

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: M. R. M., :
Alleged to be Mentally Ill, : No. 12AP-686
(Appellant). : (Prob. No. MI-19106)
: (ACCELERATED CALENDAR)

D E C I S I O N

Rendered on June 4, 2013

Law Office of Brian M. Garvine, LLC, and Brian M. Garvine,
for appellant.

J. Michael Evans, for appellee.

APPEAL from the Franklin County Court of Common Pleas
Probate Division

DORRIAN, J.

{¶ 1} Respondent-appellant, M.R.M. ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas, Probate Division, ordering that appellant be committed to the Franklin County Alcohol, Drug Abuse, and Mental Health Board ("Franklin County ADAMH Board") with placement at Twin Valley Behavioral Health Hospital ("Twin Valley"), for a period not to exceed 90 days. Because we conclude that there was sufficient evidence to support the probate court's conclusion that appellant was a mentally ill person subject to hospitalization by court order, we affirm.

{¶ 2} This case arises from appellant's hospitalization under a court order. On June 15, 2012, an affidavit of mental illness made by Michele Bowers ("the Bowers affidavit") was filed with the probate court, attesting that appellant was a mentally ill person subject to hospitalization by court order. The probate court concluded that the Bowers affidavit satisfied the statutory criteria and issued an order directing the Franklin

County Sheriff to take appellant into custody. Appellant was admitted to Twin Valley on June 21, 2012. On June 22, the probate court, acting on its own motion, filed an entry of continuance setting the statutorily required hearing on the Bowers affidavit for June 27, 2012. On June 25, 2012, Twin Valley filed an application to authorize forced psychotropic medication for appellant, and the probate court set the hearing for that application for June 27, 2012. The probate court later filed a second continuance, setting the hearing on the affidavit of mental illness and the application for forced psychotropic medication for June 29, 2012, based on appellant's request to call Dr. Kevin Paugh as a witness on her behalf.

{¶ 3} At the hearing, the probate court dismissed the Bowers affidavit because the hearing was conducted more than ten days after the affidavit was filed. The same day, another affidavit of mental illness, attested by Dr. Justin Trevino ("the Trevino affidavit") was filed with the probate court, attesting that appellant was a mentally ill person subject to hospitalization by court order. The probate court concluded that the Trevino affidavit satisfied the statutory criteria and ordered that appellant be detained at Twin Valley. The probate court scheduled a hearing on July 3, 2012, to consider the Trevino affidavit and the application for forced psychotropic medication. Appellant requested a continuance to obtain records from Dr. Charles Paugh and waived the ten-day requirement for the hearing; the probate court granted the continuance and scheduled the hearing for July 11, 2012. Appellant later withdrew her waiver of the ten-day requirement, and the probate court conducted a hearing on July 6, 2012. A magistrate of the probate court issued a judgment entry finding that appellant was a mentally ill person subject to hospitalization by court order. The probate court adopted the magistrate's decision, entering a judgment ordering that appellant be committed to the Franklin County ADAMH Board with placement at Twin Valley for a period not to exceed 90 days.

{¶ 4} Appellant appeals from the probate court's judgment, assigning two errors for this court's review:

I. THE PROBATE COURT'S DECISION FINDING APPELLANT TO BE A MENTALLY ILL PERSON SUBJECT TO HOSPITALIZATION BY COURT ORDER WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AS APPELLANT'S MOTION TO SUPPRESS EVIDENCE AND

DISMISS THE AFFIDAVIT OF MENTAL ILLNESS SHOULD HAVE BEEN GRANTED.

II. THE PROBATE COURT'S DECISION TO FORCIBLY MEDICATE APPELLANT WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE BECAUSE APPELLANT'S MOTION TO SUPPRESS EVIDENCE AND DISMISS THE AFFIDAVIT OF MENTAL ILLNESS SHOULD HAVE BEEN GRANTED.

