STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1531

In the Matter of the Civil Commitment of:
Allison Fischer

Filed April 1, 2008
Affirmed
Toussaint, Chief Judge

Dakota County District Court
File No. P3-07-9117

Allison Fischer, 3 Signal Hills Center, Post Office Box 18265, West St. Paul, MN 55118 (pro se appellant)

James C. Backstrom, Dakota County Attorney, Kenneth A. Malvey, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent State of Minnesota)

Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Shumaker, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellant Allison Fischer challenges two orders issued by the district court, one committing her as mentally ill and the other authorizing the involuntary administration of neuroleptic medication, contending that the evidence does not support the district court's findings and that the orders violate her constitutional rights. Because clear and

convincing evidence supports the district court's determination that appellant presents a substantial likelihood of harm to herself and refuses to comply with treatment or take medication, and because the orders do not violate appellant's constitutional rights, we affirm.

FACTS

Appellant was born in 1985 and is currently 22 years old. On June 25, 2007, appellant was taken to Regions Hospital emergency department by law enforcement based on a recommendation by the Dakota County Crisis Team. The crisis team was concerned that appellant had been experiencing paranoid delusions and was unable to care for herself after appellant's mother had reported that she had been tape recording conversations, was religiously preoccupied, was not sleeping, had delusional ideas, and was contacting strangers over the Internet to find a place to live.[1]

Appellant was held at the hospital on a 72-hour hold. She completely denied any symptoms of mental illness and repeatedly requested to leave the hospital. Appellant refused an EKG because of her concerns as to how the electricity would affect her body and because she had to complete her rosary. She refused to have blood drawn and was unwilling to remove her clothing due to her religious beliefs. Appellant also refused to see any outpatient mental health providers and would not take any neuroleptic medications.

[1] According to hospital records, appellant's past writings expressed grandiose thinking, stating that she planned to convert China, Russia, and Africa to Catholicism, win a marathon, win the World Cup, win a best-director-of-movies award, and make millions of dollars writing books.

A Petition for Judicial Commitment of appellant and a Petition for Authorization to Impose Treatment were filed on June 28, 2007. After a probable-cause hearing, the district court ordered appellant hospitalized until her commitment hearing.

The court-appointed licensed psychologist submitted a report to the district court in which he noted that appellant was paranoid, manic, religiously preoccupied, delusional with grandiose ideas, tangential, tense, anxious, and had rapid, rambling, pressured speech. It was the psychologist's opinion that appellant suffered from psychosis, lacked insight regarding her mental status, and was unable to demonstrate an ability to live independently. He opined that appellant's "haughty and dismissive demeanor also places her in a potentially vulnerable position." At the commitment hearing, the psychologist testified that appellant was a danger to herself and that "the court has no other option but to commit [appellant]" because of her refusal to submit to treatment and inability to safely care for herself. He stated that appellant's prognosis without treatment would be "[i]ncreasingly poor" because "[s]he will continue to antagonize others, [and] be unable to financially support herself . . . she would probably be unable to maintain [a job] and would, again, find herself without any means for supporting herself."

The court-appointed certified neuropsychiatrist also submitted a report to the district court in which he noted that appellant was in denial as to her mental state, paranoid, had bizarre behavior and grandiose thoughts and plans, had pressured speech, and had sleep disturbances. He opined that:

> It is my impression that [appellant] is in a manic phase of bipolar disorder, that she needs neuroleptic medications and mood-altering medications to help her. . . . Obviously she does not have any insight and does not have the

> capacity to enter into a treatment plan. . . . [s]he does not have the ability to manipulate information rationally.

The neuropsychiatrist recommended that appellant "have a protective order for neuroleptic medications and that she could perhaps make an uneventful recovery with a commitment . . ." At the commitment hearing, the neuropsychiatrist testified that appellant did not have the ability to rationally use information due to her bipolar disorder and was a danger to herself or others. He stated that he supported the petition for commitment.

