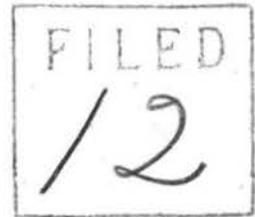


PROBATE COURTS: Probate courts in this state have no power to commit a person under guardianship in said court because of habitual drunkenness to a state hospital or any other institution.

May 19, 1948



Honorable Joseph N. Brown
Assistant Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Brown:

This will acknowledge your letter in which you request the opinion of this department as to the construction to be given to Section 509, R. S. 1939, whether said section gives probate courts of this state the authority to commit to a state hospital a person who is found to be so "addicted to drunkenness * * * as to be incapable of managing his affairs."

Your letter is as follows:

"We desire to say that it is frequently necessary in this County as it is no doubt in many other counties of this State to file in the Probate Court either an information for a sanity hearing or an information alleging that certain persons are habitual drunkards in order that a hearing may be had to determine whether or not such person is insane or an habitual drunkard. Of course, in cases where the subject is found to be insane there is no question but that under the statute the Probate Court has jurisdiction to commit the subject to a State Hospital for the insane; however, the law is not so plain concerning the jurisdiction of the Probate Court to commit a person to a State Hospital in the event such person is found to be so "addicted to drunkenness * * * as to be incapable of managing his affairs". This question involves the construction of Section 509, R. S. Mo. 1939. Said section being as follows:

"If information, in writing, verified by the informant on his best information and belief, be given to the probate court of any county that any person in its county is so addicted to habitual drunkenness or to the habitual use of cocaine, chloral, opium or morphine as to be incapable of managing his affairs, and praying that an

inquiry thereinto be had, the court shall proceed therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind, and if a guardian is appointed on such proceedings, he shall have the same powers and be subject to the same control as the guardian mentioned in section 451, and shall publish the same notice mentioned in section 473; also, shall file an inventory and appraisement, made under the provisions mentioned in sections 461 to 468, both inclusive."(R. S. 1929, Section 508)

"It is to be noted that said section provides that 'the court shall proceed therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind.' It seems that the reasonable interpretation of the quoted clause would be that the court would have the same power to commit habitual drunkards as it would in the case of an idiot, lunatic or person of unsound mind. Unless the word "proceed" as used in said section is to be given a restricted or limited meaning.

"We desire to request an opinion from your Department as to the proper interpretation of this section and assure you that we shall appreciate receiving same."

Article 19, Chapter 1, R. S. Mo. 1939, has for its title the following "GUARDIANS OF DRUNKARDS--CONFINEMENT OF DRUG ADDICTS."

The first section of said Article 19, Chapter 1, is Section 509, R. S. Mo. 1939 referred to in your letter, and which has for its title "Guardians of Drunkards, How appointed--Powers and Duties." The full text of said section 509 is as follows:

"If information, in writing, verified by the informant on his best information and belief, be given to the probate court of any county that any person in its county is so addicted to habitual drunkenness or to the habitual use of cocaine, chloral, opium or morphine as to be incapable of managing his affairs, and praying that an inquiry thereinto be had, the court shall proceed therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind, and if a guardian

is appointed on such proceedings, he shall have the same powers and be subject to the same control as the guardian mentioned in Section 451, and shall publish the same notice mentioned in section 473; also, shall file an inventory and appraisement, made under the provisions mentioned in sections 461 to 468, both inclusive."

The sentence which states: "the court shall proceed therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind" seems to be the particular part of said section 509 which causes doubt as to the power of the court thereunder to commit a person "so addicted to drunkenness * * * as to be incapable of managing his affairs," to a state hospital.

