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O'Connor v. Donaldson

422 U.S. 563 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 27, 1975

PERSONAL

Re: 74-8 - O'Connor v. Donaldson

MEMORANDUM TO THE CONFERENCE:

I deferred my vote at Conference, and I have now decided to vote to affirm the result reached by the CA on the basis of failure to object to the otherwise erroneous instruction. As to the instruction, it was error and I would want to make very clear that there is a constitutional right-not-to-be-confined but no constitutional right to treatment.

Regards,

WEB

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 27, 1975

PERSONAL

Re: 74-8 - O'Connor v. Donaldson

Dear Bill:

I think our ideas on the ultimate and important aspects of this case are parallel at least. However, I want to hit very hard to negate the CA5 notion that there is a Constitutional right-to-treatment.

While I would far prefer to hold that such a gross error in the instruction is "plain error", I am willing to yield in order to get a Court on the central issue, along the lines of my memo to the Conference earlier today.

As "the least persuaded" I think I will take the case myself because it will probably get you, Lewis, Harry and Byron on the Constitutional issue.

Regards,

WEB

Mr. Justice Rehnquist

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LAW (TITLE 17, U.S. CODE)

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From.

Circulated: MAY 15 1975

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-8

J. B. O'Connor, Petitioner, *v.* Kenneth Donaldson. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to decide whether there is a constitutional right to treatment for persons involuntarily committed to state institutions by reason of mental abnormality. The issue arises in the context of an action for damages under 42 U. S. C. § 1983 brought by a former patient against individual physicians employed by the State of Florida.

I

On December 10, 1956, respondent's father instituted civil proceedings in the County Judge's Court of Pinellas County, Florida, to commit him as an incompetent. The petition alleged that respondent was incompetent by virtue of a longstanding "persecution complex" and "increasing signs of paranoid delusions . . . ," and expressed his father's belief that he was potentially dangerous. Accordingly, the County Judge appointed a committee of two physicians and a layman to examine respondent as required by Fla. Stat. § 394.22.[1]

[1] That statute governed judicial proceedings regarding a person believed to be "incompetent by reason of mental illness, sickness, drunkenness, excessive use of drugs, insanity, or other mental or

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 4, 1975

Re: No. 74-8 - O'Connor v. Donaldson

MEMORANDUM TO THE CONFERENCE:

Potter's proposed dissent furnishes a possible avenue for disposing of this case but it does not deal with a crucial aspect should the Court of Appeals remand for a new trial. In that situation we should deal with the instruction that Donaldson had a "constitutional right" to treatment. I believe a majority were of the view that no such right existed. It would hardly be wise if a new trial were held and this instruction given anew if five here think it wrong.

The opinion I drafted was by no means my "first choice" disposition but an effort to develop a solution acceptable to a majority.

Meanwhile as we await reactions, I would add the following as a footnote to page 8 of the draft, because the issue of possible dangerousness to self was not really submitted.

__/ Fairly read, the District Court's instructions provided two overlapping theories upon which the jury could base a conclusion that respondent's alleged failure to treat petitioner deprived him of a federally-protected right. First, the District Court was of the view that if petitioner were mentally ill but not "dangerous to himself or others" the only justification for continued hospitalization was to provide treatment; in such circumstances his confinement would bear no relationship to its purpose unless treatment were actually provided. Alternatively, regardless of the purpose of respondent's confinement, the District Court unequivocally charged that he had a constitutional right to receive treatment which would give him a realistic opportunity to improve. In both the Court of Appeals,

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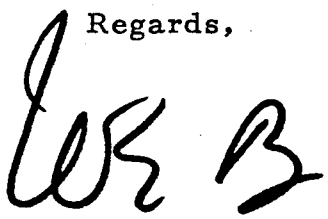
see 493 F.2d, at 510, and this Court petitioner has attacked only the broader instruction, and this refutes respondent's argument that we must assume that the jury found him to be non-dangerous. See Brief for Respondent 32.

