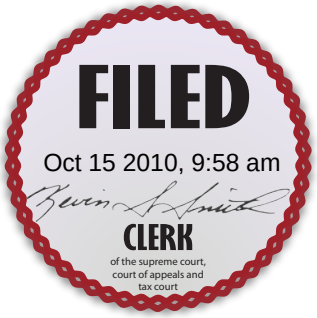

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE MENTAL HEALTH PROCEEDINGS OF D.J.,	)	
D.J.,	)	
Appellant,	)	
vs.	)	No. 29A04-1003-MH-205
COMMUNITY HOSPITAL NORTH, GEOFFREY FORTNER, M.D., and BEHAVIORCORP,	)	
Appellees.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
Cause No. 29D03-1001-MH-2

October 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

D.J. appeals an order involuntarily committing him to a mental health facility as an inpatient. He presents the following restated issues for review:

1. Did the trial court err in denying D.J.'s motion for continuance?

2. Was the involuntary commitment order supported by sufficient evidence?

We affirm.

The facts are that on January 11, 2010, D.J. was released from prison into the custody of his parents. Within several days, D.J. became agitated and daily grew more "threatening" and progressively more unstable. *Appellee's Appendix* at 31. According to his mother (Mother), "[h]e was up most of the night. Up and down the steps. He wanted to do exercise or work outs and he would shout and yell. … [I]t was just not normal behavior." *Id*. at 32. On January 22, 2010, fearing for her safety, Mother filed an application for emergency detention. In Mother's application, she alleged that D.J. had a history of paranoid schizophrenia and a potential for violence, was gravely disabled, and if not restrained, posed a potential threat to others.

Mother's application was granted and D.J. was admitted to Community Hospital North, Psychiatric Pavilion (Community North). After he was admitted, D.J. was examined by Dr. Geoffrey Fortner. Dr. Fortner diagnosed D.J. as suffering from paranoid schizophrenia. On January 26, 2010, Dr. Fortner filed a Report Following Emergency Detention and a Physician's Statement seeking D.J.'s temporary involuntary commitment. After further research revealed that D.J. had been the subject of a mental health commitment

in the past, Dr. Fortner modified his request to include a regular involuntary commitment. *See* Ind. Code Ann. § 12-26-3-9(b) (West, Westlaw through 2010 2nd Regular Sess.) ("[i]f an individual has previously been the subject of a commitment proceeding, the court may order a regular commitment if a longer period [than ninety days] of treatment is warranted"). Community North sought involuntary commitment on the ground that D.J. is gravely disabled.

The trial court conducted a commitment hearing on February 8, 2010. D.J. submitted a Motion For Continuance at that hearing on the basis that his parole officer, Summer Martin, was unavailable to testify at that time. According to the motion, D.J. believed Martin could "produce testimony as to his competency and actions after his release from [prison] on or about January 11, 2010, and records of said department which he believes will show he is competent." *Appellant's Appendix* at 21. D.J.'s counsel explained at the hearing that Martin could "furnish some important documents that would hopefully persuade the Court that during his last year of incarceration and after his release [D.J.] was not dangerous to other people or incompetent." *Appellee's Appendix* at 3. Community North objected to the continuance on grounds that, as a result of his psychological condition and because of medical necessity, he posed a danger to himself or others unless he was under institutional care. The medical necessity was identified as a cancerous (malignant melanoma) mole that had been discovered on D.J.'s back after he was admitted to Community North. Community North explained that treatment for the cancer should begin immediately, but that it could not commence while D.J. was hospitalized in the psychiatric ward at the hospital. Rather, the

necessary treatment could be rendered only at the hospital's outpatient surgery center. When the trial court asked why D.J. could not receive the treatment after discharge from the psychiatric unit, Community North explained:

> Unfortunately Your Honor the patient has very little insight into his condition and has been refusing to take medications even though he is hospitalized. So we are here today to make sure he can get the medications he needs started so we can get the ball rolling, get him out, get him the treatment he needs.

