IN THE COURT OF APPEALS OF IOWA

No. 1-313 / 10-1906
Filed May 11, 2011

IN THE MATTER OF T.R.,
Alleged to be Seriously
Mentally Impaired,

T.R.,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

T.R. appeals from the district court's ruling that she is seriously mentally impaired. **AFFIRMED.**

Leanne M. Striegel-Baker of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel L. Flaherty, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

T.R. appeals from the district court's ruling that she is seriously mentally impaired. She contends the district court erred in finding there was clear and convincing evidence of serious mental impairment as defined in Iowa Code section 229.1(17) (2009).[1] Because the district court's findings are supported by substantial evidence, we affirm the ruling that T.R. is seriously mentally impaired.

I. Background Facts.

On September 22, 2010, an application was filed alleging T.R. was seriously mentally impaired. After a September 27, 2010 hearing, a magistrate judge did find by clear and convincing evidence that T.R. was seriously mentally impaired and ordered inpatient treatment. The magistrate made a finding as to dangerousness, writing: "Very aggressive. Threatened police in this instance. Also has needed restraints in past due to assaultive behavior. Not capable of caring for herself at this time. Very aggressive on the unit. Very delusional."

T.R. appealed to the district court. *See* Iowa Code § 229.21(3)(a). On October 28, 2010, a trial de novo was held. *See id.* § 229.21(3)(c). Dr.

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[1] Section 229.1(17) provides:

> "Seriously mentally impaired" or "serious mental impairment" describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:
>
> a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
>
> b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.
>
> c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

Romancito Ocampo testified T.R. was admitted to Broadlawns Medical Center on September 27 after being transported there by police from a residential facility (City View). T.R had been court-ordered to City View and within about fifteen minutes of her arrival, T.R. "became very agitated, as reported, very threatening. She threatened to kill the police. And after that, as reported, she swallowed a cell phone and it stuck in her throat." Dr. Ocampo testified that T.R. had been examined upon admission to the hospital at which time she believed she was pregnant with ten babies and was refusing to take her medications, stating it was against her religious beliefs. Dr. Ocampo further testified T.R. had a long history of mental illness, including several previous hospitalizations over the course of many years. Dr. Ocampo stated T.R. was suffering from chronic, severe schizophrenia. He testified she lacked judgmental capacity because "she's not aware of her illness. She has a remarkably impaired insight and judgment, and she poses a danger to herself and others." The doctor further stated T.R. was refusing medications[2] that had previously provided improvements in her paranoid symptoms. When asked about why the doctor believed T.R. would injure herself or others, Dr. Ocampo reiterated that just prior to admission she had threatened to kill police officers and had swallowed a cell phone, which stuck in her throat. He stated that while in the hospital, T.R. continued to exhibit paranoia and had

> exhibited multiple times of very intrusive behavior. For example, if the nurses would give drugs to the patients, she would just abruptly stop the nurse and yell at the patient, screaming, Don't take the medications. These are poison. That is psychosis and that

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[2] T.R. was under a treatment plan "for her to take PO [per oral] medication and the once-a-month injectables." Since her September hospitalization, T.R. has refused her medications, although she was administered one dose of the once-a-month injectable, Invega Sustenna, which the doctor stated was "for psychosis."

> intrusiveness is very, very impaired judgment, and that is very dangerous to the patient and others.

T.R. had not physically assaulted anyone in the hospital since the September 27 admission. But Dr. Ocampo stated she was "very irritable, very hostile" and due to her untreated psychosis, her behavior was unpredictable. Dr. Ocampo testified that based upon his review of her medical records and having treated her for more than a month, his recommendation

> is a long-term structured facility. . . . And I'm thinking about Cherokee is ideal for her because they know her very well. She was admitted in that State hospital ten times, and recently she was there two months. So they have very good records and they know her very well.

When questioned about whether there was a less restrictive placement, Dr. Ocampo testified, "That is the less restrictive, reviewing her case and knowing her for more than a month."

T.R. testified that she had been diagnosed as paranoid schizophrenic thirty years ago. However, she stated she was not mentally ill now and she did not want to be locked up anymore.

