IN THE COURT OF APPEALS OF IOWA

No. 17-1283
Filed December 20, 2017

IN RE THE MATTER OF J.C.,
Alleged to be Seriously Mentally Impaired,

J.C.,
Respondent-Appellant.

Appeal from the Iowa District Court for Mahaska County, Rose Anne Mefford, District Associate Judge.

Respondent appeals the district court order finding her to be seriously mentally impaired. **REVERSED AND REMANDED.**

Dustin D. Hite of Heslinga, Dixon & Hite, Oskaloosa, for appellant.

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

Considered by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, Judge.

J.C. appeals the district court order finding her to be seriously mentally impaired. We conclude there is not clear and convincing evidence in the record to show J.C. was likely to injure herself or others if allowed to remain at liberty without treatment. We reverse the district court's ruling finding J.C. was seriously mentally impaired and remand for dismissal of the application.

I. Background Facts & Proceedings

J.C. has been diagnosed with bipolar disorder. On August 1, 2017, J.C. was brought to the emergency room "alleging assault." Also, she reported she had taken the amount of a medication prescribed for one day in a two-hour time period. At the hearing, there was evidence her residence was in disarray.

An application was filed alleging J.C. was seriously mentally impaired. Marcy Dewitt, a social worker, filed an affidavit stating J.C. had "Delusions of grandeur, flight of ideas, and loosed associations." Dewitt stated J.C. was agitated and threatened legal action for imagined issues. J.C.'s psychiatrist, Dr. Ronald Berges, filed an affidavit stating J.C. had recently "become increasingly paranoid, grandiose, delusional, and irritable, all consistent with a manic state." Dr. Berges also noted J.C. had threatened malpractice lawsuits and other legal action without a valid basis. Dr. Berges recommended J.C. be hospitalized to stabilize her condition.

J.C. was examined by Dr. Jeffrey Weyeneth, who gave the opinion J.C. was not capable of making responsible decisions regarding her treatment because she had not been compliant with treatment and had refused medication

on several occasions. He also gave the opinion J.C. was likely to physically injure herself or others if allowed to remain at liberty without treatment. Concerning the necessary finding of a recent overt act to support this finding, Dr. Weyeneth stated, "Very grandiose, disorganized at times. Threatening others with lawsuits. Intrusive to others." He stated J.C. needed inpatient treatment for stabilization.

A hearing was held on August 7, 2017. The only witness called was Dr. Weyeneth. When asked if J.C. was likely to physically injure herself or others, he replied:

> Well, at her level of disorganization, I'm not sure how good of job she would be able to do to take care of herself, which could definitely lead to a decline. She is not–she's not been physically aggressive here. She's been intrusive, opening people's doors to their rooms, and being loud and intrusive to patients, but no physical aggression has been demonstrated. I don't know if anything like that happened prior to her coming into the hospital. I don't see any documentation of that.

When questioned further, Dr. Weyeneth stated patients in a manic phase, like J.C., were "[p]robably some of the most dangerous patients in psychiatry . . . because they are very impulsive and they get very agitated quite easily." He testified he believed if J.C.'s condition was "left unchecked, that could definitely lead to dangerousness."

The district court ruled from the bench, stating:

> [J.C.], I find that the fighting issue here is whether or not you are likely to injure yourself or others, and I do find, based upon the doctor's testimony, that you are likely to physically injure yourself or others based upon the diagnosis of bipolar in the manic phase that is continuing to escalate. The doctor said it typically escalates quickly, and, in fact, you continue to decompensate during your stay at the hospital and continue to be noncompliant with the

> direction of treatment. So I think you're very likely to injure yourself or others.
>
> I do find that you are seriously mentally impaired based upon what's been presented to me today.

J.C. appeals the district court's decision finding she was seriously mentally impaired.

II. Standard of Review

Challenges to the sufficiency of the evidence in involuntary commitment proceedings are reviewed for the correction of errors at law. *In re B.B.,* 826 N.W.2d 425, 428 (Iowa 2013). An allegation of serious mental impairment must be proven by clear and convincing evidence. Iowa Code § 229.13(1) (2017). "Clear and convincing evidence is less burdensome than evidence establishing proof beyond a reasonable doubt, but more burdensome than a preponderance of the evidence." *B.B.,* 826 N.W.2d at 428. "It means that there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence." *Id.*

While the elements of serious mental impairment must be established by clear and convincing evidence, the district court's factual findings are binding on appeal if they are supported by substantial evidence. *In re J.P.,* 574 N.W.2d 340, 342 (Iowa 1998). "Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence." *Id.*

III. Merits

In order to be considered seriously mentally impaired under section 229.1(20), there must be clear and convincing evidence the respondent (1) has a mental illness, (2) lacks "sufficient judgment to make responsible decisions with

respect to the person's hospitalization or treatment," and (3) is likely, if allowed to remain at liberty, to inflict physical injury on "the person's self or others," to inflict serious emotional injury on those close to the person, or to be unable to satisfy the person's physical needs. *Id.* at 343 (quoting *In re Foster,* 426 N.W.2d 374, 376–77 (Iowa 1988)). The district court's decision was based on a finding J.C. was likely to inflict physical injury on herself or others if she remained at liberty, and so we do not consider the other two grounds.

The element of dangerousness "requires a predictive judgment, 'based on prior manifestations but nevertheless ultimately grounded on future rather than past danger.'" *In re Mohr,* 383 N.W.2d 539, 542 (Iowa 1986) (citations omitted). The term "likely" means "probable or reasonably to be expected." *Id.* The danger the person poses to himself or others must be evidenced by a "recent overt act, attempt or threat." *J.P.,* 574 N.W.2d at 344. "In the context of civil commitment we hold that an 'overt act' connotes past aggressive behavior or threats by the respondent manifesting the probable commission of a dangerous act upon himself or others that is likely to result in physical injury." *Foster,* 426 N.W.2d at 378 (citation omitted).

The record in this case is devoid of any evidence of a recent overt act by J.C. "manifesting the probable commission of a dangerous act upon [herself] or others that is likely to result in physical injury." *See id.* Dr. Weyeneth testified J.C. had not engaged in any acts of physical aggression. Additionally, there was no evidence she threatened physical aggression against anyone. J.C. threatened to bring lawsuits against people but that is not the same as

threatening physical injury. We conclude there is not clear and convincing evidence in the record to show J.C. was likely to injure herself or others if allowed to remain at liberty without treatment.

We reverse the district court's ruling finding J.C. was seriously mentally impaired and remand for dismissal of the application.

REVERSED AND REMANDED.