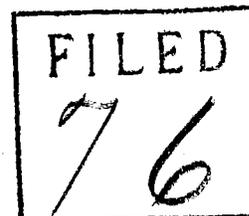


ELEEMOSYNARY INSTITUTIONS: Validity of claims by state or county, for reimbursement for keep of patient as poor person at state hospitals, against estates of indigent patients.

May 10, 1946



5/14

Honorable Allen Rolston
Prosecuting Attorney
Schuyler County
Lancaster, Missouri

Dear Sir:

This department is in receipt of your recent letter requesting an opinion on the following facts:

"As prosecuting attorney of Schuyler County, I have this question:

"Mary Arni, a resident of this county, was adjudged insane about a year ago. She had an interest in some real estate, and a small amount of personal property. The adjudication was by our probate court, and a guardian and curator was appointed, he being Mr. A. J. George of Queen City, Missouri.

"Some months after she was adjudged to be of unsound mind, she became more violent, and it became necessary for her to be confined in some hospital. She did not, at that time, have sufficient funds or estate to support her in any institution, except for a very short time. Her need for confinement to a hospital was very urgent. Her guardian went before our court and showed her financial condition, and showed the court that later she would perhaps have estate enough to pay her way, at least for a while. Our county court ordered her sent to State Hospital No. 1 at Fulton, Missouri, with the

agreement with the guardian that if and when she or her estate became so that it could, her guardian would reimburse the county and state. The guardian did pay the county the \$6.00 per month, which the county sent to the hospital. Miss Arni died March 30 of this year. A few days prior to her death her guardian obtained enough estate to more than pay what it would have cost to keep her in the hospital as a private patient.

"The guardian is willing to pay this if it is a legal obligation, or one which he could be made liable. He is making settlement as guardian, and making report of the situation as it is. A controversy has arisen between him and some of the heirs.

"Please let me know whether or not, in your opinion, the guardian should reimburse the county and state, and if so, how much he should pay, that is at what rate, and to whom such payment should be made."

Section 9328, R. S. A., provides that the County Court shall have the power to send poor patients to state institutions at the expense of the county.

Section 9335, R. S. A., providing the procedure to be followed in admitting county patients to the state institutions, is as follows:

"For the admission of county court patients the following proceedings shall be had: Some citizen residing within the county, of which the alleged insane person is a resident, shall file with the Clerk of the County Court of such county a verified statement in writing which shall be substantially as follows:

"State of Missouri)
) ss.
 County of _____)

"The undersigned, a citizen residing in the county and state aforesaid, on his oath, according to his best information and belief states: that _____, a resident of the county and state aforesaid is insane; that his insanity is less than _____ year's duration; the said _____ has not sufficient estate to support him at a state hospital for the insane; that the said _____ (is or is not) so deranged as to endanger himself or others and _____ (will or will not) be dangerous to the safety of the community by being at large and that he _____ (is or is not) now being confined or restrained; and that the foregoing facts can be proved by _____ and _____ (naming at least two persons one of whom shall be a reputable physician).

"Dated this _____ day of _____, 19____.

"Subscribed and sworn to before me this _____ day of _____, 19____.

County Clerk."

The County Court is the only tribunal authorized to send patients to state institutions at the expense of the county, and in the exercise of this function it is the duty of the County Court to determine (1) the residence of the patient, (2) that he is insane and requires hospitalization, and (3) that he does not have sufficient estate to support himself at a state hospital for the insane.

In the case of Ussery v. Haynes, 127 S.W. (2d) 410, 1.c. 414, the court said:

"It will be seen that the statute gives the county court jurisdiction to inquire into the sanity of persons alleged to be insane and to adjudicate thereon, where it is sought to send such persons to a state hospital at the expense

of the county and it is the only court that has authority to order an insane person sent to a state hospital at the public expense. When, therefore, the statement required by Sec. 8643 was filed the court was vested with jurisdiction of the subject matter. * * * *"

When the County Court exercises its power and determines a patient does not have sufficient estate, that finding is final and conclusive until otherwise changed by the County Court. In the case of *The State ex rel. Yarnell v. The Cole County Court*, 80 Mo. 80, l.c. 82, the court said:

