



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

Nos. 04-17-00221-CV & 04-17-00222-CV

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF J.R.

From the Probate Court No. 1, Bexar County, Texas
Trial Court Nos. 2017MH0786 & 2017MH0918
Honorable Kelly Cross, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Irene Rios, Justice

Delivered and Filed: September 20, 2017

AFFIRMED

In these accelerated appeals, appellant J.R. challenges the probate court's judgment committing her for temporary inpatient mental health services and its order compelling the administration of psychoactive medications. J.R. contends the evidence is legally and factually insufficient to order her temporary commitment under the first commitment criteria, and because the evidence is insufficient to support her commitment, the probate court could not order compelled medication. We affirm the probate court's judgment and order.

BACKGROUND

At the temporary commitment hearing, Dr. Carlos Velez, a psychiatrist, testified he had been treating J.R. daily while she was inpatient at a hospital. J.R. is diagnosed with schizophrenia. Dr. Velez testified J.R. is likely to cause serious harm to herself because she has a consistent pattern

of paranoid behavior which had worsened in the past six months. J.R. demonstrates poor self-care and ideation which lead her to not take care of herself medically and psychiatrically. J.R. was twenty weeks pregnant and only intermittently received prenatal care. Even while hospitalized, J.R. was minimally compliant with prenatal care. For example, J.R. needed to have prenatal labs drawn; however, she refused the labs based on her belief that she might have previously had the labs drawn. Dr. Velez testified J.R. was consistently suspicious about labs being drawn due to her paranoia, and the failure to have the labs drawn could potentially harm both J.R. and her baby. Although J.R. was consistently taking vitamins, she was only intermittently taking the recommended prenatal iron. J.R. previously injured her hand requiring stitches; however, she refused to have the stitches removed. Dr. Velez testified J.R. went to the emergency room on one occasion because she believed her baby was being monitored through a wire that her neighbors could see. Dr. Velez stated J.R.'s visits to the emergency room were because of her paranoia about her medical care.

J.R.'s mother testified she is concerned about her daughter who had sought treatment at the emergency room six or eight times in the past few months. J.R. sought treatment because she said she is in pain and concerned about her baby. J.R.'s brother also is diagnosed as bipolar schizophrenic, and J.R.'s mother agrees with J.R.'s diagnosis based on her observations, including J.R.'s belief that she sees people in the vent.

Dr. Kelin Ogburn, a psychiatrist, also had treated J.R. off and on for two weeks. Dr. Ogburn also diagnosed J.R. as schizophrenic and believed J.R. was likely to cause serious harm to herself because she was unable to explain her hand injury. Dr. Ogburn testified J.R.'s stitches should have been removed ten days before the hearing, but she refused to have them removed on multiple occasions. Dr. Ogburn stated the skin will eventually grow over the stitches so they cannot be removed. Although J.R. sought treatment at the emergency room on several occasions,

she refused the recommended healthcare, including a refusal of such basic services as checking her vital signs and lab work. Dr. Ogburn testified it took two weeks to convince J.R. to allow labs to be drawn which were needed for both her health and the health of her baby. Dr. Ogburn stated J.R. is unable to consent to treatment because of her paranoia.

J.R.'s boyfriend testified J.R. cut her hand when she hit a window while trying to kill a bee. J.R.'s boyfriend did not believe J.R. had a mental illness and did not see any reason for J.R. to take medication.

J.R. testified the hospital was not providing her with the paperwork necessary to explain her treatment and had not spoken with her OB/GYN regarding the labs she already had drawn. J.R. stated she was receiving prenatal care from her OB/GYN. J.R. also stated she had an appointment to have her stitches removed but the doctor did not accept her insurance, and she was unable to set up another appointment because of her hospitalization. J.R. testified she was not having the stitches removed at the hospital because the hospital was missing paperwork and because the stitches have to be removed by a doctor of her choice. She further testified someone signed her name to paperwork at the hospital without her knowledge. J.R. admitted she sought treatment at the emergency room six times in two months.

At the conclusion of the testimony, the probate court granted the temporary commitment based on its finding that J.R. is likely to cause serious harm to herself. The probate court also granted the State's motion to compel the administration of psychoactive medications. J.R. appeals.