Moreover, although the phrase "dangerous to himself or others" was not defined in the District Court's instructions, the testimony and other evidence at trial and the arguments of the parties on this point make plain that for purposes of this litigation it referred to a propensity for violence or similar physically dangerous behavior rather than respondent's ability to function in society. Cf. United States v. Birnbaum, 373 F.2d 250, 257 (CA 2 1967). Compare Lake v. Cameron, 364 F.2d 657 (CA DC 1966). This also seems to have been the understanding of the Court of Appeals. See 493 F.2d, at 517, 520. Thus, even if the District Court's first theory is read as a qualification of the second, it is not correct that the jury's findings must have eliminated all of the "traditionally asserted grounds for continued confinement . . .", ante at ____, and petitioner's challenge must be confronted.

I surely favor almost any disposition that clarifies the constitutional right as a right not to be confined as opposed to a "right to treatment."

Regards,



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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 5, 1975

Re: No. 74-8 - O'Connor v. Donaldson

MEMORANDUM TO THE CONFERENCE:

I have some further changes prompted by current memos and will try to have a circulation out tomorrow or Monday.

In my view even to give tacit approval to the instruction that there is a "Constitutional right" to "realistically" effective treatment will (a) leave the instruction binding on all district judges in the largest circuit and (b) lead other courts to consider such an instruction as required. That will bring us quite a volume of business as "jackleg" lawyers begin to look for new fields to conquer.

The constitutional issue is fairly presented and ought to be met.

Regards,

WEB

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1975

Re: 74-8 - O'Connor v. Donaldson

MEMORANDUM TO THE CONFERENCE:

A revised draft of the above is at the printer. That, with a response to Potter's June 6 dissent, will be around late Monday.

Regards,

WEB

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1975

Re: No. 74-8 - O'Connor v. Donaldson

MEMORANDUM TO THE CONFERENCE:

We have all recognized from the outset that this is a most difficult case. If, as Potter suggests, the Court of Appeals had adopted a strained reading of the District Court's instructions in order to write an essay regarding the supposed constitutional right-to-treatment, I would be with the first to agree that we should emphatically disapprove of its opinion and decide this case on a narrower ground. However, after repeatedly going over the record, I remain convinced that the Court of Appeals' interpretation of the instructions is correct. Thus, while I am open to some other disposition which would not only vacate that court's judgment but leave no doubt that the opinion is "washed out," I continue to believe that we risk disservice to courts faced with claims such as respondent's if we do not decide the right-to-treatment question. Admittedly, this aspect is complicated by the miserable performance of defense counsel -- so bad as to be almost a denial of due process.

The District Court's instructions regarding the constitutional question in this case are reproduced in full and in proper sequence at page 5 of my initial draft. The first (respondent's proposed instruction No. 37) was represented by four omission dots at page 5 of the dissent, but could not be more unequivocal in stating that there is a constitutional right to effective psychiatric treatment for any involuntarily confined mental patient. The second instruction, which was taken substantially from respondent's proposed instruction No. 38, does not purport to qualify the first in any way. Specifically, it certainly does not state that petitioner and his co-defendants had no constitutional obligation to treat respondent if he were "dangerous to himself and others"; in those circumstances they simply had no constitutional obligation to release him. It seems to me that both the language of these instructions and the order

in which they were given refute the notion that the first merely "defined" the treatment to which respondent may have been entitled under the second. See Dissent, at 5a, n.8. The most plausible interpretation is that elaborated upon in footnote 6 of my second draft, namely, that the District Court was instructing the jury on alternative, albeit overlapping, theories of liability.

This interpretation is reinforced by the District Court's comments to the parties prior to giving its charge to the jury. Not surprisingly, respondent proposed a number of instructions relating to the constitutional question in this case. One of them, No. 40, stated in pertinent part: "Even if a person has been lawfully committed to a mental hospital, he retains the right, inside the hospital, to receive adequate treatment." The District Court refused this instruction on the ground that it was "adequately covered." Tr., at 705. Similarly, respondent's proposed instruction No. 41(b) stated:

> "If you believe that defendants withheld psychiatric treatment from plaintiff, or allowed his confinement to continue knowing that he was not receiving adequate treatment, you may find that his confinement was illegal under the federal constitution and the Civil Rights Act." (Emphasis supplied.)

The District Court also refused this instruction, saying: "It is covered. It is covered by No. 37 and No. 38." Ibid.

