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| Centre intégré universitaire de santé et de services sociaux de l'Ouest-de-l'Île-de-Montréal (St. Mary's Hospital Center) c. R.C.English translation of the judgment of the Court | 2024 QCCA 1231 |
| COURT OF APPEAL |
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| CANADA |
| PROVINCE OF QUEBEC |
| REGISTRY OF | MONTREAL |
| No: | 500-09-030927-248 |
| (500-17-128882-241) |
|  |
| DATE: |  September 20, 2024 |
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| CORAM: | THE HONOURABLE | BENOÎT MOORE, J.A.GUY COURNOYER, J.A.FRÉDÉRIC BACHAND, J.A. |
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| **CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE L’OUEST-DE-L’ÎLE-DE-MONTRÉAL** (St. Mary’s Hospital Center) |
| APPELLANT – Plaintiff |
| v. |
|  |
| R. C. |
| RESPONDENT – Defendant |
| and |
| M. C. |
| IMPLEADED PARTY – Impleaded party |
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| JUDGMENT |
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**WARNING: Disclosure and circulation prohibited: The *Code of Civil Procedure* (“*C.C.P.*”) provides that, except as authorized by the Court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a matter regarding authorization for care to be identified (article 16 *C.C.P*.).**

1. The appellant, the Centre intégré universitaire de santé et de services sociaux de l’Ouest-de-l’Île-de-Montréal (CIUSSS), appeals a judgment rendered on March 14, 2024, by the Superior Court, District of Montreal (the Honourable Mark Phillips), dismissing its application for authorization of treatment on the ground of lack of evidence of the respondent’s incapacity.[[1]](#footnote-1)
2. The respondent is a 51-year-old man. Between 2007 and 2019, he was hospitalized a number of times to obtain psychiatric care for suicidal ideations, anxiety attacks and personality disorders.
3. In April 2021, he was admitted to the CHUM for pneumonia with a pulmonary embolism caused by a severe case of Covid-19. During a lengthy intubation, he suffered brain hypoxia (lack of oxygen). In 2022 and 2023, he made at least 13 visits to the emergency room, on a voluntary basis, notably to obtain benzodiazepines, to which he developed a dependency.
4. In the spring/summer of 2023, the respondent agreed to take antipsychotic medication because he was suffering from hallucinations and psychotic symptoms since his Covid-19 episode. He testified to having observed positive effects, including a two or three weeks reprieve from his auditory hallucinations, but he also still felt adverse effects, including weight gain and suicidal ideations. After three months, he stopped taking the antipsychotic medication because of those side effects and has refused to take that type of medication ever since.
5. On January 20, 2024, the respondent called the police who, seeing that he was in a great state of confusion, brought him to the Jewish General Hospital. The medical team requested confinement, which was granted by the Court of Québec on June 23, 2024. He was subsequently diagnosed with late-onset schizophrenia which would have been caused by brain damage caused by hypoxia.
6. For his part, the respondent was of the view, rather, that the cause of his ailments was a device equipped with artificial intelligence implanted in his body when he was hospitalized for Covid-19. He therefore believed that psychiatrists could not help him and that he should, rather, undergo medical tests to allow doctors to locate and remove the device. Seeing the respondent’s refusal of his diagnosis, his disillusions, his disorganization and based on the assessment conducted, Dr. Marie-Christiane Noël, psychiatrist, and Dr. Janie Morissette, psychiatry resident, concluded that the respondent was incapable of consenting to the care.
7. On February 16, 2024, the appellant filed its Application for Authorization of Treatment. It requested authorization to administer to the respondent antipsychotic medication, as well as other medication to mitigate its side effects, for a period of 24 months. It also requested authorization to re-hospitalize the respondent for a maximum of 30 days. The judgment under appeal dismissed this application, the Superior Court judge finding that it had not been established that the respondent was incapable of consenting to the proposed care, and that he therefore lacked jurisdiction under the terms of *F.D*.[[2]](#footnote-2)
8. The judge accepted the schizophrenia diagnosis, which, moreover, was not the subject of any second opinion. Nevertheless, he found that the respondent, who described himself as “intellectual”, had testified in a clear, articulate and calm manner, that he had been hospitalized on his own initiative on a number of occasions[[3]](#footnote-3) and that he had agreed to take, then stopped taking, Risperdal, an antipsychotic drug, because of side effects, i.e., weight gain and suicidal ideation.[[4]](#footnote-4) He wrote:

[7] […] Defendant fully understands that people with psychosis can indeed benefit from antipsychotic medication. It therefore cannot be said that he is incapable of grasping the nature or goal of the proposed treatment, its potential benefits and risks. Nor has the psychosis deprived him of the ability to reason and express himself logically.

