

1806.

OHIO HOSPITAL FOR EPILEPTICS—WHERE PATIENT WAS COMMITTED TO SAID INSTITUTION BUT WARRANT TO CONVEY WAS NOT ISSUED UNTIL AMENDMENTS TO SAID LAW CHANGED—ACTION “PENDING PROCEEDING”—COST BILL GOVERNED BY OLD LAW.

On October 8, 1918, one L. A. M. was, pursuant to section 2044 G. C.; section 1953 G. C. and related sections, proceeded against as an epileptic person, and on said date was found to be an epileptic. On account of the condition of the patient and certain other circumstances, the warrant to convey said patient to the Ohio Hospital for Epileptics at Gallipolis was not issued until November 30, 1920. Meanwhile, to-wit on May 20, 1920, amendments of sections 1981 and 1982 G. C. (See H. B. 294, 108 O. L., Part II, p. 1203) became effective, said amendments providing that all costs in such proceedings should be taxed in the bill of costs and collected “from the patient or those lawfully responsible for his care.” Held, that said epilepsy proceeding was on May 20, 1920, a “pending proceeding,” within the meaning of section 26 G. C. and that said amendments cannot, because of section 26 G. C., be construed to affect the same.

COLUMBUS, OHIO, January 21, 1921.

HON. H. M. SUMMERS, *Probate Judge, Ottawa, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading thus:

“I desire the following information: On the 8th day of October, 1918, one L. A. M. was found by this court to be an epileptic. She was committed to the care of her father, A. S. M., to be kept in his custody until such time as he could arrange to take her to Gallipolis.

On account of his health and the condition of the patient the warrant to convey was not issued until the 30th day of November, 1920, and on that date said warrant to convey was issued to the sheriff of this county, who took her along with an assistant to Gallipolis. The sheriff's fees amounted to \$65.33, and the assistant, \$15.72, making in all \$81.05.

What I want to know is whether or not said A. S. M., the father of said epileptic, should pay this bill of \$81.05, since he was to blame for the delay from the time of commitment until the date of the issuing of said warrant to convey. My point in short is this: This commitment was made under the old law and the warrant to convey issued since the change in the law, which new law, as you fully understand, compels the father of the patient even though she be a minor, as in this case, to pay the total expense of such conveyance, provided he is financially able and in this instance A. S. M. is well to do financially and can pay this expense if he is legally required to do so.”

What the procedure is for the commitment of epileptics to the Ohio hospital for epileptics at Gallipolis, is indicated by section 2044 G. C., which says:

“In the commitment and conveyance to the hospital, the care and custody while there, and the discharge therefrom, of epileptic insane or epileptics whose being at large is dangerous to the community, like proceedings shall be had, and like powers exercised by officers charged with like duties in the premises as is provided by law for the commitment and care of the insane.”

Said section clearly refers to the procedure set forth in the chapter of the General Code which has to do with hospitals for the insane, to-wit sections 1947 G. C., et seq.

Section 2050 G. C. says :

"The fees of the probate judge, physician and other officers, witnesses and persons, growing out of the admission of a patient to the hospital, shall be paid to the amount, and in the manner as similar fees in the commitment of an insane person to a state hospital. * * *

While section 2050 G. C. speaks only of "fees" and says nothing of "expenses," the administrative practice for many years has been to pay the same expenses in epilepsy cases as are paid in lunacy cases.

At the time the epilepsy proceedings referred to in your letter were instituted, section 1981 G. C., fixing the costs and expenses (other than the fees of the probate judge and sheriff) payable in such cases, read as follows :

"The probate judge shall make a complete record of all proceedings in lunacy. The costs and expenses, other than the fees of the probate judge and sheriff, to be paid under the provisions of this chapter, shall be as follows: To each of the two physicians designated by the court to make examination and certificate, five dollars, and witness fees as allowed in the court of common pleas; to witnesses the same fees as are allowed in the court of common pleas; to the person other than the sheriff or deputy sheriff making the arrest, the actual and necessary expense thereof and such fees as are allowed by law to sheriffs for making arrests in criminal cases; to the person other than the sheriff, deputy sheriff or assistant, for taking any insane person to state hospital or removing one therefrom upon the warrant of the probate judge, mileage at the rate of five cents per mile, going and returning; and for the transportation of each patient to or from the hospital, mileage at the rate of two cents per mile; to one assistant to convey to the hospital, when authorized by the probate judge, two dollars and, two cents per mile each way; all mileage allowed herein shall be for the distance actually and necessarily traveled."