Transcript at 9. Community North also informed the court that without medication, D.J. is unable to function independently and that he has no job or other means of income and is homeless. The trial court denied D.J.'s motion for continuance and commenced with a hearing on the merits of Community North's petition.

Dr. Fortner testified that D.J.'s mental health records dating back to the early 2000s indicated that he had been exhibiting similar symptoms for many years. He testified that D.J. believed he is in line for a billion-dollar inheritance that is derived from his grandparents' property, which D.J. claims includes farmland that made up "almost one third of Hamilton County". *Appellee's Appendix* at 54. Mother testified that D.J. did not have an inheritance waiting for him, that his grandparents did not own vast tracts of land in Hamilton County, and they were not wealthy. D.J. claims that Mother, the FBI, his social worker, and Dr. Fortner are conspiring to prevent him from claiming his inheritance.

At the conclusion of the hearing, the trial court granted Community North's request for a regular involuntary commitment upon its conclusion that Community North had established by clear and convincing evidence that D.J. is suffering from a mental illness and

is gravely disabled. Further facts will be supplied where relevant.

1.

D.J. contends the trial court erred in denying his motion for continuance. Pursuant to Ind. Trial Rule 53.5, a trial court shall grant a motion for continuance upon "a showing of good cause established by affidavit or other evidence." The trial court's decision with respect to such requests "is reviewed for an abuse of discretion, and there is a strong presumption the trial court properly exercised its discretion." *Gunashekar v. Grose*, 915 N.E.2d 953, 955 (Ind. 2009). We will overturn the denial of a motion for continuance "only if the movant demonstrates good cause for granting it." *Id*.

To prevail in its request for the regular, involuntary commitment of D.J., it was incumbent upon Community North to prove, among other things, that D.J. was "mentally ill and either dangerous or gravely disabled". I.C. § 12-26-7-3(a)(2)(A) (West, Westlaw through 2010 2nd Regular Sess.); *see In re Commitment of Steinberg*, 821 N.E.2d 385 (Ind. Ct. App. 2004) (burden of proof is on the petitioner to demonstrate commitment is warranted).

D.J. claimed that Martin, his parole officer, could provide documents that would "hopefully persuade" the trial court that D.J. did not pose a danger to others "during his last year of incarceration and after his release". *Appellee's Appendix* at 3. His rationale was that Martin could demonstrate that he had not exhibited mental illness or grave disability and had not posed a danger to self or others while incarcerated and shortly thereafter, thereby refuting Community North's claim that those prerequisite conditions existed. We note, however, that

D.J. was released from prison on January 11, 2010 and moved directly into his parents' home. Soon thereafter he began exhibiting behaviors consistent with mental instability. His Mother reported that the behavior was growing progressively worse. So much so, in fact, that only eleven days after his release from prison, his parents' fear for their safety caused them to seek an emergency commitment. Thus, the time spent on his own following his release from prison spanned only eleven days, inclusive. Moreover, during that time, there is no indication that D.J. sought employment or in any other meaningful way demonstrated the ability to live independently. Rather, until he was taken to a motel, he stayed in his parents' home. Viewed thus, the eleven days he spent on parole between incarceration and commitment at Community North is hardly sufficient time to draw any meaningful conclusion with respect to the state of his mental health and the danger he posed to himself or others. Accordingly, Martin's testimony on those subjects would be of little, if any, value.

As noted, D.J. also contended that Martin could provide evidence that he was not mentally ill and did not pose a danger to himself or others while he was incarcerated. The determination of D.J.'s condition, i.e., mental illness and dangerousness, was based upon his then-current condition. His behavior months before while incarcerated would have only marginal relevance, at best. Moreover, Dr. Fortner testified that D.J. "is someone who has been or is more comfortable in a [sic] institutional type environment[.]" *Transcript* at 28. That, coupled with evidence that D.J. does not have insight into his condition and therefore does not self-medicate to control his condition when he is on his own, further diminishes the relevance of his behavior while institutionalized with respect to an assessment of his behavior

while living on his own and the prospects for independence.

