STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0267

In the Matter of the Civil Commitment of: Renee P. Sharp.

Filed August 5, 2008
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-MH-PR-07-1250

Renee P. Sharp, 2629 West 43rd Street, Apartment 201, Minneapolis, MN 55410 (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Peterson, Presiding Judge; Toussaint, Chief Judge; and Kalitowski, Judge.

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

PETERSON, Judge

Pro se appellant challenges district court orders that recommit her as a mentally ill person and authorize the administration of neuroleptic medications for the duration of the recommitment. We affirm.

FACTS

Appellant Renee P. Sharp is a 52-year-old woman who has been coping with mental illness since the early 1990s. She has been hospitalized voluntarily and involuntarily[1] and has a history of noncompliance with respect to prescribed medications. This noncompliance has lead to decompensation, extended hospitalization, and the loss of housing and personal property.

In December 2006, the district court committed appellant as a person who is mentally ill and authorized the use of neuroleptic medications based on a finding that appellant has paranoid schizophrenia and lost the ability to care for herself after she stopped taking her medications. This court dismissed appellant's appeal from these orders, and her petitions for review to the Minnesota Supreme Court and the United States Supreme Court were denied. Appellant was provisionally discharged from a treatment facility in June 2007 and allowed to live on her own, subject to the two orders. A hearing regarding the continuation of the initial commitment was to be held in early July 2007, but appellant waived her right to the hearing and agreed to a six-month continuation of the initial commitment and the administration of neuroleptic medications.

On November 9, 2007, the Hennepin County Attorney's Office filed a petition for judicial recommitment that was supported by appellant's treating physician, Dr. Dallas Erdmann. In his statement supporting the petition, Erdmann described appellant as "a 52-year-old woman with long-standing psychiatric difficulties complicated by alcohol

[1] According to the petition for recommitment, appellant was hospitalized voluntarily in 1993, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2006. She was hospitalized involuntarily in 1997, 1999, 2002, 2003, and 2006.

abuse and medication noncompliance … [who] continues to remain delusional and misperceiving." Erdmann also expressed his medical opinion that appellant required recommitment for her own safety.

A hearing on the recommitment petition was held on December 12, 2007. The court-appointed examiner, Dr. Kristine Kienlen, testified about appellant's history of noncompliance and decompensations and expressed her opinion that appellant continued to suffer from mental illness, including delusions. Kienlen also expressed concerns that if appellant were not recommitted, she would fail to follow her medication regimen and once again decompensate for a prolonged period of time. Appellant's case manager, Christina Downing, testified and expressed her concern that without court supervision, appellant would fail to take her prescribed medication, need to be hospitalized, and lose her housing and personal property.

The district court issued orders that recommit appellant as a mentally ill person and authorize the administration of neuroleptic medications. This appeal followed.

D E C I S I O N

I.

Appellant challenges the district court order recommitting her as a person who is mentally ill under Minn. Stat. §§ 253B.02, subd. 13(a), .09, subd. 1(a) (2006). This court's review of an involuntary civil commitment is limited to an examination of whether the district court complied with the requirements of the commitment statute and whether the commitment is "justified by findings based upon evidence at the hearing." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The factual findings of the district court

are accorded great deference and will not be set aside unless clearly erroneous. *Id*. "We review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

If the district court finds that a proposed patient is a person who is mentally ill[2] and that there is no suitable alternative to judicial commitment, the court shall commit the patient to the least-restrictive treatment program or alternative program that can meet the patient's treatment needs. Minn. Stat. § 253B.09, subd. 1(a) (2006). A person who is mentally ill may be involuntarily committed for an initial period not to exceed six

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[2] For purposes of the commitment statute:

> A "person who is mentally ill" means any person who 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).

months. Minn. Stat. § 253B.09, subd. 5 (2006). Following a review hearing, the initial commitment period may be continued for a prescribed period, provided that "[n]o period of commitment shall exceed [the prescribed period] or 12 months, whichever is less." Minn. Stat. § 253B.13, subd. 1 (2006).

Following the continued-commitment period, the "commitment may not be continued unless a new petition is filed pursuant to section 253B.07 and hearing and determination made on it." *Id.* This extended commitment, otherwise known as a "recommitment," may not exceed a period of 12 months, and the standard of proof at the hearing on the new petition is specified in Minn. Stat. § 253B.12, subd. 4. *Id.*; *In re Robledo*, 611 N.W.2d 67, 69 (Minn. App. 2000).

Minn. Stat. § 253B.12, subd. 4 (2006), specifies that:

> The committing court shall not make a final determination of the need to continue commitment unless the court finds by clear and convincing evidence that (1) the person continues to be mentally ill . . . ; (2) involuntary commitment is necessary for the protection of the patient or others; and (3) there is no alternative to involuntary commitment.
>
> In determining whether a person continues to be mentally ill, . . . the court need not find that there has been a recent attempt or threat to physically harm self or others, or a recent failure to provide necessary personal food, clothing, shelter, or medical care. Instead, the court must find that the patient is likely to attempt to physically harm self or others, or to fail to provide necessary personal food, clothing, shelter, or medical care unless involuntary commitment is continued.

