STATE OF MICHIGAN

COURT OF APPEALS

In re RUDEAN MONIQUE MARTIN.

PEOPLE OF MICHIGAN,

Petitioner-Appellee,

v

RUDEAN MONIQUE MARTIN,

Respondent-Appellant.

UNPUBLISHED
November 27, 2018

No. 343963
Grand Traverse Probate Court
LC No. 08-030040-MI

Before: RIORDAN, P.J., and RONAYNE KRAUSE and SWARTZLE, JJ.

PER CURIAM.

Respondent appeals by right the probate court's order requiring her to participate in involuntary mental health treatment. Following a hearing on the petition, which respondent did not attend, the trial court found that respondent was a "person requiring treatment" under MCL 330.1401(1)(a). Respondent argues that she received constitutionally deficient notice of the hearing on the petition, and that petitioner failed to establish that respondent was a "person requiring treatment" under MCL 330.1401. We affirm.

I. FACTS

In March 2018, a police officer responded to concerns that respondent might have been contemplating suicide. The officer testified that he found respondent standing outside the railing of her second-story balcony. The officer further explained that respondent "was . . . leaning out just holding on to the railing with her hands [,]" and confirmed she was facing forward, i.e., away from the building. The balcony was situated approximately 10 to 15 feet above the ground. At the scene, respondent informed the responding officer that a friend had committed suicide by jumping off of a balcony, and that she was thinking of doing the same.

Respondent was taken to Munson Medical Center (MMC) for hospitalization, where she was examined by a physician and a psychiatrist. Respondent admitted to both doctors that, at the time of the incident, she had fully intended to jump. Respondent was diagnosed with depression with suicidal ideation by the physician, as well as unspecified psychosis by the psychiatrist. Respondent had been previously diagnosed with schizophrenia and bipolar disorder with

psychotic features. To treat her previously diagnosed conditions, respondent was required to take medication every three weeks via injection. However, respondent had a chronic history of refusing to take her medications.

The next day, the responding officer filed a petition for mental health treatment pursuant to MCL 330.1401(1)(a). Respondent was issued notice of a hearing on the petition to be held in April 2018. However, the hearing was deferred pursuant to respondent's request, in which she agreed to submit to hospitalization at MMC for a period not exceeding 60 days and alternative treatment at Northern Lakes Community Mental Health (NLCMH) for a period not exceeding 90 days in the interim.

Respondent was soon discharged from the hospital, although there was some dispute as to whether she complied with the recommended treatment plan while there. Nonetheless, respondent became noncompliant with the treatment plan shortly after her release. Respondent failed to attend an appointment with her case manager and psychiatrist despite multiple reminders to do so, and she missed an appointment to receive her medication injection.

On May 1, 2018, MMC's liaison with NLCMH filed a demand for a hearing, stating that respondent had been refusing to accept her prescribed treatment and required further hospitalization. That day, a notice of hearing and advice of rights was filed, indicating that the hearing on the petition would be held on May 8, 2018, and that respondent would participate via Polycom[1] from MMC. Respondent's counsel was served on May 1, 2018, with the notice of hearing, but respondent was not.

On May 3, 2018, an amended notice of hearing and advice of rights was filed. The information contained in the amended notice was identical to the first notice of hearing, except that it no longer indicated that respondent would participate via Polycom. Instead, the amended notice stated that the hearing was to take place at the trial court's physical address in Traverse City. Respondent was personally served with both the May 1, 2018 notice and the May 3, 2018 amended notice within an hour of each other on May 3, 2018.

On May 8, 2018 at 8:00 a.m., the hearing on the petition took place at the trial court, but respondent did not attend. Respondent's counsel stated that she spoke with respondent, at 8:30 p.m., the night before the hearing and respondent indicated her desire to attend the hearing on the petition. Respondent's counsel further stated that she had met with respondent twice before and spoken to her "numerous" times on the phone. On the basis of these contacts, respondent's counsel reported that respondent had no objection to receiving mental health treatment; however, respondent did not wish to continue receiving treatment at NLCMH or to continue receiving medication via injection.

[1] Polycom is a multinational corporation that develops video, voice and content collaboration and communication technology, i.e., it is a brand of technology used for video conferences.

The trial court found that respondent was a "person requiring treatment" under MCL 330.1401(1)(a), and ordered respondent to participate in involuntary mental health treatment at MMC and NLCMH.

II. PRESERVATION AND STANDARD OF REVIEW

Ordinarily, this Court reviews a probate court's dispositional rulings for abuse of discretion, and reviews the factual findings underlying the probate court's decision for clear error. *In re Portus*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 337980); slip op at 3. Explaining these standards, this Court stated:

> An abuse of discretion occurs when the probate court "chooses an outcome outside the range of reasonable and principled outcomes. A probate court's finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." [*Id*. at ___; slip op at 3, quoting *In re Bibi Guardianship*, 315 Mich App 323, 329; 890 NW2d 387 (2016).]

