MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL.

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

Special justices have no statutory authority to perform same judicial functions as juvenile court judges in mental commitment hearings for juveniles.

The Honorable Audrey J. Franks

Judge, Juvenile and Domestic Relations District Court

April 8, 1996

You ask whether a special justice may perform the same judicial functions as a juvenile and domestic relations district court ("juvenile court") judge in mental commitment hearings for juveniles.[1]

In Title 16.1, the term "judge" is defined as "the judge or the substitute judge of the juvenile and domestic relations district court of each county or city."[2] By contrast, in Title 37.1, and specifically Chapter 2 of that title relating to adult civil commitment proceedings, the term "judge" means

only the judges, associate judges and substitute judges of general district courts within the meaning of Chapter 4.1 (§ 16.169.1 et seq.) of Title 16.1 and of juvenile and domestic relations district courts within the meaning of Chapter 11 (§ 16.1226 et seq.) of Title 16.1, as well as the special justices authorized by § 37.188[.][3]

The 1979 Session of the General Assembly amended § 16.1241(B), relating to *exclusive* original jurisdiction of the juvenile courts over the civil commitment of minors.[4] A prior opinion of the Attorney General construes § 16.1241(B) to confer on juvenile courts exclusive jurisdiction for the commitment of minors, "preclud[ing] persons other than juvenile court judges from conducting hearings for the commitment or certification of children."[5]

When the 1979 Session amended § 16.1241(B), § 37.188 provided for the appointment of special justices and authorized special justices to exercise all the powers conferred on a judge by Title 37.1.[6] The position of special justice is created by statutory provisions contained in Title 37.1, however, and "they possess *only* those powers conferred upon a judge by that title."[7] No statute in Title 37.1 specifically confers to special justices jurisdiction over the commitment or certification of minors. The authority granted to special justices by the General Assembly in § 37.188 has not been extended to any of the provisions contained in Title 16.1. Therefore, only specific provisions contained in Title 16.1 will authorize special justices to perform the judicial functions prescribed in that title. Contrary to § 37.188, however, there are no provisions in Title 16.1 that expressly provide for the appointment and use of special justices at civil commitment hearings of juveniles.[8]

Before the 1990 Session of the General Assembly, § 16.1280 required a judge presiding over a petition for the civil commitment of a minor to proceed under the provisions of §§ 37.167.1 through 37.167.4, the general commitment statutes.[9] The 1990 Session, however, amended §§ 16.1241(B) and 16.1280, requiring that commitment of a mentally ill minor be accomplished in accordance with the provisions of Title 16.1.[10] With the exception of the procedural provisions for involuntary temporary detention contained in § 37.167.1, the provisions pertaining to involuntary commitment procedures in §§ 37.167.1 through 37.167.4 no longer govern juvenile commitments. Accordingly, the provision in § 37.188 that special justices may perform "duties required of a judge by [Title 37.1]" no longer applies to juvenile commitments under Title 16.1.[11]

The 1990 Session also enacted The Psychiatric Inpatient Treatment of Minors Act[12] ("the Act") to provide a distinct statutory procedure for commitment of juveniles to mental health facilities within the Commonwealth.[13] The judges of the juvenile court are required to perform certain judicial functions under the Act; however, special justices may perform only one function under the Act. Section 16.1339(C) authorizes a special justice to appoint a guardian *ad litem* upon receipt of a petition for judicial approval of the admission of a minor aged fourteen or older who objects to hospitalization.[14]

Although § 16.1339(C) permits a special justice to appoint a guardian *ad litem* before the juvenile court schedules a commitment hearing, and § 16.1348 requires that a judge, as defined in § 37.1-1, "be available seven days a week, twenty-four hours a day," these provisions of the Act do not provide specific authority for the civil commitment of minors by special justices. Therefore, I am of the opinion that special justices have no statutory authority to perform the same judicial functions as juvenile court judges in mental commitment hearings for juveniles.[15]

[1]Section 37.188 of the *Code of Virginia* provides: "The chief judge of each judicial circuit *may appoint* one or more special justices, *for the purpose of performing the duties required of a judge by [Title 37.1]*. At the time of appointment each such special justice … *shall have all the powers and jurisdiction conferred upon a judge by this title* …." (Emphasis added.)

