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The Application of the Institution of Negotiorum Gestio to the Confinement of the Mentally Ill

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NOTES

THE APPLICATION OF THE INSTITUTION OF NEGOTIORUM GESTIO TO THE CONFINEMENT OF THE MENTALLY ILL

On her physician's recommendation, plaintiff was confined in a private mental hospital for more than a year without her commitment or continuing consent. After obtaining her release through habeas corpus proceedings, she sued the hospital for false imprisonment.[1] The United States District Court for the Eastern District of Louisiana directed a verdict for the defendant. The Fifth Circuit Court of Appeals reversed, stating the jury could have found plaintiff's detention was false imprisonment in Louisiana. *Geddes v. Daughters of Charity of St. Vincent De Paul*, 348 F.2d 144 (5th Cir. 1965).

Since the Louisiana Civil Code makes no mention of false imprisonment, such actions must fall under article 2315; "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."[2] A party seeking relief under this article must show "damage" occasioned by another's "fault." Nevertheless, the jurisprudence recognizes false imprisonment as unlawful interference with freedom from confinement.[3]

In the instant case the court stated: "Under Louisiana law there are two essential elements to the tort of false imprisonment, namely, (1) there must be a detention or restraint of the person, and (2) such detention or restraint must be unlawful."[4] By "restraint" the court referred to the general common law rule that mobility be absolutely limited to a given area. Simple interference with movement in a given direction is not false imprison-

1. The common law tort of false imprisonment protects the personal interest in freedom from restraint of movement. It may constitute restraint on the open street, traveling in an automobile, confinement to an entire city, or being compelled to accompany the actor. PROSSER, TORTS § 12 (3d ed. 1964). See, *e.g.*, Crossett v. Campbell, 122 La. 659, 48 So. 141 (1909).

2. LA. CIVIL CODE art. 2315 (1870).

3. Crossett v. Campbell, 122 La. 659, 48 So. 141 (1909); Went v. Morgan, 3 La. 311 (1832); Buquet v. Watkins, 1 La. 131, 134 (1830); Wamack v. Kemp, 6 Mart.(N.S.)477 (La. 1828); Bore v. Bush, 6 Mart.(N.S.) 1 (La. 1827); Sweeten v. Friedman, 9 La. App. 44, 118 So. 787 (1928).

4. Geddes v. Daughters of Charity of St. Vincent De Paul, 348 F.2d 144, 147 (5th Cir. 1965).

ment.[5] By "unlawful," the court implied confinement either unconsented to[6] or not brought about by commitment procedures.[7]

In discussing the necessity for unlawfulness in the detention the court failed to mention the well-recognized tort doctrine that liability will not attach if the actor is privileged. Such a privilege arises in the confinement of alleged insane persons if the actor can show the person was a danger to himself or the community.[8] "Danger" has been restrictively interpreted to require immediate urgency before one may detain another without incurring liability.[9] The basis for the restriction is the traditional common law emphasis on individual self-determination. However, unlike most mental health acts, the common law failed to impose any duty on one detaining another to take affirmative action to insure proper treatment. This omission is probably because at the time the privilege was established there was little else one could do for the mentally ill other than lock them up. Today, however, restrictive application of the privilege discourages cooperation between members of society in aiding those in need, and fails to recognize adequately the social interest in providing necessary psychiatric treatment.

Generally, the interests of society in treating the mentally ill are recognized by the commitment procedures of the Mental Health Act,[10] permitting the state to confine the mentally ill for treatment if it "is in the best interest of the patient and of the community"[11] or if the patient is "in need of observation or care."[12] Under these commitment procedures the will of the person confined is not considered. If the legality of the action is challenged, all the state need show is that it was not negligent

5. Bird v. Jones, 7 Q.B. 742, 115 Eng. Rep. 668 (1845). The plaintiff was prevented from traveling on a public highway.

6. The court stated that the jury could have found that the consent, if originally given, had been withdrawn, and such would constitute false imprisonment. The plaintiff had repeatedly requested her release after finding out the type of institution to which she was confined. 348 F.2d at 148.