In my view, these comments and actions leave little room to doubt that the District Court intended to instruct the jury that respondent's constitutional rights had been violated either if the doctors withheld treatment from him or, if respondent was not dangerous, refused to release him although knowing that he was not being treated. Petitioner has challenged only the first of these theories, and it was the one with which the Court of Appeals was concerned.

In any event, as footnote 6 of my second draft states, the record in this case makes abundantly clear that in the context of this litigation the term "dangerous" meant physically dangerous. The expert and other testimony at trial used the term in this sense, the Court of Appeals did as well, and the parties have perpetuated this usage in their briefs to this Court. Thus, even assuming that the second of the District Court's instructions somehow qualified the first, it is not correct to state that the

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jury necessarily eliminated all of the traditional justifications for civil commitment. The question whether there is a constitutional right-to-treatment in the absence of physical dangerousness must therefore be confronted and, in parsing the reasoning of the Court of Appeals, is dealt with in Part III.A. of my initial draft.

In short, the question whether there is a constitutional right-to-treatment is fairly presented by this case and that we relieve ourselves of no difficult problems, and indeed will create serious problems, by brushing it under the rug, unless, as suggested above, we make clear that the opinion approving such instruction is no longer a valid holding of the Court of Appeals.*/ At the very least, if this case is eventually remanded for a new trial -- and the terms of Potter's proposed disposition make that a genuine possibility -- the need for "washing out" the opinion will be very real.

Our "hang up," it seems to me, is the proper disposition of this specific litigation. As I stated in my memorandum to the Conference of last Wednesday, the one proposed in my present draft is not by any means my first choice and I am perfectly willing to consider alternatives so long as they make clear that the Court of Appeals' opinion is not to be considered precedent or the law of this case. If such a disposition can be developed, I can go along with a remand. Otherwise, I believe that we should decide the right-to-treatment issue.

Regards,

WEB

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*/ Among (and within) the circuits there are differing views regarding the precedential effect of <u>opinions</u> vacated on other grounds.

P.S. The second draft of the opinion is "on the presses."

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stylistic changes throughout.
see pp. 5, 6, 8-13, 17.

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated:

Recirculated: JUN 10 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-8

J. B. O'Connor, Petitioner, *v.* Kenneth Donaldson. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to decide whether there is a constitutional right to treatment for persons involuntarily committed to state institutions by reason of mental abnormality. The issue arises in the context of an action for damages under 42 U. S. C. § 1983 brought by a former patient against individual physicians employed by the State of Florida.

I

On December 10, 1956, respondent's father instituted civil proceedings in the County Judge's Court of Pinellas County, Florida, to commit him as an incompetent. The petition alleged that respondent was incompetent by virtue of a longstanding "persecution complex" and "increasing signs of paranoid delusions . . . ," and expressed his father's belief that he was potentially dangerous. Accordingly, the County Judge appointed a committee of two physicians and a layman to examine respondent as required by Fla. Stat. § 394.22.[1]

[1] That statute governed judicial proceedings regarding a person believed to be "incompetent by reason of mental illness, sickness, drunkenness, excessive use of drugs, insanity, or other mental or

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1975

Re: 74-8 - O'Connor v. Donaldson

MEMORANDUM TO THE CONFERENCE:

Potter seems to have four and a fraction votes (with Bill Douglas not voting), and I am happy to have him try his hand at an opinion. As I stated, I can go along with a remand, but the opinion must explain how a new trial can be confined to the immunity issue. Also can we avoid passing on the correctness of the right-to-treatment issue in view of the CA5 opinion with its categorical approval of the District Court instruction?

Bon voyage!

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1975

Re: 74-8 - O'Connor v. Donaldson

Dear Potter:

I will have an opinion, very likely concurring, around tomorrow.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From:

Circulated: JUN 19 1975

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-8

J. B. O'Connor, Petitioner, *v.* Kenneth Donaldson. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1975]

MR. CHIEF JUSTICE BURGER, concurring.

Although I join the Court's opinion and judgment in this case, it seems to me that several factors merit more emphasis than it gives them. I therefore add the following remarks.

