

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2016 CA 0715

IN THE MATTER OF THE MENTAL HEALTH OF D.J.W.

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JEW by JY

Judgment rendered: APR 20 2017

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On Appeal from the
Twentieth Judicial District Court
In and for the Parish of East Feliciana
State of Louisiana
No. JC-2793

The Honorable Kathryn E. Jones, Judge Presiding

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

HOLDRIDGE, J.

This appeal concerns the judicial commitment of D.J.W., a sixty-one year old male, pursuant to La. R.S. 28:54. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

D.J.W. was charged with three counts of battery, aggravated assault with a firearm, and simple criminal damage to property.¹ On July 14, 2015, the trial court found D.J.W. to be incapable of standing trial pursuant to La. C.Cr.P. art. 648(B)(3) and ordered that he remain in the legal custody of the Department of Health and Hospitals, Eastern Louisiana Mental Health System (ELMHS).

On July 23, 2015, Dr. Franklin J. Bordenave, a physician at ELMHS, filed a petition seeking judicial commitment for D.J.W.² In his petition, Dr. Bordenave stated that D.J.W. suffered from a mental illness that “contribute[d] or cause[d] him to be gravely disabled.” Dr. Bordenave further stated in the petition that D.J.W. “ha[d] ongoing delusional beliefs that everyone from Marlon Gusman, Mitch Landrieu, Mary Landrieu and Bobby Jindal conspired to send the police to his house to rob him. He ha[d] filed frivolous lawsuits against President Obama and ha[d] required administrative review for forced medications to combat both elevated mood and psychosis.” Dr. Bordenave further alleged that D.J.W. did not have the capacity to make a knowing and voluntary consent to treatment on a voluntary basis because of his mental condition.

¹ The record on appeal does not contain an indictment or bill of information confirming these charges. However, it appears that the appellant does not contest this.

² On July 7, 2015, D.J.W. was evaluated by Dr. John E. Roberts, III, his attending physician at ELMHS, and reported that he refused his medications and exhibited paranoid delusions against government officials. Dr. Roberts concluded that D.J.W. was in need of involuntary commitment.

The trial court then issued an order on July 27, 2015, setting the matter for a commitment hearing pursuant to La. R.S. 28:55 and appointed Dr. Roberts to examine D.J.W. prior to the hearing and report to the court his concerns pursuant to La. R.S. 28:54.³ Following the hearing, the trial court signed a judgment on August 7, 2015, finding that D.J.W. was gravely disabled and unable to provide for his own basic physical needs and further committed D.J.W. to ELMHS for a period not to exceed 180 days.

On February 3, 2016, Dr. Bordenave filed another petition for judicial commitment alleging that D.J.W. was gravely disabled and needed further treatment at ELMHS. Dr. Bordenave stated in his petition that D.J.W.'s "insight, judgment, and reliability [were] poor. [D.J.W. denied] that he ha[d] any type of psychiatric illness [and] ha[d] ongoing delusional beliefs." The trial court then issued an order on February 3, 2016, setting the matter for a commitment hearing and appointed Dr. Harminder Mallik, a physician at ELMHS, to examine D.J.W. prior to the hearing and report to the court his concerns pursuant to La. R.S. 28:54(D)(1). Dr. Mallik examined D.J.W. on March 14, 2016 and reported that D.J.W. continued to exhibit paranoid delusions, limited insight, and refused all treatment.⁴

On March 18, 2016, a hearing was held on Dr. Bordenave's petition for judicial commitment, wherein the appellee offered Dr. Mallik as an expert in the field of psychiatry. Dr. Mallik testified that he was D.J.W.'s treating psychiatrist since December of 2015. He stated that D.J.W. had been diagnosed with

³ The record on appeal does not contain a transcript of the August 7, 2015 hearing.

⁴ It appears from the record that the "DATE AND TIME" suggested on Dr. Mallik's report, "3-14-15" is incorrect as it should read "3-14-16". Because it was simply a clerical mistake that does not affect the outcome of this case we will not address it.

Schizoaffective Disorder,⁵ a bipolar type. Dr. Mallik further testified that “it’s been a constant ... struggle to ... treat [D.J.W.] because he doesn’t feel that he needs medications ...[a]lthough he remain[ed] psychotic he [was] fairly quiet on the unit and complie[d] with the rules and regulations.”

After hearing the testimony of Dr. Mallik and D.J.W., the trial court ruled in open court finding that D.J.W. suffered from “a serious mental illness and [was] ... gravely disabled [and] placement at [ELMHS was] the least restrictive, medically appropriate placement for him currently.” A judgment was signed March 18, 2016, committing D.J.W. to ELMHS for a period not to exceed 180 days. D.J.W. appealed assigning as error that the trial court erroneously found him to be gravely disabled due to a mental health condition absent clear and convincing evidence.

