

IN THE COURT OF APPEALS OF IOWA

No. 3-1138 / 12-1983
Filed January 9, 2014

**IN THE MATTER OF S.M.,
ALLEGED TO BE SERIOUSLY
MENTALLY IMPAIRED,**

S.M.,
Respondent-Appellant.

Appeal from the Iowa District Court for Page County, Timothy O'Grady,
Judge.

S.M. appeals the district court's decision denying his request for a
placement hearing and the appointment of a commission of inquiry. **REVERSED
AND REMANDED.**

Marti D. Nerenstone, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant
Attorney General, and Jeremy Petersen, County Attorney, for appellee State.

Considered by Doyle, P.J., Tabor, J., and Eisenhauer, S.J.*

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

EISENHAUER, S.J.

S.M. appeals from a district court order denying his request for a placement hearing under Iowa Code section 229.14A (2011) and failing to consider his request for the appointment of a commission of inquiry under section 229.31. We determine S.M.'s request for a placement hearing could be considered a petition for writ of habeas corpus under section 229.37. We reverse and remand.

I. Background Facts & Proceedings.

S.M. was convicted of first-degree murder and sentenced to life in prison without parole. He has been diagnosed with schizophrenia, paranoid type. S.M. objects to taking medication for his condition. In 1999 S.M. was determined to be seriously mentally impaired, and thereafter he has received involuntary treatment.

On September 7, 2012, a periodic report was filed by a psychiatrist stating S.M.'s condition was unchanged.¹ The district court entered an order continuing S.M.'s "alternate placement" at the Clarinda correctional facility. The order advised S.M. of his right to request a placement hearing. S.M. then requested a placement hearing under Iowa Code section 229.14A (2011) and the appointment of a commission of inquiry under section 229.31. S.M. claimed he was not seriously mentally impaired and was being unjustly deprived of his liberty. S.M. stated he should have the right to refuse to take medication. On October 1, 2012, the district court entered an order stating, "Because

¹ Periodic reports about S.M.'s condition have been submitted to the court every six months after he was determined to be seriously mentally impaired.

Respondent is serving a life sentence in the custody of the Department of Corrections, he is not entitled to a placement hearing.”

S.M. filed a document asking the court to address his request regarding a commission of inquiry. He stated he had a constitutional right to challenge the civil commitment and questioned whether he was being denied his right to access to the court and equal protection. The court issued an order on October 15, 2012, stating S.M. had thirty days to appeal the challenged decision. S.M. appealed.²

II. Standard of Review.

In general, we review involuntary commitment proceedings for the correction of errors at law. See *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013). On constitutional issues our review is de novo. *Lewis v. Jaeger*, 818 N.W.2d 165, 175 (Iowa 2012).

III. Merits.

On appeal, S.M. raises several constitutional issues that were not preserved for review.³ “Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.” *Taft v. Iowa Dist. Ct.*, 828 N.W.2d 309, 322 (Iowa 2013). The constitutional issues were not raised in S.M.’s request for a placement hearing

² On its own motion the Iowa Supreme Court granted a limited remand for the district court to appoint appellate counsel for S.M.

³ These issues are: (1) chapter 229 is unconstitutional because it does not provide a mechanism for a patient to file a request to be released; (2) both a commission of inquiry and a habeas corpus proceeding are constitutionally deficient because they do not provide adequate due process protections; (3) the denial of S.M.’s right to refuse treatment is a violation of his liberty interest and due process rights; (4) his religious rights have been violated by forced medical treatment; and (5) forcible medical treatment constitutes cruel and unusual punishment.

and the appointment of a commission of inquiry, or in his subsequent filing challenging the court's ruling. See *id.* at 322-23 (noting a party may not preserve error by making only a general reference to a constitutional provision in the district court). Furthermore, the district court did not rule upon any of the constitutional issues S.M. now raises on appeal.

S.M. did preserve error on his claim the district court should have considered his request for the appointment of a commission of inquiry under section 229.31. S.M.'s filing of September 20, 2012, specifically stated, "I'm making a Sworn Complaint now per Iowa Code § 229.31," and alleged he was not seriously mentally impaired and was being unjustly deprived of his liberty. On appeal he argues, "S.M. is entitled to avail himself of a commitment review and request release through a commission of inquiry procedure and/or a habeas corpus proceeding."

Section 229.31 provides:

A sworn complaint, alleging that a named person is not seriously mentally impaired and is unjustly deprived of liberty in any hospital in the state, may be filed by any person with the clerk of the district court of the county in which such named person is so confined, . . . and thereupon a judge of said court shall appoint a commission of not more than three persons to inquire into the truth of said allegations.

"Our current system also provides for the appointment of a commission to inquire into complaints filed by parties who allege they are not seriously mentally impaired and are unjustly deprived of their liberty." *In re Melodie L.*, 591 N.W.2d 4, 8 (Iowa 1999). A patient may challenge the commitment process through this procedure. *Id.* at 9.

Additionally, S.M.'s filing of September 20, 2012, stated he wanted a hearing not only on placement, but also on the issue of whether he was seriously mentally impaired. After the court denied his request for a placement hearing, he stated he had a constitutional right to challenge the commitment and the premise he was seriously mentally impaired. We conclude the issue of whether S.M. was entitled to a hearing to determine if he continued to be seriously mentally impaired has been preserved for our review.

S.M.'s request for a placement hearing could be treated as a petition for a writ of habeas corpus under section 229.37. See *In re B.T.G.*, 784 N.W.2d 792, 796 (Iowa Ct. App. 2010) (“[A]n application requesting to be released from impatient treatment should be treated as a petition for a writ of habeas corpus.”). Section 229.37 provides, “All persons confined as seriously mentally impaired shall be entitled to the benefit of the writ of habeas corpus, and the question of serious mental impairment shall be decided at the hearing.” After a hearing, a court must determine whether a person remains seriously mentally impaired. *B.A.A. v. Chief Med. Officer*, 421 N.W.2d 118, 126 (Iowa 1988).

We determine the ruling of the district court, “Because Respondent is serving a life sentence in the custody of the Department of Corrections, he is not entitled to a placement hearing,” should be reversed. We remand for the court to conduct a hearing to consider S.M.'s request for a commission of inquiry under section 229.31 and to consider whether his request for a placement hearing should be deemed a petition for writ of habeas corpus under section 229.37. The United States Supreme Court has stated, “A criminal conviction and sentence of imprisonment extinguish an individual's right to freedom from confinement for the

term of his sentence, but they do not authorize the State to classify him as mentally ill and to subject him to involuntary psychiatric treatment without affording him additional due process protections.” *Vitek v. Jones*, 445 U.S. 480, 493-94 (1980).

We reverse the decision of the district court and remand for further proceedings.

REVERSED AND REMANDED.