**IN THE COURT OF APPEALS OF IOWA**

No. 0-521 / 10-0396
Filed October 20, 2010

**IN THE INTEREST OF A.P.,**
**Alleged to be Seriously Mentally Impaired**
**and A Chronic Substance Abuser,**

**A.P.,**
Respondent-Appellant.

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Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch (motion for release), and Michael J. Shubatt (commitment appeal), Judges.

Appeal from involuntary commitment proceedings. **AFFIRMED.**

Bradley T. Boffeli of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, Ralph Potter, County Attorney, and Lyle Galliart, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., Potterfield and Tabor, JJ.

**SACKETT, C.J.**

Amy appeals from her involuntary commitment as a chronic substance abuser and as seriously mentally impaired. She contends the court erred (1) in not dismissing the proceedings on res judicata grounds, (2) in denying her request for release pending appeal, and (3)-(4) in affirming her commitments as seriously mentally impaired and as a chronic substance abuser without clear and convincing evidence to support the commitments. We affirm.

**I. Background and Proceedings.**

On February 3, 2010, Amy's mother filed applications seeking Amy's involuntary commitment under Iowa Code chapter 229 (2009) as seriously mentally impaired and under chapter 125 as a chronic substance abuser. The applications were supported by affidavits from Amy's mother and one of Amy's friends. The court issued an order for her immediate custody and transport, appointed counsel to represent her, appointed a physician to examine her, and set the applications for hearing on February 5.

At the beginning of the hearing, Amy's counsel moved to dismiss based on res judicata, alleging a preceding commitment hearing on February 3 in which the examining doctor opined Amy did not meet the civil commitment criteria. The State asked the magistrate to overrule the motion "as there is no authority for his motion." The magistrate overruled the motion, then stated:

> What happened is the doctor's report recommended a dismissal; the applicants were not given an opportunity to testify. After the hearing, the doctor became aware of further information that apparently [Amy] withheld, withheld from the doctor, or at least that's going to be the allegation, so I don't think this falls under the category of res judicata.

The hearing proceeded and the State presented testimony from the examining doctor, Amy's mother, and Amy's friend, along with eleven photographic exhibits purportedly of drugs found at Amy's home. Amy also testified, stating she was willing to attend outpatient treatment, but did not think she needed to be committed to inpatient treatment. Amy's attorney renewed the motion to dismiss at the close of the hearing.

The magistrate found Amy met the criteria for commitment as seriously mentally impaired, having limited judgment capacity, being a danger to herself or others (particularly her twelve-year-old daughter), having a diagnosis of major depressive disorder, and being treatable with medication. The magistrate further found she met the criteria of a chronic substance abuser, given her history and the drug test results from her admission in the hospital. The magistrate ordered her committed on an inpatient basis to a suitable facility. Separate findings of fact for each application were filed the same day. Amy appealed to the district court on February 9.

On February 12, Amy filed a motion for release pending appeal, under Iowa Code section 229.21(4), alleging the chief medical officer had not filed a certification that she was either seriously mentally impaired or a chronic substance abuser, so the statute provides for discharge from custody pending disposition of the appeal. Following a hearing that same day, the court overruled the motion, concluding that because of the time frame in the statute within which the chief medical officer must respond, that "it is a reasonable interpretation of the statute that the chief medical officer must be served personally with the

notice of appeal." Because the notice of appeal was mailed by regular mail, the court could not determine when the chief medical officer received a copy of the notice of appeal.

At the beginning of the February 16 trial de novo[1] in district court, Amy again moved to dismiss the proceedings on res judicata grounds and provided the court with a brief on the issue. The court took the issue under advisement.

The court heard testimony from Amy, her mother, and a consulting psychiatrist from Mid Eastern Council on Chemical Abuse (MECCA), the substance abuse treatment facility to which Amy was committed on February 10. The doctor agreed with the results of the mental health evaluation done for the commitment. She recommended continued inpatient treatment, followed by individual outpatient therapy for medication management. She testified she would "be uncomfortable" with recommending outpatient treatment for Amy's mental health diagnosis. Concerning Amy's substance abuse, the doctor testified Amy was diagnosed with cannabis dependence, had limited insight, was "very impulsive" in her illegal substance usage, and posed a danger to herself or others. She recommended continued inpatient treatment, followed by outpatient aftercare. She opined Amy likely would remain at MECCA for another two to three weeks.

In its order filed on February 24, the court concluded the State proved, by clear and convincing evidence, that Amy is a chronic substance abuser under Iowa Code section 125.83 and is seriously mentally impaired as defined in

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[1] "When appealed, the matter shall stand for trial de novo." Iowa Code § 229.31(3)(c).

section 229.1(14). Concerning the motion to dismiss on res judicata grounds, the court noted Amy provided no legal authority to support the claim and had not met her burden to prove all the elements of res judicata. The court affirmed the February 5 decision of the magistrate. Amy appealed to the supreme court.