The district court found that appellant "continues to be diagnosed with paranoid schizophrenia" and "continues to have a substantial disorder of thought, mood and

perception which grossly impairs her judgment, behavior, capacity to recognize reality, and ability to reason or understand, which is manifested by instances of grossly disturbed behavior and/or faulty perceptions." Clear and convincing evidence supports this finding that appellant continues to be mentally ill. Kienlen testified that appellant "continues to be mentally ill" and evinced "psychotic symptoms," including delusions. Appellant expressed to Kienlen concerns about being monitored since birth and had Kienlen examine a bump on appellant's head that appellant believed might be an implanted surveillance device. Also, Erdmann diagnosed appellant with paranoid schizophrenia and noted that appellant "continues to remain delusional and misperceiving."

The district court also found that appellant "will not take her medications unless closely monitored and supervised" and that if appellant is not under court supervision, she "would likely attempt to physically harm herself or others due to her inability to care for her basic needs without supervision." Clear and convincing evidence supports these findings. Kienlen described appellant's history of noncompliance with treatment while not under court supervision and her resulting decompensations. Kienlen also expressed concern that without continuous court supervision, appellant will once again fail to take her medications or fail to work with mental-health professionals and decompensate further, which would require increased time in the hospital to stabilize. In addition, Erdmann stated in his neuroleptic-medication note that appellant has an "inability to care for herself off meds." Erdmann also noted:

> Within the last two years [appellant] has been evicted from her residence on two occasions, on each occasion losing her entire belongings and furnishings. . . . In the past, without

> court supervision, she has terminated relationships with case management and providers, divested herself from insurance and has been unable to provide for her own clothing, shelter or medical care.

Finally, Downing testified about her concern that if appellant decided to stop using her medication, appellant would be at risk of being hospitalized for a significant period of time and again losing her home and her belongings.

There is also clear and convincing evidence that supports the district court's finding that "the least restrictive, appropriate, and available treatment [for appellant] is a continued commitment to the Anoka-Metro Regional Treatment Center and the Commissioner of Human Services for a period of twelve (12) months."[3] Kienlen testified about the severity of appellant's possible decompensation if she remains unsupervised, and Erdmann opined that "[appellant] has repeatedly required commitment with *Jarvis* to achieve and maintain stability. . . . It is my firm medical opinion that [appellant] requires recommitment to provide for her safety." Because each of the district court's findings regarding the requirements for recommitment specified in Minn. Stat. § 253B.12, subd. 4, is supported by clear and convincing evidence, the district court's conclusion that appellant meets the standards for commitment is supported by clear and convincing evidence.

[3] The district court also ordered that "[appellant's] provisional discharge status remains unchanged at this time."

II.

Appellant challenges the district court order authorizing the continued administration of neuroleptic medications for the duration of her recommitment. Court approval is required to administer neuroleptic medications to a person who otherwise refuses to consent to the treatment. Minn. Stat. § 253B.092, subd. 8(a) (2006). In general, a person "is presumed to have capacity to make decisions regarding administration of neuroleptic medication." Minn. Stat. § 253B.092, subd. 5(a) (2006). When determining whether a person has the capacity to make decisions regarding administration of neuroleptic medications, a court must consider:

> (1) whether the person demonstrates an awareness of the nature of the person's situation, including the reasons for hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;
>
> (2) whether the person demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; and
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> (3) whether the person communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on delusion, even though it may not be in the person's best interests.

Id., subd. 5(b) (2006).

It must be proved by clear and convincing evidence that the person lacks the capacity to make decisions regarding neuroleptic medications. *See Thulin*, 660 N.W.2d at 145 (affirming district court's finding appellant lacked capacity to refuse neuroleptic medication because the record contained clear and convincing evidence to support it). If the person did not clearly state what the person would choose to do regarding neuroleptic

medications when the person had the capacity to make the decision, the court's decision regarding the administration of neuroleptic medications

> must be based on what a reasonable person would do, taking into consideration:
>
> (1) the person's family, community, moral, religious, and social values;
>
> (2) the medical risks, benefits, and alternatives to the proposed treatment;
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> (3) past efficacy and any extenuating circumstances of past use of neuroleptic medications; and
>
> (4) any other relevant factors.

Minn. Stat. § 253B.092, subd. 7 (2006).

In his neuroleptic-medication note, Erdmann indicated that appellant "has no insight regarding her condition or the need for continued treatment," demonstrates no understanding of such treatment or its alternatives, and does not communicate clear and reasoned choices regarding treatment. Erdmann also stated that appellant has an "inability to care for herself off meds" and "will require lifelong treatment with medications prescribed at the lowest effective/therapeutic dose while monitoring regularly and adjusting as needed to maintain effectiveness and to minimize side effects."

The note also states that appellant has previously experienced weight gain and tremulousness as side effects of the medication, but has no other current contraindications; past neuroleptic-medication regimens were highly beneficial to appellant; and the benefits of continued use include the resolution of psychotic symptoms, an increased ability to live safely in the community, and a decreased risk of harm to appellant or others.

Clear and convincing evidence supports the district court's determination that appellant lacked the capacity to make proper determinations regarding neuroleptic medications and that a reasonable person in appellant's circumstances would take the medications. The record supports the order authorizing the administration of neuroleptic medications for the duration of appellant's recommitment.

Affirmed.