{¶ 5} Appellant was involuntarily hospitalized under the procedure set forth in R.C. 5122.11 to 5122.15. Hospitalization under this procedure is commenced by the filing of an affidavit with the court setting forth the specific category or categories under R.C. 5122.01(B) upon which the court's jurisdiction is based. The affidavit must also contain alleged facts sufficient to indicate probable cause that an individual is a mentally ill person subject to hospitalization by court order. R.C. 5122.11. The criteria defining "mentally ill person subject to hospitalization by court order" are set forth in R.C. 5122.01(B). If the court has probable cause to believe that the person named in the affidavit is a mentally ill person subject to hospitalization, it may issue a temporary order of detention providing for the individual to be taken into custody and transported to a hospital. R.C. 5122.11. The court must then conduct a hearing to determine whether the individual is a mentally ill person subject to hospitalization by court order. R.C. 5122.141(A). By statute, this hearing must be conducted within five court days from the day when the individual is detained or the affidavit is filed, whichever occurs first. However, for good cause, the court may order a continuance of the hearing for up to ten days from the day on which the individual is detained or the affidavit is filed. Under the statute, failure to conduct the hearing within the ten-day period requires immediate discharge of the hospitalized individual. R.C. 5122.141(B).

{¶ 6} Appellant asserts that this appeal is subject to review under the clear-and-convincing-evidence standard. Twin Valley argues that the manifest-weight-of-the-evidence test applies and that the probate court's judgment should not be reversed if it is supported by some competent, credible evidence. In *Licking & Knox Community Mental Health & Recovery Bd. v. T.B.*, 10th Dist. No. 10AP-454, 2010-Ohio-3487, this court suggested that there may be a question as to whether appeals of involuntary commitment

orders are subject to the clear and convincing evidence standard or the competent, credible evidence standard. *Id.* at ¶ 8. However, as explained below, appellant does not challenge the substance of the evidence presented to the probate court, and we conclude that, under either standard, the evidence was sufficient to support the probate court's order. Therefore, we need not answer the question raised in the *T.B.* decision.

{¶ 7} In her first assignment of error, appellant asserts that the probate court should have excluded or dismissed the Trevino affidavit and concluded that there was insufficient evidence to indicate probable cause to believe that appellant was a mentally ill person subject to hospitalization. However, appellant does not challenge the *content* of the Trevino affidavit. Rather, appellant argues that the Trevino affidavit should have been excluded because it was based on information gathered and records created during appellant's initial hospitalization. Appellant argues that the Bowers affidavit, which provided the basis for the initial hospitalization, was insufficient to invoke the probate court's jurisdiction and that her hospitalization pursuant to that affidavit was unlawful. Appellant argues that, by extension, any evidence or medical records gathered during the initial hospitalization should have been excluded. Appellant cites to several cases in which courts concluded that improper affidavits were insufficient to invoke the probate court's jurisdiction. However, appellant ignores a key distinction—in those cases, the affidavit was found to be *substantively* insufficient.

{¶ 8} The Supreme Court of Ohio has held that "[t]he jurisdiction of a court may not be invoked by an affidavit alleging that a person is a 'mentally ill person subject to hospitalization by court order' under R.C. 5122.01(B)(4) when the *factual* allegations contained in the affidavit are insufficient to establish probable cause." (Emphasis added.) *In re Boggs*, 50 Ohio St.3d 217 (1990), syllabus. In *Boggs*, the affidavit asserted that the individual claimed to be mentally ill subject to hospitalization had a religious preoccupation and a history of noncompliance with medications. *Id.* at 220. However, the court found that there was no evidence in the affidavit or an attached letter to substantiate any religious preoccupation or history of noncompliance with medications, even if the court assumed that one or both of those conditions constituted a basis for involuntary commitment. *Id.* Therefore, the court concluded that the affidavit contained insufficient factual allegations to establish probable cause and that it was insufficient to invoke the

probate court's jurisdiction. *Id.* at 221. Similarly, in *In re Miller*, 63 Ohio St.3d 99 (1992), an affidavit was submitted asserting that an individual was progressively confused, delusional, and paranoid. However, the court concluded that these bare assertions were insufficient and that the affidavit lacked the necessary facts to demonstrate probable cause to invoke the jurisdiction of the probate court. *Id.* at 105-06. *See also In re Mitterbach*, 8th Dist. No. 89200, 2007-Ohio-6489, ¶ 12-16 (holding that affidavit that failed to substantiate individual's history of psychiatric illness or indicate how individual was non-compliant with medications or delusional was insufficient to invoke jurisdiction of probate court).

{¶ 9} This court applied *Boggs* and *Miller* in *In re P.H.*, 10th Dist. No. 96AP-1729 (July 10, 1997). In that case, the affidavit attesting that the respondent was mentally ill was made in the name of Dr. James Youngman but was signed by Dr. R.D. Huestis. The court noted that it was unaware of any authority allowing an affidavit to be signed by a person other than the person possessing the knowledge or information set forth in the affidavit. Due to this flaw, the affidavit was insufficient to invoke the subject- matter jurisdiction of the probate court.