1. Pursuing his analysis, the judge noted that a patient’s rejection of a diagnosis is not sufficient to form the basis of a finding of incapacity, otherwise, any person suffering from psychosis could be forced to undergo treatments for that reason.[[5]](#footnote-5) From all of this, the judge concluded:

[10] Based on the evidence, the Court is of the view that defendant’s theory of some sort of device in his body, as an explanation for the auditory hallucinations he experiences, is factually incorrect, and that he is wrong to believe that he personally is not suffering from psychosis. That, however, is not enough to conclude that he is unable to give or withhold consent. And the other criteria are not satisfied. The Court is therefore forced to conclude that defendant is not unable to give or withhold consent to treatment. The Court is therefore without jurisdiction to impose unwanted treatment on him.

\* \* \*

1. The appellant submits that the judge made a palpable and overriding error by limiting his analysis to the respondent’s ability to understand that people suffering from psychoses – which, according to him, is not his case – would benefit from antipsychotic treatment. In the appellant’s view, the judge cannot limit himself to such a theoretical and abstract understanding, but must rather determine if the person subject to the order is capable of making an informed decision for her or himself. However, according to the appellant, the judge omitted to assess the criteria recognized by the case law in this matter, in addition to setting out an irrelevant criterion, i.e., the respondent’s capacity to reason and express himself logically. Finally, it is argued that the judge failed to provide sufficient reasons for his decision. For his part, the respondent notes that these are questions of fact which call for great deference on the part of the Court.

\* \* \*

1. Article 10 of the *Civil Code of Québec* provides that, except in cases provided for by law, no one may interfere with a person’s integrity without his or her free and enlightened consent. In matters of care, when a person is of full age, he or she is presumed to be capable of signifying such consent. It is therefore incumbent upon whoever seeks an authorization to provide care to that person against his or her will to displace that presumption,[[6]](#footnote-6) which equally applies to a person undergoing psychiatric treatment.[[7]](#footnote-7)
2. In *A.G.*,[[8]](#footnote-8) our Court defined the concept of capacity to consent as follows:

[…]

[translation] Free and enlightened consent meets three specific criteria: the patient must be informed by his or her doctor of his or her condition so that he or she can make a fully informed decision; the patient must be capable of receiving and understanding the information; and lastly, the patient must be capable of making a decision and expressing it.

[Reference omitted]

1. In that same judgment, our Court enumerated five criteria for assessing that capacity:[[9]](#footnote-9)

[translation]

1. Does the person understand the nature of the illness for which treatment is being proposed to them?
2. Does the person understand the nature and purpose of the treatment?
3. Does the person understand the risks and benefits of the treatment if they undergo it?
4. Does the person understand the risks of not undergoing the treatment?
5. Is the person's capacity to understand affected by their illness?
6. Since *A.G.*, our Court has held on a number of occasions that these criteria are not cumulative and that it is incumbent upon the trier to assess them as a whole.[[10]](#footnote-10) In essence, [translation] “[t]he important thing is to know whether the patient truly understands the parameters of the decision they have to make. It would be erroneous to conclude that a person is incapable simply because the care they are refusing is in their best interests.”[[11]](#footnote-11) This is a question of fact which is within the trial judge’s discretion and which calls for great deference on the part of our Court.[[12]](#footnote-12)
7. Although the majority in *A.G.* insisted on the importance that the person named in the application understand the nature of their illness,[[13]](#footnote-13) it is now well established, by both the Supreme Court[[14]](#footnote-14) and our Court,[[15]](#footnote-15) that the mere rejection of a diagnosis cannot constitute sufficient proof to displace the presumption of capacity.
8. It is that principle that the trial judge purports to apply. In his view, the psychiatrists’ analysis of the capacity was tainted in its entirety by the same error that our Court identified in *M.H.*, i.e. by repeatedly carrying over in the five criteria, in a “cascading” fashion, the rejection of the diagnosis, rendering *de facto* the first criteria a *sine qua non* criterion.[[16]](#footnote-16)
9. With great respect, however, that was not the case here.
10. First, it is important to point out that in *M.H.*, both the incapacity and the diagnosis were disputed by a second medical opinion, and that the person subject to the treatment plan had not displayed any psychotic symptomsduring the three previous years. In the present case, not only did the judge not have the benefit of a second medical opinion on the issue of the respondent’s capacity, but the debate on that issue was limited to Dr. Morissette’s testimony relating the content of the report. Indeed, counsel for the respondent did not raise that aspect, either during Dr. Morissette’s cross-examination, nor in his address to the court, and counsel simply deferred to the court’s decision. Neither did the judge intervene nor express any concern regarding the sufficiency of the evidence proffered, whereas that aspect was not the subject of any debate. In such circumstances, it was incumbent upon the judge — who, it should be recalled, has a decisive proactive role to play in protecting the interests of the person involved[[17]](#footnote-17) — to ask questions if he felt that a point that had not been the subject in a genuine adversarial debate raised a problem in his view.
11. Further, the record shows that the evidence goes beyond merely finding the respondent’s rejection of the diagnosis. Indeed, both the report and Dr. Morissette’s testimony state that the respondent was incapable, because of his illness, to make an informed decision on his situation, that he attributed to the existence of an artificial intelligence device implanted in his body by organized crime. Here are excerpts from the report:[[18]](#footnote-18)

