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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1800

Chaleunsouk Keomany,
Appellant,

vs.

Commissioner of Human Services,
Respondent.

Filed April 16, 2012
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-MH-PR-06-657

Chaleunsouk Keomany, St. Peter, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Steven H. Alpert, Anthony R. Noss, Assistant Attorneys General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Theresa Fehringer Couri, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Collins, Judge.[*]

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

CONNOLLY, Judge

Appellant challenges the decision of the judicial appeal panel to deny his request for a full discharge from his indeterminate commitment as mentally ill and dangerous. Because we see no error in the panel's conclusion that appellant failed to produce any competent evidence showing that he is entitled to a full discharge, we affirm.

FACTS

Appellant Chaleunsouk Keomany was born in Laos in 1973; in 1981, he emigrated to the United States with his parents and five older siblings. In 1993, appellant entered into an unrecorded marriage he describes as "cultural." His three children were born in 1994, 1998, and 2001. Appellant and his wife separated after an incident in August 2001, when appellant reportedly struck his wife several times and interfered with her 911 call. He was arrested for domestic assault and interference with a 911 call, put on probation, and ordered to attend anger management classes.

Another incident of violent behavior towards family members occurred in July 2004, when appellant held a knife to the throats of two family members. He said that auditory hallucinations had told him to "kill, kill, kill." Appellant was hospitalized, complaining of insomnia, delusions, and behavioral changes and reporting both visual and auditory hallucinations. He was diagnosed with Psychotic Disorder, Not Otherwise Specified (NOS) and was prescribed antipsychotic medication. Against medical advice, appellant left the hospital three days after being admitted.

Two more incidents occurred in August 2004. First, appellant injured his sister, who fell from a vehicle that appellant continued to drive while she was trying to prevent him from doing so. Then, two days later, appellant attempted to stab his mother with a kitchen knife, saying he wanted to kill her. Appellant reported experiencing hallucinations in connection with this incident, and he was hospitalized for two months. In 2005, appellant was again hospitalized and was prescribed Risperdal in injectable form. He was given a stay of commitment.

In 2006, another incident of violence towards his mother occurred when appellant, after shouting that he was "seeing ghosts everywhere," attacked his mother with a small wooden club. Appellant required sedation and restraints to prevent him from injuring himself. He was taken by ambulance to the hospital and charged with domestic assault.[1]

A petition was again filed for appellant's commitment as mentally ill and dangerous (MI&D), and a hearing on the petition was held in August 2006. The evidence included testimony from two court-appointed examiners. The district court found that (1) appellant's diagnosis was schizophrenia, paranoid type, which impaired his judgment, behavior, and capacity to recognize reality; (2) appellant's condition was manifested by disturbed behavior and paranoid delusions and hallucinations, auditory and visual; (3) appellant presented a clear danger to public safety, as evinced by his attack on his elderly mother; and (4) there was a substantial likelihood that appellant would engage in other acts that could cause physical harm because he lacked insight into his behavior, he

[1] Records conflict as to whether it was second-degree or third-degree assault. In any event, the charges were dismissed after he was found incompetent in 2008.

was medication noncompliant, and he had been treated with narcoleptic medications. Appellant was committed to the Minnesota Security Hospital (MSH) as MI&D.

After the January 2007 review hearing, the district court found that nothing had changed since appellant's admission to MSH. Although his symptoms had decreased, he still had schizophrenia, paranoid type; lacked insight into the disease; saw no need for narcoleptic medication; and continued to be a danger to the public. Appellant was indeterminately committed.

Appellant petitioned for a discharge, a provisional discharge, or a transfer. In September 2010, a Special Review Board (SRB) conducted a hearing on the petition. Evidence included testimony from a forensic psychologist that appellant wants his doctors to cease his medication to prove he is not mentally ill and does not trust anyone to give him feedback; testimony from an adult protection services representative that appellant said he would not take medication if fully discharged but would take it to comply with a provisional discharge, and testimony from appellant that he has never had symptoms of mental illness. The SRB denied appellant's petition.

Appellant then sought review only of the denial of his petition for a full discharge from a three-judge appeal panel. He was examined by a licensed psychologist, who did not testify but provided a report stating that appellant was not capable of making an adjustment to open society, was still dangerous to the public, and still needed inpatient treatment and supervision.

Based on the psychologist's report and on the testimony of appellant, the only witness at the hearing, the appeal panel affirmed the denial of appellant's petition for a full discharge. He challenges that decision.

D E C I S I O N

In reviewing decisions of an appeal panel, this court applies a de novo standard to issues of statutory interpretation but does not reverse findings of fact if the record as a whole sustains them. *Rydberg v. Goodno*, 689 N.W.2d 310, 313 (Minn. App. 2004).

> The discharge procedures pertaining to a person committed as mentally ill and dangerous to the public provide that such a person shall not be discharged unless he or she: (1) is capable of making an acceptable adjustment to open society, (2) is no longer dangerous to the public, and (3) is no longer in need of inpatient treatment and supervision.

Call v. Gomez, 535 N.W.2d 312, 317 (Minn. 1995) (citing Minn. Stat. § 253B.18, subd. 15 (1994)). Before the appeal panel, "[t]he petitioning party seeking discharge or provisional discharge bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief." Minn. Stat. § 253B.19, subd. 2(d) (2010).