I

With respect to the remand to the Court of Appeals on the issue of official immunity,[1] it seems to me not entirely irrelevant that there was substantial evidence that Donaldson consistently refused treatment that was offered to him, claiming that he was not mentally ill and needed no treatment.[2] The Court appropriately takes notice of the uncertainties of

[1] I have difficulty understanding how the issue of immunity can be resolved on this record and hence it is very likely a new trial may be required; if that is the case I would hope these sensitive and important issues would have the benefit of more effective presentation and articulation on behalf of petitioner.

[2] The Court's deference to "milieu therapy," *ante*, at 5, may be construed as disparaging that concept. True, it is capable of being used simply to cloak official indifference, but the reality is that some mental abnormalities respond to no known treatment. Also some mental patients respond, as do persons suffering from a variety of physiological ailments, to what is loosely called "milieu treatment," *i. e.*, keeping them comfortable, well-nourished, and in a protected environment. It is not for us to say in the baffling field of psychiatry that "milieu therapy" is always a pretense.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 11, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Potter:

Please join me. Since Bill Brennan, Byron, Thurgood, and Lewis have already joined you, isn't your dissent the basis for the Court opinion? If so, to avoid any delay at this late hour, and if, as I assume, it is my task formally to assign the opinion for the Court, I assign, of course, to you.

Sincerely,

W.O.D.

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 19, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Potter:

Please join me in your opinion for the Court.

Sincerely,

William O. Douglas

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 5, 1975

RE: No. 74-8 O'Connor v. Donaldson

Dear Potter:

Please join me in your dissent in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 15, 1975

RE: No. 74-8 O'Connor v. Donaldson

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 19, 1975

No. 74-8, O'Connor v. Donaldson

Dear Chief,

In due course I shall circulate a dissenting opinion in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: JUN 2 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-8

J. B. O'Connor, Petitioner, *v.* Kenneth Donaldson. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1975]

MR. JUSTICE STEWART, dissenting.

The respondent, Kenneth Donaldson, was civilly committed to the Florida State Hospital at Chattahoochee in January 1957 and was confined there against his will for nearly 15 years.[1] During most of that period, the

[1] The judicial commitment proceedings were initiated by Donaldson's father, pursuant to a state statute, now repealed, which provided:

"Whenever any person who has been adjudged mentally incompetent requires confinement or restraint to prevent self-injury or violence to others, the said judge shall direct that such person be forthwith delivered to the superintendent of the Florida state hospital, for care, maintenance, and treatment, as provided in §§ 394.09, 394.24, 394.25, 394.26 and 394.27, or make such other disposition of him as he may be permitted by law."

14 A Fla. Stat. § 394.22 (11) (a) (West 1960).

Donaldson had been adjudged "incompetent" several days earlier under § 394.22 (1), which provided for such a finding as to any person who was

"incompetent by reason of mental illness, sickness, drunkenness, excessive use of drugs, insanity, or other mental or physical condition, so that he is incapable of caring for himself or managing his property, or is likely to dissipate or lose his property or become the victim of designing persons, or inflict harm on himself or others. . ."

It would appear that § 394.22 (11) (a) contemplated that involuntary commitment would be imposed only on those "incompetent" persons who "require[d] confinement or restraint to prevent self-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-8, O'Connor v. Donaldson

In response to comments, I have made the indicated changes in my dissent in this case.

As to the general approach to the case: The constitutional problems raised by civil commitment of the mentally ill are many and difficult. I remain persuaded that the Court should proceed cautiously and deliberately in this area. The present case can be decided on a narrow, though hardly trivial, ground--i.e. that a person cannot be incarcerated, without more, merely because he is mentally ill.

The next question is, of course, whether the State may confine the mentally ill merely to facilitate treatment of their illnesses. My inclination is to say no, but it is not necessary to reach that question here, and I understand that some members of the Court, before expressing even tentative views on that subject, would prefer to await a case that directly raises the issue. Thus my dissent leaves the question open.

Further down the road is the question whether the State can confine mentally ill persons, who have committed no crime, merely on a prediction that they will act dangerously toward others. Here we enter the difficult area of "preventative detention" of the mentally ill. In what I take to be pure dictum, the Court of Appeals suggested that such preventive detention is constitutionally permissible, but only if treatment is provided along with confinement. The

constitutional arguments on all sides are novel and complicated. They were not joined in this case; nor was there any need to join them, for Donaldson was found to be non-dangerous.