***2. Does the patient understand the nature and goals of treatment?***

Given that he vigorously refutes the diagnosis of psychosis, he insists that antipsychotic and psychiatrie care are not appropriate for him. Even when explained that antipsychotic medication will inevitably help with his intense distress, debilitating anxiety and alleged sleep issues, the patient refuses to recognize any potential benefit. When confronted with the report from outpatient team that he improved on risperidone (antipsychotic), he denies this and attributes only negative effects to the medication. He perseverates on a request to remove the "implanted device" as the only acceptable treatment to him.

[…]

***5. ls the capacity to consent to treatment affected by the patient's illness?***

lt is clear that patient's untreated delusions, thought disorganization (perseveration), hallucinations and the concurrent lack of insight of his active psychotic symptoms prevent him from understanding the required treatment. lndeed, this patient has very poor insight into his psychotic behaviours and frankly illogical reasonings. When, for instance, he is confronted the fact of having had multiple medical examinations and investigations including CT scans, he answers that "the device knows to turn off in the scan". He believes that the technology torturing him is more advanced than current medical knowledge, yet repeatedly demands that a doctor removes the presumed device. With regards to his interpersonal capacities, he has struggled with longstanding difficulties with attachment, regressive behaviours and relational conflicts leading to social isolation. His character traits also contribute to his capacity to trust medical authority and appropriately use the health care system. As such, we believe that his capacity to consent to treatment (medications and psychiatric care) are largely affected by his diagnoses of schizophrenia as well as concurrent effects from his probable brain injuries from hypoxia and personality disorder, rendering him incapable of consenting.

1. To the same effect, Dr. Morissette stated as follows during her examination:[[19]](#footnote-19)

Q- In your opinion, what is his understanding of his illness, the psychiatric illness?

A- Yeah. So, Mr. C. only recognized that he's suffering from panic attack and from depression in the past. He refused that he's suffering from any form of psychotic disorder; he refused suffering from schizophrenia.

He's convinced that it's really a device that was implanted in his body. And even after we explained him the diagnosis multiple times, he continues to refuse the diagnosis.

Q- And what is his understanding of the nature of the treatment, the benefits of the treatment? What can you tell us about that?

A- So, because he doesn't recognize suffering from a psychiatric illness, he refused treatment, he refused to take antipsychotic. He repeatedly says that it's not for him, it's not necessary for him as he's suffering from a medical and criminal problem.

So, he doesn't understand what is the treatment, and he doesn't understand what are the risks if he's not taking the medication. He only recognizes risk of taking the medication.

Q- And what is his understanding of the risk of not taking the medication?

A- So, of not taking, he doesn't understand risk. He thinks that if he... that he needs to not take antipsychotic, and he needs to have medical investigation to find the device. And he doesn't understand that his condition will worsen with time if he's not treated with antipsychotic.

Q- And according to you, what effects his ability to understand all that?

A- So, we think that the underlying schizophrenia is affecting his insight and his judgment; and that's actually a well documented symptom of psychotic disorders is impermanent in your insight and in your judgment. And we think this is the main reason why he doesn't understand.