7. The court erroneously stated in a footnote that the procedures in the Mental Health Act are not applicable to private institutions. 348 F.2d at 147 n.1. *Contra*, LA. R.S. 28:50 (1950), added by La. Acts 1954, No. 701, § 2, as amended, La. Acts 1966, No. 482, § 1.

8. 35 C.J.S. *Insane Persons* § 16, at 641 (1960).

9. The application of the rule is usually limited to situations where the actor can show that there was *immediate* danger. *Ibid.*

10. LA. R.S. 28:50 (Supp. 1966) (covered generally in part III, "Examination, admission, commitment, and detention of mental patients").

11. LA. R.S. 28:53 (Supp. 1966).

12. LA. R.S. 28:52 (Supp. 1966).

in assuming the person committed was in need of psychiatric care.[13]

In the instant case plaintiff did not challenge the right of the state to confine her. The question was whether one not acting under authority of the state, such as a doctor or hospital, had the right to confine for treatment a person believed to be mentally ill.[14] The court's negative reply was correct under traditional tort law. The court did not rely on two often-given reasons for denying such a right to a private person: the common fear that "sane" persons will be "railroaded" into confinement, and a distrust of the infant science of psychiatry. The first seems greatly exaggerated; railroading seldom, if ever, happens.[15] The second may have merit: but if public good dictates the establishment of a right in a private person possible difficulty in proving facts should not prevent its establishment. If the interest of society require that such a right be given to the state, the same interests would favor granting the right to private persons under proper safeguards against rash action.

In addition to furthering social interests in maintaining order, protecting property, and restoring an individual to a level of productivity, granting such a right to a doctor or hospital would encourage voluntary cooperation and mutual assistance between members of society "unsolicited and legally unobliged action in favor of others."[16] The goal of encouraging voluntary lawful action in aid of others by members of society is recognized in all civilian jurisdictions by the institution generally known by its Roman name of *negotiorum gestio*. In Louisiana, the institution is recognized in Civil Code articles 2295-2300, which encourage voluntary intervention in the affairs of another by allowing the manager to recover all "useful and necessary expenses."[17] Thus in civilian jurisdictions, the "volunteer" is rewarded for his efforts and is generally looked upon favorably by the courts.

13. LA. R.S. 28:52, 28:98.2 (Supp. 1966).

14. The instant case only involved the liability of a hospital, but if a hospital could be found liable so could a doctor or any private person.

15. *Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 87th Cong., 1st Sess., 65, n. 6 (1962). Dr. Francis Braceland, M.D., stated that he had not seen a single instance of railroading in his thirty-year connection with psychiatry; Curran, *Hospitalization of the Mentally Ill*, 31 N.C.L. REV. 274, 293-94 (1953). The danger of commitment based on such wrongful motives as a desire to obtain the allegedly insane person's property is practically nonexistent.

16. PASCAL, NEGOTIORUM GESTIO (unpublished paper in the possession of Professor Robert A. Pascal, Louisiana State University School of Law).

17. LA. CIVIL CODE art. 2299 (1870).

This may be contrasted with the general disdain traditionally found in the common law toward the "officious intermeddler."[18]

Anglo-American law contains no corresponding institution to *negotiorum gestio.* Only where the intervention is "dutiful"[19] will the intervenor be entitled to compensation, that is, when the actor has conferred a benefit for which the recipient ought to pay. Moreover, the common law remedy of unjust enrichment is not nearly so broad as that of *negotorium gestio* for in the latter the actor (*gestor*) need not show any actual benefit bestowed. Also, the two concepts are premised on two conflicting goals. Unjust enrichment, like much of the common law, emphasizes the individual's right to be free from unwarranted interference, but does so at the expense of discouraging unsolicited aid freely given to others. The latter idea is the crux of *negotiorum gestio.* There are only two instances where Anglo-American law comes close to the civilian approach toward the intervenor, the first of these being in cases of agency by necessity[20] where in an emergency an agent is entitled to act beyond his authority to prevent substantial loss to the principal. But these cases are readily distinguishable in that there must be some sort of agency at the inception of the relationship. Thus the same act performed by a stranger or volunteer is not aided by the rule even though his act be just as useful or reasonable.[21] The second instance where the common law approaches the idea of *negotiorum gestio* is under a somewhat strained application of the doctrine of unjust enrichment: although by definition recovery can be had under unjust enrichment only if the actor shows an actual benefit bestowed,[22] under section 116 of the *Restatement of Restitution* a person supplying aid in an emergency to alleviate pain is entitled to reimbursement for his expenses regardless of whether the service so rendered lessened the suffering of the person in need. The rationalization that the simple receiving of the attention resulted in enrichment is unpersuasive. This seems to be the only case in which the common law functionally applies *negotiorum gestio.*[23]

