IN THE COURT OF APPEALS OF IOWA

No. 3-846 / 13-0473
Filed October 2, 2013

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

A.S.R.,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George Stigler, Judge.

Respondent appeals decision declaring him seriously mentally impaired. **AFFIRMED.**

Nina Forcier of Nydle & Forcier, P.L.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Gretchen Kraemer, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Danilson and Tabor, JJ.

TABOR, J.

A.S.R. appeals from a district court order continuing his commitment to outpatient treatment under Iowa Code chapter 229 (2013). He argues the involuntary commitment is not supported by evidence showing he is dangerous, or alternatively, that his dangerousness has anything to do with mental illness. We affirm because the record contains clear and convincing evidence A.S.R. suffers from a delusional disorder, and due to that disorder he lacks insight into his condition and poses a danger to others.

I. BACKGROUND FACTS AND PROCEEDINGS

On February 14, 2013, Waterloo Police Chief Daniel Trelka filed an application alleging A.S.R., who is forty-nine years old, suffered from a serious mental impairment. In support of his application, Chief Trelka filed an affidavit recounting A.S.R.'s unsettling interactions with city personnel and A.S.R.'s accusations police officers were conspiring against him. The chief reported a February 7, 2013 conversation in which A.S.R. discussed "lining up" those who conspired against him and shooting them. The chief also referenced a written narrative of complaints provided by A.S.R. in which A.S.R. described arming himself with an "H & K 9 mm" when A.S.R. perceived that an Urbandale police detective had given him an intimidating look. Chief Trelka contacted the Urbandale police chief, who confirmed similar erratic behavior by A.S.R. when the respondent was living in Polk County. Chief Trelka's check of Waterloo police records showed A.S.R. had received a permit to acquire a weapon on

June 13, 2012, and received a non-professional permit to carry a weapon on February 1, 2013.

A Waterloo city employee also filed an affidavit in support of the application, stating A.S.R. had visited city hall "demanding to see people" and acting "very paranoid, talking of taking justice his way." These documents expressed concern A.S.R. would injure others.

The judicial hospital referee held a hearing on February 19, 2013. Dr. James Trahan, the physician who examined A.S.R., diagnosed A.S.R. as having delusional disorder. The doctor reached this conclusion based on statements by A.S.R. concerning a large-scale conspiracy preventing him from collecting insurance benefits and delusional beliefs concerning the wrongdoing of law enforcement and city employees. Dr. Trahan opined A.S.R. was not capable of making responsible decisions regarding hospitalization or treatment because A.S.R. does not believe he has an illness. A.S.R. has refused to take medication. The doctor testified A.S.R.'s circumstances suggest he suffered from a chronic mental illness and had "a bit of a flare-up" recently. Also at the hearing, Chief Trelka testified A.S.R. told him on February 7, 2013, "if not for the belief [A.S.R.] has in God, there would have been a mass murder based on what [A.S.R.'s] been through in life."

In an order filed February 20, 2013, the judicial hospitalization referee determined A.S.R. was seriously mentally impaired. The referee ordered out-patient treatment at the Black Hawk-Grundy Mental Health Center, telling A.S.R. "which just means that you check in with them." The referee also advised A.S.R.

"if you're court-ordered to treatment, you're ordered to take medications as prescribed." A.S.R. appealed to the district court. In response to the appeal, the executive director, the medical director, a social worker, and an advanced nurse practitioner from the Black-Hawk-Grundy Mental Health Center drafted a letter concerning their evaluation of A.S.R. The letter recommended continued commitment based on the "inherent risk" associated with A.S.R.'s diagnosis of delusional disorder and his "naming of specific individuals who have conspired against him." The medical staff considered A.S.R.'s recent applications for weapons permits and stated "in their professional opinion" the combination of circumstances could be a "recipe for disaster."

The district court held a hearing on March 18, 2013, and affirmed the order of the judicial hospitalization referee on March 21, 2013. A.S.R. appeals.

II. STANDARD OF REVIEW

Involuntary commitments are tried to the court as actions at law. *In re Oseing*, 296 N.W.2d 797, 800–01 (Iowa 1980); *In re B.T.G.*, 784 N.W.2d 792, 796 (Iowa Ct. App. 2010). Therefore, we review challenges to the sufficiency of the evidence for legal error. *See* Iowa R. App. P. 6.907. The district court's findings of fact are binding upon this court if supported by substantial evidence. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence. *Id*.

III. CIVIL COMMITMENT

Involuntary commitment is appropriate only if the court finds a person has a serious mental impairment. A serious mental impairment means the person is mentally ill, and because of that illness both lacks sufficient judgment into the needed treatment and poses a danger to the person's self or others. That dangerousness can be manifested in any of three ways: (a) the likelihood the person will physically injure himself or others if allowed to remain at liberty without treatment; (b) the likelihood the person will inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment; or (c) the person's inability to satisfy his needs for nourishment, clothing, essential medical care, or shelter so that it is likely he will suffer physical injury, physical debilitation, or death. Iowa Code § 229.1(17). A.S.R. challenges all of these elements.

