Touro Law Review

Volume 21
Number 1 *New York State Constitutional Decisions: 2004 Compilation*

Article 20

December 2014

Supreme Court, Broome County, In re United Health Services Hospitals

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Cover Page Footnote

21-1

SUPREME COURT OF NEW YORK

In re United Health Services Hospitals[1]
(decided November 4, 2004)

United Health Services Hospitals, Inc. (UHS) petitioned under Article 81 of the Mental Hygiene Law[2] for the appointment of the Broome County Commissioner of Social Services as guardian for the "person and property of AG, an alleged incapacitated person (AIP).[3] An Article 81 hearing seeks to promote the welfare of an incapacitated person by establishing a system for the appointment of a guardian who will have control of the personal or proprietary matters of the AIP in a manner which is "tailored to the individual needs of that person."[4] At trial, AG was called as a witness and sought to invoke his Fifth Amendment[5] right not to testify against himself in cases where a deprivation of liberty was at stake.[6] The court stated that the "right to remain silent [in] . . . an Article 81 hearing [was] a matter of first

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[1] 785 N.Y.S.2d 313 (N.Y. Sup. Ct. 2004).

[2] N.Y. MENTAL HYG. § 81.21 (Consol. 2004) provides in pertinent part: "[The] court may authorize the guardian to exercise those powers necessary and sufficient to manage the property and financial affairs of the incapacitated person; to provide for the maintenance and support of the incapacitated person, and those persons depending upon the incapacitated person; to transfer a part of the incapacitated person's assets to or for the benefit of another person on the ground that the incapacitated person would have made the transfer if he or she had the capacity to act."

[3] *United Health Services*, 785 N.Y.S.2d at 313.

[4] N.Y. MENTAL HYG. § 81.01 (Consol. 2004) which states in pertinent part: "[T]he purpose of [the] act [is] to promote the public welfare by establishing a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person . . ."

[5] U.S. CONST. amend. V provides in pertinent part: "No person shall . . . be compelled in any criminal case to be a witness against himself . . . ."

impression in New York."[7] The court, using state and federal authority, analogized an AIP to a juvenile, and considered instances where mentally incapacitated persons were afforded specific liberty interests, to reach its holding that "[i]t is inherently offensive . . . to require a person to testify against himself or herself in a proceeding where that person's liberty is at stake."[8]

When the initial petition for the appointment for a guardian was filed, AG did not take the usual affirmative steps associated with an appointment. He did not answer the petition or place his condition in issue. When the trial started, he neither called any witnesses nor waived any of his civil rights or privileges.[9] During trial, a UHS discharge planner testified that within the past year and a half "AG had been admitted to the hospital over 25 times and had signed himself out against medical advice 16 times."[10] When AG was called as a witness, his attorney objected stating, among other things, that "[t]he *Fifth Amendment* [provided for a] right not to testify when a liberty interest is at stake."[11]

In *In re Gault*, the United States Supreme Court held that the Fifth Amendment privilege against self-incrimination is also applicable to the states.[12] In *Gault*, a petition was filed for the release of a fifteen-year-old boy who had been adjudicated as a juvenile delinquent and was being institutionalized in the State

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[6] *United Health Services,* 785 N.Y.S.2d at 313.
[7] *Id.*
[8] *Id.* at 317.
[9] *Id.* at 313.
[10] *Id.*
[11] *United Health Services,* 785 N.Y.S.2d at 313.

Industrial School.[13] The boy was taken into custody for calling a neighbor and making lewd, offensive and indecent remarks while he was still on probation for a prior offense.[14] When the boy was picked up by the police, no one was at home and the parents were not notified that the child was being taken into custody.[15] Only eight hours later, when the boy's mother returned from work and realized that her son was not home, did she discover from a neighbor that he had been taken into custody.[16] The next day, the boy, his mother, his brother and two probation officers came before the juvenile judge in chambers.[17] When questioned about the telephone call, there was conflicting testimony between the boy's and the probation officer's testimony.[18] The boy claimed that he only dialed the number of the complainant and then gave the phone to the other boy charged with lewd conduct.[19] Conversely, Probation Officer Flagg claimed that the boy admitted making the remarks himself.[20] Ultimately, at the habeas hearing nearly two months later, the judge was called as a witness and testified that the boy had made some of the lewd statements and the court committed Gault to the State Industrial School as a juvenile delinquent through the "period of his minority."[21] The

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[12] 387 U.S. 1 (1967).
[13] *Id.* at 4.
[14] *Id.*
[15] *Id.* at 5.
[16] *Id.*
[17] *Gault,* 387 U.S. at 5
[18] *Id.* at 6.
[19] *Id.*
[20] *Id.*
[21] *Id.* at 7-8.

