

IN THE COURT OF APPEALS OF IOWA

No. 1-443 / 10-2110
Filed June 15, 2011

IN THE INTEREST OF D.R.,
Alleged to be Seriously Mentally Impaired,

D.R.,
Respondent-Appellant.

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,
District Associate Judge.

Respondent appeals the juvenile court's order finding he was seriously
mentally impaired and should be placed in an inpatient treatment facility.

AFFIRMED.

David G. Wierman of Pillers & Richmond, Clinton, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant
Attorney General, Mike Wolf, County Attorney, and Ross Barlow, Assistant
County Attorney, for appellee State.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

On November 5, 2010, Kristy, the mother of D.R., who was fourteen years old, filed an application for involuntary hospitalization of D.R. under Iowa Code chapter 229 (2009).¹ Both Kristy and Dustin DeWeerd, a social worker who was working with D.R., filed supporting affidavits. D.R. was examined by Dr. Prabhakar Pisipati at Mercy Medical Center in Clinton. He was diagnosed with attention deficit hyperactivity disorder (ADHD), intermittent explosive disorder, and oppositional defiant disorder. Dr. Pisipati recommended D.R. be sent to a mental health institute (MHI) or another equivalent facility, like Bremwood Center.

D.R. requested a second opinion. He was examined by Dr. Sunita Kantamneni at Wheaton Franciscan Healthcare in Waterloo. Dr. Kantamneni diagnosed D.R. with intermittent explosive disorder, ADHD, and oppositional defiant disorder. The recommendation was made for inpatient treatment at a facility, such as Bremwood or an MHI.

At the hospitalization hearing, counsel for D.R. objected to the physicians' reports because the physicians were not present to be questioned. D.R.'s counsel stated he was making this request as to both doctors. The juvenile court pointed out that D.R. had requested the second opinion, and counsel admitted he had not made arrangements for the second doctor to be available. Counsel then stated, "Your Honor, I would throw out with respect to the opinion of Wheaton

¹ The procedural requirements of chapter 229 are applicable to minors involved in hospitalization proceedings. Iowa Code § 229.6A(2). The juvenile court has exclusive jurisdiction over these proceedings. *Id.* at § 229.6A(1).

Franciscan.” The court accepted the findings in the report by Dr. Kantamneni, from Wheaton Franciscan Healthcare, and stated it would not consider the report by Dr. Pisipati due to the objections by D.R.’s counsel. The court determined D.R. was seriously mentally impaired and should be placed at a Psychiatric Mental Institute for Children (PMIC). D.R. appeals the court’s decision.

II. Standard of Review.

An involuntary 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). We review at law challenges to the sufficiency of the evidence. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). If the court’s findings of fact are supported by substantial evidence, they are binding on us on appeal. *In re B.T.G.*, 784 N.W.2d 792, 796 (Iowa Ct. App. 2010). “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. Sufficiency of the Evidence.

Iowa Code section 229.12(3) provides:

The licensed physician or qualified mental health professional who examined the respondent shall be present at the hearing unless the court for good cause finds that the licensed physician’s or qualified mental health professional’s presence or testimony is not necessary. The applicant, respondent, and the respondent’s attorney may waive the presence or the telephonic appearance of the licensed physician or qualified mental health professional who examined the respondent and agree to submit as evidence the written report of the licensed physician or qualified mental health professional. . . . “*Good cause*” for finding that the testimony of the licensed physician or qualified mental health professional who examined the respondent is not necessary may include, but is not limited to, such a waiver.

D.R. asserts he never made an affirmative waiver of the presence of Dr. Kantamneni, and therefore, the requirements of section 229.12(3) were not satisfied. He claims the court should not have relied upon Dr. Kantamneni's report, and consequently, there is insufficient evidence he was suffering from a mental illness. See Iowa Code § 229.1(17) (providing that one of the factors in determining whether a person is seriously mentally impaired is whether the person has a mental illness).

A physician is required to be present to permit a respondent to cross-examine the physician.² *In re T.S.*, 705 N.W.2d 498, 504 (Iowa 2005) (citing section 125.82(1), relating to the involuntary commitment of chronic substance abusers). Under section 229.12(1), a respondent "shall be afforded an opportunity to testify and to present and cross-examine witnesses." A court's failure to require a physician's presence, without a showing of good cause, violates a respondent's statutory right to cross-examination. *Id.*

The statutory right to have a physician present for cross-examination, either in person or by telephone, at a mental health hospitalization proceeding may be waived. Iowa Code § 229.12(3). In fact, the statute specifically provides that good cause for finding the presence of the physician is not necessary may be due to a waiver of that right. *Id.*

It is clear from the record the parties and the court accepted the statement by D.R.'s counsel, "Your Honor, then I would throw out with respect to the opinion of Wheaton Franciscan," as a statement that D.R. was withdrawing the

² A court may permit a physician or qualified mental health professional to testify by telephone. Iowa Code § 229.12(3).

objection to the report by Dr. Kantamneni of Wheaton Franciscan Healthcare and withdrawing the request to have Dr. Kantamneni present at the hearing. Immediately after counsel's statement, the court stated, "That's fine. The Court will accept the findings of Wheaton Franciscan." Later, the court stated, "I'm not going on Dr. Pisipati's report because there was an objection to its admission, . . . we're using the Wheaton Franciscan Healthcare report." Counsel made no further objections to the court's consideration of Dr. Kantamneni's written report, which belies a conclusion that there had been a misunderstanding as to the intent of counsel's statement.

We conclude D.R.'s counsel waived the previous request to have Dr. Kantamneni present at the hearing for cross-examination. Because D.R. withdrew the objection to Dr. Kantamneni's report, the court properly considered that report in concluding D.R. was seriously mentally impaired. Dr. Kantamneni diagnosed D.R. with intermittent explosive disorder, ADHD, and oppositional defiant disorder. We conclude there is substantial evidence in the record to support the court's finding that D.R. had a mental illness.

IV. Inpatient Treatment.

D.R. claims the court erred by ordering inpatient treatment as the least restrictive alternative. He states that persuasive evidence was presented at the hearing that would support an order for outpatient treatment. He asserts inpatient treatment is unnecessary. See *Leonard v. State*, 491 N.W.2d 508, 512 (Iowa 1988) ("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.").

D.R.'s mother testified at the hearing she believed D.R. could have outpatient treatment, and she and others in the household would be safe. She admitted D.R. had thrown a knife towards her and pushed his sister across the room. DeWeerdts testified D.R. had threatened another student at school. He stated he was not convinced D.R. and his sister could get along, and he was worried about her safety in the home. Mary O'Donnell, a nurse who was involved with D.R.'s treatment, testified Kristy had previously agreed D.R. needed the level of care found at a PMIC. She stated that Dr. Pisipati told her that if it was known Kristy wanted outpatient treatment, they would have tried to work with her.

The court stated that since it was not considering Dr. Pisipati's report, due to the objection by D.R.'s counsel, it was also not going to consider O'Donnell's testimony about what Dr. Pisipati might have done differently. Dr. Kantamneni gave the recommendation D.R. needed inpatient treatment, stating, "He is in need of a highly structured behaviorally therapeutic 24/7 environment such as Bremwood or MHI." We conclude there is substantial evidence in the record to support the court's order finding D.R. should be placed in an inpatient treatment facility.

We affirm the decision of the juvenile court.

AFFIRMED.