1. But more than that, the evidence did not in any way support the judge’s finding that the respondent was capable of understanding the benefits and risks associated with the treatment based on the mere fact that he had stopped it because of side effects[[20]](#footnote-20) or because “the other criteria are not satisfied.”[[21]](#footnote-21) Not only had Dr. Morissette questioned the fact that the suicidal ideation was caused by the antipsychotic medication, since this was not a known side effect, but the respondent had made numerous suicide attempts before taking that medication. And, above all, the antipsychotic drugs had been beneficial to the respondent. He admits this as a matter of fact. He testified that he suffered from his symptoms and asked the judge to find a solution so that they stop, which, according to him, would involve removing the [translation] “device”.[[22]](#footnote-22) He in fact explained that it was as a result of that very device, and not the antipsychotic drugs, that had felt wellbeing during the treatment. This is what he said:[[23]](#footnote-23)

A- OK. So, I'm against such idea because it can impact the [inaudible] cloud my mind. I was on medication before, so I know how bad it is. You have a lot of memory problems, clinic problems, personality problems.

Goodness, the medication is really for people who, I mean, have those type of problems. I don't have them, so I know about the side effects.

They have been given to me, and if I took them, it's because I was looking for some sort of treatment, which did not work out.

And they are very dangerous because you can have psychotic side effects, such as suicide... suicidal ideation. And God forbid that you may harm yourself, then it will rest on the shoulders of those doctors.

So, I'm against the idea. I'm not saying that I'm firmly against taking medication for anxiety, because that is the primary disorder that I did have, and that I feel that I have.

[…]

What has happened to me, this is not the story that I chose to write overnight. What has happened to me is something that is illogical, it's even... I did have trouble believing it, because it's so... there's some sort of technology out there that somebody did put inside of me, I don't know what it is. I call it "the device", but I don't know what it is.

[…]

Q- OK.

1. This is not the problem. Taking the medication is not going to solve the issue […]

Q- So, it proves that there's some kind of psychotic dimension to it, because otherwise there wouldn't have been that three-week reprieve.

A- Let me clarify. The three-week reprieve was because the AI did not know if it was... if I was going to have some sort of important change in regards to how I... Basically, it's a machine, it has to analyze how you go about. But after two, three... two weeks and a few days, it started talking to me again.

The voices did not go away at all, and that's how I met with Doctor Gervais, and I was... I felt so bad by this doctor, because he would... each and every step of the way, he will... Well, now, I would talk to him, and I would say, you know : "This and that has happened, I hear a radio." "Yes, Mr. C., it's a radio, you know." He would just play along, you know.

That's what psychiatrist... they don't really help you, they just say, you know: "We think that you're feeling this and that". But in the background, in their mind, what they are thinking is actually giving you medication.

In this case, I think it's very uncommon, you know, it's very unusual for somebody to come out of the... And say: "this and that happen", write the stories on some piece of paper. They go a lot of times to the emergency.

Even with that sort of proof, they don't believe, you know. They're not believer, I'm sorry. I believe in things, you know.

I mean, it's hard to understand, but if a person comes to the hospital on so many occasions, severely ill, and all of a sudden, start writing, you know, this novel is because something has happened. And, you know, I have to document it. You know, I have to write... to record videos.

And I was thinking that somebody was going to believe me. So, there was no... how can I say? There was no improvement from the medication, and I felt let down by all these psychiatrists. I mean, this is...

[Emphasis added]

1. Respectfully, these aspects of the evidence did not allow the judge to find, under the circumstances, that the respondent was capable of consenting to or refusing the proposed treatment plan. Indeed, the respondent, while acknowledging that his symptoms had abated while taking the antipsychotic drugs, seemed incapable of understanding their mechanism of action and claimed that they did not help him. It therefore appears that the respondent had no understanding of the proposed treatment’s positive effects, though he had benefited from those effects.
2. The respondent must therefore be declared incapable of consenting to the care. As for the remaining matters, that is to say the existence of a categorical refusal as well as the terms of the treatment plan sought, including the hospitalization request, the file should be referred back to the Superior Court for determination.

**FOR THESE REASONS, THE COURT:**

1. **ALLOWS** the appeal;
2. **QUASHES** the judgment rendered on March 14, 2024 in file 500-17-128882-241 and **DECLARES** the respondent incapable of consenting to the proposed treatment plan;
3. **REFERS** the file back to the Superior Cour for determination of whether there is categorical refusal and, if applicable, to assess the proposed treatment plan, including hospitalization;
4. **THE WHOLE** without legal costs.