18. Dawson, *Negotiorum Gestio: The Altruistic Intermeddler,* 74 HARV. L. REV. 817 (1961).

19. Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law,* 13 CORNELL L.Q. 190 n.1 (1928).

20. RESTATEMENT, AGENCY § 47 (1933).

21. Pascal, *Unsolicited Action on Behalf of Others in American and English Law,* in STUDI GIURIDICI IN MEMORIA DE F. VASSALLI 1237, § 4 (1960).

22. RESTATEMENT, RESTITUTION § 155 (1937).

23. Pascal, *Unsolicited Action on Behalf of Others in American and English Law,* in STUDI GIURIDICI IN MEMORIA DE F. VASSALLI 1241 (1960).

An act of *negotiorum gestio* is defined by Planiol as the accomplishment of a service by a person in the interest of another without being charged to do so.[24] He distinguished the institution from mandate by stating that it must be undertaken by neither mandate nor law.[25] This idea is expressed on a philosophical plane by describing the institution as one in which

> ". . . individuals are recognized as properly possessing the power to complete the specification of order which has not been achieved through law or contract."[26]

There is little precedent upon which to base an application of *negotiorum gestio* to confinement of the mentally ill.[27] However, this of itself is no obstacle so long as the principles upon which the institution is based are applicable, and application would be conducive to common good. Moreover, as Planiol points out, the institution is broad enough to cover not only "juridical acts, but services or material advantages procured for or rendered to another."[28] Furthermore, article 2295 states: "When a man undertakes. . . to manage the *affairs* of another. . . ."[29] Under the jurisprudence "affairs" has been liberally interpreted and includes the selling of bonds[30] or the payment for necessary medical expenses.[31] This is in accord with the German view which "contains no limitation on the types of 'affairs' that can be managed."[32] Thus, it seems that the institution is designed to cover any act rendered in the interest of another provided that the decision to intervene can be said to have been made reasonably in the interest of another and that the action taken after the intervention was itself proper. Whether the intervention can be called reasonable represents the most important condition precedent to the application of the doctrine as well as a significant check against unwarranted interference in the affairs of another. A variety of terms are used to convey this idea:

24. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2274 (1959).

25. *Ibid.*

26. PASCAL, NEGOTIORUM GESTIO (unpublished paper in the possession of Professor Robert A. Pascal, Louisiana State University School of Law).

27. *But see* Thompson v. Louisiana Central Lumber Co., 2 La. App. 200 (2d Cir. 1925), where an employer was held to be a *negotiorum gestor* where he paid the hospital expenses of an employee in order to save his life.

28. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2274 (1959).

29. LA. CIVIL CODE art. 2295 (1870).

30. Weber v. Graugnard, 173 La. 653, 138 So. 433 (1931).

31. Thompson v. Louisiana Central Lumber Co., 2 La. App. 200 (2d Cir. 1925).

32. Dawson, *Negotiorum Gestio: The Altruist Intermeddler*, 74 HARV. L. REV. 825 (1961).

justified, usefully conceived, useful, appropriate, or having utility. Reasonableness is a question of judicial interpretation in each case, but this is a device frequently employed in order to make the law a flexible tool. The term fault or negligence encountered in tort law presents much the same process of judicial interpretation.[33]

The court must test the utility of the act from the time at which the act took place. The gestor is not forced to assume the risk that his action, appearing reasonable at the time, will later turn out to be unprofitable or detrimental to the master's interest.[34] This is keeping with the general purpose of the institution: to encourage worthwhile unsolicited aid.

