AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Individual Rights/Personal Freedom and Public Morality

**Best v. St. Vincents Hospital, 3 Cv. 365 (S.D.N.Y. 2003)**

*William Best admitted himself to St. Vincents Hospital in November 2002. He was diagnosed as having tuberculosis. Best knew that he had been infected with tuberculosis for the past decade, but had not previously sought treatment. He began an in-patient treatment program, but within a few days Best sought to leave the hospital. At that point, New York City officials issued an isolation notice that authorized the hospital to detain Best for treatment until he was no longer a danger of infecting others. Best sought his release thought a judicial hearing, during which he also began to refuse further medical treatment of his condition. Several months later, Best still was not fully cooperative with his medical treatment and still sought release from isolation. At this point, he brought a case to federal district court arguing that his continued detention was unconstitutional. The district court dismissed the complaint, holding that neither his substantive due process nor his procedural due process rights had been violated and that the state had an adequate basis for continuing to detain him given the threat that he posed to the public.*

Judge FRANCIS.

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The gravamen of Mr. Best's allegations against the City defendants is that he has been held at Bellevue against his will and without appropriate court orders or hearings, thus violating his due process rights. Mr. Best seems to have asserted, in part, a substantive due process claim, alleging that the TB control statutes and regulations are unconstitutional and that the judicial hearings held in relation to his case were unconstitutional because (1) he disagrees with the ultimate outcome of these hearings and (2) he asserts that it was falsely alleged during these hearings that he had refused to take necessary medication. . . .

Substantive due process comes into play where, regardless of the procedures followed, a governmental decision or action is so contrary to a fundamental right that it cannot be countenanced. In *Joyner v. Dumpson* (2nd Cir. 1983), the Second Circuit laid out a three-part analysis for evaluating substantive due process claims. First, the court examines the nature of the interest at stake to determine whether it is a "fundamental right" protected under the Due Process Clause of the Fourteenth Amendment. Second, the court determines whether the defendants' actions have "significantly infringed" that fundamental right. Third, the court asks whether an "important state interest" justifies the infringement. . . .

Mr. Best's liberty is undoubtedly a fundamental right, and by detaining him against his will, the City defendants have "significantly infringed" upon that right. The remaining question is whether the state has demonstrated a substantial governmental interest in Mr. Best's continued detention.

The constitutionality of the New York TB control statutes has not yet been specifically addressed. It is well settled, however, that in the exercise of its police power, a state may confine individuals solely to protect society from the "dangers of significant antisocial acts or communicable disease." *O’Connor v. Donaldson* (1975); *Jacobsohn v. Massachusetts* (1905); *Campagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health* (1902). Courts have consistently upheld the constitutionality of quarantine as a public health measure. In *Jacobson*, the Court stated that "although this court has refrained from any attempt to define the limits of [the state's police] power, . . . it has distinctly recognized the authority of a State to enact quarantine laws and health laws of every description." Likewise, the detention of individuals with dangerous mental illnesses is generally justified by their danger to the public.

The Supreme Court, in the civil commitment cases, has set constitutional standards that must be met before an individual can be detained. The central requirements set out by the Court are the right to a particularized assessment of an individual's danger to self or others and the right to less restrictive alternatives.

In the case of civil commitment of the mentally ill, the Supreme Court has found that the individual must exhibit behavior that puts himself or others in danger. "Assuming that [mental illness] can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom." *O’Connor*. Accordingly, the fact that an individual has active TB does not itself justify involuntary detention; rather, that individual's circumstances must be analyzed to determine whether he or she would constitute a danger to society.

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Here, Mr. Best has demonstrated that he poses a risk for both himself and the community. He has refused to take prescribed medications and expressed interest in leaving the community which would make it difficult to monitor his progress. This unwillingness to comply with treatment creates a high risk that the plaintiff will transmit TB to others. This risk makes the City defendants' determination that Mr. Best poses a threat to the public health reasonable and establishes a substantial governmental interest in depriving him of his liberty in order to protect the community.

The existence of a substantial government interest is not enough to satisfy substantive due process, however, unless the State utilizes the least restrictive means available to advance that interest. *Shelton v. Tucker* (1960). . . . Admittedly, less restrictive alternatives exist for TB control, including "free treatment at neighborhood chest clinics, voluntary hospitalization, voluntary [directly observed therapy programs], and finally compulsory [directly observed therapy programs], the latter being the most coercive form of intervention short of detention." However, less restrictive alternatives are inappropriate for an individual who is noncompliant with medical treatment. Mr. Best's refusal to continue taking medication, his plans for leaving the community, his communal living situation, and the strong governmental interest in protecting the community all support the conclusion that no less restrictive alternative exists in this case.

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It is well settled that individuals who are detained pursuant to civil proceedings are entitled to various procedural rights, including the right to notice, to free counsel if indigent, to judicial review, and to cross-examine State witnesses. *Vitek v. Jones* (1980). . . .

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. . . . [I]t appears that the State's procedures pose only a minor risk of erroneous deprivation, and this risk will not be significantly reduced by adding new regulations to those already required by the state. Under the present scheme, individuals detained pursuant to Health Code § 11.47 must be detained pursuant to a court order within five days after requesting release, are entitled to a hearing where they can be represented by counsel and are entitled to periodic reviews of their detention status by the Commissioner. The scheme thus appears to "reflect a careful balance between the rights of the individual and the interests of society." The New York scheme falls well within the boundaries of what has been held to be an appropriate procedural framework for involuntary commitments. . . .

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. . . . The interest of the state in controlling the transmission of TB is clear. . . . Courts have traditionally been deferential to a state's ability to protect the public health. Given this deference, New York State civil commitment schemes have been routinely upheld by the Second Circuit. *Rodriguez v. City of New York* (2nd Cir. 1995). . . .

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*Dismissed*.