Gault family filed for a writ of habeas corpus which was initially dismissed by both the Superior Court and Supreme Court of Arizona.[22] The Supreme Court considered whether the Supreme Court of Arizona mistakenly held that "due process of law is requisite to the constitutional validity of proceedings in which a court reaches the conclusion that a juvenile has . . . misbehaved with the consequence that he is committed to an institution in which his freedom is curtailed."[23]

Considering the argument against the application of the right to silence in juvenile proceedings, the *Gault* Court analogized admissions of juveniles with the privilege of self incrimination stating that "the privilege against self incrimination is . . . related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy."[24] One argument against giving juveniles the right to silence, is that "juvenile proceedings are 'civil' and not 'criminal[.]' "[25] The Court noted that the "statement of the privilege in the Fifth Amendment . . . is applicable to the States by reason of the Fourteenth Amendment" and is appropriate in a civil case as well as a criminal case.[26] The Supreme Court said that "the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure

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[22] *Gault,* 387 U.S. at 9-10.
[23] *Id.* at 12.
[24] *Id.* at 47.
[25] *Id.* at 49.
[26] *Id.*

which it invites."[27] The Court reasoned that juveniles should have a right to silence in proceedings ultimately leading to the determination of delinquency because a classification of delinquency may lead to commitment in a state institution.[28] "[C]ommitment is a deprivation of liberty [and is] incarceration against one's will, [regardless of] whether it is called 'criminal' or 'civil.' "[29] Because the Federal Constitution states that "no person shall be 'compelled' to be a witness against himself when he is threatened with deprivation of his liberty," a juvenile should have the right to remain silent in actions in which his liberty is at stake.[30]

The court in *United Health Services* analogized the situation with AG to that in *In re Gault.* The New York Constitution contains a privilege which prevents a person from being forced to testify against himself [31] and has "incorporated [the provision] as a rule of evidence."[32] Civil Practice Laws and Rules Section 4501 states that "a witness [is not required] to give an answer which will tend to accuse himself of a crime or to expose him to a penalty or forfeiture."[33] In an Article 81 proceeding, in which a guardian is appointed for an AIP, that guardian has the

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[27] *Gault,* 387 U.S. at 49.
[28] *Id.*
[29] *Id.* at 50.
[30] *Id.*
[31] N.Y. CONST. art. 1, § 6 provides in pertinent part: "No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . ."
[32] *United Heath Services,* 785 N.Y.S.2d. at 314.
[33] N.Y. C.P.L.R. § 4501 (McKinney 2004).

power, among other things, to place the AIP in a nursing home or residential care facility.[34]

Because this was a matter of first impression in New York State, the court in *United Health Services* looked to sister courts for guidance. The issue in *United Health Services* was identical to that in *In re Matthews.*[35] In *Matthews,* the Oregon Court of Appeals sought to determine whether "an allegedly mentally ill person has a right to remain silent in a civil commitment proceeding."[36] Although stating that an AIP can "assert his Fifth Amendment privilege in civil commitment proceeding whenever his testimony might implicate him in a criminal matter,"[37] the court was not inclined to extend that same privilege in a hearing based on a civil commitment.[38] The court deemed that the "procedural and substantive safeguards which [were] presently afforded allegedly mentally ill persons in commitment hearings" were sufficient to prevent an "erroneous deprivation of [a liberty] interest."[39] Likewise, in *Tyars v. Finner,*[40] a factually similar California case, the court was faced with an issue identical to that in *Matthews.* In *Tyars,* a mentally retarded person was found by the court to be "incapable of understanding the customary oath, but [able to] understand the importance of telling the truth."[41] The

