IN THE COURT OF APPEALS OF IOWA

No. 3-869 / 13-0116
Filed October 2, 2013

IN THE MATTER OF L.J., ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED

L.J.,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Marsha M. Beckelman, Judge.

L.J. appeals the district court's ruling affirming the finding L.J. is seriously mentally impaired. **AFFIRMED.**

Frank Santiago, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Gretchen Witte Kraemer, Assistant Attorney General, Janet M. Lyness, County Attorney, and Susan Nehring, Assistant County Attorney, for appellee State.

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

VOGEL, P.J.

L.J. appeals from the district court's order finding L.J. is seriously mentally impaired and thus subject to civil commitment, pursuant to Iowa Code section 229.1(17) (2011). L.J. claims the allegations and subsequent court rulings are not supported by clear and convincing evidence. Because we find the State's expert provided clear and convincing evidence L.J. is seriously mentally impaired, we affirm.

I. Factual and Procedural Background

L.J., born in 1993, is currently an inmate at the Iowa Medical and Classification Center (IMCC), before which he was serving time at the Anamosa State Penitentiary. When he first arrived an Anamosa, L.J. was seen periodically by psychologists and was diagnosed with anti-social disorder and prescribed medication for anxiety, impulsiveness, and problems with sleep. However, after a brief period of time, L.J. refused the medication, and his agitation and disruptive behaviors increased. After serving less than one year, L.J. accumulated almost eighteen months of disciplinary time for actions such as threatening staff, being off unit, and assaulting his cellmate. Consequently, on November 9, 2012, L.J. was transferred to the IMCC. Once there, L.J. informed staff he could drown himself by using a toilet or could use a light fixture to electrocute himself. These comments prompted staff to put L.J on suicide watch.

Gary Keller, D.O., conducted an initial examination of L.J. on November 9, 2012, in which he diagnosed L.J. with mood disorder not otherwise specified (NOS), learning disorder NOS, and mild mental retardation. After this examination, Dr. Keller wrote a letter informing the court of his intention to file for

a civil commitment of L.J. due to L.J.'s psychiatric disorders and the danger he posed to himself and others. Dr. Keller characterized L.J.'s behavior as "explosive and impulsive . . . [and that has] put staff and ultimately [L.J.] in danger . . . ." Cleo Hester, a social worker at the IMCC, filed the application for order of involuntary hospitalization on November 13, reflecting Dr. Keller's conclusion.

On December 1, 2012, an independent medical examination was performed by Christopher Okiishi, M.D., who interviewed L.J. in person and also reviewed Dr. Keller's and Hester's reports. Dr. Okiishi concluded that, though L.J. has a mental illness, L.J. was not a danger to himself or others at the time, and therefore should not be civilly committed. Based on this report, L.J. filed a motion to dismiss, which was denied.

On December 14, 2012, a hearing was held before the judicial hospitalization referee. In his physician's report of examination, composed pursuant to Iowa Code section 229.10(2), Dr. Keller stated that after a more thorough examination, he concluded L.J. suffers from bipolar disorder NOS, with concerns of hypomanic periods and intermittent explosive disorder, and borderline intellectual functioning. Dr. Keller further noted L.J.'s loud and disruptive behavior and denial of any need for medication. The hospitalization referee granted the application for involuntary commitment.

L.J. then filed a notice of appeal and a de novo hearing was held in district court on December 31. Dr. Keller testified, reiterating his opinion as set forth in his December 14 physician's report to the court. He further testified L.J. was recently returned to the acute psychiatric unit after engaging in actions indicating

he would harm himself, and was again placed on suicide watch. However, after beginning a new medication regimen, L.J.'s violent and disruptive behavior had lessened, though at the time of the hearing L.J. had only been on the new medication for two weeks. In its order, the court found Dr. Keller's testimony regarding L.J.'s serious mental impairment credible, and furthermore, after listening to and observing L.J. testify, found:

> [L.J.] demonstrated little or no insight into his mental health problems . . . . [L.J.] demonstrated that he is unable to manage his mental illness on his own at this time. Even though he responds to treatment with medication, without the benefit of a more structured environment, it is highly likely that [L.J.] will not make decisions as are in his best interest. [L.J.] has a history of being noncompliant with taking prescribed medications . . . . The Court agrees with Dr. Keller that [L.J.] presents a danger to himself and others due to his history of refusing to be compliant with prescribed medication. Without [this] medication, [L.J.'s] impulsivity and assaultive behaviors will likely return and/or increase.

