baker***, 431 Mass. 101, 103, 725 N.E.2d 552 (2000). However, "[i]ssues involving the commitment and treatment of mentally ill persons are generally considered matters of public importance" and present "classic examples" of issues that are capable of repetition, yet evading review. *Id.,* quoting *Guardianship of Doe,* 391 Mass. 614, 618, 463 N.E.2d 339 (1984). We note that, even if Magrini had not agreed to a *783 conditional voluntary admission, appellate review of the denial of his request for an emergency hearing would not have occurred prior to the expiration of his temporary commitment or prior to the filing of a petition by the **hospital** for his continued commitment under G.L. c. 123, §§ 7 and 8. We therefore exercise our discretion and address the merits.

4. *Emergency hearing.* We are called in this appeal to interpret various aspects of the emergency hearing provision in G.L. c. 123, § 12 (*b*), third par., and, thus, are faced with questions of law. We first address the **hospital's** contention that the judge correctly denied Magrini's request for an emergency hearing because the basis Magrini cited to obtain an emergency hearing was outside the scope of G.L. c. 123, § 12 (*b*). The

hospital relies on the following italicized language in the emergency hearing provision: "Any person admitted under the provisions of this subsection, who has reason to believe that such admission is the result of an abuse or misuse *of the provisions of this subsection,* may request ... an emergency hearing" (emphasis supplied). G.L. c. 123, § 12 (*b*), third par. Under the hospital's interpretation, a person is entitled to an emergency hearing only when the person alleges an abuse or misuse of one of the specifically enumerated rights set forth in § 12 (*b*), such as: the person's examination was not conducted by a designated physician, § 12 (*b*), first par.; the person's examination was not conducted in a timely manner, *id.;* the designated physician failed to apply the correct standard to admit the person, *id.;* the hospital did not inform the person of its obligation to notify CPCS, § 12 (*b*), second par.; the hospital did not notify CPCS of the person's admission, *id.;* CPCS failed to appoint an attorney for the person, *id.;* or the appointed attorney failed to meet with the person.

[3] **[4]** The hospital's reading of the emergency hearing provision is too narrow. That provision states that "[a]ny person admitted" has the right to request an emergency hearing in the appropriate District Court where he or she "has reason to believe" that the admission has occurred because of "an abuse or misuse" of a § 12 (*b*) admission. That the emergency hearing provision provides any person admitted with the opportunity to be heard, and heard promptly, if the admission resulted from any abuse or misuse of a § 12 (*b*) admission is consistent with the obvious intent of the ***784** Legislature. While there are abuses or misuses that may occur based on the denial of one or more of the specifically enumerated rights provided in the first and second paragraphs of § 12 (*b*), the broad language serves as a catch-all provision to include other circumstances that have resulted in a wrongful § 12 (*b*) admission.[13] Our interpretation is consistent ****935** with the intent of the Legislature to extend further procedural protections to persons who, by virtue of their temporary involuntary commitment, are experiencing a "massive curtailment" of their liberty. *Commonwealth v. Nassar,* 380 Mass. 908, 917, 406 N.E.2d 1286 (1980), quoting *Lessard v. Schmidt,* 349 F.Supp. 1078, 1093 (E.D.Wis.1972). See *Sullivan v. Brookline,* 435 Mass. 353, 360, 758 N.E.2d 110 (2001) ("statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result").

[5] Magrini's request for an emergency hearing unquestionably demonstrated a proper basis of a misuse or abuse contemplated under § 12 (*b*), third par., to warrant an emergency hearing. The hospital's conduct of effectuating a second § 12 (*b*) commitment rendered the order directing Magrini's discharge illusory.[14] The hospital never complied with the court order, and instead continued to confine Magrini against his will in a locked psychiatric unit. This caused Magrini to be involuntarily confined for eleven days without a hearing. Where Magrini was not afforded his statutory rights and was not permitted to be discharged in accordance with a court order, he clearly satisfied the minimal showing that his second § 12 (*b*) commitment resulted from a misuse or abuse under the § 12 (*b*) process.

[6] **[7]** ***785** The hospital argues that, under the emergency hearing provision, when a person has sufficiently demonstrated a basis for a hearing, such hearing is directory and not mandatory. The operative language provides that "unless a delay is requested by the person [who has been temporarily admitted] or through counsel, the district court *shall* hold such hearing on the day the request is filed with the court or not later than the next business day" (emphasis supplied). G.L. c. 123, § 12 (*b*), third par. In view of the significant liberty interests at stake and our previous interpretations that the use of the term "shall" imports a mandatory or imperative obligation, *Commonwealth v. Gross,* 447 Mass. 691, 694, 856 N.E.2d 850 (2006), and cases cited, we conclude that, unless a request for an emergency hearing on its face is patently frivolous,[15] the obligation to hold an emergency hearing is mandatory. To ensure meaningful review and due process to a person whose liberty is then at stake, we further conclude that the person temporarily committed has the right to be present at the hearing and may be heard. The hearing, however, does not necessarily have to be an evidentiary one. The judge conducting the hearing will have the discretion to decide whether evidence ****936** should be required in light of the abuse or misuse alleged.[16]

5. *Conclusion.* The decision and order of the Appellate Division dismissing the appeal is vacated. The order of the District Court denying Magrini's request for an emergency hearing is vacated.

So ordered.

All Citations

451 Mass. 777, 889 N.E.2d 929

Footnotes

1 General Laws c. 123, § 9 (*a*), provides that "[m]atters of law arising in commitment hearings ... in a district court may be reviewed by the appellate division of the district courts in the same manner as the civil cases generally."