The district court found by clear and convincing evidence that T.R. was mentally ill; treatable; lacking sufficient judgment to make responsible decisions with respect to her hospitalization or treatment "as evidenced by her refusing medication within days of leaving Cherokee MHI and her refusing treatment" since admission to Broadlawns; and likely to injure herself or others

> as indicated by her threats to kill the police after they were called to the facility where she was residing because of her disruptive behavior and her attempt at that time to swallow a cell phone. Her delusional behavior including believing she is pregnant with ten babies and her advocating to other mental health patients that they refuse medicine.

The court further found that T.R. was unable to satisfy her needs of nourishment and essential medical care, and is likely to inflict serious emotional injury on others who lack reasonable opportunity to avoid contact with her. The district court ordered inpatient mental health treatment.

T.R. now appeals, arguing the court erred in its findings of her judgmental capacity and dangerousness. She also contends the court erred in finding inpatient mental health treatment at a long-term facility was the least restrictive placement for her.

II. Standard of Review.

An involuntary civil commitment proceeding is a special action that is triable to the court as an action at law. *In re Oseing*, 296 N.W.2d 797, 800–01 (Iowa 1980); *In re B.T.G.*, 784 N.W.2d 792, 796–98 (Iowa Ct. App. 2010). We review challenges to the sufficiency of the evidence for errors at law. *See* Iowa R. App. P. 6.907. The district court's findings of fact are binding upon this court if 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. Discussion.

A person who has a "serious mental impairment" may be committed involuntarily. In determining whether a person has a serious mental impairment, the person must be found to have:

> (1) a mental illness, consequently (2) to lack "sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment" and (3) to be likely, if allowed to remain at liberty, to inflict physical injury on "the person's self or others," to

> inflict serious emotional injury on a designated class of persons, or be unable to satisfy the person's physical needs.

Id. at 342–43 (citations omitted); *see also* Iowa Code § 229.1(17).

1. Mental illness. While T.R. stated otherwise, the record is replete with evidence that T.R. is suffering from mental illness, i.e., chronic, severe schizophrenia.

2. Lack of judgmental capacity regarding treatment. The second element, lack of judgmental capacity regarding treatment, "requires the State to prove that the person is unable because of the alleged mental illness, to make a rational decision about treatment, whether the decision is to seek treatment or not." *In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986).

T.R. stated she did not need medication any longer as she was no longer mentally ill. She stated she was misdiagnosed at Cherokee:

> And I was given—a physician assistant talked to me in Cherokee Mental Health Institute, and that physician agreed with me that I was infected with an infection. Okay. And this infection was in my body, and it made me mentally ill. And she prescribed drugs for me to take for my infections, and I took the drugs. And this—these drugs I was on for two weeks, and I felt better after that. And it takes a long time to get infection gone out of your body. So within the last three years I progressively got well, and therefore I'm not mentally ill anymore.

Because she believes she is not mentally ill, and because she states it is against her religion,[3] T.R. refuses to take medication that would help control her psychosis and paranoia.

[3] Dr. Ocampo stated her religion is just that—"[T.R.'s] religion"—uniquely her own. It is not practiced by anyone else other than T.R. T.R. explained "in my religion I do feel that a pure temple is what I seek."

Dr. Ocampo testified that T.R. refused medication within days of leaving Cherokee Mental Health Institute where she had been for two months and refused treatment since admission to Broadlawns. Since leaving Cherokee and refusing medications, she displayed severe paranoia and psychosis, attempted to swallow a cell phone and threatened police, and screamed paranoid warnings at fellow residents at Broadlawns. Based on the evidence in the record, we conclude the second element of a serious mental impairment, lack of judgmental capacity regarding treatment, was satisfied. *Cf. In re B.A.A. v. Chief Med. Officer, Univ. of Iowa Hosps.*, 421 N.W.2d 118 (Iowa 1988).

