

**IN THE COURT OF APPEALS OF IOWA**

No. 2-224 / 11-0654  
Filed April 25, 2012

**IN THE MATTER OF D.M.T.,  
Alleged to Be Seriously  
Mentally Impaired,**

**D.M.T.,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Marion County, Monty W. Franklin,  
Judge.

D.M.T. appeals from a district court involuntary civil commitment order.

**AFFIRMED.**

Marc A. Elcock of Elcock Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant  
Attorney General, Ed Bull, County Attorney, and Melissa Clark, Assistant County  
Attorney, for appellee.

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

**MULLINS, J.**

D.M.T. appeals from her involuntary civil commitment alleging her trial counsel provided ineffective assistance by failing to inform her that she had the right to contest her commitment proceedings. We affirm.

**I. Background Facts and Proceedings.**

D.M.T. has a history of schizophrenia and mental illness. On March 18, 2011, her home health social worker filed an application, along with a supporting physician's affidavit, for involuntary hospitalization. See Iowa Code § 229.6 (2011). The application alleged that D.M.T. was hearing music and voices in her head, had expressed suicidal ideations and anger, and threatened to kill her neighbor, whom she blamed for the loud music. The application requested D.M.T. be taken into immediate custody.

The district court immediately reviewed the application and found probable cause to believe D.M.T. had a serious mental impairment and was likely to injure herself or others if allowed to remain at liberty. *Id.* § 229.11. The district court ordered D.M.T. be detained at Vision Quest in Oskaloosa until a hospitalization hearing. *Id.* The district court further appointed a physician to perform an examination of D.M.T., see *id.* §§ 229.8(3)(b), 229.10, and appointed an attorney to represent her. *Id.* §§ 229.8(1), 229.9. Upon being taken into custody, D.M.T. was served with notice. *Id.* § 229.7. The notice contained a list of rights including the right to an attorney, the right to an examination by a physician of her choosing, the right to a hearing, and the right to be present at the hearing.

The hospitalization hearing was held on March 22, 2011. *Id.* § 229.12. At the hearing, the State submitted a chief medical officer's report dated March 19, 2011 from a psychiatrist at Vision Quest. *Id.* § 229.14. The report stated that D.M.T. suffered from schizophrenia, undifferentiated, chronic with acute exacerbation, depressive disorder NOS, and dementia, which was affecting her decision making and causing cognitive impairment. The report concluded D.M.T. was seriously mentally impaired and in need of full-time custody, care, and treatment in a hospital, and would likely benefit from further treatment. *Id.* § 229.14(1)(b). The report was received without objection, and the State rested. When asked his client's position, D.M.T.'s counsel responded:

[D.M.T.] understands that it is probably in her best interest to spend some time at Vision Quest, hopefully a short time in which she can get back to her residence in Pella. She has lived in a care facility arrangement in Pella for [inaudible] years. Hopefully, things can get straightened out. Do you agree with that, [D.M.T.]?

To which, D.M.T. responded, "Yeah." The district court then found by clear and convincing evidence that D.M.T. has a serious mental impairment, and ordered her placement in inpatient hospital treatment at Vision Quest. *Id.* § 229.13(1)(a).

On April 1, 2011, D.M.T.'s mental health advocate filed a memorandum requesting an attorney be appointed to properly safeguard D.M.T.'s rights and interests. *Id.* § 229.19(1)(d)(2). An attorney was appointed by the district court that day.

On April 4, 2011, the psychiatrist at Vision Quest filed a report stating that D.M.T. remained seriously mentally impaired, but was unlikely to benefit from further treatment in a hospital setting. *Id.* 229.15(1). The psychiatrist

recommended D.M.T be transferred to a nursing home for continued treatment. *Id.* § 229.14(1)(d). The district court promptly ordered D.M.T. be transferred to a nursing home.

D.M.T. now appeals the order determining she suffers from a serious mental impairment. D.M.T. contends her counsel provided ineffective assistance by failing to inform her that she had an option to contest her involuntary commitment proceeding.

## **II. Analysis.**

Our supreme court has not definitely held that persons facing involuntary civil commitment under chapter 229 have a right to effective assistance of counsel. On two previous occasions, when addressing commitments of sexually violent predators under chapter 229A, the supreme court has recognized a similar issue, but declined to answer it. See *In re Detention of Crane*, 704 N.W.2d 437, 438-39 n.3 (Iowa 2005); *In re Detention of Willis*, 691 N.W.2d 726, 730 (Iowa 2005). In both cases, the court noted that chapter 229A proceedings are civil and not criminal in nature, and therefore the Sixth Amendment to the federal constitution is not directly implicated. *Crane* 704 N.W.2d at 438 n.3; *Willis*, 691 N.W.2d at 730. Rather, a person's right to counsel in chapter 229A proceedings is conferred by statute. See Iowa Code § 229A.6(1). Although the court has stated that granting the right to effective assistance of counsel "appears to be consistent with precedent," see *Crane*, 704 N.W.2d at 438 n.3, the court has not specifically held such to be so. Instead, the court assumed the right exists, and then dismissed the underlying claims for lacking merit. *Id.* at

439; *Willis*, 691 N.W.2d at 730. Like chapter 299A proceedings, proceedings under chapter 229 are civil and the right to counsel is conferred by statute. See Iowa Code § 229.8(1). Therefore, like proceedings under chapter 229A, we too will assume the right to effective assistance of counsel exists under chapter 229 for the purposes of this appeal.

We review ineffective assistance of counsel claims de novo. *State v. Lyman*, 776 N.W.2d 865, 877 (Iowa 2010). To establish a claim of ineffective assistance of counsel, a claimant must prove: (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Id.* at 877-78. A claimant's failure to prove either element by a preponderance of the evidence is fatal to the claim. *State v. Polly*, 657 N.W.2d 462, 465 (Iowa 2003).

We find that D.M.T. has not shown prejudice in this case. D.M.T. does not point to any evidence in the record or raise any argument to show that she is not seriously mentally impaired. To be seriously mentally impaired, a person must have a mental illness, which causes the person to lack sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and makes the person likely to physically injure the person's self or others if allowed to remain at liberty without treatment. Iowa Code § 229.1(17)(a); *In re J.P.*, 574 N.W.2d 340, 342-43 (Iowa 1998). The psychiatrist's report states that D.M.T. suffers from schizophrenia, depression, and dementia affecting her decision-making and cognitive abilities such that she has no insight as to why she is in the hospital and cannot make responsible decisions with respect to her hospitalization and treatment. The report further

states that D.M.T. is a danger to herself and others because she has expressed suicidal ideations and would like to kill her neighbor, whom she believes is playing loud music that no one else can hear. Because the statutory definition has been shown by clear and convincing evidence, we find D.M.T. has failed to prove “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Lyman*, 776 N.W.2d at 878 (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984)); see also *State v. Graves*, 668 N.W.2d 860, 882 (Iowa 2003). Accordingly, we affirm.

**AFFIRMED.**