**II. Scope and Standards of Review.**

"An involuntary commitment proceeding is a special action triable to the court as an ordinary action at law." *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). "Our review is for errors at law." *In re Melodie L.*, 591 N.W.2d 4, 6 (Iowa 1999). To justify involuntary commitment, the allegations in the application must be supported by clear and convincing evidence. Iowa Code § 229.12(3). "Clear and convincing evidence is more than a preponderance of the evidence but less than evidence beyond a reasonable doubt." *J.P.*, 574 N.W.2d at 342. "It means that there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence." *In re L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App. 1995). A district court's findings of fact "are binding on us if supported by substantial evidence." *Id.*; *see* Iowa R. App. P. 6.904(3)(*a*). "Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence." *J.P.*, 574 N.W.2d at 342.

**III. Merits.**

*A. Res Judicata.* Amy contends the district court erred in holding claim preclusion[2] did not bar the February 5 civil commitment even though a judicial

[2] Res judicata embraces two concepts: claim preclusion and issue preclusion. *Spiker v. Spiker*, 708 N.W.2d 347, 353 (Iowa 2006). At issue in this case is claim preclusion.

hospitalization referee had determined on February 3 that Amy did not meet the standards for commitment under either chapter 125 or chapter 229.

For purposes of our analysis in this appeal, we assume without deciding, that claim preclusion may apply to civil commitment proceedings. The burden would be on Amy to prove the elements of claim preclusion.

> To invoke the doctrine of claim preclusion, three elements must be established: (1) the parties in the first and second action must be the same, (2) the claim made in the second action could have been fully and fairly adjudicated in the prior case, and (3) a final judgment on the merits was issued in the first action.

*Braunschweig v. Fahrenkrog*, 773 N.W.2d 888, 893 (Iowa 2009) (citations and internal quotation omitted).

During oral argument, appellant's counsel repeatedly referred to "testimony" concerning a prior commitment proceeding. Although there are statements in the transcripts before us referring to an earlier proceeding, the statements of the magistrate and of counsel are not testimony and are not evidence. The record on appeal does not contain any prior commitment decision or other records from that proceeding that might enable us to evaluate this claim. It does not appear from this record that any documents from prior commitment proceedings were before the district court as exhibits or that the court was asked to take judicial notice of the record from the earlier proceedings. Consequently, we agree with the district court's conclusion that Amy failed to prove the elements of claim preclusion and affirm on this issue.[3]

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[3] Because we have determined Amy failed to prove the elements of claim preclusion, we need not address the question whether claim preclusion properly applies to civil commitment proceedings. Neither party has cited any Iowa authority that claim

*B. Proof of elements to commit under chapter 229.* Amy contends the court erred in finding clear and convincing evidence she lacked insight into her mental health treatment and was a danger to herself or others. The State suggests this issue and the following parallel issue under chapter 125 may be moot because it contends Amy was released from inpatient commitment in April.[4] A review of the district court file shows a report of respondent's discharge from MECCA, dated March 9, and an order of transfer from inpatient to outpatient care in both commitment proceedings filed on March 17. On April 21, following receipt of a periodic report, the court filed an order continuing Amy's treatment in an outpatient status. Based on these filings, we conclude this claim and the parallel claim under chapter 125 are moot and we decline to address them.

*C. Proof of elements to commit under chapter 125.* Amy contends the court erred in finding clear and convincing evidence she lacked insight into her substance abuse problem. As noted in the discussion of the preceding issue, this issue is moot and we do not address it.

**AFFIRMED.**

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preclusion applies. Amy cited two unpublished decisions from other jurisdictions in her brief to the district court (but not in her brief on appeal). One dealt with a commitment of a sexually-violent predator and concluded the probable cause hearing was not a final judgment on the merits, so res judicata did not bar a second petition or subsequent trial. *See In re the Care and Treatment of Swinney*, No. 2008-UP-156 (S.C. Ct. App. Mar. 12, 2008). The other dealt with a mental illness commitment and concluded res judicata did not bar the current proceeding because the appellant had committed at least four assaults after the earlier determinations he did not meet the statutory criteria for commitment. *See In re the Civil Commitment of Schuebel*, No. A06-2212 (Minn. Ct. App. May 22, 2007).

[4] "Matters that are technically outside the record may be submitted in order to establish or counter a claim of mootness. We consider matters that have transpired during the appeal for this limited purpose." *See In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992).