2 It is not disputed that the **hospital** is a "facility" under G.L. c. 123, § 1.

3 If the person has not been examined by a designated physician prior to his reception at the admitting facility, the person "shall receive such examination immediately after reception at such facility. For the purposes of this paragraph, 'immediately' shall mean within two hours and before the person has been classified as a patient or has been assigned to a bed or ward by the admitting staff. In the event that the designated physician on call at the facility is engaged in an emergency situation elsewhere, he or she shall conduct such an examination as soon as such emergency no longer requires his or her attention." 104 Code Mass. Regs. § 27.07(2) (2008).

4 This determination is quite different from the "reason to believe" standard set forth in G.L. c. 123, § 12 (*a*), required for restraint and application for **hospitalization**.

5 The Legislature delegated the task of defining the term "mental illness" to the Department of Mental Health (department). See G.L. c. 123, § 2. The term is defined as "a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but shall not include alcoholism or substance abuse." 104 Code Mass. Regs. § 27.05(1) (2006).

6 "The periods of time prescribed or allowed under [G.L. c. 123, § 12,] shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure." G.L. c. 123, § 12 (*e*). As such, the day that the person is admitted is not counted. See Mass. R. Civ. P. 6(a), 365 Mass. 747 (1974).

7 A person admitted on conditional voluntary status is "in need of care and treatment," and is accepted by the **superintendent**, or head of the **hospital**, on a "voluntary basis." G.L. c. 123, § 10 (*a*). The **superintendent**, "in his discretion, may require [a conditional voluntary patient] to give three days written notice of [his or her] intention to leave or withdraw." *Id.* at § 11. See ***Acting*** *Supt. of Bournewood Hosp. v.* ***Baker***, 431 Mass. 101, 725 N.E.2d 552 (2000).

8 In the case of an initial petition for commitment under G.L. c. 123, §§ 7 and 8, "the hearing shall be commenced within 5 days of the filing of the petition, unless a delay is requested by the person or his counsel. The periods of time prescribed or allowed under [this section] shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure." G.L. c. 123, § 7 (*c*). At the hearing, the facility must prove beyond a reasonable doubt that the person is mentally ill and that "the discharge of such person from a facility would create a likelihood of serious harm." *Id.* at § 8 (*a*). See ***Superintendent*** *of Worcester State Hosp. v. Hagberg,* 374 Mass. 271, 276, 372 N.E.2d 242 (1978). In addition, the facility must demonstrate that no less restrictive alternative to **hospitalization** is appropriate. *Commonwealth v. Nassar,* 380 Mass. 908, 917–918, 406 N.E.2d 1286 (1980).

9 The statutory scheme does not allow recovery by persons involuntarily restrained or committed. G.L. c. 123, § 22 ("Physicians [and other designated medical providers] shall be immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility ... if the physician [or other designated medical provider] **acts** pursuant to this chapter").

10 Magrini arrived at the **hospital** on the evening of Thursday, June 8, 2006. The examining physician completed the application for a temporary involuntary commitment under G.L. c. 123, § 12 (*a*), at about 10:15 P.M. that evening. A few hours later, at 1 A.M., on Friday, June 9, the examining physician completed and signed the authorization under G.L. c. 123, § 12 (*b*), to admit Magrini.

11 The **hospital** points out that, even if it had timely filed its petition, the hearing scheduled for June 20 did fall within the prescribed time frame for hearings on petitions for involuntary commitments pursuant to G.L. c. 123, §§ 7 and 8.

12 The attending psychiatrist was not the same physician who had examined and admitted Magrini on June 8 and June 9.

13 These other circumstances do not include a challenge to the substance of the designated physician's actual "determin[ation] that failure to **hospitalize** such person would create a likelihood of serious harm by reason of mental illness," G.L. c. 123, § 12 (*b*), first par., because the Legislature has already established an appropriate time to challenge that determination, namely, at the hearing afforded to a person when the **hospital** is seeking the person's continued commitment beyond the three-day **hospitalization**. G.L. c. 123, §§ 7, 8. See note 8, *supra.* See also *Wolfe v. Gormally,*

440 Mass. 699, 704, 802 N.E.2d 64 (2004) (statute is to be construed to give effect to all its provisions so no part will be inoperative).

14 This is not to say that a **hospital** could never recommit a person on a temporary basis. The statutory scheme does not prohibit such action, but that issue is not before us.

15 Concerns over an inundation of frivolous requests do not appear to be valid, as statistics produced by the department show that, over a six-year period, there have been 41,140 temporary commitments under § 12 (*b*) and only 279 emergency hearing requests.

16 Suggestions made in internal transmittals or memoranda from the Chief Justice of the District Court regarding commitment proceedings are just that. Cf. *Eagle–Tribune Publ. Co. v. Clerk–Magistrate of the Lawrence Div. of the Dist. Court Dep't,* 448 Mass. 647, 648 n. 4, 863 N.E.2d 517 (2007), quoting *Commonwealth v. Clerk–Magistrate of the W. Roxbury Div. of the Dist. Court Dep't,* 439 Mass. 352, 357, 787 N.E.2d 1032 (2003) ("While lacking the force of law or rules, the Standards of Judicial Practice [regarding complaint procedure] ... are 'administrative regulations promulgated by the Chief Justice of the District Court that [are] treated as statements of desirable practice' to be followed in the District Courts").