FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-896

ALFRED HICKS III,

Appellant,

v.

NORTH FLORIDA REGIONAL
EVALUATION AND TREATMENT
CENTER,

Appellee.

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

December 23, 2019

ROWE, J.

Alfred Hicks III, 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 Hicks 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

Hicks was diagnosed with delusional disorder. The trial court declared Hicks incompetent to proceed to trial on the criminal charges against him and committed him to the custody of DCF. Eight months later, the administrator of the commitment facility petitioned the court, under section 916.107(3), for an order authorizing the involuntary treatment of Hicks, including the administration of psychotropic medications. The administrator asserted that Hicks was unable to give express and informed consent for his treatment.

The court held an evidentiary hearing on the petition and Hicks testified. Hicks claimed he did not need treatment because he was not harming anyone. He refused to take his prescribed medications because he was concerned about the side effects. But he did not identify any side effects that prompted his concern.

Dr. John Johnston, an expert in forensic psychiatry, also testified at the hearing. Dr. Johnston diagnosed Hicks with delusional disorder. Hicks' disorder manifested itself through many irrational beliefs. For example, he believed that it would be impossible for him to lose at trial, that he was a millionaire, and that the hospital was poisoning his food. He also believed that a group at the hospital was conspiring to prevent his discharge. Dr. Johnston opined that the best course of treatment for Hicks was long-term psychotherapy. But Hicks refused to talk about his symptoms or illness. The next best treatment option was medication. Dr. Johnston explained that Hicks' prognosis with medication was better than without it. He also opined that Hicks' competency could not be restored without medication.

After filing the petition for involuntary treatment, Dr. Johnston sought an emergency treatment order because Hicks' anger and aggression over being involuntarily committed led to Hicks making threatening statements to multiple staff members at the hospital. Dr. James Yelton, a psychiatrist, opined that there

had been a de-escalation in Hicks' aggressive behavior since he started taking the medication authorized by the emergency order.

The hearing concluded and the trial court granted the petition for involuntary treatment. The court found that Hicks was unable to and refused to give express and informed consent to his treatment. And that Hicks refused to participate in therapeutic options offered to restore his competency. Because Hicks had been diagnosed with delusional disorder, the court found that treatment with psychotropic medications was essential to Hicks' care and did not present an unreasonable risk of serious, hazardous, or irreversible side effects.

In support of its order, the trial court made these findings required by section 916.107(3): (1) Hicks preferred not to take medication; (2) Hicks suffered no adverse side effects from the psychotropic medication administered under the emergency order and there were no physical contraindications to the administration of the psychotropic medications; (3) Hicks' prognosis without treatment was poor, and his competence could not be restored without the use of psychotropic medications; and (4) Hicks' prognosis was better with drug treatment than without it.

After the trial court found that the evidence supported Hicks' involuntary medication under the statute, Hicks' counsel argued that the trial court was also required to determine whether Hicks' 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 a 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 Hicks 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 found that although Hicks had posed no immediate danger to himself or others since August 2018, Hicks' improved behavior could be attributed to the administration of psychotropic

medications under the emergency treatment order. The court found that without the medication, Hicks was likely to re-engage in overtly symptomatic behavior. The court also found that it lacked authority to vacate or contradict an order of a sister court that found that Hicks presented a danger to himself or others.

The court also concluded that Hicks was not competent to make his own treatment decisions. The court relied on testimony from Drs. Johnston and Yelton to reach this conclusion. The court also relied on Hicks' testimony that he did not believe that he had a mental illness and that he would refuse psychotropic medications under any circumstances. Based on these findings, the trial court held that it need not consider *Sell* because alternative grounds justified Hicks' 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

A trial court must consider both statutory and constitutional factors before authorizing involuntary treatment of a forensic client.

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 Hicks. Hicks suffers from delusional disorder. Dr. Johnston testified that psychotherapy would be the best way to treat the disorder, but Hicks refused to participate in treatment and refused to acknowledge that he suffered from mental illness. So medication was the only available treatment option for Hicks. Dr. Johnston testified that the treatment was not experimental and did not present an unreasonable risk of serious, hazardous, or irreversible side effects. In fact, Hicks had been taking the prescribed medication since May 2018, under the emergency treatment order, and Hicks had complained only of headaches as a side effect.

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

Constitutional Considerations

Hicks 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. Hicks 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.

Hicks argues that the involuntary medication order was not authorized because the trial court failed to consider the *Sell* factors. We disagree because *Sell* does not apply when a trial court orders involuntary 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 gravely at risk. *Id.* at 182. In those cases, the court need not consider the *Sell* test. *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 apply the *Sell* test. Here, while the trial court found that the administration of the medication to Hicks would promote restoration of his competency, the trial court also found that Hicks was a danger to himself or others. The court reached this conclusion for two reasons. First, the court reasoned that Hicks was declared 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). Hicks' order listed both reasons for his commitment. Second, the court relied on Dr. Johnston's testimony about Hicks' dangerous behavior at the hospital before he was involuntarily medicated under the emergency order. Dr. Johnston asserted that the escalation in Hicks' anger and aggressive behavior caused him to seek an emergency treatment order. Hicks threatened multiple staff members, including threatening to decapitate a staff member, by implying that he had people on the outside who would hurt the staff members. We find that the testimony from Dr. Johnston provided competent, substantial evidence to support the trial court's finding that Hicks was dangerous to himself and others without medication. We, therefore, need not address Hicks' argument that the original commitment order was too stale to support a finding of dangerousness.

Besides making the dangerousness determination, the trial court found that Hicks was not competent to make his own medical decisions and that medication was necessary for his care. Hicks did not believe that he had a mental illness and refused to take psychotropic medications under any circumstances. Dr. Johnston

explained that the medication was necessary to treat Hicks' delusional disorder.

In sum, because Hicks' involuntary treatment was not authorized solely to restore his competency, the court correctly found that it need not consider the *Sell* factors in ordering the involuntary treatment of Hicks.

Conclusion

Competent, substantial evidence supports the trial court's findings under section 916.107(3)(a), Florida Statutes, as well as the court's findings that Hicks was a danger to himself and others, and not competent to make decisions regarding his medical treatment. We thus hold that the trial court did not err when it granted the petition for involuntary treatment of Hicks.

AFFIRMED.

WOLF and ROBERTS, JJ., 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.