After the commitment hearing, the district court rejected alternative dispositions to commitment and ordered that appellant be dually committed as a mentally ill person in need of inpatient hospitalization to the Minnesota Commissioner of Human Services and Regions Hospital as "the least restrictive program which can meet [appellant's] treatment needs" for a period not to exceed six months.

In its order authorizing use of neuroleptic medications, the district court noted that appellant "lack[ed] any ability to understand and use information about [appellant's] mental illness, its symptoms or its treatment, and has been unable to engage in a rational discussion regarding [appellant's] treatment with neuroleptic medication." The court listed the appropriate medication and doses that appellant was to be administered, and stated that the medication "should decrease [appellant's] delusional thinking and behavior, while making [appellant] more comfortable and more able to participate in other forms of treatment." The court concluded that appellant was neither competent nor able to give or withhold consent for the use of neuroleptic medication.

Appellant was initially committed to Regions Hospital and placed on a waiting list for commitment to the human services facility. About a month later, appellant was provisionally discharged from Regions Hospital, but refused to sign the Provisional Discharge Contract. One day later, respondent State of Minnesota filed a report to the district court asking that appellant's provisional discharge be revoked, alleging that she "failed to cooperate with any of the conditions of Provisional Discharge, including refusal of admission to [Intensive Residential Treatment] IRTS," and was therefore homeless.[2] Appellant was apprehended and held at the Anoka Metro Regional Treatment Center. She disputed the need to be transferred to a regional treatment center and requested a hearing to contest the revocation of her provisional discharge. After a hearing, the district court revoked appellant's provisional discharge and ordered that she be "held at Regions Hospital until placement at the facility of commitment can occur."

A report submitted by the Anoka Metro Regional Treatment Center on September 13, 2007, noted that, "[o]ur plan is for [appellant] to live [in] Supportive Housing/Adult Foster Care" but that appellant was in further need of inpatient care because she "meets the statutory criteria for commitment" due to "unsafe delusions and the "inability to care for herself." The report indicated that appellant was not being treated with any type of medication while at Regions Hospital but that she "lacks the capacity to give or withhold consent for neuroleptic medications because [appellant] lacks an understanding of [her] illness, reasons for hospitalization, the consequences of refusing treatment and the risks

[2] The record indicates that, after refusing to attend the residential treatment program, appellant went to a local police station and asked if she could stay there until she found a place to reside.

and benefits of treatment." The report recommended that the "current order for intrusive mental health treatment" be continued for the duration of appellant's commitment.

On September 28, 2007, Anoka Metro Regional Treatment Center sent a "Change of Status Report" indicating that appellant had been discharged from commitment.

D E C I S I O N

I.

Appellant's commitment may have been discharged but, because collateral consequences attach to a commitment as mentally ill, this appeal is not moot. *See In re McCaskill*, 603 N.W.2d 326, 331 (Minn. 1999) (holding that, because of early intervention provisions of Minnesota Commitment and Treatment Act, collateral consequences attached to appellant's commitment as mentally ill, making appeal not moot).

II.

Appellant challenges the district court order committing her as mentally ill, contending that there is insufficient evidence to support her commitment. When reviewing a district court's commitment of a person as mentally ill, this court's review is limited to a determination of whether the district court complied with the Minnesota Commitment and Treatment Act. *In re Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). The district court's findings of fact are accorded deference and will not be overturned unless clearly erroneous, but we review de novo whether the evidence is sufficient to satisfy the requirements of the statute. *Id.* The record is considered in a light most favorable to the district court's findings. *In re Knops*, 536 N.W.2d 616, 620

(Minn. 1995). When the findings rest largely on expert testimony, the district court's credibility determinations, to which we defer, are particularly important. *Id.*

A district court may commit a person if there is clear and convincing evidence that the person is mentally ill. Minn. Stat. § 253B.09, subd. 1(a) (2006). A person is mentally ill if the person

> has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:
>
> (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
> (2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
> (3) a recent attempt or threat to physically harm self or others; or
> (4) recent and volitional conduct involving significant damage to substantial property.