Additionally, the court noted that after L.J.'s arrival at the IMCC, he continued to be disruptive, did not listen to staff, and persistently denied the need for medication. Based on these facts, the district court affirmed the referee's decision L.J. is seriously mentally impaired and subject to civil commitment.

L.J. now appeals, claiming Dr. Keller's opinion does not establish by clear and convincing evidence he is subject to civil commitment. He asserts the prison psychiatric reports, which contain varying diagnoses, in combination with Dr. Okiishi's report, establish he is not seriously mentally impaired.

II. Standard of Review

Because an involuntary commitment proceeding is a special action triable as an ordinary action at law, we review challenges to the sufficiency of the evidence for errors at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). The

elements of serious mental impairment must be supported by clear and convincing evidence, that is, "there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence." *Id.* (internal citations omitted). Additionally, the district court's findings of fact are binding if they are supported by substantial evidence, and we will not set aside the trial court's findings unless, as a matter of law, they are not supported by clear and convincing evidence. *Id.*

III. Whether L.J. is Seriously Mentally Impaired

A person is seriously mentally impaired when the person has a mental illness, and:

> [B]ecause of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:
>
> a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
>
> b. Is likely to 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.
>
> c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

Iowa Code § 229.1(17). Thus, the definition of serious mental impairment has three elements: the respondent must have (1) a mental illness, and so (2) lack "sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment" and (3) is 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.*; *J.P.*, 574 N.W.2d at 343.

With regard to the first element, both Dr. Keller and Dr. Okiishi concluded L.J. suffers from a mental illness. Dr. Keller believes L.J. has bipolar disorder NOS, with concerns of hypomanic periods and intermittent explosive disorder, and borderline intellectual functioning. Dr. Okiishi diagnosed L.J. with ADHD and anti-social personality disorder. Therefore, substantial evidence supports the trial court's finding L.J. suffers from a mental illness, and the first element is met.

To establish the lack of judgmental capacity, the State must "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). As the district court noted, L.J. denies he has ever been diagnosed with a mental illness for which he needs medication. The district court's conclusion L.J. is unable to make reasoned decisions regarding his treatment is reinforced by both this testimony and L.J.'s past and recent history as an inmate of refusing medication, which results in violent and disruptive behavior where L.J. poses a danger to both himself and others. As Dr. Keller testified in response to the question of whether L.J. would be a danger to himself or others if he was not required to take his medication:

> A: [L.J.] has continued to express that he is not very interested in continuing the medications if he was given the opportunity to stop them. Unfortunately, from his history of up to this point in the Department of Corrections, his number of reports, impulsivity, the—again, the assault that took place before his transfer here, plus his interactions with peers on the unit and the number of reports he got for that, I do believe that the level of impulsivity, especially when it escalates to the point he had and the events, that he's at risk to self without medications or at least a trial of them.
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> Q: In your opinion, is he capable of making responsible decisions in regard to his treatment at this time?
>
> A: Not at this moment.

Based on this evidence, the district court aptly found L.J. lacks the judgmental capacity to make a rational decision regarding his treatment. *See In re B.T.G.*, 784 N.W.2d 792, 797–98 (Iowa Ct. App. 2010) (finding a respondent's refusal to take medication, without which he is violent toward both himself and others, is enough to establish the element of impaired judgment).

The third element of dangerousness involves likely physical injury to oneself or others, which must be established by recent overt acts. *Id.* at 798. L.J. has been placed on suicide watch on several occasions prior to and after the filing of the application for involuntary hospitalization. These acts occurred after L.J. engaged in behavior indicating he is contemplating self-harm, such as stating he could drown himself in the toilet, electrocute himself with the light fixture, or beat his head against the wall. Dr. Keller also specifically testified he believes L.J. is a threat to himself without his medication, which, if left alone, he refuses to take. Moreover, without his medication, L.J. is violent toward others, as evidenced by his multiple disciplinary reports for behavior such as threatening guards and assaulting other inmates. Therefore, recent overt acts indicate L.J. poses a danger to both himself and others.

For these reasons, we affirm the decision of the district court, which affirmed the referee's finding L.J. is seriously mentally impaired pursuant to Iowa Code section 229.1(17).

AFFIRMED.