3. Dangerousness.[4] The third element, dangerousness, involves "likely physical injury to oneself or others." *J.P.*, 574 N.W.2d at 343; see also *In re Foster*, 426 N.W.2d 374, 379 (Iowa 1988) (noting that "[i]n the context of a civil commitment proceeding, harm to oneself is defined in terms of neglect or inability to care for oneself"). The threat the patient poses to himself or others must "be evidenced by a recent overt act, attempt or threat." *Mohr*, 383 N.W.2d at 543 (citation omitted). Overt acts includes behavior such as a threat to take one's life; a threat to kill; and verbal abuse coupled with aggressive physical action. *See Foster*, 426 N.W.2d at 379 (citing with approval *In re M.C.*, 716 P.2d 203, 207 (Mont. 1986), and cases cited therein).

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[4] In *B.A.A.*, 421 N.W.2d at 123–24, the court noted:

> the state can no longer commit an individual solely because treatment is in the person's best interest under the parens patriae doctrine. There must also be a likelihood that the individual constitutes a danger to himself or others . . . . In addition, this danger must be evidenced by a "'recent overt act, attempt, or threat.'"

(Citations omitted.)

T.R. threatened to kill police officers and attempted to swallow a cell phone, which stuck in her throat. These are clear examples of recent overt acts of dangerousness—at the very least to herself—supporting the district court's November 2, 2010 commitment. *See* Iowa Code § 229.1(17)(a) ("Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.").

In addition, there is clear evidence that supports the alternative finding under section 229.1(17)(c) ("Is unable to satisfy [her] needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death" "unable to satisfy the person's physical needs.") Dr. Ocampo testified that T.R., "without medications with this paranoid delusion she couldn't stand on her own. She doesn't have group support. She doesn't have a place to go, and she's not aware of all of this."

The State's burden to prove the allegations by clear and convincing evidence requires "that there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence.'" *J.P.*, 574 N.W.2d at 342 (quoting *In re L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App.1985)). We have no serious or substantial doubt about the correctness of the district court's conclusion that T.R. is seriously mentally impaired. The fact that there is conflicting evidence in the record does not preclude, as a matter of law, a finding of clear and convincing evidence. *See Green v. Harrison*, 185 N.W.2d 722, 723 (Iowa 1971). Because we find clear and convincing evidence of mental illness,

lack of judgmental capacity, and dangerousness, we affirm the finding that T.R. is seriously mentally impaired. *See* Iowa Code § 229.1(17)(a),(c).[5]

4. Least restrictive placement. "It is not only the customary procedure, but the constitutionally and statutorily mandated requirement, to treat even seriously mentally impaired persons in the least restrictive environment medically possible." *Leonard v. State*, 491 N.W.2d 508, 512 (Iowa 1992). T.R. argues the district court erred in finding long-term inpatient mental health treatment was the least restrictive placement available. She argues Dr. Ocampo never considered a less restrictive placement. The record indicates otherwise.

> [T.R.'s counsel]. Q. So is it my understanding that other than Cherokee you haven't looked at anything less restrictive? A. That is the less restrictive, reviewing her case and knowing her for a month.
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> Q. And you haven't looked into a residential facility where there's just kind of, like an assisted-living type facility where they also do outpatient mental treatment, have you? A. Yes. That is really what happened with this patient. She was court-ordered. After two months of stay at Cherokee state hospital, she was court-ordered to stay at City View. That is a residential place. They have group. They have outpatient. But she was there only for 15 minutes. She became delusional and that led her to this admission.

Dr. Ocampo stated T.R. had a "treatment-resistant schizophrenia," for which after "[r]eviewing all her medical records and handling her for more than a month, my recommendation is a long-term structured facility."

After hearing the testimony and considering the evidence before it, the district court ordered T.R. "placed in patient Broadlawns Medical Center, until such time as a bed becomes available at Cherokee MHI or other suitable facility

[5] Section 229.1(17) defines serious mental impairment as a person with a mental illness and "who because of that illness meets *any* of the following criteria." Finding clear evidence of any one definition of dangerousness is sufficient. *See* Iowa Code § 229.1(17)(a)–(c).

for inpatient mental health treatment." We find no error in the court's decision as to treatment placement.

AFFIRMED.