Minn. Stat. § 253B.02, subd. 13(a) (2006).

Here, appellant challenges the district court's determination that she suffers from "psychosis and/or bipolar disorder (manic phase)." But the record is replete with evidence indicating "a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment." The record indicates that appellant was diagnosed with psychosis and bipolar disorder because of her delusions of grandiosity, paranoid ideation, hyper-religiosity, pressured speech, and tangentiality. The

neuropsychiatrist testified that appellant does not have the ability to rationally use information, and the psychologist testified that appellant exhibited grossly disturbed behavior and faulty perceptions. Appellant claims she is not mentally ill, but offers no evidence of such a diagnosis from a mental-health expert to confirm her belief. Clear and convincing evidence supports the district court's determination that appellant suffers from a substantial psychiatric disorder that grossly impairs her judgment and behavior.

Appellant also challenges the district court's determination that she poses a substantial likelihood of physical harm to herself because of her failure to obtain shelter and her past physical altercation with a roommate. The commitment statute "clearly requires that the substantial likelihood of physical harm must be demonstrated by an overt failure" to obtain necessities or by a recent attempt or threat to harm self or others. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995) (emphasis omitted). While a district court may not engage in speculation about future harm, the court is not required to delay commitment until a person is actually harmed as long as the danger has already become evident. *In re Terra*, 412 N.W.2d 325, 328 (Minn. App. 1987).

Here, appellant was in complete denial regarding her psychosis and bipolar disorder and refused to take medication or attend treatment. At the time of her commitment, appellant was homeless, had no income, and was delusional as to where she could reside and work. Furthermore, appellant had dangerously asked strangers if she could live with them. The record indicates that appellant posed a substantial risk of harm to herself as shown by her failure to obtain shelter or medical care. *See* Minn. Stat. § 253B.02, subd. 13(a)(1); *see also Janckila*, 657 N.W.2d at 903 (affirming commitment

as mentally ill when appellant was homeless and resisted treatment for his disorder); *Terra*, 412 N.W.2d at 328 (affirming commitment as mentally ill when appellant was unable to provide for his basic physical needs and had no income); *In re Nadeau*, 407 N.W.2d 406, 409 (Minn. App. 1987) (affirming commitment as mentally ill when appellant was unable to provide for her basic physical needs and was homeless), *review denied* (Minn. Aug. 12, 1987); *In re Anderson*, 367 N.W.2d 107, 109 (Minn. App. 1985) (affirming commitment as mentally ill when appellant was preoccupied with religion, unable to provide for his basic physical needs, and failed to cooperate with treatment).

In addition, when the evidence establishes that the person's behavior is likely to outrage others and provoke an attack on the vulnerable person, the substantial-likelihood-of-harm standard is met. *See In re Gonzalez*, 456 N.W.2d 724, 729 (Minn. App. 1990) (affirming commitment when evidence supported district court's finding that person's manic conduct, which "may outrage others and result in an attack," posed a likelihood of harm). Here, the court-appointed psychologist opined that appellant would "continue to antagonize others." Appellant's haughty and dismissive attitude, as well as her delusional beliefs, could outrage others and provoke an attack. The record indicates that appellant has already been involved in one physical altercation with a former roommate she met via the Internet. Clear and convincing evidence supports the district court's conclusion that appellant poses a substantial likelihood of physical harm to herself because she was unable to demonstrate an ability to live independently.

III.

Appellant also challenges the district court order authorizing involuntary treatment with neuroleptic medication, arguing that she has never needed medication and was never administered medication after the order was issued. A person is presumed to have the capacity to consent to the administration of neuroleptic medication. Minn. Stat. § 253B.092, subd. 5(a) (2006). But a district court may authorize the involuntary administration of such medication if the court determines that the person lacks the capacity to consent and if the court applies statutory factors. *Id.*, subd. 8(e) (2006). In order to authorize involuntary administration of neuroleptic medication, necessity of treatment must be proven by clear and convincing evidence. *In re Peterson*, 446 N.W.2d 669, 672 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989).

