IN THE COURT OF APPEALS OF IOWA

No. 8-893 / 08-0772
Filed November 26, 2008

IN THE MATTER OF C.M., Alleged To Be Seriously and Mentally Impaired,

C.M.,
Respondent-Appellant.

Appeal from the Iowa District Court for Clarke County, Gary G. Kimes, Judge.

C.M. appeals from the district court's decision finding that she is seriously mentally impaired and is a danger to herself or others. **REVERSED AND REMANDED.**

Leanne Striegel of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Gretchen Kraemer, Assistant Attorney General, and Ronald Wheeler, County Attorney.

Considered by Vaitheswaran, P.J., and Potterfield, J. and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

POTTERFIELD, J.

I. Background Facts and Proceedings

C.M. is a thirty-two-year-old female. On March 26, 2008, C.M.'s mother filed an application alleging that C.M. was seriously mentally impaired pursuant to Iowa Code section 229.6 (2007). C.M's sister filed an affidavit in support of the application. Both C.M.'s mother and sister stated concern that C.M. was living in an unsafe house with no running water. They both expressed concern that C.M. was not able to care for herself or protect herself from danger. C.M. was taken into immediate custody.

Dr. Brown evaluated C.M. on four different occasions and completed a report indicating that C.M. was mentally ill and diagnosing her with schizophrenia. Dr. Brown stated that "[d]ue to her delusions and fragmented thought processes, [C.M.] presents a clear danger to herself and others."

The hospitalization hearing pursuant to Iowa Code section 229.12 took place April 1, 2008. Dr. Brown appeared and testified that C.M. did have a mental illness, which she diagnosed as schizophrenia. Dr. Brown further testified that C.M. was a "danger to herself and others because she does not recognize danger" and that "she does not realize that she could be in a situation that would be dangerous to herself." The magistrate concluded that C.M. was seriously mentally impaired and that she demonstrated "neglect or inability to care for oneself." The magistrate ordered that C.M. be placed in Clarinda Mental Health Institute immediately. C.M. appealed the magistrate's finding to the district court.

On April 17, 2008, the district court conducted a de novo hearing pursuant to Iowa Code section 229.21. Dr. Brown did not testify at this hearing, but the

district court admitted her report. The court also admitted a report from Dr. Rosales, a physician who evaluated C.M. on April 14, 2008, diagnosing her with schizophrenia, a serious mental illness. Dr. Rosales also reported that C.M. was not capable of making responsible decisions with respect to hospitalization or treatment and that she was likely to injure herself or others. The district court overruled motions by C.M. to have Rosales testify via telephone and to continue the hearing to a date on which Rosales would be available to testify. C.M.'s mother testified at trial that C.M. would be a danger if left to care for herself. The district court concluded that C.M. was mentally ill and posed a danger to herself or others.

C.M. appeals the district court's decision arguing: (1) the district court failed to conduct the trial de novo as prescribed in Iowa Code section 229.21(3); and (2) the district court did not have substantial evidence to find that C.M. was seriously mentally impaired.

II. Standard of Review

An involuntary civil commitment proceeding is tried as an ordinary action at law. *Matter of Oseing*, 296 N.W.2d 797, 800-01 (Iowa 1980). Our review is for errors at law. *Id.* at 801. The applicant has the burden of supporting allegations of serious mental impairment by clear and convincing evidence. Iowa Code § 229.12(3). The district court's findings of fact are binding on us if supported by substantial evidence. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). We will not set aside the district court's findings of fact unless they are not supported by clear and convincing evidence. *Id.*

III. Trial De Novo

C.M. argues that the district court failed to conduct the trial de novo as required under Iowa law. When a magistrate's findings are appealed, "the matter shall stand for trial de novo." Iowa Code § 229.21(3)(c). "Trial de novo" is a "new trial on the entire case . . . conducted as if there had been no trial in the first instance." Black's Law Dictionary 1544 (8th ed. 2004). The trial shall be held as prescribed by Iowa Code section 229.12. Iowa Code § 229.21(5). Iowa Code section 229.12(3) requires that the "licensed physician or qualified mental health professional who examined the respondent shall be present at the hearing unless the court for good cause finds that the licensed physician's or qualified mental health professional's presence or testimony is not necessary." *Id*. "Because a person's liberty interests are at stake, 'it is imperative that the statutory requirements and procedures [of the involuntary commitment statutes] be followed.'" *In re T.S*., 705 N.W.2d 498, 502 (Iowa 2005) (quoting *In re M.T*., 625 N.W.2d 702, 706 (Iowa 2001)).

Because this was a trial de novo, the State had the burden to present evidence supporting contentions made in the application. Iowa Code § 229.12(3). The State was required to arrange for Rosales's presence or telephonic appearance at the trial as a witness in the absence of C.M.'s waiver. The State failed to do so.

The State asserts that the district court found with good cause that Rosales's presence was not necessary. According to the State, the district court's good cause for refusing to allow Rosales's presence stemmed from the fact that C.M. did not request her presence until the day of the hearing, and

Rosales was unavailable at that time. At trial, the State contended that the inconvenience of transporting C.M. for a continued hearing justified denying the continuance. We determine that this does not constitute good cause given the circumstances. The court's failure to require Rosales to appear denied C.M. her right to cross examine the physician. *See Id.* While section 229.12 states that a waiver of the physician's presence by the applicant, respondent, and respondent's attorney may constitute good cause, we conclude that C.M. did not consent to such a waiver. We find that the district court did not have good cause for refusing to require Rosales's presence or telephonic appearance at the trial de novo. Accordingly, the district court should have granted C.M.'s motion to continue the trial until a date when Rosales could be present to testify.[1] We reverse the district court and remand for another trial de novo consistent with our opinion.

REVERSED AND REMANDED.

[1] Because we reverse on the above stated grounds, we decline to address C.M.'s argument for reversal due to lack of substantial evidence.