I am opposed to plunging into these extraneous issues in this case. In this delicate area, the Court should not act until it has, through the adversary process, been made fully aware of the conflicting arguments and practical considerations. I would therefore dispose of the present case on its facts. The Court of Appeals used the case as a vehicle for an expansive essay on the constitutional law of civil commitment. This was unnecessary, and perhaps we should say so. But surely we should not make the same mistake.

P.S.

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Pp. 1, 4, 5, 5a, 7, 10, 10a

cc: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: _____

Recirculated: JUN 6 1975

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–8

J. B. O'Connor, Petitioner, v. Kenneth Donaldson. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1975]

MR. JUSTICE STEWART, with whom Mr. Justice Brennan, Mr. Justice White, and Mr. Justice Marshall join, dissenting.

The respondent, Kenneth Donaldson, was civilly committed to the Florida State Hospital at Chattahoochee in January 1957 and was confined there against his will for nearly 15 years.[1] During most of that period, the

[1] The judicial commitment proceedings were initiated by Donaldson's father, pursuant to a state statute, now repealed, which provided:

"Whenever any person who has been adjudged mentally incompetent requires confinement or restraint to prevent self-injury or violence to others, the said judge shall direct that such person be forthwith delivered to the superintendent of the Florida state hospital, for care, maintenance, and treatment, as provided in §§ 394.09, 394.24, 394.25, 394.26 and 394.27, or make such other disposition of him as he may be permitted by law."

14 A Fla. Stat. § 394.22 (11) (a) (West 1960).

Donaldson had been adjudged "incompetent" several days earlier under § 394.22 (1), which provided for such a finding as to any person who was

"incompetent by reason of mental illness, sickness, drunkenness, excessive use of drugs, insanity, or other mental or physical condition, so that he is incapable of caring for himself or managing his property, or is likely to dissipate or lose his property or become the victim of designing persons, or inflict harm on himself or others. . . ."

It would appear that § 394.22 (11) (a) contemplated that involuntary commitment would be imposed only on those "incompetent" persons who "required confinement or restraint to prevent self-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-8, O'Connor v. Donaldson

I propose to add the following footnote to my dissenting opinion in this case, at the end of the final sentence:

> 15. The opinion of the Court of Appeals unnecessarily expresses views on difficult issues of constitutional law not presented by this case -- for example, whether mentally ill persons dangerous to themselves or others have a right to treatment upon confinement by the State. Our decision to vacate the judgment of the Court of Appeals would deprive that court's opinion of all precedential effect and leave this Court's decision as the sole law of the case. Cf. United States v. Munsingwear, 340 U.S. 36.
>
> Upon remand, the Court of Appeals would be free to consider only the question whether O'Connor should be held liable for monetary damages for violating Donaldson's constitutional right to liberty. The jury found, on substantial evidence and adequate instructions, that there was such a violation, and that finding needs no further consideration. If the Court of Appeals holds that a remand to the district court is necessary, the only issue to be determined in that court would be whether O'Connor is immune from liability for monetary damages.

P.S.

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
~~Mr.~~ Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: JUN 13 1975

Recirculated: _____

DRAFT

No. 74-8

J. B. O'Connor, Petitioner, v. Kenneth Donaldson.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Kenneth Donaldson, was civilly committed to confinement as a mental patient in the Florida State Hospital at Chattahoochee in January of 1957. He was kept in custody there against his will for nearly 15 years. The petitioner, Dr. J. B. O'Connor, was the hospital's superintendent during most of this period. Throughout his confinement Donaldson repeatedly, but unsuccessfully, demanded his release, claiming that he was dangerous to no one, that he was not mentally ill, and that, at any rate, the hospital was not providing treatment for his supposed illness. Finally, in February of 1971, Donaldson brought this lawsuit under 42 U.S.C. § 1983, in the United States District Court for

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omission p 11

STYLISTIC CHANGES THROUGHOUT.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-8

J. B. O'Connor, Petitioner, *v.* Kenneth Donaldson.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Recirculated: JUN 17 1975

