

IN THE COURT OF APPEALS OF IOWA

No. 6-439 / 05-1893
Filed July 12, 2006

**IN THE MATTER OF A.P.,
Alleged to be Seriously Mentally Impaired,**

A.P.,
Respondent-Appellant.

Appeal from the Iowa District Court for Muscatine County, Mark D. Cleve,
Judge.

A.P. appeals a district court order involuntarily committing her to inpatient
treatment. **REVERSED.**

Mark J. Neary, Muscatine, for appellant.

Gary Allison, County Attorney, for appellee.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.

A.P. appeals a district court order committing her to inpatient treatment. We reverse.

I. Background Facts and Proceedings

A.P. is a forty-seven-year-old female. In October 2005 her mother filed an application alleging serious mental impairment. A.P.'s sister filed an affidavit in support of the application. The district court set the matter for hearing and ordered that A.P. be taken into custody and transported to a hospital for evaluation.

The physician's report of examination was entered into evidence at the hearing. The physician who completed the report noted A.P. was mentally ill, suffering from "psychosis not otherwise specified," and indicated A.P. could not make responsible decisions about her care. The physician indicated "it is possible" that A.P. was likely to physically injure herself or others, noting that A.P.'s sister "reports that [A.P.] turned in front of traffic. Per her sister, a friend stated [A.P.] has been making suicidal comments." Finally, the physician stated it was "unknown at this time" whether A.P. was likely to inflict emotional injury on others.

A.P.'s mother and sister testified at the hearing. A.P.'s mother testified she had not spoken with A.P. since at least ten months prior to the hearing. She and A.P. used to talk daily, but they stopped communicating regularly sometime prior to the murder of one of A.P.'s sisters in August 2003. A.P.'s mother testified she filed the application because "people . . . would come to tell us . . . they were truly concerned about her." When A.P.'s mother was asked to testify about an

incident her granddaughter witnessed, the court sustained A.P.'s objection on hearsay grounds.

A.P.'s sister testified her relationship with her sister had been "nonexistent" since the day of their sister's murder two years earlier. She admitted, "I have had literally no contact with [A.P.] in the last year. I only have what people have brought me out of concern."

After the State rested, and upon reviewing Iowa Code section 229.12(3) (providing that "the court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence"), the district court vacated its hearsay ruling and allowed testimony to which A.P. had previously objected.

The State recalled A.P.'s sister. She testified that others had seen A.P. sitting on her deck crying for hours, and had told her A.P. was making plans to kill herself. A.P.'s sister further testified she and others had observed A.P. driving around with no destination in mind. A niece had observed A.P. make a U-turn in front of traffic. Upon cross-examination, A.P.'s sister admitted she did not know when these incidents had occurred or when A.P. had made statements about killing herself.

The State again rested, and A.P. testified. At the time of the hearing, she had been living in a motel room for two weeks. She moved out of the trailer she had lived in for the past two years when her landlord sold it. She was unemployed and had last worked through a temporary employment agency in July 2004. She testified she was currently looking for work and had fifty dollars in her checking account.

A.P. testified her relationship with her sister was “nonexistent” and she had “little or no contact” with her mother. She explained she had not had much contact with certain family members, including her mother and sister, since her other sister’s murder. A.P. explained she was prescribed antidepressants shortly after her sister’s murder, but elected not to take them. She denied ever threatening to kill herself or crying for hours.

The district court concluded A.P. was seriously mentally impaired and placed her on an inpatient commitment. A.P. appeals, contending (1) the district court erred in admitting hearsay testimony as the sole source of information regarding her alleged actions, and (2) insufficient evidence was presented at her civil commitment hearing to show she was seriously mentally impaired.¹

II. Standard of Review

An involuntary commitment proceeding is a special action triable to the court as an ordinary action at law. *In re Oseing*, 296 N.W.2d 797, 800-01 (Iowa 1980). Our review is for errors at law. *Id.* The allegations made in the application for involuntary commitment must be supported by clear and convincing evidence. Iowa Code § 229.12(3) (2005); *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). “Clear and convincing evidence” means “there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence.” *In re J.P.*, 574 N.W.2d at 342 (citation omitted). The district court’s findings of fact are binding on us if supported by substantial evidence. *Id.*

¹ The State has not filed a responsive brief in this matter.

III. Discussion

A person who is “seriously mentally impaired” may be committed involuntarily. Iowa Code § 229.13. The definition of serious mental impairment, see Iowa Code § 229.1(16), has three elements. *In re J.P.*, 574 N.W.2d at 343.

The respondent must be found to have

(1) a mental illness, consequently (2) to lack “sufficient judgment to make responsible decisions with respect to the person’s hospitalization or treatment” and (3) to be likely, if allowed to remain at liberty, to inflict physical injury on “the person’s self or others,” to inflict serious emotional injury on a designated class of persons, or be unable to satisfy the person’s physical needs.

Id. (citations omitted); see also Iowa Code § 229.1(16). On appeal, A.P. challenges only the district court’s findings with respect to the third element, the extent to which A.P. would be likely to inflict physical injury on herself or others, or to inflict emotional injury on a designated class of persons.

The term “likely” in the third element means “probable or reasonably to be expected.” *In re Foster*, 426 N.W.2d 374, 377 (Iowa 1988). The district court must “make a predictive judgment about whether the respondent poses a danger” to herself or others. *Id.* The evidence to support its judgment must come in the form of a “recent overt act, attempt or threat.” *Id.* (citation omitted). “Stringent proof under the dangerousness standard is necessary because predicting dangerousness is difficult and, at best, speculative.” *Id.* at 377-78.

The district court based its determination A.P. is a danger to herself or others on A.P.’s sister’s testimony regarding statements A.P. made to a friend, who relayed the statements to A.P.’s sister. We assume without deciding the admission of these hearsay statements into evidence was appropriate, given the

relaxed evidentiary standards of section 229.12(3). However, we conclude the evidence relied upon by the district court in making its determination of dangerousness does not rise to the level of “stringent proof” required to make such a determination. A.P.’s sister could not identify when A.P. made the statements regarding suicide to her friend, or when A.P. allegedly made a U-turn in front of oncoming traffic. Thus, there was no evidence of a “*recent* overt act, attempt or threat” to support the district court’s conclusion A.P. presents a danger to herself or others. The evidence presented was simply too speculative and too remote in time to provide clear and convincing evidence of dangerousness.

Although we recognize the concern A.P.’s family has for her, she cannot be involuntarily committed unless all the elements of serious mental impairment are proven by clear and convincing evidence. We conclude the evidence presented at A.P.’s involuntary commitment hearing was insufficient to establish A.P. is a danger to herself or others. Accordingly, we reverse.

REVERSED.