STANDARD OF REVIEW

The burden of proof for an involuntary commitment is by clear and convincing evidence. TEX. HEALTH & SAFETY CODE ANN. § 574.034(a) (West 2017). Clear and convincing evidence is “that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.” *State v. K.E.W.*, 315

S.W.3d 16, 20 (Tex. 2010) (quoting *State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979)); see also *In re C.E.*, 100 S.W.3d 368, 369 (Tex. App.—San Antonio 2002, no pet.).

Because the burden of proof for an involuntary commitment is clear and convincing evidence, we apply a heightened standard of review. *State ex rel. D.W.*, 359 S.W.3d 383, 385 (Tex. App.—Dallas 2012, no pet.). When we consider a legal sufficiency challenge, “we review all the evidence in the light most favorable to the finding to determine whether a reasonable factfinder could have formed a firm belief or conviction that the finding was true.” *K.E.W.*, 315 S.W.3d at 20. “We resolve disputed fact questions in favor of the finding if a reasonable factfinder could have done so, and we disregard all contrary evidence unless a reasonable factfinder could not have done so.” *Id.* “When reviewing factual sufficiency, we must give due consideration to evidence that the fact finder could reasonably have found to be clear and convincing and then determine whether, based on the entire record, a fact finder could reasonably form a firm conviction or belief that the allegations in the petition were proven.” *State ex rel. D.W.*, 359 S.W.3d at 385 (citing *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)).

In order to satisfy the clear and convincing evidence standard for establishing the criteria required for commitment, “the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm: (1) the likelihood of serious harm to the proposed patient or others; or (2) the proposed patient’s distress and the deterioration of the proposed patient’s ability to function.” TEX. HEALTH & SAFETY CODE ANN. § 574.034(d). “Expert testimony recommending involuntary temporary commitment must be supported by a factual basis;” “[a] bald diagnosis alone is insufficient to support commitment.” *In re Breeden*, 4 S.W.3d 782, 784 (Tex. App.—San Antonio 1999, no pet.).

TEMPORARY COMMITMENT

J.R. asserts the evidence is legally and factually insufficient to support her temporary commitment “under the first criteria because she was likely to cause serious harm to herself.”

A person who cannot make a rational decision to receive treatment is dangerous to his own well-being. *State ex rel. S.W.*, 356 S.W.3d 576, 583 (Tex. App.—Texarkana 2011, no pet.); *Johnson v. State*, 693 S.W.2d 559, 563 (Tex. App.—San Antonio 1985, no writ). The danger stems from the person’s inability to seek treatment which might improve his condition. *See State ex rel. S.W.*, 356 S.W.3d at 583; *Johnson*, 693 S.W.2d at 563.

Based on the testimony of Dr. Velez and Dr. Ogburn, the trial court could have found J.R.’s mental illness is preventing her from making a rational decision to receive treatment, including the removal of her stitches and basic services necessary for proper prenatal care. Although J.R. testified she was receiving care from another physician, she admitted she refused to have her stitches removed in part because the hospital was missing paperwork and someone signed her name to some of the hospital’s paperwork. Furthermore, although the evidence established J.R. routinely sought medical care at the emergency room, the evidence also established her paranoia caused her to refuse any recommended treatment. Having reviewed the record, we hold the evidence is legally and factually sufficient to support the probate court’s finding that J.R. is likely to cause serious harm to herself as a result of her mental illness.

COURT-ORDERED MEDICATION

J.R. also challenges the probate court’s order compelling her to take medication. The only basis on which J.R. challenges the medication order, however, is that the evidence is legally and factually insufficient to support the trial court’s judgment of commitment. *See TEX. HEALTH & SAFETY CODE ANN. § 574.104(a)(3)* (requiring patient to be under an order for inpatient mental health services before physician may file application for court-ordered medication). Because we

have determined the evidence is sufficient to support the probate court's judgment with regard to J.R.'s temporary commitment, we overrule J.R.'s challenge to the order compelling her to take medication. *See State ex rel. D.P.*, Nos. 04-14-00719-CV & 04-14-00723-CV, 2015 WL 3616169, at *5 (Tex. App.—San Antonio June 10, 2015, no pet.) (mem. op.).

CONCLUSION

The probate court's judgment committing J.R. for temporary inpatient mental health services and its order compelling the administration of psychoactive medications are affirmed.

Irene Rios, Justice