In summary, the evidence that D.J. proposed to introduce through Martin would have been of little or no value to the trial court in making the assessment it was called upon to make with respect to Community North's petition. Therefore, D.J. has failed to demonstrate good cause for delaying the proceedings in order to permit Martin to testify *See Gunashekar v. Grose*, 915 N.E.2d 953. Accordingly, the trial court did not abuse its discretion in denying the motion for continuance.

2.

D.J. contends the involuntary commitment order was not supported by sufficient evidence that he is gravely disabled. As is the case with general challenges to the sufficiency of evidence, we review such challenges with respect to commitment proceedings by looking to the evidence most favorable to the decision and draw all reasonable inferences from that decision. *Commitment of M.M. v. Clarian Health Partners,* 826 N.E.2d 90 (Ind. Ct. App. 2005), *trans. denied*. We do not reweigh the evidence nor judge witness credibility. *Id*. "If the trial court's commitment order represents a conclusion that a reasonable person could have drawn, we will affirm the order even if other reasonable conclusions are possible." *Id*. at 96. Because civil commitment is a significant deprivation of liberty that requires due process protections, *see Addington v. Texas*, 441 U.S. 418 (1979), the petitioner bears the burden of proving by clear and convincing evidence that the individual is gravely disabled. I.C. § 12-26-2-5(e); *Commitment of M.M. v. Clarian Health Partners,* 826 N.E.2d 90.

For purposes of civil commitment, Ind. Code Ann. § 12-7-2-96 (West, Westlaw

through 2010 2nd Regular Sess.) defines "gravely disabled" as follows:

> [A] condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual:
>
> (1) Is unable to provide for that individual's food, clothing, shelter, or other essential human needs; or
> (2) has a substantial impairment or an obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently.

Mother testified that D.J. "has never held a job for more than a couple of weeks if that." *Transcript* at 56-57. She testified that D.J. was not on medication for the preceding two years while in prison, but that he was confined in the mental health unit, where he was isolated twenty-three hours per day. Visitation was limited. When his parents were able to visit with him, D.J. was handcuffed, shackled, and kept separated from them by a glass partition, attended sometimes by "two, three or four guards." *Id*. at 57.

Dr. Fortner testified at the hearing that D.J. suffers from "chronic" and "life[-]long" mental illness, which the doctor identified as paranoid schizophrenia. *Transcript* at 26. D.J.'s symptoms include paranoia and delusions. Dr. Fortner testified that D.J. has "no insight" into his mental illness and if he were not compelled to do so, D.J. would not continue mental health treatment. *Id*. Treatment in D.J.'s case includes Haldol, an anti-psychotic medication that Dr. Fortner characterized as "really good" for D.J.'s symptoms. *Id*. Although Dr. Fortner opined that D.J. "did well" while taking this medication in the past, D.J. expressed a strong objection at the hearing to taking the drug. *Id*. D.J. testified that he suffered side-effects from taking the drug, including light-headedness, lack of balance, "sever

sexual side affects" [sic], *id*. at 66, and total incapacitation to the point that he was "incapable of any production of any type of work." *Id*. In fact, D.J. was asked, "You don't believe you need medication and you don't believe you need to be in any sort of out[-]patient facility, or attend clinic sessions of anything like that?" *Id*. at 81. He responded, "Absolutely not." *Id*. Dr. Fortner testified that without treatment, D.J.'s prognosis includes, "a lot of paranoia and delusions. Probably have to live in a shelter. He would not have any potential to be able to meet his needs. Probably, you know, at some point make a bad decision to violate his parole." *Id*. at 27-28.

From the foregoing evidence, a reasonable person could have concluded that D.J. "has a substantial impairment or an obvious deterioration of [his] judgment, reasoning, or behavior that results in [his] inability to function independently." *See* I.C. § 12-7-2-96. Therefore, the evidence is sufficient to support the trial court's finding that D.J. is gravely disabled as defined in I.C. § 12-7-2-96.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.