"The statute authorizing a pay patient confined in the asylum to be made a county patient, provides as follows: 'If the county court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate under seal setting forth that any patient in the asylum has not sufficient estate to support him at the asylum. Upon the receipt of such certificate by the superintendent, such person shall be a county patient of such county, and shall be supported by such county, as provided in the cases of poor patients.' R.S. 1879, Sec. 4140. As this section conferred jurisdiction upon the county court over the subject matter, and invested it with full power to make a pay patient a county patient, the order made by the court and offered in evidence cannot be said to be a nullity. It may be irregular, but that does not make it void. It is the fact that the pay patient has not estate sufficient to support him at the asylum that authorizes the county court to make him a county patient, to be supported at the expense of the county; and we can indulge the presumption that the court found this fact to exist and based its order upon it. This order, if certified to the superintendent, would be as binding on the county as a certificate of the clerk stating that he had been ordered by the court to certify that such pay patient had not estate sufficient to support him."

It is our opinion that when the County Court makes its finding that the patient does not have sufficient estate to support himself that such order is binding upon both the county and the hospital, and before the institution can consider the patient otherwise than a county patient his status must be changed by the County Court under Section 9347, R.S.A., which provides as follows:

"If the county court of the proper county shall so order, the clerk thereof shall transmit to the superintendent a certificate, under his official seal, setting forth that any county patient in the state hospital from his county has sufficient estate to support and maintain him at the hospital. After the receipt of this certificate, the patient shall be a pay patient; and in such cases, charges shall be made out and paid and a bond shall be required and executed as in all other cases of pay patients; and upon a failure thereof, after reasonable delay, the superintendent shall discharge such patient in the manner as provided in this article in case of poor persons."

The status of the patient mentioned in your letter was never changed from that of a county patient to that of a pay patient, and it is our opinion that the State could not recover any moneys above the amount paid by the county for her keep.

In answer to your next question, as to whether or not the county could recover the money appropriated for the keep of this patient at the hospital, we refer you to Section 500, R.S.A., which is as follows:

"In all cases of appropriation out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same, and

also the county may recover the amount of said appropriations from the estate of such insane person."

Section 500, supra, was amended in 1927 by adding "and also the county may recover the amount of said appropriations from the estate of such insane person." Prior to this amendment, the Supreme Court held in the case of *Montgomery County v. Gupton*, 139 Mo. 303, 39 S.W. 447, and several other cases, that the county could not recover moneys appropriated for this purpose from the estates of indigent insane persons, that is, persons who were indigent at the time the County Court made the order committing them to the institution.

Since the amendment of this act in 1927, the Springfield Court of Appeals has held that the county could recover moneys thus appropriated, and in the case of *Barry County v. Glass*, 160 S.W. (2d) 308, l.c. 309, said:

" * * * * that provision was in full force and effect when Glass was confined in the State Hospital at Nevada, Missouri, as a county indigent patient, and, under that section, the estate of Charles W. Glass, an insane person, was clearly liable for the money previously paid out by Barry County."

Further in the opinion in this case the court discussed the application of the prior decisions of the Missouri Supreme Court, and said at l.c. 809:

"Plaintiff in error cites *Montgomery County v. Gupton*, 139 Mo. 303, 39 S.W. 447. All we need to say of the case cited is that it was decided in 1897 and before the Statute was amended so as to give the county a demand or claim against the estate of the insane person. What the Supreme Court held in that case, is well shown in paragraphs 1 and 2 of the syllabi of the 39 S.W. at page 447. The 1927 amendment, Laws 1927, p. 98, R.S. 1939, Sec. 500, supplied the very defect pointed out in the Gupton case. * * * *"

Honorable Allen Rolston

-7-

Conclusion.

It is, therefore, our opinion that the state or state hospital does not have a valid claim against the estate of this deceased person, but that the county does have a valid claim for reimbursement of the amount appropriated from the county funds for the keep of this patient and that the claim, when allowed for that amount, should be paid to the county.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WED:ml