IN THE COURT OF APPEALS OF IOWA

No. 2-055 / 11-0324
Filed February 15, 2012

IN THE MATTER OF D.F.,
Alleged to be Seriously
Mentally Impaired

D.F.,
Respondent-Appellant.

Appeal from the Iowa District Court for Fayette County, Richard D. Stochl, Judge.

D.F. appeals from the district court order affirming the decision of a magistrate finding her to be seriously mentally impaired and in need of a residential level of care. **AFFIRMED.**

Brannon Burroughs, Sumner, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, W. Wayne Saur, County Attorney, and J.D. Villont, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

D.F. appeals from the district court order affirming the decision of a magistrate finding her to be seriously mentally impaired and in need of a residential level of care. She contends the State presented insufficient evidence to support her continued involuntary commitment. Because clear and convincing evidence supports the magistrate's finding D.F. suffers from a mental illness that impairs her judgment and poses a risk to herself or others if untreated, we affirm the order continuing her commitment in a residential level of care.

I. Background Facts and Proceedings.

D.F. has been involuntary committed for more than a decade, with the first order in the record dated July 7, 1999.[1] On August 10, 2010, D.F. asked to discontinue her commitment at Tripoli Nursing Home, asserting she "is not a danger to myself or other and has never been." Following a hearing, the magistrate entered an order on November 17, 2010, providing for D.F.'s placement "at an appropriate residential level of care facility." D.F. appealed to the district court on November 19, 2010.

The district court held a hearing on December 1, 2010. Psychiatrist Darko Zdilar testified regarding his diagnosis and treatment of D.F., which was based on six or seven meetings with her; information learned from contacting D.F.'s daughter, family members, and staff at the facility where she had been residing;

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[1] That order refers to "an Order having previously been entered for continued hospitalization of the Respondent," but because the matter was transferred from another county, no earlier orders appear in the court file. The record refers to D.W. having been hospitalized at Prairie View for either fourteen, sixteen, or seventeen years before transferring to Tripoli Nursing Home in February 2009. D.F.'s psychiatrist testified there were records she had been hospitalized at least a couple of times in 1995.

and review of twelve or more years of clinical records. Dr. Zdilar diagnosed D.F. as having schizoaffective disorder, depressed; attention deficit hyperactivity disorder; polysubstance dependence; borderline personality disorder; and borderline intelligence. The doctor testified D.F.'s "cognitive functioning really has been pretty limited which puts her at ongoing constant risk. She—she cannot live without being supervised, at least on a daily basis . . . ." He added, "Her judgment is very poor. She is very impulsive and she has—she has limited insight about the problems, medical conditions, medications she takes, consequences of her actions." Dr. Zdilar opined D.F. would best be served by a residential care facility.

D.F. also testified at the hearing. She stated her desire to live independently. It was her plan to live in an apartment in Sumner Senior Housing. She testified she was capable of cooking for herself and would also have meals delivered to her home two or three times per week, and would have a nurse check on her a couple times per week.

On January 31, 2011, the district court entered its order affirming the magistrate. The court found it was "clear" D.F. "lacks sufficient mental awareness to function safely on her own." The court determined the magistrate's finding that D.F. needs a residential level of care was supported by the evidence.

II. Scope and Standard of Review.

Involuntary commitment proceedings are special actions triable to the court as an ordinary action at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). Therefore, we review challenges to the sufficiency of the evidence for errors at

law. *Id.* Clear and convincing evidence must support involuntary commitment. *Id.* Such evidence requires more than a preponderance of the evidence but less than evidence beyond a reasonable doubt. *Id.* In other words, there must be no serious or substantial doubt drawn from the evidence about the correctness of the involuntary commitment decision. *Id.*

The district court's fact findings are binding upon us if supported by substantial evidence. *Id.* Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence. *Id.* The trial court's findings will not be set aside unless they are not supported by clear and convincing evidence as a matter of law. *Id.*

III. Analysis.

The continuation of an involuntary commitment requires proof of serious mental impairment. *In re B.T.G.*, 784 N.W.2d 793, 796 (Iowa Ct. App. 2010). Serious mental impairment, as defined in the Iowa Code,

> 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.

