IN THE COURT OF APPEALS OF IOWA

No. 3-143 / 12-1220
Filed May 15, 2013

IN THE MATTER OF J.G.,
Alleged to Be a Chronic Substance Abuser,

J.G.,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Paul D. Miller, Judge.

J.G. appeals her involuntary commitment under Iowa Code chapter 125 (2011). **REVERSED.**

Willie E. Townsend, Coralville, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kreamer, Assistant Attorney General, Janet M. Lyness, County Attorney, and Patricia Weir, Assistant County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

J.G. appeals an order finding her to be a "chronic substance abuser"[1] and ordering outpatient evaluation and treatment.

I. Background Facts and Proceedings

J.G.'s mother filed an application seeking J.G.'s involuntary hospitalization for chronic substance abuse. *See* Iowa Code §125.75 (2011). She supported the application with an affidavit attesting to her daughter's alcoholism and attempted suicide. She also attested that J.G. had a heart condition for which surgery was scheduled but later postponed because her "liver levels were to[o] high." Included with the application was a second affidavit signed by J.G.'s grandfather and containing similar attestations.

The district court issued an order for immediate custody and transport, and set the application for hearing. Follow-up testing revealed that J.G.'s blood alcohol concentration was .207 and her liver enzymes were "markedly elevated . . . consistent with excessive alcohol consumption." J.G. was placed in a detoxification unit at a substance abuse treatment center. A urine sample taken on her admission to the facility tested positive for marijuana.

After the first of two evidentiary hearings, the judicial hospitalization referee found J.G. to be a chronic substance abuser and ordered her placed at the facility on an outpatient basis for "evaluation and appropriate treatment." On appeal to the district court, which conducted a second de novo hearing pursuant to Iowa Code section 229.21(3)(c), the court ruled that J.G. was a chronic

[1] The order was filed before the July 1, 2012 effective date of amendments that deleted the term "chronic substance abuser" from the definitional section of Iowa Code chapter 125.

substance abuser under what was formerly Iowa Code section 125.2(5)(a) and again ordered her to undergo outpatient evaluation and treatment. J.G. moved for an expanded ruling, which the court denied. This appeal followed.

II. Mootness

As a preliminary matter, the State contends the issues on appeal are moot because J.G. was discharged from outpatient treatment and the district court filed an order terminating the commitment. J.G. disagrees, asserting the appeal is not moot in light of the "collateral effects a commitment may have."

In general, an appeal is moot if the "issue becomes nonexistent or academic and, consequently, no longer involves a justiciable controversy." *State v. Hernandez–Lopez*, 639 N.W.2d 226, 234 (Iowa 2002). Ordinarily, we will not review moot issues, but there are exceptions. *In re B.B.*, 826 N.W.2d 425, 428-29 (Iowa 2013).

In *B.B.*, 826 N.W.2d at 428, the Iowa Supreme Court addressed the question of "whether an appeal from a finding that a person is seriously mentally impaired under chapter 229 becomes moot when the person is released from involuntary commitment and the proceedings are terminated." The court noted that other jurisdictions had adopted an exception to the mootness doctrine "if a judgment left standing will cause the appellant to suffer continuing adverse collateral consequences," including "the accompanying stigma" of an involuntary commitment. *Id.* at 429. The court adopted that exception, holding, "a party who has been adjudicated seriously mentally impaired and involuntarily committed is presumed to suffer collateral consequences justifying appellate review." *Id.* The court explained that the State could rebut the presumption by showing "'some

number of prior involuntary commitment orders.'" *Id.* at 432 (*quoting In re Joan K.*, 273 P.3d 594, 598 (Alaska 2012)).

This appeal does not involve an involuntary commitment for a "serious mental impairment" under Iowa Code chapter 229 but court-ordered treatment for chronic substance abuse under Iowa Code chapter 125. Nonetheless, we believe the rationale for adopting the collateral consequences exception to the mootness doctrine applies equally to chapter 125 proceedings.

First, the court has interpreted these chapters similarly. *See In re E.J.H.*, 493 N.W.2d 841, 843 (Iowa 1992) ("We believe these same principles [governing involuntary commitment for mental illness] govern the involuntary commitment of a chronic substance abuser."); *see also In re R.P.*, 606 N.W.2d 15, 17 (Iowa 2000) (evaluating procedures for the involuntary commitment or treatment of chronic substance abusers and stating "The Supreme Court has held that civil commitment *for any purpose* constitutes a significant deprivation of liberty requiring due process protection." (citing *Addington v. Texas*, 441 U.S. 418, 425 (1979)). Second, the stigma associated with adjudication as a chronic substance abuser is not materially different from the stigma attending an adjudication based on a serious mental impairment. Indeed, the Iowa legislature's recent amendments to chapter 125 essentially equate substance abuse with mental illness, by defining "substance-related disorder" as "a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual of mental disorders published by the American psychiatric association that results in a functional impairment."

Iowa Code § 125.2(14) (2013). *Compare* Iowa Code chapter 125 (2011) *with* Iowa Code chapter 125 (2013); *see* 2011 Iowa Acts ch 121, §§ 24-50.