Said section was amended by H. B. 294 (108 O. L., Part II, p. 1203), effective May 20, 1920, to read thus :

"The probate judge shall make a complete record of all proceedings in lunacy. The costs and expenses to be paid under the provisions of this chapter, in addition to fees and expenses otherwise provided for, shall be as follows: To each of the two physicians designated by the court to make examination and certificate, five dollars in full for all services rendered; to the person, other than the sheriff or his deputies, for taking an insane person to a state hospital or removing one therefrom upon the warrant of the probate judge, the actual necessary expense incurred, specifically itemized and verified by his oath and approved by the probate judge; to one assistant to convey to the hospital, when authorized by the probate judge, his actual necessary expense incurred, specifically itemized and verified by his oath and approved by the probate judge."

Section 1982 G. C., at the time the epilepsy proceedings referred to in your letter were instituted, read thus :

"When it appears at the time of conveying such person to the hospital that the condition of the patient so requires, a conveyance may be provided from the nearest railroad station, or in counties where state hospitals are located, from the county seat to the hospital, and the expense thereof and the costs and expenses specified in the preceding section shall be paid from the county treasury upon the certificate of the probate judge."

Said section was also amended by H. B. 294, to read:

"The fees and expenses enumerated in the preceding section, together with all costs in the probate court, including the cost of clothing, if any, authorized by section 1962, shall be taxed in the bill of costs and collected from the patient or those lawfully responsible for his care; but if they should prove insolvent, all of said fees and expenses, except the fees of the probate judge and the fees and expenses of the sheriff, shall be paid from the county treasury upon the certificate of the probate judge."

It thus appears that at the time when the epilepsy proceedings against the said L. A. M. were begun, neither the patient nor those lawfully responsible for her case were liable for the costs of such proceeding; it further appears that before the final steps in such proceedings (to-wit commitment and conveyance to the state hospital for epileptics) were had, the amendments of sections 1981 and 1982 G. C., set forth above, became effective. The question upon which you desire my opinion is whether A. S. M., the father of L. A. M., can be held liable, as a person lawfully responsible for the care of L. A. M., for the costs of such proceeding made subsequent to the effective date of H. B. 294.

Section 26 G. C. says:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

In *State, ex rel. Andrews vs. Zangerle*, Auditor, 101 O. S. 235, the second syllabus says:

"Section 26, General Code, is a rule of legislative interpretation and is to be construed as a part of any amended act, unless such amendment otherwise expressly provides."

Was the matter affecting the said L. A. M. a "pending proceeding," within the meaning of section 26 G. C., at the time H. B. 294 became effective? If so, no liability rests upon the said A. S. M. to pay the bill in question, as it does not appear that there is anything in H. B. 294 which "otherwise expressly provided."

Section 2044 G. C., which for the sake of convenience we again quote, says that

"In the commitment and conveyance to the hospital, the care and custody while there, and the discharge therefrom, of epileptic insane or

epileptics whose being at large is dangerous to the community, like proceedings shall be had, and like powers exercised by officers charged with like duties in the premises as is provided by law for the commitment and care of the insane."

Among the statutes to which this general reference in section 2044 G. C. sends us, is section 1953 G. C. Said section begins with these words:

"For the admission of patients to a hospital for the insane, the following *proceedings* shall be had."

The word "proceedings" also occurs in sections 1955 G. C., 1960 G. C., 1968 G. C., 1975 G. C., and 1981 G. C. No court decisions have come to our attention holding that a lunacy or epilepsy proceeding is not a "proceeding" within the meaning of section 26 G. C., and we know of no good reason for any such view.

Nor do we have any doubt that the proceeding was *pending* at the time the amended act took effect. While it is true that the said L. A. M. had, prior to that time been adjudged an epileptic (section 1956 G. C.), the power of the court over the person so adjudged was not exhausted, the court still having jurisdiction to commit to the institution for epileptics. As a matter of fact the court's jurisdiction in such cases endures after commitment of the patient to the institution and until the patient is finally discharged. *Heckman vs. Adams*, 50 O. S. 305.

You are therefore advised that the said A. S. M. is not legally liable for the payment of the bill mentioned in your letter.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1807.

SOLDIERS' BURIALS—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO PAY EXPENSES OF BURIALS IN ABSENCE OF STEPS PROVIDED BY SECTION 2950 G. C. ET. SEQ.

County commissioners are without authority to pay the expenses of soldiers' burials, in the absence of the taking by the burial committee of the steps provided by sections 2950 G. C. et seq.

COLUMBUS, OHIO, January 21, 1921.

HON. LLOYD S. LEECH, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading thus:

"A condition arises in one of the townships in this county in regard to burial relief for a deceased soldier, as provided for in sections 2950 et seq. G. C.

A, who was a veteran of the Civil war, died leaving B, his widow, surviving him. At the time of his death he possessed a small house and lot in a small country village which was used as their home, and is at the present time occupied by the aged widow as her home. No other property of any consequence being left by the deceased, and his widow does not have any income of any importance aside from her pension, to provide her with the necessities of life.