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[34] *United Health Services,* 785 N.Y.S.2d at 316.
[35] 613 P.2d 88 (Or. Ct. App. 1980).
[36] *Id.* at 89.
[37] *Id.* at 90.
[38] *Id.* at 91.
[39] *Id.*
[40] 518 F. Supp. 502 (C.D. Cal. 1981).
[41] *Id.* at 503.

court held that "[i]t would . . . be consistent with current federal constitutional standards to apply the Fifth Amendment safeguard against self-incrimination to petitioner Tyars' situation."[42]

The New York Court of Appeals has consistently held that a "person retains his or her civil rights in a proceeding where personal liberty is at stake."[43] In *Rivers v. Katz,* the court was asked to consider "whether and under what circumstances the State may forcibly administer antipsychotic drugs to a mentally ill patient who has been involuntarily confined to a State facility."[44] The court held that where a patient refuses to consent to taking antipsychotic drugs, "there must be a judicial determination of whether the patient has the capacity to make a reasoned decision with respect to proposed treatment before the drugs may be administered" and therefore the patient should be afforded a de novo trial because he or she has a liberty interest and is thus entitled to representation by counsel.[45] Similarly, the court in *United Health Services* stated that "[i]f patients do not lose their rights to make their own decision regarding administration of antipsychotic drugs, . . . AIP's should not lose to a guardian their rights to make their own medical decisions."[46] The Court of Appeals in *In re St. Luke's,*[47] held that the "AIP was entitled to

[42] *Id.* at 509.
[43] Rivers v. Katz, 495 N.E.2d 337 (N.Y. 1987).
[44] *Id.* at 339.
[45] *Id.* at 343-44.
[46] *United Health Services,* 785 N.Y.S.2d at 316.
[47] *In re* St. Luke's, 675 N.E.2d 1209 (N.Y. 1996).

assigned counsel" which shall be funded by the locality.[48] The *United Health Services* court reasoned that "[i]f an AIP has a right to counsel, he or she should also have the right to remain silent on the advice of that counsel."[49]

Therefore the court in *United Health Services* held that an AIP cannot be compelled to testify against himself in an Article 81 hearing, especially if a liberty interest is at stake.[50] Its rationale was that:

> in Article 81 proceedings, the AIP can be deprived of liberty. If the evidence warrants, the guardian can be given the power to place the incapacitated person involuntarily in a nursing home or other institution, to make medical decisions for him or her, including the power to withhold or withdraw life sustaining treatment.[51]

The issue of whether an allegedly incapacitated person has a right to remain silent during a trial or hearing is a novel one, not only in New York, but across the country. The United States Supreme Court has not yet reached a conclusion on the issue; therefore the lower courts have no guidance on how to rule when presented with this matter. In *Gault,* the United States Supreme Court stated that any kind of commitment is a deprivation of liberty and that no person should be compelled to testify against himself when there is a threat that his liberty will be taken away.[52]

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[48] *Id.* at 1210.
[49] *United Health Services,* 785 N.Y.S.2d at 316.
[50] *Id.* at 317.
[51] *Id.* at 316.
[52] *In re* Gault, 387 U.S.1, 50 (1967).

In summation, the court in the instant case stated that "it [was] inherently offensive to [the] Constitution and due process to require a person to testify against himself or herself in a proceeding where that person's liberty is at stake."[53] From the time of the creation of the Bill of Rights, the Fifth Amendment right against self incrimination has stood as one of the most important liberty interests provided to American citizens. The *Gault* court reinforced that infallible right by holding that the same also applied in a civil juvenile proceeding. The *United Health Services* court concluded that it logically followed that the right to remain silent could not be deprived in a "proceeding[] where a person's life and liberty is at risk due to allegations of mental illness or incapacity . . . [and] [d]ue process requires nothing less."[54]

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[53] *United Health Services*, 785 N.Y.S.2d at 317.
[54] *Id.* at 317.

SEARCH & SEIZURE

United States Constitution Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

New York Constitution Article I, Section 12:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.