

FILED: October 26, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of R. G.,
Alleged to be a Mentally Ill Person.

STATE OF OREGON,
Respondent,

v.

R. G.,
Appellant.

Marion County Circuit Court
10C18268

A146358

Gale M. Rieder, Judge.

Submitted on September 12, 2011.

Tom Coleman filed the brief for appellant.

John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Janet A. Klapstein, Senior Assistant Attorney General, filed the brief for respondent.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Duncan, Judge.

PER CURIAM

Reversed.

1 PER CURIAM

2 Appellant seeks reversal of a judgment committing her to the custody of the
3 Mental Health Division, ORS 426.130(1)(b)(C), based on a finding that, because of a
4 mental disorder, she was unable to provide for her basic personal needs and was not
5 receiving the care necessary for her health and safety, ORS 426.005(1)(e)(B). Appellant
6 assigns error to that determination, arguing that the state failed to establish by clear and
7 convincing evidence that she was unable to provide for her basic personal needs.

8 Appellant has not requested *de novo* review, and we decline to review the
9 facts in this case under that standard. ORS 19.415(3)(b); *see also* [State v. B. B.](#), 240 Or
10 App 75, 77 n 2, 245 P3d 697 (2010) (adhering to "'presumption against the exercise of
11 discretion' to engage in *de novo* review" without request and justification to do so
12 (quoting ORAP 5.40(8)(c))). Therefore, we defer to the trial court's findings of fact if
13 there is any evidence to support them and review the court's legal conclusions for legal
14 error. *B. B.*, 240 Or App at 77.

15 A discussion of the facts would not benefit the bench, the bar, or the public.
16 The trial court appears to have based its determination that appellant was unable to
17 provide for her basic personal needs on a medical examiner's conclusion that appellant
18 lacked "skills to handle homelessness" and access to financial resources, which made
19 appellant's future plans to care for herself "not very realistic." However, even drawing all
20 inferences consistently with the trial court's findings, the evidence in this case is legally
21 insufficient to support a finding that appellant's mental disorder created a serious and
22 "nonspeculative threat to [appellant's] near-term survival." *See* [State v. D. M.](#), 245 Or

1 App 466, 473, ___ P3d ___ (2011) (stating principle); *see also* [State v. A. M.-M.](#), 236 Or
2 App 598, 604, 238 P3d 407 (2010) ("Although it seems plausible that [the] appellant will
3 not have housing services available on release, * * * homelessness is not adequate
4 justification for involuntary commitment.").

5 Reversed.