Appellant presented no evidence showing that he is entitled to discharge. The psychologist who examined him did not testify, but her report was submitted to the appeal panel. Her "Summary and Recommendations" were:

> At present, [appellant] does not seem capable of making an acceptable adjustment to open society. To his credit, he has been relatively cooperative with groups in the past and has complied with journaling. He has saved money and has a history of employment. However, he has a history of six community hospitalizations in a two year time period

from 2004 to 2006. Three of these were the result of significant physical aggression against family members. During that time he apparently failed to comply with treatment in the community including stopping his medication. *[Appellant] has firmly denied for the past five years that he has any mental illness*. At times he has also denied his past aggressive acts. He does not acknowledge that his well documented delusional beliefs led to violent behavior on his part or that antipsychotic medication is helpful to him in controlling these beliefs. He offers rationalizations for his past beliefs that his family members were imposters, stating that he felt excluded or nagged, but these do not account for his significantly aggressive acts. At present, [appellant] reports that he is willing to continue to take medication but this is not convincing given his requests to go off medication in the past year and his clear indication that he sees no need for it and feels no benefit from it.

[Appellant] has not engaged in overtly dangerous behavior in the past five years but in the past several months he has reportedly engaged in "veiled threats" to staff in his journal. His refusal to reconcile with his family suggests the possibility of ongoing delusional beliefs about them that he is now too treatment savvy to share. This does not support his assertion that he is no longer dangerous to them or to the public.

[Appellant] has not demonstrated good control of his disorder or that he has the ability to regulate his illness adequately outside of his current closely supervised setting. He has indicated there is no one he trusts to help him manage his symptoms or give him advice. His refusal to acknowledge his illness has been attributed to his family's traditional Lao beliefs regarding the stigma of mental illness and the existence of demons and ghosts to explain aberrant behavior. It has also been identified as a manifestation of his illness and an ongoing delusional belief. While a refusal to acknowledge mental illness or anosognosia is thought to be common among mentally ill adults, in [appellant's] situation it presents a significant impediment to his goal of being discharged. He continues to be in need of 24 hour care and supervision.

(Emphasis added.) Thus, the psychologist explicitly found that appellant does not meet any of the criteria for discharge. Her report is not "competent evidence" indicating that appellant is entitled to discharge. Indeed, it shows just the opposite.

Appellant was the only witness the appeal panel heard, and his testimony also failed to provide competent evidence that he meets the criteria for discharge. Appellant testified that: (1) he had held a knife to his brother-in-law's throat because they were having an argument; (2) he had driven off in his sister's van while she was hanging onto it because he didn't know she was there; (3) he threatened his brother-in-law with a knife on an occasion when he wanted a cigarette; (4) he had a fight with his mother because, due to a change in the form of his medication, he thought she was an imposter; (5) he hit his mother with a small wooden club, but didn't know what was happening and felt like this was not real; and (6) he had never had violent incidents except with family members.

Appellant's testimony confirmed the psychologist's observation that he does not believe he has a mental illness. When asked if he believed he had a mental illness, he replied, "No, I don't." When asked why he did not believe he had a mental illness, appellant answered, "Well, I mean I didn't do anything weird. I argue with my family, I hurt my mom, yes, I did. I regret that but I mean I can't do anything about it." He testified further that, although he was not acting strange at the time he was committed, his family thought he was acting strange "[b]ecause probably I go out too much with my friends and stuff like that and they think I wasn't being responsible around my kids and stuff like that so they say that that doesn't look like it's me." He testified that he does not think he needs medications "because I'm complying with everything they want me to do"

and said he would not take medication for mental illness if he were released from commitment "[b]ecause ever since I took the medication everything just went wrong. Even before I went to the hospital and they give me medication and they never told me it was a psych medication." Appellant testified that he feels he does not need more treatment "[b]ecause I understand about what they tell me about the illness and the symptoms that come with it. That's why I feel like I never had those symptoms, I never had those problems."

Appellant also testified that what he writes in his journal is aggressive and angry because "I'm just opening up how I feel about being there and trying to learn about the – what they call the symptoms that I have and stuff like that and I – I have to write how I feel in anger, the truth, you know, how I feel about the medication and all that stuff." He testified that he is angry "[b]ecause I'm being locked up and being forced to take medication that I feel like I never had. I mean I'm not going to come out and tell them that, yes, I need the medication when I don't – I never had those symptoms that they told me I had." He testified that, if released, he would not see a doctor for his mental illness "[b]ecause I don't feel like I have the mental problem" and that, if he did see a doctor and the doctor thought he should take medication for mental illness, "It would be a thought." He said he wanted the panel to grant his petition because "since my whole entire life, I mean I haven't caused any crime since I was young, until my adult childhood until the incident they put me into the hospital for saying that I was diagnosed with schizoaffective bipolar . . . ." Finally, he said, "I feel ashamed for what I did and I would be more ashamed if I told my kid that I'm in a mental institution for what I did."

Neither the report of the psychologist who examined appellant nor appellant's testimony provided the appeal panel with any competent evidence that appellant meets the criteria for full discharge from commitment.

Affirmed.