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|  | BENOÎT MOORE, J.A. |
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|  | GUY COURNOYER, J.A. |
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|  | FRÉDÉRIC BACHAND, J.A. |
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| Mtre Denisa Voiculescu |
| MONETTE, BARAKETT |
| For the Appellant |
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| Mtre Andréanne RoyMtre Simon Lacoste |
| AIDE JURIDIQUE DE MONTRÉAL |
| For the Respondent |
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| Date of hearing: | September 13, 2024 |

1. *Centre intégré universitaire de santé et de services sociaux de l'Ouest-de-l'Île-de-Montréal (St-Mary's Hospital Center)* *c.* *R.C.*, 2024 QCCS 845 [judgment under appeal]. [↑](#footnote-ref-1)
2. *F.D.* *c.* *Centre universitaire de santé McGill (Hôpital Royal-Victoria)*, 2015 QCCA 1139. [↑](#footnote-ref-2)
3. Judgment under appeal, para. 5. [↑](#footnote-ref-3)
4. Judgment under appeal, para. 7. [↑](#footnote-ref-4)
5. Judgment under appeal, para. 9. [↑](#footnote-ref-5)
6. *Civil Code of Québec*, article 15. [↑](#footnote-ref-6)
7. *F.D.* *c.* *Centre universitaire de santé McGill (Hôpital Royal-Victoria)*, 2015 QCCA 1139, para. 52. On the application of this presumption to psychiatric care, see the excellent study of Professor Marie Annik Grégoire, “Ces « fous » qui dérangent”, in *Mélanges Jean-Louis Baudouin*, Montréal, Yvon Blais, 2012, p. 41. [↑](#footnote-ref-7)
8. *Institut Philippe Pinel de Montréal c. A.G.*, 1994 CanLII 6105 (QC CA), p. 9. [↑](#footnote-ref-8)
9. *Id.,* p. 28 at p. 33. [↑](#footnote-ref-9)
10. *M. B. c. Centre hospitalier Pierre-le-Gardeur*, 2004 CanLII 29017 (QC CA), para. 45; *M.C. c. Service professionnel du Centre de santé et de services sociaux d’Arthabaska-et-de-L’Érable,* 2010 QCCA 1114, para. 13. [↑](#footnote-ref-10)
11. *M. B. c. Centre hospitalier Pierre-le-Gardeur*, 2004 CanLII 29017 (QC CA), para. 46. [↑](#footnote-ref-11)
12. *G.B.* *c.* *Institut universitaire en santé mentale de Québec*, 2010 QCCA 2188, para. 8; *M.H.* *c.* *Centre intégré universitaire de santé et de services sociaux de la Capitale-Nationale*, 2018 QCCA 1948, para. 72; *S.B.* *c.* *Centre intégré de santé et de services sociaux des Laurentides (CISSSLAU)*, 2022 QCCA 724, para. 13. [↑](#footnote-ref-12)
13. *Institut Philippe Pinel de Montréal c. A.G.*, 1994 CanLII 6105 (QC CA)*,* p. 25. [↑](#footnote-ref-13)
14. *Starson* v*.* *Swayze*, 2003 SCC 32, para. 79. [↑](#footnote-ref-14)
15. *M.H.* *c.* *Centre intégré universitaire de santé et de services sociaux de la Capitale-Nationale*, 2018 QCCA 1948, paras. 61-62. [↑](#footnote-ref-15)
16. *M.H.* *c.* *Centre intégré universitaire de santé et de services sociaux de la Capitale-Nationale*, 2018 QCCA 1948, para. 57. [↑](#footnote-ref-16)
17. *A.N. c. Centre intégré universitaire de santé et de services du Nord-de-l’Ile-de-Montréal*, 2022 QCCA 1167, para. 60. [↑](#footnote-ref-17)
18. A.M., p. 45. [↑](#footnote-ref-18)
19. A.B. p. 77, l. 14 to p. 179, l. 2. [↑](#footnote-ref-19)
20. Judgment under appeal, para. 7. [↑](#footnote-ref-20)
21. Judgment under appeal, para. 10. The judge does not in fact specify which criteria he is referring to. [↑](#footnote-ref-21)
22. A.B., p. 131, l. 10-20. [↑](#footnote-ref-22)
23. A.B., p. 104, l. 22 to p. 105, l. 15; p. 107, l.18 to 1.24; p. 113, l. 18-19; p. 128 l. 23 to p. 130, l. 11. [↑](#footnote-ref-23)