[June —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Kenneth Donaldson, was civilly committed to confinement as a mental patient in the Florida State Hospital at Chattahoochee in January of 1957. He was kept in custody there against his will for nearly 15 years. The petitioner, Dr. J. B. O'Connor, was the hospital's superintendent during most of this period. Throughout his confinement Donaldson repeatedly, but unsuccessfully, demanded his release, claiming that he was dangerous to no one, that he was not mentally ill, and that, at any rate, the hospital was not providing treatment for his supposed illness. Finally, in February of 1971, Donaldson brought this lawsuit under 42 U. S. C. § 1983, in the United States District Court for the Northern District of Florida, alleging that O'Connor, and other members of the hospital staff, named as defendants, had intentionally and maliciously deprived him of his constitutional right to liberty.[1] After a four-day trial, the

[1] Donaldson's original complaint was filed as a class action on behalf of himself and all of his fellow patients in an entire department of the Florida State Hospital at Chattahoochee. In addition to a damage claim, Donaldson's complaint also asked for habeas corpus relief ordering his release, as well as the release of all members of the

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 18, 1975

MEMORANDUM TO THE CONFERENCE

Re: Holds for O'Connor v. Donaldson, 74-8

1. Green v. Weinberg, 74-185

Although the petitioner now contends that this case presents the question whether there is a constitutional right to treatment for the mentally ill, in reality the only issue presented is whether the petitioner's allegation that his son died because of negligent medical treatment provided by state officials is sufficient to state a claim for damages under 42 U.S.C. § 1983. Accordingly, the decision in O'Connor v. Donaldson has little effect on the merits of the petition.

The petitioner's son was voluntarily admitted to the New Jersey State Hospital at Ancora in 1968, and was subsequently committed by court order pursuant to New Jersey statutory procedures dealing with voluntary commitments. In 1969, due to "unmanageable behavior," the patient was administratively transferred to the maximum security Forensic Psychiatric Section of

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-8, O'Connor v. Donaldson

I propose to add the following to note 11 on page 13:

During his years of confinement, Donaldson unsuccessfully petitioned the state and federal courts for release from the Florida State Hospital on a number of occasions. None of these claims was ever resolved on its merits, and no evidentiary hearings were ever held. O'Connor has not contended that he relied on these unsuccessful court actions as an independent intervening reason for continuing Donaldson's confinement, and no instructions on this score were requested.

P.S.

P. S.

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n.11

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: _____

Recirculated: JUN 23 1975

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-8

J. B. O'Connor, Petitioner, *v.* Kenneth Donaldson. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Kenneth Donaldson, was civilly committed to confinement as a mental patient in the Florida State Hospital at Chattahoochee in January of 1957. He was kept in custody there against his will for nearly 15 years. The petitioner, Dr. J. B. O'Connor, was the hospital's superintendent during most of this period. Throughout his confinement Donaldson repeatedly, but unsuccessfully, demanded his release, claiming that he was dangerous to no one, that he was not mentally ill, and that, at any rate, the hospital was not providing treatment for his supposed illness. Finally, in February of 1971, Donaldson brought this lawsuit under 42 U. S. C. § 1983, in the United States District Court for the Northern District of Florida, alleging that O'Connor, and other members of the hospital staff, named as defendants, had intentionally and maliciously deprived him of his constitutional right to liberty.[1] After a four-day trial, the

[1] Donaldson's original complaint was filed as a class action on behalf of himself and all of his fellow patients in an entire department of the Florida State Hospital at Chattahoochee. In addition to a damage claim, Donaldson's complaint also asked for habeas corpus relief ordering his release, as well as the release of all members of the

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Chief:

I shall await Potter's dissent in this case.

Sincerely,

Byron

The Chief Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Potter:

Please join me in your dissenting opinion in this case.

Sincerely,

Byron

Mr. Justice Stewart

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

1-6-8

June 10, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-8 - O'Connor v. Donaldson

It is clear enough to me that this case was tried on the basis that there was a right to treatment and that a major issue was whether respondent was being treated. The Chief Justice is surely correct that the instructions informed the jury that there was a right to treatment; and although there may be other bases for liability within the boundaries of the instructions, as the case comes to us from the Court of Appeals, the judgment against petitioner rests firmly on the breach of duty to treat respondent.