It must be kept in mind that said section 509 prescribes solely a method of beginning proceedings to determine if drunkards or drug addicts are incapable of managing their affairs, and if found incapable, to appoint guardians for them, and defining the powers and duties of such guardians. We should note carefully the next clause in said section 509 following the clause hereinabove quoted which following clause is: "and if a guardian is appointed on such proceedings, he shall have the same powers and be subject to the same control as the guardian, mentioned in Section 451." (underscoring ours). It also requires the same notice as is required in Section 473, and also he shall file an inventory and appraisement such as must be made under the provisions mentioned in Sections 473 and Section 461 to 468, both inclusive. Said last numbered sections refer to the duties of the court where the subject is found to be of unsound mind. They relate to the appointment of a guardian, the giving of notice of letters, the filing of an inventory and appraisement, determining the qualifications of the guardian so appointed, and the placing of the estate of the insane ward in the hands of the guardian. None of those sections in anywise mention the power of the court to commit a person of unsound mind to a state hospital. Those sections consider and deal only with subjects relating to persons declared to be of unsound mind. Section 509 provides only for "proceedings" looking toward the establishment of guardianship for a person who, by reason of habitual drunkenness, is unable to manage his own affairs. And we may here note the particular significance of the words hereinabove quoted which state "and if a guardian is appointed on such proceedings," he shall have the same powers and be subject to the same control as the guardian mentioned in said Section 451, supra.

Turning again to said section 451, supra, and other sections of Article 18 which prescribe the powers of the guardian of an insane person and the kind and character of control to be exercised under the guardianship and by whom, after a finding of unsoundness of mind of

the subject, we find that Section 451 provides for the appointment of a guardian and curator, and defines the qualifications to be possessed by the guardian, and sets out other provisions respecting the duty of the court to certify, if it be a fact, that such person is a public officer of this state, or of any county in this state, or of any municipality in this state, such facts to the officer or tribunal having power to fill vacancies, such office held by such person of unsound mind being deemed vacant. There is no provision whatever in said Section providing for the commitment of such insane person to a hospital.

Section 473, referred to in said section 509, provides only for the publication of notice of guardianship and the taking physical custody of the property of the insane person. Sections 461 to 468, both inclusive, provide for the administration of the estate of his ward by the guardian. In none of these sections last named do we find any reference to the commitment of a person adjudged to be of unsound mind.

We believe the word "proceed" as used in said Section 509 in referring to Sections 451, 475 and 461 to 468, both inclusive, means that such sections are to be followed only as a guide for the inquiry and the appointment of a guardian for an habitual drunkard. We believe the word "therein" used in the phrase "the court shall proceed therein in all respects as herein provided in respect to an idiot, lunatic or person of unsound mind" means only that the court may proceed in the matters then and there before the court, to-wit, the appointment of a guardian in like manner as is followed in said Section 451 in cases of persons of unsound mind.

In cases of persons declared to be of unsound mind, we find the power of the probate court to make an order for their restraint or commitment provided for in Sections 474, 497 and 498, Article 18, Chapter 1, R. S. Mo. 1939.

Said Article 18, Chapter 1, has for its title "Guardians and Curators of Insane Persons." None of said Sections 474, 497 and 498 is mentioned or referred to in anywise in section 509. There is no reference in section 509, of Article 19, providing for the personal restraint or confinement of a person under guardianship for drunkenness. Section 510 and other sections of said Article 19, do provide for the involuntary confinement of persons who are users of certain drugs, to such an extent as to be defined as "dope fiends" or "addicts", in state hospitals for insane persons, for treatment and cure for such habits, but then only for such time as shall be necessary to accomplish a cure.

The Legislature has not deemed it necessary or proper to include habitual "drunkards" in any statute defining persons who may be committed to state hospitals for the insane, or to any other institution because of it. The title of said Article 19 itself gives, we believe, plain and convincing evidence that the Legislature purposely left out of the title of said article any indication of an intention to provide in the Act for the confinement of habitual drunkards. The title of said Article 19 indicates that in the body of the Act it would be provided for the confinement of drug addicts solely, thereby excluding drunkards and we do so find such provisions in said sections 510, 511, 512, 513 and 514 of said Article 19, Chapter 1.

