IN THE COURT OF APPEALS OF IOWA

No. 9-448 / 08-1676
Filed July 2, 2009

IN THE MATTER OF R.A.N.,
Alleged to be Seriously
Mentally Impaired,

R.A.N.,
Respondent-Appellant.

Appeal from the Iowa District Court for Floyd County, Christopher C. Foy, Judge.

R.A.N. appeals a district court order committing him to inpatient treatment.

AFFIRMED.

David A. Kuehner of Eggert, Erb & Mulcahy, P.L.C., Charles City, for appellant.

Jesse M. Marzen, County Attorney, and Normand Klemesrud, Assistant County Attorney, Charles City, for appellee.

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

DOYLE, J.

R.A.N. appeals from a district court decision ordering him to be involuntarily committed for psychiatric treatment and care. He contends there is insufficient evidence to support the court's finding that he is likely to physically injure himself or others if released without treatment. We affirm.

On August 1, 2008, R.A.N. threatened to kill his aunt and her cousin. He then punched his aunt's cousin in the face. R.A.N.'s aunt called the sheriff. While waiting for the sheriff to arrive, R.A.N. threatened to kill a third individual. R.A.N.'s aunt filed an application to commit R.A.N. An order for immediate custody was entered later that day, and R.A.N. was taken to Mercy Hospital in Mason City. He was then transferred to the Mental Health Institute (MHI) in Cherokee.

After a contested hearing, a magistrate found R.A.N. to be seriously mentally impaired and ordered that he remain at the MHI for treatment until further order of the court. R.A.N. appealed and a hearing was held before a district court judge. The court found that R.A.N. suffered from a mental illness; lacked the sufficient judgment to make responsible decisions with respect to his hospitalization or treatment; was likely to physically injure himself or others if released without treatment; and was unable to satisfy his needs for nourishment, clothing, essential medical care, and shelter so that if he was presently released he would suffer physical harm as a result. Based on these findings, the court concluded R.A.N. was "seriously mentally impaired" as defined by Iowa Code section 229.1(16) (2007). The court granted the application for involuntary hospitalization and ordered R.A.N. to remain at the MHI for treatment and care

until he obtains maximum benefits or until further order of the court.[1] R.A.N. appeals.

An involuntary civil commitment proceeding is a special action that is triable to the court as an action at law. *In re Oseing*, 296 N.W.2d 797, 800-01 (Iowa 1980). Therefore, we review challenges to the sufficiency of the evidence for errors at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998) (citing Iowa R. App. P. 6.4). Allegations made in an application for involuntary commitment must be supported by clear and convincing evidence. Iowa Code § 229.12(3). "Clear and convincing evidence" means "there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence." *J.P.*, 574 N.W.2d at 342. "The district court's findings of fact have the effect of a special verdict and will be upheld if there is substantial evidence to support them." *In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986). "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." *J.P.*, 574 N.W.2d at 342.

A person who is "seriously mentally impaired" may be committed involuntarily. Iowa Code § 229.6. To determine whether a respondent is "seriously mentally impaired," three elements must be found:

> The respondent must be found to have (1) a mental illness, consequently (2) to lack "sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment" and (3) to be likely, if allowed to remain at liberty, to inflict physical injury on "the person's self or others," to inflict serious emotional injury on a designated class of persons, or be unable to satisfy the person's physical needs.

[1] It is noted that by an order dated February 6, 2009, it was found that R.A.N. no longer required full-time hospitalization, but was ordered to remain in outpatient treatment until further order of the court. That status was reaffirmed by an order filed March 23, 2009.

J.P., 574 N.W.2d at 343; *see also* Iowa Code § 229.1(16). R.A.N. concedes the first two elements were established by clear and convincing evidence. On appeal, R.A.N. challenges only the district court's findings with respect to the third element, that he is a danger to himself or others, or is unable to satisfy his physical needs.

The "endangerment" element consists of three alternative criteria: (a) the person is likely to physically injure the person's self or others if allowed to remain at liberty without treatment; (b) the person is likely to inflict serious emotional injury on members of the person's family or others; or (c) the person is unable to satisfy the person's needs for nourishment, clothing, essential medical care or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death. Iowa Code § 229.1(16)(a)-(c). "Likely" is construed to mean "probable or reasonably to be expected." *Oseing*, 296 N.W.2d at 801. The endangerment element "requires a predictive judgment, 'based on prior manifestations but nevertheless ultimately grounded on future rather than past danger.'" *Mohr*, 383 N.W.2d at 542 (citation omitted). The danger the person poses to himself or others must be evidenced by a "recent overt act, attempt or threat." *Id*. (citations omitted).

> In the context of civil commitment . . . an "overt act" connotes past aggressive behavior or threats by the respondent manifesting the probable commission of a dangerous act upon himself or others that is likely to result in physical injury.

In re Foster, 426 N.W.2d 374, 378 (Iowa 1988). Overt acts include behavior such as threats to kill. *See id*. at 379.

R.A.N. argues that his one prior instance of violence is insufficient to establish that he was likely to cause physical injury to himself or others. He asserts that no injury resulted when he struck his aunt's cousin in the face with his fist. Satisfaction of the "recent overt act, attempt, or threat" requirement does not demand a showing of a resulting physical injury. Nevertheless, R.A.N's recent overt act did result in a physical injury. To injure is to inflict bodily hurt or pain. *See* Webster's New Collegiate Dictionary 589 (1981). It stretches credulity to claim no pain resulted from being punched in the face. Although this act of unprovoked physical aggression alone would have been sufficient to establish the "recent overt act, attempt, or threat" requirement, R.A.N.'s threats to kill his aunt, her cousin, and another person further support the court's finding that R.A.N. posed a danger to others. Additionally, Bradley Dirks, the physician assistant in psychiatry primarily responsible for R.A.N.'s treatment at MHI, testified about R.A.N.'s extortion concerning cigarettes with other patients and of an incident where R.A.N. was in the parking lot using his fingers as a gun and pointing them at a passerby who happened to be a visitor. While this testimony concerning R.A.N.'s extortionary and threatening behavior at MHI, standing alone, would be insufficient to establish dangerousness, it strengthens the court's predictive judgment.[2] Finally, Dirks, whose professional qualifications are unquestioned, testified R.A.N. "remains a threat to himself and others at this time." He further testified as to R.A.N.'s multiple episodes of medication noncompliance and of R.A.N.'s statements that he does not need medications

[2] We note that "[p]rovoking acts of aggression toward oneself by bizarre or socially unacceptable behavior does not elevate such behavior to a level of likely physical injury to oneself." *Foster*, 426 N.W.2d at 379.

and that he would stop taking medications when he leaves the hospital. Dirks opined that the probability was very high "that off medication and released from the hospital [R.A.N.] could become violent with others." Furthermore, Dirks's conclusion that R.A.N. was likely to injure himself or others in light of his underlying mental illness was reviewed and approved by Dr. Gillette, superintendent/clinical director of MHI. Taking all the above into consideration, we hold the evidence was sufficient to support the trial court's finding that R.A.N. is likely to physically injure himself or others if released without treatment. We therefore affirm.[3]

AFFIRMED.

[3] Because we find sufficient evidence to support the court's findings under section 229.1(16)(a), we need not address R.A.N.'s argument that there was insufficient evidence to support the court's findings under section 229.1(16)(c).