IN THE COURT OF APPEALS OF IOWA

No. 9-987 / 09-1002
Filed March 10, 2010

IN THE MATTER OF B.O., Alleged to Be a Chronic Substance Abuser,

B.O.,
Respondent-Appellant.

IN THE MATTER OF B.O., Alleged to Be Seriously Mentally Impaired,

B.O.,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Respondent appeals an order requiring involuntary inpatient hospitalization for a serious mental impairment. **AFFIRMED.**

Steven J. Drahozal of Drahozal & Schilling, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, Ralph Potter, County Attorney, and Robert E. Sabers, Assistant County Attorney for appellee State.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

VAITHESWARAN, J.

Brian appeals an order requiring involuntary inpatient hospitalization for a serious mental impairment.

I. Background Facts and Proceedings

Brian abused alcohol and crack cocaine and was diagnosed with bipolar disorder. He engaged in several violent acts directed at himself and his mother. Although he voluntarily admitted himself to a hospital on two occasions, he did not pursue treatment recommendations. As a result, his parents filed applications to have their twenty-four-year old son involuntarily hospitalized.

Following a hearing, a judicial hospitalization referee granted the commitment applications. The referee made two sets of findings and conclusions, one under Iowa Code chapter 125 (2009), governing commitment for chronic substance abuse, and the other under chapter 229 governing hospitalization for a serious mental impairment. Based on Brian's dual diagnoses, the referee ordered him hospitalized at the Mental Health Institute in Mt. Pleasant, Iowa.

Brian appealed the referee's orders to the district court. *See* Iowa Code § 229.21(3)(a). The court affirmed the referee's decision and ordered Brian to remain at the Mental Health Institute.

II. Analysis

On appeal, Brian (1) challenges the inpatient treatment order on constitutional grounds and (2) contends the evidence established only that he was a chronic substance abuser and not that he was seriously mentally impaired.

The constitutional challenge was not preserved for our review. Although Brian requested outpatient treatment at the hearing before the judicial hospitalization referee, he did not contend that a more restrictive placement would be unconstitutional. Moreover, he did not challenge the referee's subsequent inpatient treatment order on appeal to the district court. *See id.* §§ 229.21(3)(a), (d) (distinguishing between an appeal from a finding of serious mental impairment or chronic substance abuser and an appeal from a placement order); *see also id.* § 229.14A (setting forth procedure for challenging a mental health placement order); *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal."). Therefore, we decline to reach the merits of this contention.[1]

We are left with Brian's challenge to the referee's finding that he was seriously mentally impaired.[2] Our review is for errors at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). "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." *Id.*

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[1] The issue also may be moot, as after the notice of appeal was filed, Brian was transferred to an outpatient treatment facility. *See In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992) ("Matters that are technically outside the record may be submitted in order to establish . . . a claim of mootness.").

[2] Brian does not challenge his commitment as a chronic substance abuser under chapter 125. This raises the question of whether we could affirm on that unchallenged ground and, accordingly, not reach the question of his diagnosis and hospitalization under chapter 229. *Cf. In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (stating where parental rights are terminated on more than one statutory ground, we may affirm if we find clear and convincing evidence to support any of the grounds cited by the juvenile court). We elect to bypass this question and proceed to the merits.

"Serious mental impairment" has three elements. *Id.* 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). Brian challenges the second and third elements.

The second element, judgmental capacity, "requires the State to prove that the person is unable because of the alleged mental illness, to make a rational decision about treatment, whether the decision is to seek treatment or not." *In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986). The district court found that although Brian

> may present himself voluntarily for treatment, he is not aware of the severity of his addictions and his mental health status to the extent that he voluntarily leaves the hospital and does not follow through with recommended treatment that he desperately needs.

There is clear and convincing evidence to support this finding.

Brian's mother testified that, while it was his idea to come in for treatment, he did not remain at the hospital. He failed to take the medications prescribed for bipolar disorder and did not explain why he chose to forego them. *Cf. J.P.*, 574 N.W.2d at 343 (holding that respondent's discontinuation of medication because of concern about its side effects was not indicative of a lack of responsibility because the decision, "although medically inadvisable," was rationally reached); *B.A.A. v. Univ. of Iowa Hosps.*, 421 N.W.2d 118, 120, 126 (Iowa 1988) (same). He also continued to abuse alcohol and crack cocaine after his first voluntary hospitalization, informing a nurse practitioner that "he had been drinking one-fifth

of liquor on a daily basis for the past two weeks." Although Brian attempts to separate his substance abuse from his mental health, a physician testified those issues "certainly play against each other. And the substance abuse may well be a part of the bipolar." Based on this evidence, we conclude the second element of a serious mental impairment was satisfied.

The third element, dangerousness, involves "likely physical injury to one's self or others." *J.P.*, 574 N.W.2d at 343. The threat the patient poses to himself or others must "be evidenced by a 'recent overt act, attempt or threat.'" *Mohr*, 383 N.W.2d at 542 (citation omitted).

The record contains several examples of recent overt acts. In the month the commitment applications were filed, Brian wielded a knife while in the car with his mother and "kept stating: 'Somebody is going to get hurt, somebody is going to get hurt.'" A month earlier, he grabbed his mother's arms and left bruises. The same month, he pushed her out of her car. Two months before the applications were filed, he stabbed himself twice with a pocket knife. He stated, "Well, now I know that maybe I can follow through with something of a more serious extent," and then made "a slashing motion across with his knife." Although Brian was intoxicated during most of these episodes, his mother expressed "major concerns for his mental state," as did his father and a physician. This evidence is adequate to establish that Brian was likely to physically injure himself or others because of his mental illness.

As the second and third elements of "serious mental impairment" were satisfied, we affirm the involuntary hospitalization order under chapter 229.

AFFIRMED.