There is thus much to be said for deciding the right to treatment issue -- unless we are foreclosed from deciding it or may rationally avoid it. As to the latter question, there is no issue here as to treatment for those who are dangerous to others or to themselves (broadly defined to include those who cannot take care of themselves); for it appears to be admitted that respondent is not in this category. This leaves those persons, such as respondent, who are mentally ill but not dangerous to themselves or others. Potter says that whether or not respondent had a right to be treated, no treatment was given and respondent therefore should have been released since the State may not confine a person against his will solely because he is mentally ill. So far I agree with him. But it should be understood that his opinion decides that nondangerous, mentally ill persons who are not being treated must be released and that in this sense Potter deals with the right to treatment issue -- at least he is not disagreeing with the Court of Appeals' pronouncement insofar as persons in respondent's situation are

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concerned. I do not disagree with respect to that area either, for if the State may confine solely for treatment, it should treat or release.

The difficulty is that if there is to be a new trial, as I think there should be, at least to determine whether petitioner knew or should have known that he was violating respondent's constitutional rights, it is essential that the jury be properly instructed as to what respondent's constitutional rights were and are. On this point, I agree with the Chief Justice that the trial court's instructions on the right to treatment were in some respects unsatisfactory and that they should not be repeated at trial.

This leads me to the question whether a State may confine a nondangerous, mentally ill person solely for treatment purposes. If it may not do so, there would be no right to treatment issue in this case; the issue would be solely whether petitioner -- mentally ill, but admittedly not dangerous to himself or others -- knew or should have known that confining respondent involuntarily violated his constitutional rights whether or not treatment was furnished. I would thus prefer to decide one of the questions Potter leaves open, namely, whether a State may confine a nondangerous person solely for therapy. My vote at the conference was that the State may not do so. Otherwise, I shall remain where Brother Stewart has left me.

B.R.W.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 17, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Potter:

I join your opinion of June 13 with the changes which I understand are being made on page nine.

Sincerely,

Byron

Mr. Justice Stewart

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ASSISTANCE TO RESEARCHERS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1975

Re: No. 74-8, J. B. O'Connor v. Kenneth Donaldson

Dear Potter:

Please join me.

Sincerely,

T. M.

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1975

Re: No. 74-8 - J.B. O'Connor v. Kenneth Donaldson

Dear Potter:

Please join me in your circulation of June 13.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Potter:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1975

No. 74-8 O'Connor v. Donaldson

Dear Chief:

In view of the difficulty of the issue in this case (at least for me), I will await other circulations before deciding where I come down.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1975

No. 74-8 O'Connor v. Donaldson

Dear Chief:

Responding to your memorandum of this date, perhaps I should make two observations.

I have not yet had an opportunity to consider carefully either your draft opinion or Potter's dissent. In view of other work in progress here in my Chambers requiring my attention, it may be another couple of days at least before I refresh my recollection on the issues in this troublesome case.

But at least as of now, I lean toward Potter's basic approach - subject to reservations as to his reference to a standard of liability based primarily on Strickland (which I had hoped was focused on the particular case).

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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June 11, 1975

No. 74-8 O'Connor v. Donaldson

Dear Chief:

Having now reviewed carefully everything that has been circulated, I have concluded that this case properly can be decided on the narrow ground that a state may not confine a mentally ill person solely because of his illness, absent danger to himself or others. As I read the circulations, you and Potter are of one mind on this issue.

Your opinion, however, proceeds to address the broader issue of whether - and under what circumstances - there may be a constitutional right to treatment. You make a persuasive argument that the broader issue may be reached in this case, but I remain unconvinced that it must be reached. If I am correct in this, there are persuasive prudential reasons for deferring decision until we have the question in sharp focus and adequately briefed and argued.

It also seems to me that footnote 15, which Potter proposes to add, would make it abundantly clear - indeed painfully so to my Fifth Circuit - that the decision below will have no precedential effect.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1975

No. 74-8 O'Connor v. Donaldson

Dear Potter:

Please join me in your dissent.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 16, 1975

No. 74-8 O'Connor v. Donaldson

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1975

Re: No. 74-8 - O'Connor v. Donaldson

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

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