DISCUSSION

Judicial commitment of a mentally ill person is a civil exercise of the state’s police power. It is not a criminal proceeding or a formal interdiction affecting the committed person’s property rights. In re M.M., 42,899 (La. App. 2 Cir. 11/21/07), 969 So.2d 835, 837. Before a person may be subjected to a judgment of civil commitment, the petitioner must establish by clear and convincing proof that the person is a danger to himself or others or is gravely disabled by substance abuse or mental illness. In Re Mental Health S.A.V., 2008-1013 (La. App. 1 Cir. 6/20/08), 992 So.2d 1067, 1070; *see also* La. R.S. 28:55. Clear and convincing evidence is more than a preponderance of evidence but less than proof beyond a

⁵ Schizoaffective Disorder is a group of severe emotional disorders characterized by psychotic features during the active phase; deterioration from a previous level of social, occupational, and self-care functioning, onset before age 45, a duration of at least six months with a strong likelihood of recurrence; and the presence of multiple symptoms such as delusions, loosening of associations, hallucinations, blunted or inappropriate affect, disturbed sense of self, disturbance in motivation and/or goal-directed activity, and withdrawal from social relationships. Dox, *Attorney’s Illustrated Medical Dictionary* at S9.

reasonable doubt. In the Matter of B.W., 566 So.2d 1094, 1096 (La. App. 2 Cir. 1990).

In order to prove grave disability, the petitioner is required to establish that a person is both unable to provide for his basic needs and unable to survive safely in freedom or protect himself from serious harm. *See* La. R.S. 28:2(10); In re H.W., 94-0406 (La. App. 4 Cir. 9/29/94), 644 So.2d 225, 228. Whether a person is mentally ill or gravely disabled and unable to survive safely in freedom are factual determinations to be made by the trial court, and these findings will not be disturbed on appeal in the absence of manifest error. In re Mental Health of S.A.V., 2008-1013 (La. App. 1 Cir. 6/20/08), 992 So.2d 1067, 1071. Although, the factual findings of the trial court in commitment cases are entitled to great weight, the record must be reviewed in light of the heightened burden of proof required by constitutional and statutory law since the judgment of the trial court involves the deprivation of liberty by involuntary commitment. Id.

In the instant matter, the record clearly establishes that D.J.W. suffers from a serious mental illness, schizoaffective disorder. In determining whether D.J.W. is able to provide his own basic physical needs pursuant to La. R.S. 28:1, *et. seq.*, the trial court ordered Dr. Mallik, D.J.W.'s treating physician at ELMHS, to evaluate him. Dr. Mallik's medical report stated in part the following:

[D.J.W.] has had longstanding delusions that Governor Jindal, Senator Landrieu, Mayor Landrieu, and Sheriff Gusman all conspired to send agents to [his] house and "place of business" to attempt to rob and assault him. [D.J.W.] has refused medications to the extent that we needed Administrative Review for forced medications in the past. Since his transfer to CV he continues to refuse his antipsychotic medications stating that it causes "kidney problems". He is adamant that he is not mentally ill. He feels that the Moon and Crescent Co are behind all his legal problems.

[D.J.W.] continues to exhibit paranoid delusions and limited insight. He is refusing all treatment due to this limited insight. Due to [his] ongoing paranoid delusions, such as that of not needing medication

and paranoia against governmental officials, I believe that he is in need of involuntary commitment.

During the commitment hearing, Dr. Mallik testified that he believed that D.J.W. is a danger to himself, others, and gravely disabled because he was noncompliant with his medications. Dr. Mallik further explained D.J.W.'s criminal charges stating, in pertinent part:

[D.J.W.] doesn't feel that he has any legal charges ... he feels that the ... Landrieu family in New Orleans has been somehow involved in a conspiracy to somehow bring forth these charges ... towards him. He was originally charged with ... Simple Criminal Damage because he had put a no parking sign in his yard which, according to him, meant that nobody could park on the street in front of his home ... and he felt that people were observing the yard, and that the Landrieu family were somehow involved in this. He actually took a pipe and went and damaged the car that was parked in front of his house.

After reviewing the record, we conclude that the trial court did not err in finding that the appellee met its burden of proving by clear and convincing evidence that D.J.W. is gravely disabled. Dr. Mallik's testimony and medical report established that D.J.W. suffers from a mental illness that causes him to be delusional, paranoid, and noncompliant with his medication. D.J.W. will not voluntarily take his medication. Thus, this evidences that D.J.W. could not care for himself even with adequate medical supervision pursuant to La. R.S. 28:2(10).

Moreover, the record evidences that D.J.W. is unable to survive safely in freedom or protect himself from serious harm. The testimony of D.J.W.'s primary physician, Dr. Mallik, established that D.J.W. was incapable of providing for his own basic needs and surviving safely in freedom. Dr. Mallik testified that D.J.W.'s delusions "are probably always going to be there" and if he were discharged, his condition would deteriorate, thus necessitating readmission. Even though there were no other witnesses testifying as to D.J.W.'s behavior, the trial judge had the benefit of personally observing D.J.W.'s demeanor while testifying.

The trial court's conclusions, based on a live presentation of testimony and a personal observation of the respondent, are entitled to great weight. In the Matter of L.M.S., 476 So.2d 934, 937 (La. App. 2 Cir. 1985).

Considering this evidence, and the reasonable inferences which the trial court was entitled to draw therefrom, we conclude that the appellee presented sufficient evidence to satisfy the heightened burden of proof to establish that D.J.W. is gravely disabled pursuant to La. R.S. 28:2(10).

Motion to Strike

D.J.W. has filed a motion to strike all documents in the record which predate the appellee's February 3, 2016 petition. The appellant's motion to strike was referred to the merits of this appeal for disposition. Our review of the record reveals that the documents requested to be stricken did not affect the merits of this case. Therefore, the motion to strike is denied.

CONCLUSION

We find no error in the trial court's judgment ordering D.J.W. committed due to grave disability as a result of a mental illness. The judgment of the trial court is affirmed. Costs of this appeal are assessed to D.J.W.

MOTION TO STRIKE DENIED; AFFIRMED.