

**IN THE COURT OF APPEALS OF IOWA**

No. 9-927 / 09-0406  
Filed December 30, 2009

**IN THE MATTER OF R.S.,  
Alleged to be Seriously Mentally Impaired,**

**R.S.,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Marshall County, Kim M. Riley,  
District Associate Judge.

R.S. appeals asserting the district court erred in finding that he is seriously  
mentally impaired. **CONDITIONALLY AFFIRMED AND REMANDED WITH  
DIRECTION.**

James Ellefson, Marshalltown, for appellant.

Jennifer Miller, County Attorney, and Joshua Vander Ploeg, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**VOGEL, P.J.**

R.S. appeals asserting the district court's finding that he is seriously mentally impaired is not supported by substantial evidence, nor he claims, did the court recite and therefore perhaps did not apply the correct standard of proof by clear and convincing evidence.<sup>1</sup> We conditionally affirm, but remand for further proceedings.

We quote our well-established standard of review from *In Interest of J.P.*, 574 N.W.2d 340, 342 (Iowa 1998):

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). Because an involuntary commitment proceeding is an ordinary action at law, we review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. [6.907]. The allegations made in the application for involuntary commitment must be supported by clear and convincing evidence. Iowa Code § 229.12(3) (1997). Clear and convincing evidence is more than a preponderance of the evidence but less than evidence beyond a reasonable doubt. *In Interest of N.C.*, 551 N.W.2d 872, 873 (Iowa 1996). "It means that there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence." *In Interest of L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App. 1995).

In prior decisions involving involuntary commitment we have said the elements of serious mental impairment must be established by clear and convincing evidence and the district court's findings of fact are binding on us if supported by substantial evidence. See *In re Foster*, 426 N.W.2d 374, 376 (Iowa 1988); *In re T.C.F.*, 400 N.W.2d 544, 547 (Iowa 1987); *In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986); *Oseing*, 296 N.W.2d at 800-01. Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence. We will not set aside the trial court's findings unless, as a matter of law, the findings are not supported by clear and convincing evidence.

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<sup>1</sup> The State did not file an appellate brief.

In this case, an application for an order of involuntary hospitalization was filed by a mental health nurse at the Iowa Veterans' Home. The application was supported by an affidavit signed by Douglas F. Steenblock, M.D. The matter came on for hearing before an associate district court judge who received evidence including a physician's report of examination<sup>2</sup> and testimony by both R.S. and Dr. Steenblock. It was intended that the proceedings be tape-recorded; however, after the notice of appeal was filed, it was discovered the tape recorder had failed. The court then prepared a statement of the evidence or proceedings and order approving statement, to summarize the testimony.

The district court's order finding serious mental impairment was entered on a form with various lines checked, as found applicable to this case. Pertinent to this appeal is the checked line that states:

According to the (Evidence presented) the Court finds [R.S.] is: seriously mentally impaired as defined by Section 229.1(15) in that [R.S.] has been diagnosed with psychosis, nos, and because of that illness lacks sufficient judgment to make responsible decisions with respect to hospitalization or treatment, and who, because of that illness, meets one of the following criteria: a) is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.

There is evidence in the record of R.S.'s recent suicidal ideation, as well as going out in the cold without proper clothing, both of which R.S. denied. In addition, R.S. acknowledged he was noncompliant with recommended medication, but did so because of unpleasant side effects. It is not set forth in the district court's order which facts the court based its decision on. More importantly, the court did not state the level of proof it found to support its

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<sup>2</sup> The report was signed by Afshin Shirani, M.D.

decision. Consequently, we are unable to conduct our review as set forth above. We therefore conditionally affirm, but remand to the district court to apply the applicable burden of proof of clear and convincing evidence, on the record already created. See *State v Ellis*, 578 N.W.2d 655, 659 (Iowa 1998) (remanding to allow the district court to rule with correct “weight-of-the-evidence” standard). If the district court finds the facts support its conclusion by clear and convincing evidence, our affirmance will stand. We do not retain jurisdiction.

**CONDITIONALLY AFFIRMED AND REMANDED WITH DIRECTION.**