Other conditions precedent to the application of the institution are: the affair must be lawful; [35] it be done voluntarily;[36] it be done with the expectation of reimbursement of expenses;[37] and it not be done contrary to the express wishes of the master.[38]

The latter condition is simply an application of the requirement of reasonableness, for it is difficult to classify an intervention against the will of the master as appropriate or reasonable. This condition is supported by Louisiana jurisprudence[39] and would bar application of the institution in the instant case were it not subject to certain exceptions.

In Germany the will of the master is ignored when there is a duty of the principal the fulfillment of which is in the public interest, or when there is a statutory duty to furnish maintainance to others.[40] The German statutory exceptions, although obviously inapplicable in Louisiana, do illustrate the applicable principle that the public interest in encouraging voluntary aid will, under certain conditions, prevail over the express prohibi-

33. PASCAL, NEGOTIORUM GESTIO (unpublished paper in the possession of Professor Robert A. Pascal, Louisiana State University School of Law).

34. Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law*, 13 CORNELL L.Q. 196 (1928).

35. LA. CIVIL CODE art. 2293 (1870).

36. *Id.* art. 2295; Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law*, 13 CORNELL L.Q. 191 (1928).

37. Castro, *Negotiorum Gestio in Louisiana*, 7 TUL. L. REV. 253, 254 (1933); Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law*, 13 CORNELL L.Q. 191, 193 (1928).

38. AMOS & WALTON, INTRODUCTION TO FRENCH LAW 193 (2d ed. 1963); Nicholas, *Unjustified Enrichment in the Civil Law and Louisiana Law*, 36 TUL. L. REV. 618 (1962).

39. Mulligan v. Kenny, 34 La. Ann. 50 (1882); Woodlief & Legendre v. Moncure, 17 La. Ann. 241 (1865).

40. B.G.B. art. 679.

tion of the individual. The Italian Civil Code is much to the same effect, although broader, stating: "except if the prohibition be against the legislation, public order, or good custom."[41] Moreover, a somewhat analogous situation exists when the express will of the individual is ignored to render medical treatment needed to save his life.[42]

It may not be necessary, however, to apply broad principles to employ the institution in the instant case, for an "incapable" is bound to reimburse the *gestor* for expenses incurred in the useful management of his affairs.[43] The basis for the rule is codified in article 2300 which states:

> "All persons, such even as are incapable of consent may by the quasi contract, resulting from the act of a third person, become either the object or the subject of an obligation; because the use of reason, although necessary on the part of the person whose act forms the quasi contract, is not requisite in those by whom, or in whose favor, the obligation resulting from the act, are contracted."[44]

"[H]is obligation arises without any voluntary act on his part; it is independent of his capacity."[45] Thus, an express ratification by the "incapable" would not convert the act to one of mandate because of the incapable's incapacity to obligate himself. It would seem, therefore, that if his consent is ignored due to his lack of capacity, his prohibition should likewise be ignored. This idea is shown by the spirit of the rule which places the duty on the *gestor* to continue his management until the master is *able* to do it himself.[46]

Therefore, a *gestor* should not be refused the right to act contrary to the master's wishes when due to some mental or physical infirmity the master is unable to manage his own affairs. If in the instant case the woman receiving the psychiatric treatment was a narcotics addict whose addiction was caused by psychological or emotional illness, she should be deemed incapable of managing her own affairs, and the hospital should incur no liability for the confinement if the intervention be useful.

41. CODICE CIVILE art. 2031 (Italy 1942).
42. Application of the President and Directors of Georgetown College, 331 F.2d 1000 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 978 (1964).
43. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2282 (1959).
44. LA. CIVIL CODE art. 2300 (1870).
45. 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2282 (1959).
46. LA. CIVIL CODE art. 2295 (1870).