Applying this exception, we presume J.G. experienced collateral consequences as a result of her adjudication as a chronic substance abuser. We further conclude the State did not rebut the presumption by showing "'some number of prior involuntary commitment orders.'" *B.B.*, 826 N.W.2d at 432 (quoting *Joan K.*, 273 P.3d at 598). Accordingly, we proceed to the merits of J.G.'s appeal.

III. Affidavits

As noted, the application that precipitated these proceedings was accompanied by two affidavits, one from J.G.'s mother and one from her grandfather. *See* Iowa Code § 125.75(3)(b) (requiring application to be accompanied by "[o]ne or more supporting affidavits corroborating the application," or other specified documentation). J.G. contends the affidavits were "fabricated," rendering "the Application invalid under Iowa law" and "the [S]tate with no authority to proceed." We are not persuaded by this contention.

The mother's affidavit correctly stated that J.G. had a heart condition for which surgery was scheduled and then postponed. Although J.G. questioned the mother's attestation that the postponement was based on the status of her liver, that attestation was supported by the testimony of J.G's boyfriend, who stated the surgery was postponed in part because "the enzymes were off . . . in the liver." As for the mother's attestation that J.G. was an alcoholic, that attestation was supported by evidence of high blood alcohol content readings and an

inconsistency between those readings and J.G.'s report of her alcohol consumption.

We recognize that certain portions of the mother's affidavit were unsupported and, in fact, contradicted by testimony at the second evidentiary hearing. For example, the mother attested to J.G.'s daily consumption of alcohol and the effects of that alcohol usage on J.G.'s intake of food and non-alcoholic drinks but she admitted she only saw her daughter "off and on." Additionally, she attested to a suicide attempt by J.G., an attempt that J.G.'s boyfriend categorically refuted. Without minimizing these inconsistencies, we are not convinced they rise to the level of outright fabrications.

The same holds true for the affidavit proffered by J.G.'s ninety-year-old grandfather. While he acknowledged that the attestations were primarily based on second-hand information from his wife and daughter, he also stated, "I had something to add to it."

In light of our conclusion that the affidavits were not fabricated, we further conclude that the affidavits did not render the application or subsequent hearings invalid.

IV. Sufficiency of the Evidence

J.G. contends the record lacks clear and convincing evidence to support the district court's determination that she was a chronic substance abuser. *See* Iowa Code § 125.82(4) (2011).[2] "We will not set aside the trial court's findings

[2] As mentioned above, effective July 1, 2012, section 125.82 amended this reference from "chronic substance abuser" to "person with a substance related disorder." This and other amendments to chapter 125 were not in effect at the time of the district court proceedings in this case.

unless, as a matter of law, the findings are not supported by clear and convincing evidence." *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998) (reviewing involuntary commitment order filed under Iowa Code chapter 229).

To find a person a chronic substance abuser, the magistrate or district court has to find by clear and convincing evidence that the person:

> a. Habitually lacks self control as to the use of chemical substances to the extent that the person is likely to seriously endanger the person's health, or to physically injure the person's self or others, if allowed to remain at liberty without treatment.
>
> b. Lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment.

See Iowa Code § 125.2(5); *In re S.P.*, 719 N.W.2d 535, 538 (Iowa 2006).

J.G. focuses on the first element. She argues "[n]o evidence was put forth that [she] was a danger to herself or others."

We begin by noting that the statute does not require proof that J.G. "was" a serious danger but only that her alcohol usage was "likely" to pose a serious danger to her health or the physical safety of herself or others. "Likely" in the context of the analogous mental impairment statute means "probable or reasonably to be expected." *In re Oseing*, 296 N.W.2d 797, 801 (Iowa 1980). This element "requires a predictive judgment, based on prior manifestations but nevertheless ultimately grounded on future rather than past danger." *Id.* (citation and quotation omitted).

Even though the State was only required to prove a likelihood of serious danger rather than actual serious danger, it did not present clear and convincing evidence to support this element. The manager of the outpatient facility J.G. attended initially testified that J.G. was "not an imminent danger." While he

qualified his answer at the second evidentiary hearing, stating he did not believe she was a danger "[t]hat day," the only evidence he could point to suggesting that she had since become a danger was her "continuing" use of alcohol. Ongoing alcohol use, without more, was not enough to satisfy the first element.

This brings us to J.G.'s heart condition. A psychiatrist who evaluated J.G. testified that it was "recommended" J.G. have surgery for her heart condition, but "they cancelled her surgery because her liver enzymes were so elevated." The psychiatrist related J.G.'s high enzyme level to J.G.'s alcohol consumption. But when asked to assess the risks, the psychiatrist provided the following attenuated prognosis: "[A]lcohol in and of itself on a chronic basis can increase blood pressure" and "increased blood pressure is going to make the valves work harder and accelerate the process of . . . the valve, eventually, malfunctioning even more than it is." She also emphasized that she was not an expert cardiologist and her opinion was "a psychiatrist's take on a bicuspid valve condition." Notably, the State did not call a cardiologist to opine on the immediacy of the risk to J.G.'s heart should she continue her alcohol usage and continue to delay surgery. Accordingly, the record lacks clear and convincing evidence to support a finding that J.G. was "likely to seriously endanger [her] health or to physically injure [her]self or others, if allowed to remain at liberty without treatment" for her alcohol usage.

We reverse the district court order finding J.G. to be a chronic substance abuser.

REVERSED.