Whether a party was afforded notice in compliance with due process of law is a question of law that this Court reviews de novo. *Vincencio v Ramirez*, 211 Mich App 501, 503; 536 NW2d 280 (1995).

An issue is considered preserved for appellate review if it was raised in the lower court and is pursued on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). However, "[n]o exception need be taken to a finding or decision" made by the trial court. MCR 2.517(7). "Further, this Court may overlook preservation requirements where failure to consider the issue would result in manifest injustice, if consideration of the issue is necessary to a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002) (citations omitted). "The purpose of the appellate preservation requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Mayfield*, 221 Mich App 656, 660; 562 NW2d 272 (1997).

The gravamen of respondent's appeal is that she genuinely endeavored to participate in the hearing and was precluded from doing so through no fault of her own. A handwritten note stamped as received by the probate court clerk a mere hour and fifteen minutes after the time set for the hearing suggests promptness on respondent's part. Affording her the benefit of the doubt, we conclude that the purposes of the issue preservation requirements and substantial justice would best be served by deeming respondent's issues preserved for our review. See *Abbott v Howard*, 182 Mich App 243, 251; 451 NW2d 597 (1990) (holding that it would be manifestly unjust to enforce a judgment against a party who did not receive proper notice of a hearing).

III. PROPER NOTICE

Respondent first argues that she was denied her right to due process of law because she did not receive notice of the May 8, 2018 hearing until five days before it took place, and because she was served with two conflicting notices of hearing. We disagree.

A. TIMELINESS OF NOTICE

Respondent argues that the five day notice of hearing violated her right to due process. Due process generally requires "that notice be reasonably calculated to apprise interested parties of the action and to provide them an opportunity to be heard." *Sidun v Wayne Co Treasurer*, 481 Mich 503, 515; 751 NW2d 453 (2008) (internal quotation omitted). Under MCL 330.1453(1) of the Mental Health Code, MCL 330.1001 *et seq*.:

> The court shall cause notice of a petition and of the time and place of any hearing to be given to the subject of the petition . . . Notice shall be given at the earliest practicable time and sufficiently in advance of the hearing date to permit preparation for the hearing.

Under the Mental Health Code court rules, MCR 5.734(A) states that "[w]hen required by the Mental Health Code, the court must have the necessary papers served. The individual must be served personally. The individual's attorney also must be served." MCR 5.734(C)(1)(a) states that notice of a hearing must be served on a respondent and his or her attorney "at least 2 days before the time of a hearing that is scheduled by the court to be held within 7 days or less . . . " In all other cases, notice of a hearing must be served at least 5 days before the time scheduled for the hearing. MCR 5.734(C)(1)(b). This Court has previously held that "the procedures embodied in the Mental Health Code satisfy due process guarantees." *In re KB*, 221 Mich App 414, 421; 562 NW2d 208 (1997).

On May 1, 2018, the trial court scheduled the hearing on the petition for May 8, 2018. Because the hearing was to take place within seven days of scheduling, respondent and her attorney were entitled to at least 2 days' notice prior to the hearing. See MCR 5.734(C)(1)(a). Respondent's attorney received notice of the hearing 7 days in advance, and respondent was personally served with notice of the hearing 5 days in advance. Accordingly, the notice served on respondent complied with the timeliness rules outlined in MCR 5.734(A) and MCR 5.734(C)(1)(a). Moreover, respondent and her attorney would have been given sufficient notice under MCR 5.734(C)(1)(b), if that court rule applied.

Further, respondent has offered nothing to suggest that notice was not "given at the earliest practicable time and sufficiently in advance of the hearing date to permit preparation for the hearing." See MCL 330.1453(1). To the contrary, at the hearing on the petition, respondent's counsel stated that she had spoken to respondent "numerous" times on the phone and had met with her twice. On the basis of these conversations, respondent's counsel informed the trial court that respondent had no objection to receiving mental health treatment. Rather, respondent took issue with the specifics of where she would receive treatment and how she would receive medication. It appears that respondent and her attorney were able to adequately prepare for the hearing on the petition. Thus, the 5 day notice was "reasonably calculated" to apprise interested parties of the action, and respondent had the opportunity to be heard.

B. CONFLICTING NOTICES OF HEARING

Respondent also argues that she was denied her right to due process of law because she received two conflicting notices of hearing within an hour of each other. We agree that the

situation was undesirable. However, we are unpersuaded that respondent was denied her right to due process as a consequence.

Initially, the two notices specified different locations, but both specified the same time and date for the hearing: May 8, 2018, at 8:00 a.m. Incongruously, respondent's handwritten letter stated that she "was told [her] hearing did not start until 8:30 a.m." If so, that misunderstanding was unconnected to the notices. Furthermore, her letter states that she "was here" at 8:00 a.m. Although she does not explain the location of "here," the letter is stamped as having been received by the Grand Traverse County Probate Court at 9:15 a.m. on May 8, 2018. The first notice stated that the hearing was to take place via Polycom at Munson Medical Center. The amended notice stated that the hearing would be held at the Grand Traverse County Probate Court. This suggests that respondent *was* in the right place at the right time,[2] and she failed to appear at the hearing for other reasons. Finally, we have not been advised of any reason why respondent's mental afflictions would have prevented her from engaging in the reasonable precaution of scanning both notices for differences and noticing that the amended notice prominently stated that it was "AMENDED" and dated two days after the first notice. Her handwritten letter, to the contrary, suggests that respondent did so and, on that basis, successfully drew the appropriate conclusion.

