IN THE COURT OF APPEALS OF IOWA

No. 3-243 / 11-1836
Filed May 15, 2013

IN THE MATTER OF D.B., Alleged to be Seriously Mentally Impaired, A Chronic Substance Abuser,

D.B.,
Respondent-Appellant.

Appeal from the Iowa District Court for Des Moines County, Michael J. Schilling and John M. Wright, Judges.

D.B. appeals from a district court order requiring hospitalization due to serious mental impairment. **AFFIRMED.**

Heidi D. Van Winkle of Bartolomei & Lange, Burlington, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Ty Rogers, Assistant County Attorney.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

D.B. appeals from a district court order requiring hospitalization due to serious mental impairment and giving treating physicians the power to force D.B. to take certain medications. D.B. argues the evidence is insufficient to support a finding of serious mental impairment, the district court erred in denying his motion for a continuance, and the district court erred in admitting into evidence a doctor's report. Because we find no error, we affirm.

I. Background Facts and Proceedings

On May 24, 2012, the district court found that D.B.'s mental condition warranted continued hospitalization and forced administration of medications. The order came following a succession of district court decisions ordering both inpatient and outpatient care.

D.B. was initially ordered to involuntary outpatient treatment on September 20, 2011. Following a hearing on November 1, 2011, the district court determined that D.B. remained in a state necessitating involuntary hospitalization and further ordered the administration of any necessary medications.[1] The court relied upon a report filed by D.B.'s treating physician indicating a serious mental condition and that D.B. was failing to take medications necessary for his recovery. The report further indicated D.B. was a danger to himself or others due to paranoid and threatening behavior. Days later, an order was issued by the

[1] D.B. has two appeals, which have been consolidated before us today. The first appeal concerns the November 1, 2011 hearing.

district court which authorized the administration of chemotherapy without D.B.'s consent.[2]

After a report by doctors that he no longer required full-time custody and care, D.B. was transferred, by order of the district court, to residential placement at Chatham Oaks in Iowa City. Following notification that D.B. was once again refusing to take prescribed medications, the district court again ordered him into immediate custody and scheduled a hearing to determine his status. Following the hearing the district court determined that D.B. was seriously mentally impaired, ordered inpatient treatment at the University of Iowa Hospitals and Clinics, and authorized the administration of medication without D.B.'s consent. It is from this order that D.B. appeals. Following his appeal, however, the district court ordered that he be discharged from his hospitalization due to an improvement in his condition.

II. Standard of Review

Involuntary civil commitment actions are tried as an action at law. *In re Oseing*, 296 N.W.2d 797, 800–01 (Iowa 1980). Accordingly, our review is for errors at law. Iowa R. App. P. 6.907. Findings of the district court are binding if supported by substantial evidence. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). Evidence is substantial when a reasonable finder of fact could reach the same conclusion by clear and convincing evidence. *Id.*

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[2] Iowa Court rule 12.30 requires a report detailing the circumstances under which chemotherapy was administered and a statement indicating how the medication was "necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue." Iowa Ct. R. 12.30. The court file is not clear whether this rule was complied with, and the district court's compliance with the rule was not raised on appeal.

III. Discussion

A. Mootness

In an order dated July 18, 2012, the district court ordered D.B. transferred to an outpatient facility. He is no longer subject to involuntary confinement and hospitalization. Our supreme court recently examined a similar case where an individual appealed an involuntary commitment after the commitment had ended. *In re B.B.*, 826 N.W.2d 425 (Iowa 2013). Relying upon the stigma attendant to an involuntary commitment and other likely collateral consequences, the court decided Iowa courts are to presume that such a person suffers from collateral consequences and, absent a showing to the contrary, should consider the merits of this type of appeal. *Id.* at 430–31.

B. Continuance

D.B. argues the court erred in denying his motion for a continuance during the May 24, 2012 hearing. We note that though D.B. cites generally to the statute and the due process clause he does not support his argument with any authority.

The procedure for involuntary commitment proceedings requires the respondent be afforded an opportunity to cross-examine witnesses and present the testimony of interested parties. Iowa Code § 229.12 (2011). Our supreme court has noted, however, that the non-expert testimony of certain witnesses may be of little or no value. *See Harmsen v. Gretten*, 179 N.W. 840 (Iowa 1920). Because an individual's liberty interests are at issue, "it is imperative that the statutory requirements and procedures be followed." *In re M.T.*, 625 N.W.2d

702, 706 (Iowa 2001). It has been determined, under the United States Constitution, to comply with the requirements of due process, the individual must be given notice of the hearing, particular notice of the basis for confinement, and a reasonable opportunity to prepare. *Stamus v. Leonhardt,* 414 F. Supp. 439, 446 (S.D. Iowa 1976).

