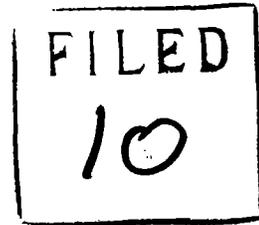


PROBATE JUDGES: Under the provisions of Article 2, Chapter 51, R. S. Mo. 1939, a "finding" must be made before the Probate Court can make an order.

July 9, 1947

Mr. Robert L. Borberg
Prosecuting Attorney
Union, Missouri



Dear Sir:

Your inquiry of recent date reads as follows:

"The Probate Judge of Franklin County, through this office, requests as opinion construing Sections 9346 and 9347, Laws 1945.

"The question: Whether or not the phrase 'If the probated court of the proper county shall so order . . .' requires the court to make a finding of the patient's ability to pay or not to pay for hospitalization."

The first rule to apply when construing statutes is the one concerning legislative intent. The cases of Thompson v. City of Lamar, 17 S. W. 2d 960, 322 Mo. 514; State v. Naylor, 40 S. W. 2d 1079, 328 Mo. 335; hold generally:

"Purpose of statutory construction is to determine legislative intent."

When the meaning of language is to be determined the rule in Bellerive Inv. Co., v. Kansas City, 13 S. W. 2d 628, is to be followed:

"In construing statutes words of common use are to be construed in their natural and ordinary meaning."

A third rule of statutory construction, and an equally important one, is the rule of pari materia. In State ex rel. Thompson v. Dirckx, 11 S. W. 2d 38, the rule is announced as follows:

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"All acts in pari materia should be construed together."

With these rules in mind let us turn to Article II, Chapter 51, of the Revised Statutes of Missouri 1939.

Section 9328, Laws of 1945, page 907, provides in part as follows, where the probate court is dealing with the insane poor:

"Section 9328. Probate courts to have power to send insane poor to state hospitals--semi-annual pay--county courts may sell warrants to pay costs. --The probate courts of the several counties shall have power to send to a state hospital such of the insane poor of their respective counties as may be entitled to admission thereto. Such probate court shall furnish the county court with a certified copy of the order finding the person to be an insane poor person and the order committing such person. * * * * *"
(Underscoring ours)

Section 9344, Laws of 1945, page 911, provides in part, when dealing with circumstances under which inmates of private or charitable institutions may be sent to state hospitals:

"* * * * Said probate court shall hear said matter on the date mentioned in said notice or upon any day to which said court shall adjourn or continue the hearing thereof, in the manner now provided for resident insane persons. If the person charged shall be found by the court to be insane and indigent and to have been a resident, * * * *"
(Underscoring ours)

Section 9346, Laws of 1945, provides as follows:

"Patients are county patients--when.--If the probate 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 patient in a state hospital has not estate sufficient to support him therein. Upon the receipt of such certificate by the superintendent, such

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person shall be a county patient of such county, and shall be supported by such county, as provided by this article in the cases of poor patients."

Section 9347, Laws of 1945, provides as follows:

"County patients may become pay patients.-- If the probate 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 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 constitutionality of these sections of the Missouri statute, quoted supra, was tested and upheld in the recent case of State ex rel. Victoria L. Kowats vs. Glendy B. Arnold, No. 40226, handed down the 9th of June, 1947, and not yet printed.

Applying the rules quoted above, and especially the rule of *pari materia* referred to above, it is apparent from the very language of the state, as demonstrated by the sections of the statutes quoted above, and underlined for clarity, that a finding must be made by the probate court before any order can be entered which is authorized by the statutes. In fact, the very terms themselves, given their ordinary meaning, disclose that a finding obvious that Section 9328, Laws of 1945, contemplates a finding being made by the court for said section uses the term "finding." Under that section the court must "find" the person poor and insane thereby enabling the court to make an order of commitment. The same is true of Section 9344, where the terms "shall be found" is read. What could be clearer than that it was the legislative intent that under the provisions of Article II, Chapter 51, R. S. Mo. 1939, there must be a finding by the probate court prior to its entering any order.

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Furthermore, for this office to hold that a probate court under the provisions of Article II, Chapter 51, could make an order without any finding of fact would in effect revive the Star Chamber procedures which were endured under the infamous Stuarts. To allow a probate court to arbitrarily enter an order of commitment without any finding of fact would violate constitutional guaranties as well as common sense.

CONCLUSION

Sections 9346 and 9347, Laws of Missouri, 1945, contemplate a finding by the probate court of the facts related and upon which the order is based as authorized by said sections. In other words, for the probate court to enter an order under Section 9346, Laws of 1945, there must be a finding of the facts which entitle the court to make said order. The same applies to Section 9347.

Respectfully submitted,

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APPROVED:

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Attorney General