A. Does A.S.R. Have A Mental Illness?

Dr. Trahan diagnosed A.S.R. with delusional disorder. A.S.R. argues Dr. Trahan only interacted with him twice and A.S.R. had never been diagnosed with this illness before. We do not believe the recency of the diagnosis diminishes its accuracy. Moreover, the doctor testified he suspected A.S.R.'s "pathology has been there a long time" and A.S.R.'s life circumstances were "reflective of a chronic mental illness."

A.S.R. also contends the judicial hospital referee should have asked about the doctor's methods in arriving at his diagnosis. But it is inappropriate for the

trier of fact to take on an advocacy role. *See In re S.P.*, 719 N.W.2d 535, 539 (Iowa 2006) (advising parties must prove their own cases without assistance from the court). A.S.R.'s counsel cross examined Dr. Trahan at the hearing, but did not question how the doctor reached his diagnosis of delusional disorder. We find clear and convincing evidence in the record supporting the district court's conclusion that A.S.R. has a mental illness.

B. Does A.S.R. Lack Sufficient Judgment To Make Responsible Decisions With Respect To His Treatment Because of His Delusional Disorder?

The second element in section 229.1(17) is judgmental capacity. The State was required to prove A.S.R. is unable, because of his alleged mental illness, to reach a rational decision whether to seek treatment. *See In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986). In the context of reviewing a continued commitment, this element entails an assessment whether the person is able to decide rationally whether to maintain treatment. *In re B.T.G.*, 784 N.W.2d 792, 797 (Iowa Ct. App. 2010).

A.S.R. argues simply disregarding medical advice is not the same as lacking the capacity to make a rational treatment decision. We agree we cannot second guess a rationally reached decision, even if medically inadvisable. *See In re J.P.*, 574 N.W.2d 340, 343 (Iowa 1998). But that is not the case at hand. Dr. Trahan decided A.S.R. was not capable of making reasonable decisions about his treatment because A.S.R. "does not see his beliefs/actions as in any way abnormal." The doctor testified that convincing A.S.R. to take prescription

medications would be "very difficult to do" despite the fact that antipsychotic drugs would likely alleviate some of A.S.R.'s delusional concerns about a conspiracy against him. In *J.P.*, the respondent discontinued taking medication because of its adverse side effects. *Id*. Here, the record shows no basis for A.S.R.'s reluctance to seek treatment, other than his general denial he has a mental illness. Upon this record, the district court could reasonably determine A.S.R. lacked capacity to make a rational judgment about his treatment because of his mental illness. *See Oseing*, 296 N.W.2d at 801.

C. Does A.S.R.'S Mental Illness Make It Likely He Will Physically Injure Himself Or Others If Allowed To Remain At Liberty Without Treatment?

Dangerousness is the third element the State must prove under section 229.1(17). *In re Foster*, 426 N.W.2d 374, 377 (Iowa 1988) (examining proof that Foster was "likely to inflict physical injury on himself or others"). The *Foster* court defined the word "likely" as "probable or reasonably to be expected." *Id*. That definition requires courts to make a prediction whether the respondent poses a danger to himself or others. *Id*. Evidence to support that prediction must come in the form of a "recent overt act, attempt or threat." *Id*. Under chapter 229, an overt act connotes "past aggressive behavior or threats by the respondent manifesting probable commission of a dangerous act upon himself or others that is likely to result in physical injury." *Id*. at 378. Unusual or bizarre conduct standing alone is not enough to establish dangerousness. *Id*. at 379; *see also In*

re Mohr, 383 N.W.2d 539, 542 (Iowa 1986) ("socially unacceptable behavior cannot suffice").

A.S.R. argues that because Dr. Trahan reported he was not an "imminent risk," the State failed to prove he is dangerous. But the phrase "imminent risk" does not appear in section 229.1(17). The judicial hospital referee and the district court received evidence that A.S.R. had recently shown up at the Waterloo city hall—aggressively demanding to see certain city officials—and in a meeting with the police chief on February 14, 2013, communicated the idea of "lining up" and shooting "all with one shot" those who conspired against him, as well as suggesting he would consider committing "mass murder" but for his belief in God. A.S.R.'s threatening statements came against the backdrop of A.S.R. asserting he had previously armed himself in a police station when he felt disrespected by an officer. A.S.R. also made the statements less than one week after obtaining a permit to carry a weapon. When viewed in context, we find A.S.R.'s aggressive behavior toward city officials and threatening statements to law enforcement qualified as recent overt acts undergirding the finding of dangerousness by the judicial hospitalization referee and the district court.

A.S.R. also argues the notion he posed a danger was negated by the fact Chief Trelka waited seven days after his February 7, 2013 conversation to file the application for civil commitment. But we note the chief's affidavit includes information that A.S.R. continued to act on his delusional beliefs, visiting the police front counter on February 12, 2013 to say he was gathering evidence to prove the Waterloo Police Department was conspiring against him, and leaving

the chief a voicemail that same day to describe "corruption" in the department and to recount an incident where an officer allegedly attempted to kill him. The record shows the chief acted diligently in pursuing this matter.

Because the record includes clear and convincing evidence supporting all three elements of serious mental impairment, we affirm A.S.R.'s continued out-patient commitment.

AFFIRMED.