

COMMONWEALTH OF MASSACHUSETTS

BRISTOL COUNTY, SS.

SUPREME JUDICIAL COURT
CIVIL ACTION NO. 2010-0146

HELEN KIRK,
Plaintiff

v.

Judge Kevin Sullivan,
District Attorney Timothy Cruz

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR A CLOSED HEARING

Question Presented:

Are civil commitment hearings brought pursuant to Gen. Law Chapter 123 §§ 7, 8 and 16 required to be public hearings.

Statement of facts:

Helen Kirk was committed to Taunton State Hospital in September 2006, after she was found to be not guilty by reason of insanity in the murder of her four-year-old son.

Ms. Kirk received treatment at Taunton State Hospital and over time was granted an increased level of privileges. She was recommitted to Taunton State Hospital on the petition of the Department of Mental Health in 2007 and 2008. In the fall of 2009, the Department of Mental Health determined that Ms. Kirk was ready to be discharged into a community based residential treatment

program, and that she did not require further commitment to Taunton State Hospital

On November 10, 2009, the district attorney received notice of Taunton State Hospital's decision to discharge Ms. Kirk to a 24 hour staffed residential facility. The district attorney filed its own petition seeking Mrs. Kirks commitment to a locked psychiatric facility under general law chapter 123 section 16.

The trial of this matter was begun in the courtroom setting at Taunton State Hospital on March 2, 2010. A reporter from a local newspaper attempted to enter the building at Taunton State Hospital that contained the courtroom. The judge ordered the Department of Mental Health to allow the reporter to come into the courtroom. The attorney for the respondent, Helen Kirk, filed her motion in limine for a closed hearing. The court continued the hearing and requested memoranda and arguments from both sides. The district attorney's office opposed closing the hearing. The Department of Mental Health supported Ms. Kirk's request for a closed hearing. The judge denied the motion for close hearing, without stating the basis for his decision.

The trial of this matter is continued until this court renders a decision on the issue of whether or not the trial should be closed to the public. Ms. Kirk remains committed to Taunton State Hospital pending the conclusion of the commitment trial.

Discussion:

The commitment trial in this case is a civil matter. Ms. Kirk's criminal case ended when the Superior Court found her not guilty by reason of mental illness and committed her to Taunton State Hospital. Each of her subsequent commitments were initiated by the Department of Mental Health and conducted pursuant to the civil sections of Chapter 123. The trial of

commitment petition filed by the district attorney is will be conducted pursuant to the authority of Gen. at chapter 123. The District Court may commit her to Taunton State Hospital on the petition of the district attorney only if it finds that she is mentally ill, and that her discharge from Taunton State Hospital would create a likelihood of serious harm. G.L. c. 123 § 8 (a). This is the statutory finding required for a civil commitment. There is no requirement that the court make any finding regarding any present or past criminal behavior by Ms. Kirk.

The trial of this matter will include the admission of court ordered evaluations, oral testimony from psychologists, psychiatrists and other mental health professionals who performed court ordered the evaluations. In addition, Ms. Kirks mental health records from Taunton State Hospital and possibly other psychiatric facilities may be introduced into evidence. These records are required to be kept private except in the discretion of the court.

M.G.L. c. 123 § 36A states:

All reports of examinations made to a court pursuant to sections one to eighteen, inclusive, section forty-seven and forty-eight shall be private except in the discretion of the court. All petitions for commitment, notices, orders of commitment and other commitment papers used in proceedings under sections one to eighteen and section ...

The judge in this case made no specific finding that he was exercising discretion under the statute.

Furthermore, the trial of this matter will have live testimony from mental health professionals who will be disclosing personal and private psychiatric matters involving Ms. Kirk. The disclosure of this information to the public will violate Ms. Kirks right of privacy. No Massachusetts law, except G.L. c. 123 § 36A cited

above, specifically addresses the issue of commitment hearings and the right of privacy. However, these cases fall within the privacy protections defined in G. L. c. 214 § 1B: that states "a person shall have a right against unreasonable, substantial or serious interference with his privacy". In addition, as a patient of the Department of Mental Health Ms. Kirk has the "right to confidentiality of all records and communications to the extent provided by chapter one hundred and twenty-three." G. L. c. 19 § 16.

In this regard it should be noted that the expert employed by the district attorney gave Ms. Kirk the so-called "Lamb warning" (see Commonwealth v. Charles Lamb, 365 Mass 265 (1974) when he began his interview with her. He informed her that their conversation was not confidential and he would be disclosing the content of the conversation to the district attorney and to the court during the trial. He obtained Ms. Kirk's consent to participate in the interview based on this information. At no time did the evaluator inform Ms. Kirk that the content of their conversation would be publicly disclosed. It is likely that Ms. Kirk would not have participated in this interview if she was aware that the public, including her former husband and other family members would have access to the information.

One State that has addressed this issue is Alabama, which places restrictions on public hearings if requested by the patient. The Alabama Code of 1975: Title 22-2 Mental Health. Chapter 52 Commitment, Discharge and Transfer of Persons in State Institutions, Section 22-52-9 Conduct of Hearings (4) states "All hearings

shall be heard by the probate judge without a jury and shall be open to the public unless the respondent or his attorney requests in writing that the hearings be closed to the public."

Conclusion:

This court should rule that a public civil commitment hearing over the objection of the patient violates her right of privacy and should order the Taunton District Court to close the commitment hearing in this matter.

Respectfully submitted,
Helen Kirk,
By her attorney,



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