We believe the state complied with these requirements. D.B. had sufficient notice of the hearing and was well-advised as to the nature of the proceedings. Though we are troubled by the failure of his first counsel to appear at the hearing, we believe the transcript of the hearing shows that his second counsel did a commendable job, was notified in advance, and was sufficiently prepared. D.B.'s inability to present certain lay witnesses is not attributable to issues with his counsel. D.B. knew of the hearing, appeared personally, and had every opportunity to bring the witnesses he believed to be important. The assistance of his counsel was unnecessary to secure this testimony in advance of the hearing. We also believe the testimony D.B. wished to offer would have been unpersuasive and largely irrelevant to the present matter. Considering the importance of finality and timeliness in this type of proceeding, we believe the district court provided D.B. with sufficient due process.

C. Sufficiency

D.B. argues the district court erred in determining he lacked judgmental capacity necessary to make rational decisions about his treatment, and that the district court erred in finding he remained seriously mentally impaired in May

2012. Because D.B. briefs the two arguments as one, and because each requires a similar analysis, we regard them as one.

An individual is seriously mentally impaired when they possess a mental illness and lack the judgment necessary to reach responsible decisions as to their own care. Iowa Code § 229.1(17) (2011). The individual must meet any of three criteria defined by statute. *Id.* The criteria include: (1) the person is likely to physically injure themselves or others if they remain unconfined, (2) the person is likely to inflict serious emotional injury on individuals who are unlikely to be able to avoid contact with them, or (3) they are unable to satisfy their own needs for certain types of care. *Id.* at § 229.1(17)(a)-(c).

It is uncontested that D.B. suffers from a mental illness. The only question is whether sufficient evidence supports a determination that he meets one of the three criteria found in chapter 229.1.

The State can establish a lack of judgmental capacity by showing that, because of illness; the individual is unable to make rational decisions about whether or not to seek treatment. *In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986). Our examination is not an attempt to second guess a decision reached, but rather we are to determine whether the grounds for the decision actually reached are rational or reasonable. *In Interest of J.P.*, 574 N.W.2d 340, 343 (Iowa 1998). In the present matter, the record is clear that D.B. has, with regularity, refused to take certain medications unless forced to do so by a court order. D.B. has given coherent reasons for refusing the medications; however, that is not to say that his reasons are rational or reasonable. It was the opinion of the treating physician

that D.B. was refusing to take his medications due to his illness. The unreasonableness of D.B.'s refusal is highlighted by his more recent assurances that he will comply with the treatment orders of doctors. Not only are his assurances unconvincing, they indicate that his objections are unreasonable and insincerely held. We agree with the district court that D.B. lacked judgmental capacity.

D.B. also argues the court improperly ruled that he continued to be seriously mentally impaired. His arguments lack specificity as he does not elaborate as to which determination he challenges. We note, however, that the decision of the district court in each instance is substantially similar. On both November 1, 2011, and on May 24, 2012, the court found D.B. lacked judgmental capacity and that he was likely to injure himself or others. We have already determined that sufficient evidence supports a determination that D.B. lacked judgmental capacity, and because the statute requires that only one of the three enumerated criteria be satisfied, the decision of the district court is affirmed.[3]

D. Doctor's Report

D.B. argues the district court erred in admitting a doctor's report attesting to his condition during the May 24, 2012 hearing. Again, we note that D.B. cites

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[3] The district court also determined D.B. was likely to injure himself or others. To support this conclusion the evidence must show that it is probable or reasonably to be expected that D.B. will injure himself or others. *In re Foster*, 426 N.W.2d 374, 377 (Iowa 1988). The evidence must also show an "overt act" of some kind displaying past aggressive behavior. *Id.* at 378. D.B.'s doctors informed the court that D.B. had used threatening language with treating staff. Though the allegation lacked specificity and was explained away by D.B., it is possible a rational finder of fact could have concluded that the threatening language, taken in light of D.B.'s other actions and behaviors in the case, constituted an overt act evidencing a likelihood of danger.

only to the statute providing for the opportunity to cross-examine witnesses and does not provide us with any other authority to support his arguments.

Section 229.12 guarantees an individual the opportunity to cross-examine witnesses presented at an involuntary commitment hearing. This requires a physician to be present at the hearing. *See In re T.S.*, 705 N.W.2d 498, 504 (Iowa 2005) (requiring the presence of a physician for involuntary commitment of chronic substance abusers). The physician shall be available for questioning unless good cause is shown or a waiver is granted by the respondent. Iowa Code § 229.12(3)(b).

The court did not state a good cause basis for excusing the presence of the physician, and D.B. did not object to the physician's absence or attempt to call the physician as a witness. D.B. did object to the report being admitted as evidence, however no basis for the objection was given and objecting to a report is not the same as requesting the presence of the physician. We find that because the district court was not asked to resolve the issue, error was not preserved, and therefore we do not reach the issue. *See Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012) (noting that an issue must be raised and decided for error to be preserved).

AFFIRMED.