[2]Section 16.1228.

[3]Section 37.11.

[4]*See* Ch. 628, 1979 Va. Acts 904. Section 16.1241 provides, in part:

"Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, *exclusive original jurisdiction*, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county over all cases, matters and proceedings involving:

***

"(B) The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1335 et seq.) of [Chapter 11 of Title 16.1.]" (Emphasis added.)

[5]1979-1980 Op. Va. Att'y Gen. 205, 206.

[6]*See* Ch. 671, 1976 Va. Acts 970, 985. The General Assembly made no further amendments to § 37.188 until its 1995 Session. *See* Ch. 844, 1995 Va. Acts Reg. Sess. 1788, 1797. Section 37.188 has provided for special justices to perform the duties required of judges under the title since its enactment. *See* Ch. 700, 1952 Va. Acts Reg. Sess. 1142 (enacting now repealed § 37-61.2); Ch. 477, 1968 Va. Acts 645, 661 (recodifying § 3761.2 as § 37.188); Ch. 111, 1974 Va. Acts 227, 22728.

[7]1978-1979 Op. Va. Att'y Gen. 155 (emphasis added).

[8]Before a hearing is scheduled, § 16.1339(C) provides that a special justice may appoint a guardian *ad litem* in a case involving a minor aged fourteen or older who objects to inpatient hospitalization, but there are no other provisions that specify what additional actions a special justice may take under The Psychiatric Inpatient Treatment of Minors Act. *See* cite for Act *infra* note 12.

[9]*See* Ch. 975, 1990 Va. Acts Reg. Sess. 2222, 2225.

[10]*See* Acts of 1990 Ch. 975*id.* at 2223, 2225 (amending §§ 16.1241(B), 16.1280, respectively). *See generally* 1985-1986 Op. Va. Att'y Gen. 197 (analyzing § 16.1280 as it existed in 1985). Sections 16.1241(B) and 16.1280 continue to provide, however, that admission of a mentally retarded minor to a training center is accomplished pursuant to § 37.165.

[11]*See* 1978-1979 Op. Va. Att'y Gen. 155 (analyzing provisions of Title 37.1 before 1990 amendment and explaining that "special justices … are creatures of Title 37.1," which included commitment of minors except those within exclusive original jurisdiction of juvenile court because they are within purview of that law).

[12]Tit. 16.1, Ch. 11, Art. 16, §§ 16.1-335 to 16.1-348Tit. 16.1, Ch. 11, Art. 16, §§ 16.1335 to 16.1-348.

[13]Despite the separate statutory scheme, § 16.1340 of the Act provides for the emergency admission of a minor pursuant to the procedures contained in § 37.167.1, the temporary detention statute generally applicable to adults. Nonetheless, § 16.1340 requires the juvenile court to schedule a hearing pursuant to the provisions of § 16.1341 within seventy-two hours of issuance of a temporary detention order.

[14]Section 16.1339(C) provides, in part: "Upon admission of a minor under this section, the facility shall immediately file a petition for judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the juvenile and domestic relations district court judge or *special justice* appointed pursuant to § 37.188 *shall appoint a guardian ad litem for the minor*." (Emphasis added.)

[15]The intent of the General Assembly that Title 16.1 exclusively govern the commitment of minors is further evidenced in the amendments by the 1995 Session to § 37.167.1, the temporary detention statute. *See* Ch. 844, 1995 Va. Acts Reg. Sess. 1788, 179294. Section 37.167.1 requires that when "temporary detention is ordered … upon petition for involuntary commitment of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1341." Section 16.1341 specifically requires action by juvenile court judges and contains no mention of special justices. In fact, §§ 16.1337 through 16.1342, and §§ 16.1344, 16.1345 and 16.1348 contain numerous references to judicial action by juvenile court judges. These references are quite specific and indicate the intent of the General Assembly to restrict jurisdiction to judges or substitute judges of the juvenile courts.