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134 Md. 305, 106 A. 753

Court of Appeals of Maryland.
WAGNER et al.
v.
MAYOR AND **CITY COUNCIL** OF **BALTIMORE**.
No. 26.

April 8, 1919.

Appeal from Circuit Court of Baltimore City; Morris A. Soper, Judge.

Petition by the Mayor and City Council of Baltimore for an order by the court directing Winifred P. Wagner and another, committee of George E. Wagner, Jr., lunatic, to pay them a stated sum for the support and maintenance of such lunatic. From a granting by the court of the order prayed for, the committee appeal. Order affirmed.

West Headnotes

Mental Health 257A **451**
257Ak451 Most Cited Cases
Code Pub.Civ.Laws, art. 59, §45, making the maintenance of lunatics in state hospitals a charge against their estate, applies to one found not guilty of crime because insane and committed under sections 4 and 5; such inmate not being a criminal under punishment, but being similarly situated with one committed under section 1 upon his own application or that of another.

Argued before BOYD, C. J., and BRISCOE, BURKE, THOMAS, PATTISON, URNER, and CONSTABLE, JJ.

J. Royall Tippett, of Baltimore, for appellants.
Alexander Preston, Asst. City Sol., of Baltimore (S. S. Field, City Sol., of Baltimore, on the brief), for appellee.

PATTISON, J.
In 1905 George E. Wagner, Jr., was tried in the criminal court of Baltimore city upon the charge of murder. The jury returned a verdict of "not guilty because of insanity," and he was committed by the court to the Springfield State Hospital, where he has been an inmate ever since.

The appellants upon their petition were appointed committee for said George E. Wagner, Jr., by a decree of the circuit court of Baltimore city passed on the 28th day of March, 1918. The petition alleged that the personal estate held by him at such time amounted to $850, consisting of money in bank and a one-half interest in an insurance policy upon the life of one George W. Wagner, in which George E. Wagner, Jr., was a beneficiary.

On the 26th day of April, 1918, the mayor and city council of Baltimore filed their petition in said circuit court of Baltimore city, in which they alleged that the said George E. Wagner, Jr., was an insane patient in said institution, where he was being supported and maintained at the expense of the city, and where he had been so supported and maintained at its expense since December***754** 15, 1905, and asked the court to pass an order authorizing and directing the said committee to pay to them the sum of $300 for the support and maintenance of said George E. Wagner, Jr., from April 22, 1915, to April 22, 1918.

The committee answered the petition, stating that the estate of said Wagner at such time was approximately of the value of $800, and admitting that he was an insane patient at the Springfield Hospital, where he had been confined since December 15, 1905, but denied that he was a charity patient of the city, in that he "was tried before a jury in the criminal court of Baltimore city on an indictment charging him with murder, and the jury *** returned a verdict of 'not guilty because of insanity,' and the judge presiding in said court sentenced the said George E. Wagner,

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Jr., to the Springfield Hospital for the Insane," and alleging therein that, under such proceedings and commitment, they were not legally bound to pay the city for the support and maintenance of said lunatic while so confined in said institution.

Upon the petition and answer the court passed its order, dated September 20, 1918, directing the committee to pay to the petitioners out of the estate of George E. Wagner, Jr., the said sum of $300 for his maintenance and support in said institution for the period above named, and the further sum of $100 per annum for such period as the said George E. Wagner, Jr., should continue to be at said hospital at the expense of the city of Baltimore. From that order this appeal has been taken.

Section 4 of article 59 of the Code (1912) of Public General Laws of this state provides that-

> "When any person indicted for a crime or misdemeanor shall allege insanity or lunacy in his defense, the jury impaneled to try such person shall find by their verdict whether such person was, at the time of the commission of the offense, or still is insane, lunatic or otherwise."

And by section 5 of said article it is provided that-

> "If the jury find by their verdict that such person was at the time of committing the offense and then is insane or lunatic, the court before which trial was had shall cause such person to be sent to the almshouse of the county or city in which such person resided at the time of the commission of such act, or to a hospital, or some other place better suited in the judgment of the court to the condition of such prisoner, there to be confined until he shall have recovered his reason and be discharged by due course of law."

By section 45 of said article it is provided that-

> "For each patient in any state hospital for the insane from Baltimore city or any one of the counties in the state the said city or county, as the case may be, shall as herein specified pay into the state treasury the sum of one hundred dollars ($100.00) for the board, care and treatment of such patient, and the remaining amount required for the board, care and treatment of such insance person shall be paid from the treasury of the state."

This section then provides that such expense shall be a charge upon the county (or city) from whence the patient is sent, and also provides for the notice required to be given by the superintendents of the different hospitals of the state to the local officials as to the amount of such charges, and also states the procedure to be followed in the collection of the same, etc. The section then concludes by saying, "The amount incurred by any county of this state for treatment and maintenance of any insane persons in the State Hospital for the Insane shall be a charge against the estate of such person," subject to the qualifications and restrictions therein mentioned which are not necessary to be stated in reaching a decision in this case.

It is contended by the appellants that this latter provision of section 45, making the costs of the treatment and maintenance of insane persons in the state hospitals a charge against the estate of such persons to the extent of $100 per annum, does not apply to those patients who are committed to such institutions under sections 4 and 5, above stated, but that it applies only to those insane persons who are committed to such institutions under section 1 of said article, upon the certificate of physicians, or, if demanded under the provisions of that section, by the inquisition or finding of a jury.

If we correctly understand the contention of the appellants, section 45 does not apply to sections 4 and 5, because of the fact that the confinement of such insane persons under those provisions of the Code partakes of a criminal punishment, and, for such reason, should be distinguished in deciding

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the question before us from cases where the party is confined for treatment upon the application of himself or others in his behalf.

In the appellants' brief it is said:

> "If the lunatic in this case was confined in the penitentiary or Baltimore city jail, it would certainly not be necessary for his committee to pay for his support or maintenance in the penitentiary or city jail."

It is thus seen that the appellants treat the confinement of insane persons committed under the provisions of sections 4 and 5 of article 59 of the Code as if such confinement was in the nature of a sentence imposed upon such insane person as a punishment for the commission of some offense or crime.

In this they are in error. It is true that Wagner was indicted for the commission of a crime and was tried, but in the trial of the case it was shown that he was insane, ***755** and consequently, in legal contemplation, he, being insane, could not commit a crime. The verdict of the jury was that he was not guilty because insane, and, when this conclusion was reached, he was thereafter to be treated simply as an insane person, just as he would have been treated under section 1 in the absence of any criminal charge against him. When his insanity was established by the verdict of the jury, he was no more a criminal than if he had never been charged with a crime, and he was in precisely the same situation as one who had, upon his own application or upon the application of others, been adjudged insane, under the provisions of section 1 of said article.

It is true a different procedure was followed in reaching that conclusion, but, when his insanity was established, his confinement thereafter was and must be regarded and treated in the same manner as if he had been confined under section 1 of said article.

We may also add that in applying said provision of the statute we discover no sound reason for distinguishing between those who upon application are adjudged insane and those who are found to be insane under setions 4 and 5 of said article; nor do we find anything in the statute indicating that it was the intention of the Legislature to create such distinction.

From what we have said the order of the court below will be affirmed.

Order affirmed, with costs to the appellee.

Md. 1919.
Wagner v. City of Baltimore
134 Md. 305, 106 A. 753

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