FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-43

KEVIN MILLER,

Appellant,

v.

NORTH FLORIDA EVALUATION
AND TREATMENT CENTER,

Appellee.

On appeal from the Circuit Court for Alachua County.
Denise Ferrero, Judge.

December 20, 2019

ROWE, J.

Kevin Miller, a forensic client committed to a state mental health facility, appeals an order authorizing the Florida Department of Children and Families to involuntarily medicate him.* Because the trial court complied with the requirements of

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* After the filing of this appeal, the trial court declared Miller competent, accepted his no contest plea, and sentenced him. Even so, this appeal is not moot. *Moreland v. State*, 706 So. 2d 71, 72 (Fla. 1st DCA 1998) (holding that an appeal of a final order approving involuntary treatment was not moot despite the appellant's discharge from the Florida State Hospital).

section 916.107(3), Florida Statutes (2018) when it authorized the treatment, we affirm.

Facts

Miller was diagnosed with Unspecified Schizophrenia Spectrum Disorder. The trial court found Miller incompetent to proceed to trial on the criminal charges against him and committed him to the custody of DCF. A few weeks after his commitment, the administrator of the commitment facility petitioned the court under section 916.107(3) for an order authorizing the involuntary treatment of Miller, including the administration of psychotropic medications. The administrator asserted that Miller was unable to give express and informed consent for his treatment.

The court held an evidentiary hearing. Miller refused to appear. Leigh Hassell-Walker, Miller's counselor, testified at the hearing. She explained that Miller refused to take his medication, to participate in any offered therapies, and to answer questions about his competency. She asserted that Miller refused to admit that he had a mental illness.

Dr. John Johnston, an expert in forensic psychiatry, also testified. He diagnosed Miller with Unspecified Schizophrenia Spectrum Disorder. He asserted that Miller refused to take his medication even though medication was the only way to restore his competency. Dr. Johnston opined that Miller's prognosis was better with medication and poor without it. He sought permission to administer three antipsychotics, two mood stabilizers, and several medications for side effects or discomfort so he would have options if one drug failed. He emphasized that he would not administer all the medications at the same time. Dr. Johnston agreed that Miller had not been a danger to himself or others during his stay at the facility.

The hearing concluded, and the court granted the petition for involuntary treatment. The court found that Miller was unable to and refused to give express and informed consent to his treatment. And that Miller refused to participate in therapeutic options offered to restore his competency. Because Miller had been diagnosed with Unspecified Schizophrenia Spectrum Disorder, the

court found that treatment with psychotropic medication was essential to Miller's care.

In support of its order, the court made these findings required by section 916.107(3): (1) Miller preferred not to take medication as demonstrated by his refusal to attend the proceedings and his refusal to take medications under any circumstances; (2) Miller suffered from a medical condition that would require close monitoring if a certain psychotropic medication was administered; (3) Miller's prognosis without treatment was poor, and his competence could not be restored without medication; and (4) Miller's prognosis would be better with drug treatment than without it.

After the court found that the evidence supported Miller's involuntary treatment under the statute, Miller's counsel argued that the trial court was also required to determine whether Miller's involuntary medication was constitutionally permissible by considering the factors provided in *Sell v. United States*, 539 U.S. 166 (2003). The court found that it need not consider those factors because *Sell* did not apply when the court determined that (1) the forensic client was dangerous or (2) the client's refusal to take medication placed his health at grave risk.

The court found that Miller was a danger to himself or others. The court observed that Florida's statutory framework for civil commitment required a preliminary finding by the committing court that the defendant was dangerous to himself or others and that no less restrictive alternative was appropriate. The court believed that the findings of the original order were controlling and that it lacked authority to vacate or contradict an order of a sister court that found that Miller presented a danger to himself or others.

The court also found that Miller was not competent to make his own treatment decisions and that the medication was essential to the care of Miller's mental illness. The court relied on testimony from Hassel-Walker and Dr. Johnston to reach this decision. Miller did not believe that he had a mental illness and refused psychotropic medications under any circumstances. The court observed that Miller's failure to appear at the proceedings showed

he lacked an understanding of the gravity of the issues presented and his situation in general. Based on these findings, the trial court held that it need not consider *Sell* because alternative grounds justified Miller's involuntary medication. Because the statutory requirements had been satisfied, it granted the petition for involuntary treatment. This timely appeal follows.

Standard of Review

A trial court's order requiring a forensic client committed to a state mental health facility to accept involuntary psychotropic treatment must be supported by competent, substantial evidence. *Dinardo v. State*, 742 So. 2d 287, 289 (Fla. 1st DCA 1998).

Analysis

Before authorizing involuntary treatment to render a defendant competent to proceed to trial, a court must consider both statutory and constitutional factors.

Statutory Considerations

Section 916.107(3)(a), Florida Statutes (2018), permits involuntary treatment of a forensic client committed to a state facility in emergency situations or by petition of the court. Before granting a petition for involuntary treatment, the trial court "shall determine by clear and convincing evidence that the client has mental illness, intellectual disability, or autism, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects." § 916.107(3)(a)3, Fla. Stat. (2018). The court must also consider: (1) the client's preference about treatment; (2) the likelihood of adverse side effects; (3) the client's prognosis without treatment; and (4) the client's prognosis with treatment. § 916.107(3)(a)3., Fla. Stat. (2018).

The trial court here considered each of the statutory factors when it authorized the involuntary treatment of Miller. Miller suffers from Unspecified Schizophrenia Spectrum Disorder. Dr. Johnston testified that psychotropic medication was necessary to

treat Miller's disorder and to restore Miller's competence. He testified that Miller refused to acknowledge that he suffered from a mental illness and refused to take psychotropic medications under any circumstances. Dr. Johnston testified that the treatment was not experimental and did not present an unreasonable risk of serious, hazardous, or irreversible side effects.