We believe that the power to commit an habitual drunkard, under guardianship, by order of the probate court, must necessarily be provided for by statute before such person could be deprived of his personal liberty. We find no such statutes, nor do we find any language in any of the sections of said Article 19, giving the power to the court to make such an order. Such power cannot exist by implication.

We do not believe the terms of said section 509 may be so enlarged as to grant such power to the court by stating that "the court shall proceed therein in all respects as herein provided in respect to an idiot or lunatic, or person of unsound mind."

Said Section 509 being merely a procedural statute is ordinarily to be given liberal construction. This rule is of such general understanding and approval that we hesitate to take time to cite authorities. The rule will be found so stated in Section 669, page 1129, 59 C.J. See State ex rel. Smith v. Trimble, 315 Mo. 166; Buck v. St. Louis Union Trust Co., 267 Mo. 644; McManus v. Park, 287 Mo. 109.

Sections 510 and 511 are the only sections in Article XIX of Chapter 1, R. S. Mo. 1939, giving the probate court the right to commit any person. Said sections do specifically mention "dope fiends" as persons who may be committed by the probate court. It does not mention habitual drunkards who have been rendered incapable of managing their own affairs. This would then suggest the application of another familiar rule of construction which is that "the expression of one excludes all others." 59 C.J., Section 582, page 984 states the rule as follows: "* * *Where a statute enumerates the things upon which it is to operate* * *it is to be construed as excluding from its effect all those not expressly mentioned:* * *". See State ex inf. Conkling ex rel. Hendricks vs. Sweaney, 195 S. W. 714.

In the case of State v. Lloyd, 7 S.W.(2d) 344, our Supreme Court in regard to the construction of criminal and penal statutes, lc. 346 said: "* * *Such statutes may not be extended or enlarged by judicial interpretation so as to impress persons not specifically brought within their terms. No one may be made subject to its provisions by implication."

But, should it be asserted that Section 509 is so enlarged, by implication, as to give probate courts the power to deprive a citizen of his liberty while under guardianship, by reason of habitual drunkenness, would place said section in the same class of statutes which requires and admits only of a strict construction, such as criminal statutes or penal statutes. In such case, it would violate Section 10, Article I of the Constitution of this state, 1945, which states: "Due Process of Law--That no person shall be deprived of life, liberty, or property without due process of law." Said statutes, in such event, would, at the same time, violate Section 1 of the 14th Amendment to the Constitution of the United States which, in part, says: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law* * *."

If the probate courts assume the power and authority under Sec. 509 to commit, and do commit, by order, a person under guardianship by reason of habitual drunkenness, it would constitute imprisonment. It would not merely be constructive imprisonment, but actual imprisonment.

31 C.J., page 260, defines imprisonment in various ways. One of such definitions is: "* * *any restraint of the personal liberty of another * * *."

Our Supreme Court has given its definition of the word "imprisonment." The Court in the case of Hyde v. Nelson et al. 287 Mo. 130, defines imprisonment, l.c. 135, as follows: "Imprisonment is the act of putting or confining a man in prison; the restraint of a man's personal liberty: * * *".

In the event that a probate court under the terms of said section 509 should commit to a state insane asylum a person, under guardianship in such court by reason of habitual drunkenness, and the terms of said section were before a court having jurisdiction to be construed, said section would be strictly construed, we believe, in favor of the citizen so committed, and against the statute and the erroneous assumption of such jurisdiction by the probate court, so that any citizen so committed would, upon his petition therefor, be released by the proper writ.

Conclusion

It is, therefore, the opinion of this department, considering the above cited statutes and authorities, that probate courts in this state do not possess the power or authority, under the terms of Section 509, Article XIX, Chapter 1, R. S. Mo. 1939, or under any other statute in this state, to commit a person so addicted to drunkenness as to be incapable of managing his affairs, and under guardianship in

Hon. Joseph N. Brown

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such probate court, to a state hospital, or to any other institution so as to deprive such citizen of his personal liberty.

Respectfully submitted,

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APPROVED:

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GWC:mv