IN THE COURT OF APPEALS OF IOWA

No. 2-854 / 12-0786
Filed October 31, 2012

IN THE MATTER OF J.N.,
Alleged to Be Seriously Mentally Impaired,

J.N.,
Respondent-Appellant

Appeal from the Iowa District Court for Johnson County, Carl D. Baker, Judge.

J.N. appeals from the district court's ruling that he is seriously mentally impaired. **AFFIRMED.**

Ellen Ramsky-Kacena, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, Janet M. Lyness, County Attorney, and Jude Pannell, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

J.N. appeals from the district court's ruling finding him seriously mentally impaired. He contends the district court erred in finding clear and convincing evidence of serious mental impairment under Iowa Code 229.1(17) (2011). Specifically, he alleges the district court erred in finding clear and convincing evidence was presented that he lacked sufficient judgment to make responsible decisions regarding his treatment, and that he was a danger to himself or others. We agree with the district court's well-reasoned opinion and find clear and convincing evidence exists that J.N. could not make responsible decisions regarding his treatment and that he was likely to physically injure himself or others.

I. Facts and Proceedings

J.N. was recommended for involuntary hospitalization in late February 2012 by his counselor after he attempted to exit her car while it was in motion. After she refused to stop, J.N. forcibly put the vehicle in park and exited, refusing to reenter. The counselor noted he had not slept or taken his medications in several days. At this time the magistrate judge found him seriously mentally impaired and J.N. agreed to outpatient evaluation and treatment. He appealed this order to the district court.

Approximately two weeks later, J.N. was brought to a hospital by police after he set fire to a field and ran for several miles from officers. During the mental health commitment hearing, J.N. also testified this was the third fire he had started in three days. The first was "a piano in the alleyway or . . . an old organ cabinet" and the second was to some leaves in the backyard of the

apartment he was renting. He also reported at the hearing that, prior to his hospitalization, he used "excess" lithium prescribed to him as a skin exfoliant. The issue was tried de novo before the district court in March of 2012. The court found clear and convincing evidence J.N. was seriously mentally impaired. The court denied J.N.'s request to be placed on outpatient status and ordered him to inpatient treatment. In April, J.N. filed his notice of appeal from these proceedings. By that time, the district court had already issued an order releasing J.N. to outpatient status as J.N. had requested.

II. Analysis

The State argues that J.N.'s claim is moot because he is no longer involuntarily committed to the inpatient treatment which resulted from this proceeding. He is, however, still subject to outpatient treatment. *See In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992) ("Matters that are technically outside the record may be submitted in order to establish . . . a claim of mootness"). J.N. requested in his initial brief that "the decision of the District Court ordering his hospitalization be reversed and that he be immediately released from his involuntary commitment." His reply brief urges us that a ruling in this case "could have the effect to lift the [outpatient] commitment and allow him to return to the status of making his own decisions regarding his treatment and his treatment provider." J.N. contests the order releasing him to outpatient treatment for the first time in his reply brief.

An appeal is moot where an opinion by this court would no longer have any practical legal effect upon the underlying controversy. *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001). A court will hear an issue in spite of its mootness

where there is a matter of public importance presented and the problem is likely to recur. *Id*. Often this occurs where the action, by its nature, will frequently be moot prior to reaching an appellate court. *Id*.

Our state supreme court has addressed a similar case: "We think the present appeal is moot. M.T. is no longer subject to the inpatient treatment order that resulted from the challenged hearing. Moreover, he does not contest his commitment to outpatient treatment. Any ruling in this case will not affect his current commitment order under these circumstances." *Id*. at 705.

Here, while J.N. initially only attacks the evidentiary basis for proving the elements of his involuntary commitment, he also contests his outpatient commitment in his reply brief. Therefore, should we address his claim regarding his outpatient treatment, his challenge will no longer be moot. While we ordinarily do not address on appeal claims raised for the first time in a reply brief, *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996), we choose to reach J.N's argument.

We review challenges to the sufficiency of evidence for involuntary commitment for the correction of errors at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). "We will not set aside the trial court's findings unless, as a matter of law, the findings are not supported by clear and convincing evidence." *Id*. We find clear and convincing evidence exists for J.N.'s involuntary commitment here.

J.N. does not contest that he has a serious mental illness and benefits from treatment; he does contest the elements under Iowa Code section 229.1(16) requiring evidence that he lacked sufficient judgment to make responsible decisions regarding his treatment and that he was likely to physically

injure himself or others. J.N. argues that the fires, the police chase and his use of the "excess" lithium as an exfoliant are facts which could be interpreted in ways that would not necessarily involve compromised judgment. We agree with the reasoned and thorough findings of the district court, based on the testimony of the treating physician and J.N.'s history of non-compliance with medication, that J.N. could not make responsible decisions regarding his treatment.

We also agree with the district court's findings and reasoning that based on the fires, police chase, and J.N.'s history of non-compliance with medicine, J.N. "was likely to physically injure" himself or others. *See* Iowa Code § 229.1(17)(a). While J.N. urges us that the two week gap between his behavior and the commitment proceeding was insufficiently recent to constitute a "recent overt act," we disagree. *See In re Mohr*, 383 N.W.2d 539, 542 (Iowa 1986) (finding attack of father years before sufficient overt act for involuntary commitment given mental state). Clear and convincing evidence exists both that J.N. could not make responsible decisions regarding his treatment, and that he was likely to physically injure himself or others.

AFFIRMED.