The trial court also observed that Miller's refusal to attend the proceeding indicated his desire to not take the medication. But it found that there were no physical contraindications to the psychotropic medications being prescribed. The court relied on Dr. Johnston's testimony and found that Miller's prognosis without treatment was poor and his competence could not be restored without the use of psychotropic medications. Miller's prognosis with treatment improved. The trial court's findings on all the statutory factors under section 916.107(3)(a) are supported by competent, substantial evidence.

Constitutional Considerations

Miller argues that the trial court's consideration of the statutory factors for involuntary treatment was not enough to support the court's order authorizing treatment. Miller argues that the court also had to consider whether his forced medication was constitutionally permissible. It is true that a forensic client in state custody retains a "significant liberty interest" under the Due Process Clause of the Fourteenth Amendment "in avoiding the unwanted administration of psychotropic drugs." *Washington v. Harper*, 494 U.S. 210, 221 (1990). At the same time, the United States Supreme Court has held that in certain limited circumstances, the government may involuntarily administer psychotropic medication for the sole purpose of restoring a forensic client's competence to proceed to trial. *Sell*, 539 U.S. at 179-80.

In *Sell*, the Court considered whether "forced administration of antipsychotic drugs to render [a defendant] competent to stand trial unconstitutionally deprive[d] him of his 'liberty' to reject medical treatment." *Id.* at 177. The Court answered the question in the negative. It held that involuntary administration of an antipsychotic medication for the sole purpose of restoring a

defendant's competency to stand trial was sometimes permissible and would not deprive the defendant of his constitutionally protected liberty interest under the Due Process Clause of the Fifth Amendment. *Id.* at 179-80; *see also Howell v. State*, 133 So. 3d 511, 523 (Fla. 2019) (observing that *Sell* applies in Florida in cases involving the involuntary medication of forensic clients to restore competency to stand trial); *Smith v. State*, 145 So. 3d 189, 192 (Fla. 4th DCA 2019) (discussing when it is permissible under *Sell* to medicate involuntarily a mentally ill defendant to restore his competency to stand trial). But in those limited cases when the State seeks to involuntarily medicate a forensic client solely for restoration of competency to stand trial, *Sell* requires a showing that (1) an important governmental interest is at stake, (2) the administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial without causing side effects that would significantly interfere with the defendant's ability to help counsel prepare a defense, (3) less intrusive treatments are unlikely to achieve the same results, and (4) the administration of the medication is in the forensic client's best medical interest. 539 U.S. at 180.

Miller argues that the involuntary medication order was not authorized because the court failed to consider the *Sell* factors. We disagree because *Sell* does not apply when a trial court orders involuntarily medication of a forensic client for reasons other than restoration of competency. Courts may order involuntary treatment when a defendant is dangerous to himself or others or to protect the defendant's own interests where the refusal to take medication puts the defendant's own health at risk. *Id.* at 182. In those cases, the court need not consider the *Sell* factors. *Id.* at 181 (holding that the four-factor test applied only when the court was considering whether involuntary medication was necessary to render the defendant competent to stand trial); *see also United States v. Loughner*, 672 F.3d 731 (9th Cir. 2012) (declining to apply the *Sell* factors when considering whether a pretrial detainee may be involuntarily medicated because of dangerousness); *Thompson v. Bell*, 580 F.3d 423 (6th Cir. 2009) (acknowledging that the *Sell* factors do not apply when involuntary medication is sought because a defendant poses a danger to himself or others).

This is not a case in which the trial court needed to consider the *Sell* factors. Here, while the trial court found that the administration of the medication to Miller would promote restoration of his competency, the trial court also found that Miller was a danger to himself or others. The court reasoned that Miller was declared to be a danger to himself or others when he was originally committed to DCF's custody under section 916.13, Florida Statutes (2018). This statute allows for the commitment of a mentally incompetent defendant when the defendant cannot survive alone or when the defendant is a danger to himself or others. § 916.13(1)(a), Fla. Stat. (2018).

Reliance on the original commitment order may be appropriate sometimes. That said, Miller's commitment order did not specify under which ground Miller was originally committed. Thus, it cannot support the court's finding that Miller was a danger to himself or others. And neither Miller's counselor nor psychiatrist testified about Miller being dangerous during his commitment. Because of the ambiguity in the original commitment order and the lack of competent evidence, the trial court erred in concluding that Miller could be involuntarily medicated because he was a danger to himself or others.

But the involuntary medication order was still constitutionally permissible because the court also found that Miller was not competent to make his own medical decisions and that the medication was essential for his care. Both Miller's counselor and psychiatrist testified that Miller cannot make his own medical decisions. Miller had expressed the belief that he did not suffer from a mental illness. And he refused to take psychotropic medications under any circumstances.

Because Miller's involuntary treatment was not authorized solely to restore his competency to proceed to trial, the court correctly found it need not consider the *Sell* factors in ordering the involuntary treatment of Miller.

Conclusion

Competent, substantial evidence supports the trial court's findings under section 916.107(3)(a), as well as the court's findings

that Miller was not competent to make decisions about his medical treatment and that the medication was essential for his care. We thus hold that the trial court did not err when it granted the petition for involuntary treatment of Miller.

AFFIRMED.

RAY, C.J., and B.L. THOMAS, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and Megan Long, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Timothy L. Newhall, Senior Assistant Attorney General, Tallahassee, for Appellee.