If *negotiorum gestio* were applied in the instant case, the gestor in order to escape liability would have the further burden of showing that the affair was well managed.[47] This duty, as well as the requirement that the intervention be deemed useful, overcomes the more common objections to granting such a right to an individual. In addition to the duty of using all the care of a prudent administrator,[48] the *gestor* must continue his management until the principal is in a position to attend to it himself.[49] Thus, one can see that the institution has sufficient safeguards preventing one from lightly mixing in the affairs of another, while at the same time, encouraging voluntary action in aid of one's fellow man.

If the *gestor* successfully shows that the management was useful and well conducted the master has the obligation to reimburse the *gestor* for all useful and necessary expenses incurred as a result of the management. Article 2299 states that "equity obliges the owner, whose business has been well managed. . . to indemnify the manager. . . and to reimburse him all useful and necessary expenses."[50] The original idea that the manager was entitled only to reimbursement for actual expenses has been broadened to include the usual fee for professional services.[51]

The institution of *negotiorum gestio* provides a workable and desirable encouragement of unsolicited and unobliged aid while protecting the individual from "unwelcome intrusion by oversolicitous strangers."[52] In the instant case, if the hospital could prove that the individual was incapable of managing her own affairs because of a mental or physiological disorder and that the confinement was appropriate and well-managed, it should incur no liability but would be entitled to the usual fee for its services. Such a result would not erode individual freedom since the *gestor* would have the duty of showing utility or the appropriateness of the intervention. This would be an effective deterrent against unreasonable confinement. Even if the intervention were appropriate, the *gestor* would still be required to show that

47. *Id.* art. 2299.
48. *Id.* art. 2298.
49. *Id.* art. 2295.
50. *Id.* art. 2299.
51. Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law*, 13 CORNELL L.Q. 204 (1928). CIVIL CODE OF CHILE art. 2290 provides for compensation whenever one "renders technical or professional services in the ordinary line of his profession or trade."
52. Dawson, *Negotiorum Gestio: The Altruistic Intermeddler*, 74 HARV. L. REV. 824 (1961).

it was properly done to escape liability.[53] These duties imposed upon the *gestor* insure against improper intervention or management.

Of course, a hospital should seek to comply as closely as possible with the Mental Health Act. But, in a case of good faith lack of compliance, it should incur no liability where all the conditions for the application of the institution of *negotiorum gestio* are present.

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CIVIL PROCEDURE—SUIT BY WIFE ON COMMUNITY CAUSE OF ACTION

Gebbia v. City of New Orleans[1] raises important questions concerning the applicability of the exceptions of no right of action and want of procedural capacity to a suit by a wife to recover a community claim. The case held that a wife is merely under a procedural incapacity to sue on behalf of the community—an incapacity that must be timely challenged by dilatory exception, or be waived. Reasoning that the wife has a "present, vested interest" in the community, the court said the peremptory exception of no right of action cannot prevail against her claim on behalf of the community.

Legislative and Judicial Background

Before the Married Women's Emancipation Act of 1916,[2] a married woman was unable to sue unless her husband authorized her to do so, and there was thus no problem of the wife attempting to independently prosecute claims for the community. Only after the Emancipation Acts, when a married woman, over eighteen, could appear in court as party plaintiff without her husband's authorization, did the question of her ability to independently assert a so-called community cause of action arise.

53. The master's right to damages do not arise ex delicto since the act of the gestor is not, under civilian theory, considered unlawful. His intention to aid another, even if ill conceived, takes his action out of a wrongful category. See LA. CIVIL CODE art. 2293 (1870), where it is stated that obligations arising under quasi contracts are "lawful and purely voluntary act of man."

1. 249 La. 409, 187 So. 2d 423 (1966), *reversing* 181 So. 2d. 292 (La. App. 4th Cir. 1965), discussed in *The Work of the Louisiana Appellate Courts for the 1965-1966 Term—Civil Procedure*, 27 LA. L.REV. 540, 544 (1967).

2. La. Acts 1916, No. 94, now LA. R.S. 9:102 (1950).