{¶ 10} Appellant does not challenge the content of the Bowers affidavit. In the affidavit, Bowers asserted that appellant was a mentally ill person subject to hospitalization by court order because she represented a substantial risk of physical harm to others and a substantial and immediate risk of serious physical impairment or injury to herself and would benefit from treatment in a hospital for her mental illness. The affidavit also contained facts to substantiate these assertions. Based on information obtained from appellant's mother, Bowers stated that appellant had a history of carrying a loaded handgun and a knife and that appellant stated she was going to kill everyone connected to the rapper Jay-Z. Additionally, appellant stated that the rapper Jay-Z was in her stomach and that she was going to cut him out. We conclude that the affidavit presented clear and convincing evidence to indicate probable cause that appellant was a mentally ill person subject to hospitalization by court order. Therefore, the Bowers affidavit was sufficient to invoke the probate court's jurisdiction, and appellant was subject to immediate hospitalization.

{¶ 11} As explained above, once an individual has been detained under R.C. 5122.141, the court must conduct a hearing on the affidavit. By statute, the hearing must be held no more than ten days from the day on which the individual was detained or the affidavit was filed, whichever comes first, and failure to conduct the hearing within the specified time requires an immediate discharge of the individual. R.C. 5122.141(B). In this case, the Bowers affidavit was filed on June 15, 2012. Therefore, the probate court was required to conduct a hearing no later than June 25. The court failed to do so, ultimately holding a hearing on June 29, at which time the court dismissed the Bowers affidavit because the hearing had not been conducted within ten days. Under R.C. 5122.141(B), due to the failure to conduct the hearing within ten days, appellant was entitled to immediate discharge as of June 26. However, the failure to conduct a hearing within ten days did not affect the *content* of the Bowers affidavit. Unlike the scenarios in *Boggs*, *Miller*, and *P.H.*, the Bowers affidavit was sufficient to invoke the probate court's jurisdiction, but the court failed to meet the procedural requirements of the involuntary hospitalization statutes. Thus, we conclude that appellant was validly hospitalized pursuant to the probate court's authority prior to June 26, 2012.

{¶ 12} The same day that the probate court dismissed the Bowers affidavit, the Trevino affidavit was filed. Appellant argues that the Trevino affidavit should have been excluded because it was based on observations made while she was hospitalized under the probate court's order based on the Bowers affidavit. However, as explained above, we conclude that the Bowers affidavit properly invoked the probate court's jurisdiction and that the hospitalization based on the Bowers affidavit was valid until June 26, 2012. The fact that the Trevino affidavit was based on observations made while appellant was hospitalized does not make it factually insufficient.

{¶ 13} Appellant does not contest the accuracy or sufficiency of the Trevino affidavit. In the affidavit, Dr. Trevino asserted that appellant represented a substantial risk of physical harm to others, represented a substantial and immediate risk of serious physical impairment to herself, and would benefit from treatment in a hospital for her mental illness. In support of these assertions, Dr. Trevino attested that appellant stated that there were children inside her body that were being raped. Appellant also stated that she was a victim of human trafficking and was being abused through the internet and

raped by a computer. Appellant also threatened her psychiatrist. Further, Dr. Trevino attested that appellant was not attending to her own basic physical needs and refused to take an antibiotic for a urinary tract infection. She asked the social worker for financial assistance, leading Dr. Trevino to believe that she might put herself in dangerous situations due to a lack of money and that hospitalization was the least restrictive environment to ensure that she could stabilize mentally and physically. We conclude that this affidavit constituted clear and convincing evidence to indicate probable cause that appellant was a mentally ill person subject to hospitalization by court order. Additionally, it constitutes competent, credible evidence in support of the probate court's decision to order appellant's continued hospitalization.

{¶ 14} Accordingly, we overrule appellant's first assignment of error.

{¶ 15} In her second assignment of error, appellant argues that the order allowing her to be forcibly medicated was not supported by clear and convincing evidence. Appellant's sole argument in support of her second assignment of error is that the order allowing appellant to be forcibly medicated will be moot if the Trevino affidavit is excluded. As explained above, we conclude that the Trevino affidavit formed a sufficient basis for the hospitalization order. Accordingly, we overrule appellant's second assignment of error.

{¶ 16} For the foregoing reasons, we overrule both of appellant's assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Probate Division.

Judgment affirmed.

KLATT, P.J., and SADLER, J., concur.