The district court must base its decision to authorize administration of neuroleptic medication on its determination of "what a reasonable person would do," considering: (1) the patient's family, community, moral, religious, and social values; (2) the medical risks, benefits, and alternatives to the proposed treatment; (3) the efficacy and any extenuating circumstances of any past use of neuroleptic medication; and (4) any other relevant factors. Minn. Stat. § 253B.092, subd. 7(c) (2006).

Appellant adamantly contends that she is not mentally ill, and at the time of her commitment, she refused to take neuroleptic medication. She did not offer moral or religious reasons for her refusal. In authorizing the use of medications, the district court determined: "Treatment of [appellant's] mental illness using neuroleptic medication outweighs any possible risks from that treatment," and that there were "no viable

treatment alternatives to the use of neuroleptic medication" based on the examiners' recommendations. There were no extenuating circumstances of any past use of neuroleptic medication to consider. The district court's decision to authorize involuntary administration of neuroleptic medications to appellant was supported by clear and convincing evidence. At the time of the district court's decision, the need for such medication was clearly shown, even if appellant was not subsequently administered neuroleptic medication during her commitment.

IV.

Appellant makes numerous constitutional and statutory arguments that are without merit. First, appellant claims that her rights under the First Amendment were violated because the district court "allowed evidence to be presented at [her hearing] which made the way [she] practice[s] religion and [her] religious beliefs a direct factor as means to imprison [her] in an insane asylum" and because she was denied freedom of speech. Nothing in the record indicates that appellant was prohibited from exercising her religious beliefs or freedom of speech in violation of the First Amendment.

Second, appellant argues that hospital staff violated the "patient's bill of rights" by asking her to remove her clothes and wear a hospital garment. *See* Minn. Stat. § 144.651, subd. 22 (2006) ("Patients and residents may retain and use their personal clothing . . ."). Nothing in the record indicates that appellant was not allowed to retain her clothing while she was in the hospital.

Third, appellant alleges that the examiners who testified at her commitment hearing committed perjury, but nothing in the record supports her claim.

Fourth, appellant claims that copyright law was violated because the examiners relied on a document written by her that demonstrated her delusions. Appellant also claims that her confidential medical records were given to the examiners without her consent, in violation of Minn. Stat. § 144.651, subd. 16 (2006) ("Patients and residents shall be assured confidential treatment of their personal and medical records, and may approve or refuse their release to any individual outside the facility."). However, in commitment hearings, the district court "may admit all relevant, reliable evidence," and the court-appointed examiners are granted access to all of the patient's medical records. Minn. Spec. R. Commitment & Treatment Act 13, 15; *see also* Minn. Stat. § 253B.0921 (2006) ("A treating physician who makes medical decisions regarding the prescription and administration of medication for treatment of a mental illness has access to the relevant sections of a patient's health records . . . if the patient lacks capacity to authorize the release of records."). It appears from the record that the document at issue was part of appellant's medical records, which the examiners properly relied upon without her consent, and which the district court properly admitted into evidence.

Fifth, appellant argues that the Fourth Amendment was violated because her "personal file was searched without a warrant and used against [her]." Appellant is most likely referring to the document outlining her delusions that she claims was taken from her computer. It is not clear how that document became part of appellant's medical records. But nothing in the record indicates that the document was seized through government action in violation of the Fourth Amendment.

Sixth, appellant alleges that the Fifth Amendment was violated because she had "plead[ed] the fifth" when she refused to attend treatment groups while residing in the hospital, and that this was used against her. This argument is without merit as appellant was never forced to incriminate herself.

Lastly, appellant claims that her due process rights were violated, but does not explain why. Nothing in the record indicates that appellant was denied due process.

Affirmed.