Respondent's letter indicates that she was told an incorrect time but not a specific location (presumably referring to a particular courtroom), that she could not find her name "on the dockets" or "in the computer system," and that "the clerk" also "checked for [her]." We have no reason to doubt the veracity of those statements. However, while concerning,[3] they appear unrelated to the two notices. On appeal, respondent only makes a general argument that it would have been reasonable for her to be confused. Respondent had ample time to inquire into any such confusion, and she actually spoke to her attorney less than 12 hours before the hearing was conducted. Finally, the record indicates that respondent's attorney advocated respondent's concerns to the trial court. Respondent has not even asserted, let alone substantively argued, that her presence at the hearing would have made any difference to the outcome. Consequently, even if the two notices were inadequate, respondent has not made the requisite showing of actual prejudice. See *People v McGee*, 258 Mich App 683, 699-702; 672 NW2d 191 (2003).

We conclude that the notices, although undesirable, adequately informed respondent of the time and location for her hearing with sufficient time to prepare, whatever confusion she suffered was a consequence of factors independent of the notices, and, in any event, she appears to have suffered no actual prejudice.

IV. CLEAR AND CONVINCING EVIDENCE

[2] The fact that she checked with "the clerk" and "the dockets" further suggests that she was at the court rather than the hospital.

[3] The probate court may wish to consider investigating these contentions, if possible.

Respondent also contends that petitioner failed to establish clear and convincing evidence that respondent was a "person requiring treatment" under the Mental Health Code. Again, we disagree.

Before an initial order of involuntary mental health treatment can be issued, a trial court must make a finding that the respondent is a "person requiring treatment." MCL 330.1472a(1). That finding must be supported by clear and convincing evidence. MCL 330.1465. "[I]n civil cases, the clear and convincing evidence standard is typically thought to be the highest level that can be required." *In re Martin*, 450 Mich 204, 227 n 21; 538 NW2d 399 (1995). Evidence is clear and convincing when it

> "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." . . . Evidence may be uncontroverted, and yet not be "clear and convincing." . . . Conversely, evidence may be "clear and convincing" despite the fact that it has been contradicted. [*Id.* at 227, quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987) (alterations and ellipses in original).]

The trial court found respondent to be a "person requiring treatment" pursuant to MCL 330.1401(1)(a), which specifies:

> [a]n individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

Respondent concedes that she is afflicted with mental illness. However, she contends that her actions did not establish by clear and convincing evidence that she could be reasonably expected within the near future to inflict serious physical injury upon herself.

Primarily, respondent believes it to be "common sense" that a fall from 10 feet would not be sufficient to cause serious bodily injury. We find "common sense" to be a tenuous argument at best, particularly in light of common experience and observation that numerous personal injury cases feature plaintiffs who suffered severe injuries from merely slipping and falling from standing height. Indeed, even unintentional falls from 10 feet or less may be sufficient to cause serious bodily injury or death. See, e.g., *Reetz v Tipit, Inc*, 151 Mich App 150, 152; 390 NW2d 653 (1986), aff'd sub nom *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347 (1987); *Grasser v Fleming*, 74 Mich App 338, 340; 253 NW2d 757 (1977), overruled on other grounds by *Jackson v PKM Corp*, 430 Mich 262, 269-271, 279; 422 NW2d 657 (1988). We note that "common sense" could lead equally to the conclusion that the height of the fall matters less than the manner of the landing. In any event, respondent's psychiatrist at MMC opined that respondent could have caused herself serious physical harm if she had jumped.

Witness testimony established that respondent stood outside the railing of her second-story balcony. Respondent held on by the railing and leaned away from the building, contemplating suicide because she learned that a friend had taken his or her own life by jumping in similar circumstances. Respondent later admitted to her physician and psychiatrist at MMC that she had every intention of jumping at the time of the incident. Such actions demonstrate that respondent may be reasonably expected within the near future to seriously injure herself, intentionally or otherwise. Moreover, respondent's diagnoses revealed that her mental afflictions had a component of suicidal ideation. Accordingly, any expectation that respondent might cause herself serious physical injury can be directly attributed to her mental illness. Furthermore, her longstanding pattern of noncompliance with treatment can reasonably be extrapolated to the future. For these reasons, the trial court did not err when it found that respondent was a "person requiring treatment" under MCL 330.1401(1)(a).

V. CONCLUSION

We conclude no error occurred regarding respondent's procedural due process rights. We also conclude that no error occurred when the trial court determined that respondent was a "person requiring treatment" under MCL 330.1401(1)(a). Affirmed.

/s/ Michael J. Riordan
/s/ Amy Ronayne Krause
/s/ Brock A. Swartzle