

**IN THE COURT OF APPEALS OF IOWA**

No. 3-422 / 13-0107

Filed June 26, 2013

**IN THE MATTER OF D.J.W.,  
ALLEGED TO BE SERIOUSLY  
MENTALLY IMPAIRED,**

**D.J.W.,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

D.W. appeals from a district court order continuing his mental health commitment. **AFFIRMED.**

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

Alan D. Gwilliam of Moore & Egerton, L.L.P., Iowa City, for appellant.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

**EISENHAUER, C.J.**

D.W. appeals from a district court order continuing his mental health commitment under Iowa Code chapter 229 (2011). He argues the evidence is insufficient to support the district court's ruling. We affirm.

**I. Background Facts and Proceedings.**

In 2011, D.W., an eighty-one-year-old United States Air Force veteran, was hospitalized three times for bipolar disorder and dementia/cognitive disorder. As a result of a mental health commitment, he resides on the supervised unit at the Veterans Administration CIC Living Center. D.W. is allowed to move freely within the center and on the outside grounds.

D.W. timely appealed the judicial hospitalization referee's order confirming his commitment. On December 18, 2012, the district court held a trial de novo. Dr. Perez-Conde is D.W.'s treating psychiatrist. Four days before trial she treated D.W. and noted:

[D.W. has had] serial hospitalizations related to bipolar I disorder, with psychosis and alcohol dependence since 1998 (or earlier) to present. Repeated acute psych hospitalizations have frequently been court-ordered related to [D.W.'s] severe lack of insight and associated markedly impaired judgment . . . .

At trial, Dr. Perez-Conde testified D.W. is aware of his surroundings and interacts appropriately on the unit. She opined D.W. is not capable of choosing the proper course of treatment or his proper living situation and he could clearly be a danger to himself if not kept in a supervised setting. She stated D.W. is not aggressive or suicidal and *if* D.W. would continue to take his medication *and* he was in a supervised setting with assistance, *then* he could "take pretty good care

of himself.” Additionally, D.W. does not deny his heart and urinary tract problems “like he denies having bipolar disorder.” Specifically:

[D.W.] has bipolar disorder . . . and he has absolutely no insight into that. Unfortunately, he equates mental illness with intelligence. He doesn’t realize that he can be brilliant and, nonetheless, have a severe mental illness that incapacitates him.

And, historically, what has happened is when he has been allowed to go on his own without any kind of supervision, he will discontinue his psychotropic medication and at that time he can decompensate quickly and then he presents a serious danger to himself . . . because he becomes very paranoid.

Dr. Perez-Conde also described D.W.’s psychiatric medications and the resultant need for serial blood testing to make sure D.W. stays within the therapeutic window for the medication. She recommended nursing supervision in a nursing home, a slightly less-restrictive placement than the VA Center. However, when she has suggested this to D.W., he adamantly refuses and insists he can care for himself independently. The district court found no nursing home placement is currently available, and D.W. does not challenge this finding on appeal.

D.W. also testified at trial. He described his military experience and explained he was forced into a promotion because his supervisor insisted he was the most qualified person. He stated:

I said I don’t want [the promotion]. He said you are going to take it or you are going to get court-martialed. That should say something for me.

Why is everyone in this neck of the woods trying to kill me?  
Why? Why is everyone trying to cut my head off?

D.W.’s attorney then instructed him to answer the questions. D.W. testified he does not like the VA Center and wants to use his savings and social security income to establish his own home and live independently. D.W. acknowledged he is treated well at the center, but complained: “People make things up about

you that are there that is going to harm you. Definitely make this stuff up or they got hit on the head with something. I can't believe it." D.W. testified he would take medications if he was allowed to live independently. D.W. did not acknowledge his bipolar disorder diagnosis or discuss it.

On December 19, 2012, the district court ordered continued commitment and placement at the VA Center. D.W. now appeals.

## **II. Scope and Standards of Review.**

An involuntary civil commitment proceeding is a special action triable to the court as an action at law. *In re B.T.G.*, 784 N.W.2d 792, 796 (Iowa Ct. App. 2010). We review for errors at law. *Id.* The district court's findings of fact are binding on us if supported by substantial evidence. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). "Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence." *B.T.G.*, 784 N.W.2d at 796.

## **III. Civil Commitment.**

As relevant to this case, to be "seriously mentally impaired" and subject to continued commitment, D.W. must (1) be mentally ill, (2) because of the illness, be lacking in judgment regarding the need for treatment, and (3) because of the illness, be "unable to satisfy [his] needs for nourishment, clothing, essential medical care, or shelter so that it is likely [he] will suffer physical injury, physical debilitation, or death." See Iowa Code § 229.1(17)(c). D.W.'s mental illness is not disputed on appeal. D.W. argues the remaining two elements are not supported by sufficient evidence.

We conclude sufficient evidence supports the court's finding D.W. lacks the judgment to make rational, responsible decisions regarding his treatment. See *B.T.G.*, 784 N.W.2d at 797 (discussing the "judgment capacity" element). Further, sufficient evidence supports the court's finding D.W. is unable to meet his needs for essential medical care, making it likely he will suffer physical injury or debilitation. We recognize this element "requires a predictive judgment, based on prior manifestations but, nevertheless, ultimately grounded on future rather than past danger." *In re Mohr*, 383 N.W.2d 539, 542 (Iowa 1986).

Although D.W. testified he will comply with his medications, his testimony is not persuasive given his lengthy history of noncompliance. We also note D.W.'s testimony at the hearing contained persecutory delusions. Dr. Perez-Conde's professional qualifications are unquestioned. She testified:

Q. Why is [D.W.'s] desire to live independently a lack of judgment on [his] part? A. Because he does not believe that he has bipolar disorder, and so he will not take his—historically, he does not take his medications when he is on his own and that is what happens, he decompensates. He has numerous psychiatric hospitalizations.

.....

Q. So basically the reason you want to keep him there is because you believe he won't take his meds if he left? A. Yes, because he does not believe that he has bipolar disorder and, therefore, he will not take his medications and that is historically what has happened. And the best predictor of future behavior is previous behavior; and given that he has absolutely no insight into that, none, zero, that is my big fear for him.

Q. If he were released . . . are [there] facilities that would be able to follow him as an outpatient . . . ? A. . . . Yes . . . . [B]ut if he were to live alone, I don't believe that he would follow up with his mental health appointments. This is historically what has happened.

We conclude sufficient evidence supports the district court's ruling by clear and convincing evidence. We affirm the district court's order continuing involuntary commitment.

**AFFIRMED.**