

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1124 / 13-1129  
Filed January 9, 2014

**IN THE MATTER OF J.E.M.,  
Alleged to be Seriously Mentally Impaired,**

**J.E.M.,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Johnson County, Mary E. Chicchelly, Judge.

The respondent appeals from the district court order affirming a finding he is seriously mentally impaired. **AFFIRMED.**

Kristin L. Denniger of Denniger Law Firm, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, Janey Lyness, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee State.

Considered by Mullins, P.J., McDonald, J., and Eisenhauer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**EISENHAUER, S.J.**

J.E.M. appeals from the district court order affirming a finding he is seriously mentally impaired and ordering him to undergo hospitalization and treatment. He contends the evidence fails to prove he lacks sufficient judgment to make responsible decisions with respect to his treatment and lacks sufficient judgment to make responsible decisions regarding his treatment due to his medical condition. We review his claims for correction of errors at law. *See In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998).

In May 2013 a staff member of the Iowa Medical and Classification Center of the Iowa Department of Corrections filed an application for order of involuntary hospitalization of J.E.M, who is currently serving a five-year prison sentence. A judicial hospitalization referee found J.E.M. to be seriously mentally impaired and ordered his hospitalization. On appeal, the district court affirmed.

A person who is “seriously mentally impaired” may be the subject of an involuntary civil commitment. Iowa Code § 229.6 (2013).

“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.

*Id.* § 229.1(17).

The allegations made in an application for involuntary commitment must be proved by clear and convincing evidence. *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013). This burden is met where there is no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence. *Id.* The district court's fact findings are binding on us if supported by substantial evidence. *J.P.*, 574 N.W.2d at 342.

The district court found clear and convincing evidence J.E.M. is seriously mentally impaired under the alternative found in section 229.1(17)(a) ("Is likely to physically injure the person's self or others . . ."). J.E.M. concedes he is a person with a mental illness but argues there is insufficient evidence he lacks the necessary judgment to make responsible decisions with respect to his treatment or is likely to physically injure himself or others if allowed to remain at liberty without treatment. We disagree.

The district court found J.E.M. would not comply with treatment if he was not hospitalized. It cited his history of noncompliance with medication, most recently in May 2013, and testimony from J.E.M.'s treating physician that without a civil commitment order, J.E.M. would not take the medications he needs. J.E.M. told his doctor he would only take the medications to "beat the commitment."

The court also found J.E.M. has been prescribed necessary medication in the necessary amount to treat his diagnoses of bipolar disorder and antisocial disorder. When J.E.M. refused to take his medication for a period in November 2012, he began to have delusions, engaged in assaultive behavior, and attempted to attack a prison guard. He only resumed taking his medications

under threat of civil commitment. While medication does not eliminate J.E.M.'s disruptive behaviors, it lessens their severity. The only evidence to contradict the court's finding is J.E.M.'s testimony. Under similar facts, this court found the second element of the test for serious mental impairment was satisfied. *In re B.T.G.*, 784 N.W.2d 792, 797-98 (Iowa Ct. App. 2013) (holding respondent lacked sufficient judgment to make responsible decisions regarding his treatment where history showed noncompliance with medications that curbed but did not eliminate violent and threatening behaviors that put the respondent and others at risk of harm, in spite of respondent's statements that he would comply with medications). The evidence supports the trial court's conclusion he lacks sufficient judgment to make responsible decisions with respect to his hospitalization or treatment.

The evidence also supports a finding J.E.M. is likely to physically injure himself or others without treatment. As stated, the evidence shows J.E.M. is likely to cease taking his medications if not hospitalized. When not taking his medications, J.E.M. had altercations with other inmates and threatened to kill staff members. He also engages in behavior so disruptive he risks assault from other inmates, and in fact, his behaviors led another inmate to stab him with a pen.

J.E.M. argues there is insufficient evidence of recent assaultive behavior to support a finding he is likely to physically injure himself or others if allowed to remain at liberty without treatment. This third element requires the threat the patient poses be evidenced by a "recent overt act, attempt, or threat." *In re B.B.*, 826 N.W.2d 425, 433 (Iowa 2013). Between his hospitalization on May 24, 2013,

and the June 2013 hearing in district court, J.E.M. kicked doors, threatened to kill a nurse and other staff, encouraged others to be disruptive, threw food trays, and urinated on the floor. His doctor testified J.E.M. had a fight with another offender just over a week before the hearing. The requirement of a recent overt act, attempt, or threat has been satisfied.

Because the evidence supports the trial court's conclusion J.E.M. has a serious mental impairment, we affirm.

**AFFIRMED.**