Iowa Code § 229.1(17) (2009). In other words, to find D.F. has a serious mental impairment, the record must show clear and convincing evidence that: (1) she

suffers from mental illness; (2) she lacks the ability to make responsible decisions regarding her hospitalization and treatment; and (3) if allowed to remain at liberty, she would be likely to inflict physical injury on herself or others, inflict serious emotional injury on others, or be unable to satisfy her physical needs. *B.T.G.*, 784 N.W.2d at 796-97.

D.F. first challenges the sufficiency of the evidence that she suffers from mental illness. She argues Dr. Zdilar conceded he was unable to formulate a "final diagnosis" that he "would firmly stand on." A review of Dr. Zdilar's testimony shows that some of his diagnoses—such as schizoaffective disorder, depressed—were based upon the review of D.F.'s medical records rather than from history relayed by D.F., who Dr. Zdilar described in his report as "generally poorly cooperative when it comes to assessment of her psychiatric problems." But his other diagnoses—such as borderline personality disorder, anxiety, and depression—were based "more from [his] personal engagement with the patient in conjunction with the records" and are therefore "more accurate." Although the true extent of D.F.'s disorders is unclear, the record offers clear and convincing evidence she suffers from mental illness.

D.F. next challenges the evidence that her judgment is impaired with regard to her ability to make decisions about her hospitalization or treatment. She argues she has willingly taken medication and engaged in treatment, noting Dr. Zdilar's testimony that to the best of his knowledge she has complied with her regime in the past year. But she ignores Dr. Zdilar's testimony regarding her inability to stay compliant with treatment in the past. He testified that while living

on her own, D.F. used "extreme or excessive amount of medications," which was one of the reasons she had been committed in the first place. *See id.* at 798 (considering a history of noncompliance and resistance to medications in determining whether compliance will occur in the future). Dr. Zdilar also testified her mental health impairs her judgment. He testified that she was "very impulsive" and had "limited insight" into her medical conditions, the medications she takes, or the consequences of her actions. He described her problems as "ongoing" and "chronic." Based on this record, we find clear and convincing evidence D.F. is unable to make rational decisions about her treatment because of her mental illness.

Finally, D.F. disputes that she would pose a danger to herself or to others if allowed to remain at liberty without treatment. The threat a patient poses must "be evidenced by a recent over act, attempt or threat." *Id.* D.F. argues the State did not present any recent over acts to show dangerousness. The State reasons that few recent overt acts signaling danger have occurred over the past few years because D.F. has lived in a supervised treatment setting. But Dr. Zdilar testified she still needs daily supervision. On one recent occasion when she left the nursing home for a day visit, D.F. engaged in behavior that posed a risk to herself and others: although she does not have a driver's license and had not driven a vehicle in many years, D.F. drove her ex-husband's car back to the nursing home and struck another vehicle in the process. The record also contained evidence that before she was committed, D.F. was abusive to others.

Because clear and convincing evidence supports the finding D.F. is seriously mentally impaired, we affirm the order continuing her commitment at a residential level of care.

AFFIRMED.

Danilson, P.J., concurs; Mullins, J., dissents.

MULLINS, J. (dissents)

I respectfully dissent. While I agree it is likely the respondent could benefit from residential care, I do not find sufficient evidence to support a finding under subparagraphs (a), (b) or (c) of Iowa Code section 229.1(17). The conclusion of the magistrate that she "is still a danger" is not supported by substantial evidence. The district court's only findings are: "It was clear to the court that the ward lacks sufficient mental awareness to function safely on her own. The magistrate's findings that she needs a residential level of care is supported by the evidence." Assuming there is "substantial evidence" to support the findings made, those findings do not satisfy the statutory elements for court ordered denial of liberty under Iowa Code chapter 229. If we allow involuntary commitments based on those conclusions, then we would be required to allow commitments for a large number of elderly persons who suffer from a wide range of dementia or memory loss issues.

The appendix submitted with this appeal contains no periodic reports pursuant to Iowa Code section 229.15(1), and Iowa Court Rule 12.36—Form 19. The record contains a psychiatric evaluation, but that evaluation does not respond specifically to the issues and the proofs required under the code section and rule cited. Without that information, the magistrate, the district court, and now this court is in a position of trying to ferret out evidence to support the statutory elements required for continued hospitalization. I do not find such evidence. (I am also troubled that neither the magistrate nor the district court identified clear and convincing as the burden of proof.)

I would reverse and remand.