



## In re L (by his next friend GE)

[1998] UKHL 24

**Country:** United Kingdom

**Region:** Europe

**Year:** 1998

**Court:** House of Lords

**Health Topics:** Health care and health services, Health systems and financing, Hospitals, Informed consent, Mental health

**Human Rights:** Right to due process/fair trial, Right to liberty and security of person

### Facts

Mr. L was a mentally retarded person who was incapable of consenting to medical treatment. From the age of 13, he had been a resident at the Bournwood Hospital which was governed by the appellant, NHS Trust. Mr. L was discharged from the hospital on a trial basis into the community with paid carers, though the appellant remained responsible for his care and treatment.

On a regular trip to the Cranstock Day Centre, Mr. L became agitated and began to harm himself. Mr. L was taken to the Accident and Emergency Department at the Bournwood Hospital where he was assessed by a psychiatrist who recommended in-patient treatment. Mr. L made no attempt to leave. His consultant decided that it was in his best interest to be re-admitted as an informal in-patient and determined that it was not necessary to detain him under the Mental Health Act, 1983 (the "Act") as Mr. L appeared to be fully compliant.

Mr. L filed a case against the Trust and applied for

- (1) a judicial review of the appellant's decision to detain him and continuing to detain him,
- (2) a writ of habeas corpus ad subjiciendum (i.e., a writ for inquiring into the lawfulness of the restraint of a person who detained in another's custody) directed against the appellant, and
- (3) damages for false imprisonment and assault.

The lower court refused Mr. L's application but the Court of Appeal indicated that the appeal should be allowed. Mr. L argued that he had been wrongfully detained in the hospital without his consent and that it had been made clear to him that, should he resist admission, he would have been detained under the Act. The appellant responded that Mr. L had been informally admitted to the hospital under Section 131(1) of the Act, which did not require active consent of the patient, it being enough that he does not dissent from being admitted and once Mr. L had been lawfully admitted the treatment he received was lawful under the common law doctrine of necessity.

The Court of Appeals held that (a) Mr. L had been detained because a person is detained in law if those who have control over the premises in which he is have the intention he shall not be permitted to leave those premises and have the ability to prevent him from leaving and (b) that the Act created complete regime which excluded the application of the common law doctrine of necessity.

### Decision and Reasoning

First the House noted that the Court of Appeals decision caused concern over the amount of resources and legal complications which would be required to compulsorily detain patients under the Act who were formerly informally admitted as in-patients.

The House, after considering the intention and legislative history of the Act, its amendments and the relevant affidavits, came to the conclusion that Mr. L was not unlawfully detained by the appellants. The House classified Mr. L's re-admission to the hospital as an informal patient under Section 131(1) of the Act because he did not object to the treatment, though lacking a capacity to do so. The House determined that all the steps taken by the doctors were taken in the best interests of Mr. L and were justified under the common law doctrine of necessity. Thus, any detention which occurred was lawful.

However there was substantial disagreement between the lords as to whether Mr. L's readmission to the hospital as an informal patient constituted a deprivation of his liberty (i.e., whether he had been detained at all). Lord Goff of Chievery found that, though Mr. L may have been considered to be detained at certain times, his readmission did not constitute a deprivation of his liberty. Lord Nolan and Lord Steyn argued that considering the fact that hospital was not prepared to release Mr. L he was, in fact, being detained despite the fact he did not try to leave.

Lord Steyn also highlighted that the House's decision did not give compliant incapacitated patients the same quality and degree of protection as is given to patients admitted under the Act of 1983 leading to an indefensible gap in our mental health law.

Ultimately, the House allowed the appeal.

## Decision Excerpts

I turn briefly to the basis upon which a hospital is entitled to treat, and to care for, patients who are admitted as informal patients under section 131(1) but lack the capacity to consent to such treatment or care. It was plainly the statutory intention that such patients would indeed be cared for, and receive such treatment for their condition as might be prescribed for them in their best interests. Moreover the doctors in charge would, of course, owe a duty of care to such a patient in their care. Such treatment and care can, in my opinion, be justified on the basis of the common law doctrine of necessity, as to which see the decision of your Lordships' House in *In re F. (Mental Patient: Sterilisation)* [1990] 2 A.C. 1. It is not therefore necessary to find such justification in the statute itself, which is silent on the subject. Opinion of Lord Goff of Chievery

In the light of this account, the following conclusions may be drawn. The first is that, as I have already recorded, although Mr. L had been discharged from hospital into the community on a trial basis, and on that basis had gone to live with Mr. and Mrs. E as his paid carers, nevertheless he had not been finally discharged. It followed that the appellant trust remained responsible for his treatment, and that it was in discharge of that responsibility that the steps described by Dr. Manjubhashini were taken. The second is that when, on 22 July, Mr. L became agitated and acted violently, an emergency in any event arose which called for intervention, as a matter of necessity, in his best interests and, at least in the initial stages, to avoid danger to others. Plainly it was most appropriate that the appellant trust, and Dr. Manjubhashini in particular, should intervene in these circumstances; certainly Mr. and Mrs. E., as Mr. L's carers, could not assert any superior position. Third, I have no doubt that all the steps in fact taken, as described by Dr. Manjubhashini, were in fact taken in the best interests of Mr. L and, in so far as they might otherwise have constituted an invasion of his civil rights, were justified on the basis of the common law doctrine of necessity. Opinion of Lord Goff of Chievery

There were times during the episode when it might be said that Mr. L was "detained" in the sense that, in the absence of justification, the tort of false imprisonment would have been committed. . . . In the present case all the steps in fact taken by Dr. Manjubhashini were, in my opinion, lawful because justified under the common law doctrine of necessity, and this conclusion is unaffected by her realisation that she might have to invoke the statutory power of detention. Opinion of Lord Goff of Chievery

If the decision of the Court of Appeal is reversed almost all the basic protections under the Act of 1983 will be inapplicable to compliant incapacitated patients: see section 57(2) for an exception. The result would be an indefensible gap in our mental health law. Opinion of Lord Steyn

Counsel for the Trust and the Secretary of State argued that "L" was in truth always free not to go to the hospital and subsequently to leave the hospital. This argument stretches credulity to breaking point. The truth is that for entirely bona fide reasons, conceived in the best interests of "L", any possible resistance by him was overcome by sedation, by taking him to hospital, and by close supervision of him in hospital. And, if "L" had shown any sign of wanting to leave, he would have been firmly discouraged by staff and, if necessary, physically prevented from doing so. The suggestion that "L" was free to go is a fairy tale. Opinion of Lord Steyn.

It is now necessary to consider whether there was lawful authority to justify the detention and any treatment of "L". This is a matter of statutory construction. But it is important to approach the mental health legislation against the context of the principles of the common law. The starting point of the common law is that when a person lacks capacity, for whatever reason, to take decisions about medical treatment, it is necessary for other persons, with appropriate qualifications, to take such decision for him: *In Re F (Mental Patient:*

Sterilisation) [1990] 2 A.C. 1, at 55H, per Lord Brandon of Oakbrook. The principle of necessity may apply. Opinion of Lord Steyn

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