IN THE COURT OF APPEALS OF IOWA

No. 18-0845
Filed February 6, 2019

IN THE MATTER OF B.B.-P.,
Alleged to Be Seriously Mentally Impaired,

B.B.-P.,
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, Steven J. Andreasen, Judge.

The appellant maintains the application for her involuntary commitment should have been dismissed, as the commitment hearing took place more than five days after the court issued an order for her immediate detainment due to serious mental impairment. **AFFIRMED.**

Zachary S. Hindman of Mayne, Hindman, & Daane (until withdrawal) and Jason B. Gann of Moore, Heffernan, Moeller, Johnson & Meis LLP, Sioux City, for appellant.

Thomas J. Miller, Attorney General, and Gretchen Kraemer, Assistant Attorney General, for appellee State.

Considered by Potterfield, P.J., Doyle, J., and Danilson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2019).

POTTERFIELD, Presiding Judge.

B.B.-P. appeals the district court ruling she is seriously mentally impaired and must undertake further evaluation at a local medical facility. She does not challenge the court's substantive findings but maintains the application for her involuntary commitment should have been dismissed, as the commitment hearing took place more than five days after the court issued an order for her immediate custody due to serious mental impairment. *See* Iowa Code § 229.11(1) (2018).

On April 9, 2018, two members of B.B.-P.'s family filed an application alleging B.B.-P was seriously mentally impaired. The same day, the district court filed an order for immediate custody, pursuant to Iowa Code section 229.11(1). The court initially scheduled a hearing on the application for April 16.

Then, on April 16, the court—on its own motion—issued an order continuing the hearing until April 23. In the order, the court noted B.B.-P. had not yet been served or taken into custody. The order provides little explanation for the delay, stating only, "It appears from the file the sheriff has been unable to locate [B.B.-P.] in order to serve" her.

B.B.-P. was served and detained on April 21.

The contested hospitalization hearing took place on April 23. B.B.-P. orally moved to dismiss the application for her involuntary commitment, maintaining the court lacked jurisdiction to proceed. In support of her motion B.B.-P. relied upon section 229.11(1), which states in part:

> If the applicant requests that the respondent be taken into immediate custody and the judge, upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent has a serious mental impairment and is likely to injure the respondent or other persons if allowed to remain at liberty,

> the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff or the sheriff's deputy and be detained until the hospitalization hearing. *The hospitalization hearing shall be held no more than five days after the date of the order,* except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next succeeding business day.

(Emphasis added.)

The court concluded the five-day requirement in section 229.11(1) was not a jurisdictional requirement, as it imposed a directory rather than a mandatory duty, and the five-day limitation was not triggered until there was both custody and detention. The court noted B.B.-P had not been required to spend more than five days in detention, which the court understood to be the purpose of the cited language in the statute. The court then denied B.B.-P.'s motion to dismiss before ultimately concluding B.B.-P was seriously mentally impaired and ordering her to be further evaluated by a local medical facility.

B.B.-P. appeals the district court's denial of her motion to dismiss. She does not challenge the court's substantive findings. We review for correction of errors at law. *See Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006) ("We review motions to dismiss for correction of errors at law."); *In re B.T.G.*, 784 N.W.2d 792, 796 (Iowa Ct. App. 2010) ("An involuntary civil commitment proceeding is a special action that is triable to the court as an action at law.").

First, B.B.-P. maintains the district court's rationale that the five-day hearing requirement is not triggered until a respondent is taken into custody is at odds with the statute on its face, which says, "The hospitalization hearing shall be held no more than five days after the date of the order"—not five days after detention begins.

But this court has come to the same conclusion as the district court when asked to consider similar language in a similar statute. Iowa Code section 125.81 provides the framework for the immediate custody of persons with substance-related disorders—rather than serious mental impairment—and provides that if certain findings are made, the court can "enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order." Iowa Code § 125.81(1). In *In re C.C.*, the respondent urged the district court to dismiss the application alleging he was a person with a substance-related disorder because the commitment hearing was not held within five days of the court's order for immediate custody. No. 17-0884, 2018 WL 2084851, at *1 (Iowa Ct. App. May 2, 2018). The district court denied C.C.'s motion to dismiss, and a panel of this court affirmed on appeal. *Id.* at *4. Our court noted the language of section 125.81 had not yet been interpreted and resorted to the rules of statutory construction. *Id.* at *3. After doing so, the court determined the statute only imposed a duty on the district court to hold the commitment hearing within five days "if the court exercises its power to order the respondent to be taken into immediate custody *and* detained until the time of the commitment hearing." *Id.*

Second, B.B.-P. challenges the district court's conclusion that the duty imposed on the court by section 229.11(1) is directory rather than mandatory and jurisdictional. *See Taylor v. Dep't of Transp.*, 260 N.W.2d 521, 522–23 (Iowa 1977) ("If the prescribed duty is essential to the main objective of the statute, the statute ordinarily is mandatory and a violation will invalidate subsequent proceedings under it. If the duty is not essential to accomplishing the principal purpose of the

statute but is designed to assure order and promptness in the proceeding, the statute is ordinarily directory and a violation will not invalidate subsequent proceedings unless prejudice is shown."). Whether a rule is mandatory or directory depends upon legislative intent. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Attorney Doe No. 639*, 748 N.W.2d 208, 209 (Iowa 2008). We agree with the district court that section 229.11(1) creates a directory duty. In a number of cases where an agency failed to provide a hearing within the statutory period, our supreme court has found that the duty to provide the hearing within the prescribed timeframe is directory. *Id.* at 210 (considering cases when an agency failed to complete its task within a necessary time period and determining the rules were directory). As in the cases considered by our supreme court in *Attorney Doe No. 639*, the delay in the hearing did not prejudice B.B.-P., as she was not detained during the prolonged period before the hearing. *Id.* (noting a delay in a license revocation proceeding did not prejudice appellant because he was able to keep his license for a longer period of time (citing *Taylor*, 260 N.W.2d at 524)). Additionally, like the statutes considered by the supreme court, section 229.11 does "not provide consequence for the [court's] failure to timely carry out [its] duties," which weighs in favor of the duty being directory. *Id.*

Moreover, B.B.-P. has not provided, and we have not found, an instance when we applied section 229.11(1) as a mandatory rule. To the contrary, we have found cases in which the court did not dismiss the application alleging serious mental impairment even though the hearing was not held within the statutory limit. *See C.C.*, 2018 WL 2084851, at *4 ("[T]he court has good cause to delay the commitment hearing for good cause when the respondent's liberty is not

restrained."); *see also In re T.C.F.*, 400 N.W.2d 544, 547 (Iowa 1987) (where respondent argued he was not provided a timely examination or hearing, and the court concluded there was "good cause" for the delays, including a problem with the treating doctor and the respondent's wavering decision regarding whether he would be treated voluntarily, and affirmed the involuntary hospitalization); *In re T.M.*, No. 17-0604, 2017 WL 5613978, at *1 n.1 (Iowa Ct. App. Dec. 20, 2017) (implying the proper procedure in considering whether a respondent's motion to dismiss for failure to hold the hospitalization hearing within five days of being taken into custody should have been granted is determining whether good cause existed for the delay).

Because the district court did not err in denying B.B.-P.'s motion to dismiss the application alleging she is seriously mentally impaired, we affirm.

AFFIRMED.