

STATE OF MICHIGAN
COURT OF APPEALS

In re NICHOLAS MOSTAFA HEIDARISAFA.

SABEENA ABRAHAM,

Petitioner-Appellee,

and

JASON EGGERSTEDT,

Petitioner,

v

NICHOLAS MOSTAFA HEIDARISAFA, also
known as NICHOLAS MOSTIFA
HEIDARISAFA and NICHOLAS M.
HEDARISAFA,

Respondent-Appellant.

UNPUBLISHED
October 17, 2019

No. 348671
Calhoun Probate Court
LC No. 2018-001115-MI

Before: MARKEY, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent, Nicholas Mostafa Heidarisaafa, appeals as of right the probate court’s third order requiring involuntary mental health treatment. On appeal, respondent argues that the probate court erred in ordering treatment without affirmatively stating that it reviewed the Alternative Treatment Report and that the probate court abused its discretion in disregarding the report’s recommendation in determining the length of hospitalization. However, we conclude that respondent’s arguments are without merit because the probate court acknowledged the report and heard oral testimony regarding the appropriateness and adequacy of respondent’s treatment, and the probate court’s reliance on the testifying psychiatrist’s recommendation regarding the length of hospitalization was not an abuse of discretion.

I. BACKGROUND

This case arises out of an incident on February 26, 2018. On that date, police went to respondent's home to do a welfare check which eventually led to police taking respondent to the hospital to be examined. While at the hospital, in addition to making bizarre and paranoid remarks, respondent became violent. Respondent punched and kicked police officers who were trying to assist a hospital security officer who had just been punched by respondent. Respondent also bit one of the police officers.

Respondent was charged with two counts of resisting and obstructing police officers and two counts of assault and battery, however he was found not guilty by reason of insanity. Officer Jason Eggerstedt filed a petition requesting the probate court to order respondent to participate in mental health treatment. The probate court granted the petition and ordered respondent to participate in mental health treatment for up to 60 days. On January 9, 2019, Sabeena Abraham—a licensed master social worker—filed a second petition for a mental health treatment order before the first order expired. The probate court concluded that respondent continued to be a person requiring treatment and ordered hospitalization for up to 90 days. On March 27, 2019, Abraham filed a third petition before the expiration of the second order requesting that respondent be hospitalized for up to one year. Following a hearing, the probate court concluded that respondent continued to be a person requiring treatment and ordered hospitalization for up to one year. Respondent now appeals the probate court's third order requiring mental health treatment.

II. ANALYSIS

On appeal, respondent argues that the probate court erred in ordering involuntary mental health treatment without consulting or reviewing the Alternative Treatment Report (ATR). Further respondent argues, the probate court erred in disregarding the recommendation of the ATR and solely relying on the testifying psychiatrist who admitted that he had limited contact with respondent.

“This Court reviews for an abuse of discretion a probate court's dispositional rulings and reviews for clear error the factual findings underlying a probate court's decision.” *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018) (quotation marks and citation omitted). The probate court abuses its discretion when it “chooses an outcome outside the range of reasonable and principled outcomes.” *Id.* (quotation marks and citation omitted). “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.* (quotation marks and citation omitted). This Court reviews matters of statutory interpretation de novo. *Id.*

According to MCL 330.1453a,

Upon receipt of documents described in [MCL 330.1452], the court shall order a report assessing the current availability and appropriateness for the individual of alternatives to hospitalization, including alternatives available following an initial period of court-ordered hospitalization. The report shall be prepared by the community mental health services program, a public or private agency, or another individual found suitable by the court. In deciding which individual or agency should be ordered to prepare the report, the court shall give preference to an

agency or individual familiar with the treatment resources in the individual's home community.

MCR 5.741 states:

(A) Written Report or Testimony Required. Before ordering a course of involuntary mental health treatment or of care and treatment at a center, the court must receive a written report or oral testimony describing the type and extent of treatment that will be provided to the individual and the appropriateness and adequacy of this treatment.

(B) Use of Written Report; Notice. The court may receive a written report in evidence without accompanying testimony if a copy is filed with the court before the hearing. At the time of filing the report with the court, the preparer of the report must promptly provide the individual's attorney with a copy of the report. The attorney may subpoena the preparer of the report to testify.

In this case, the probate court ordered the staff at Summit Pointe to prepare an Alternative Treatment Report. The report was completed by a licensed master social worker and filed with the probate court. Respondent is correct in that the probate court did not specifically state that it had reviewed the report and that the report was not accepted as an exhibit. However, the probate court acknowledged that the Alternative Treatment Report recommended hospitalization for 90 days. Interestingly, on appeal, respondent is arguing both that the probate court erred in not properly reviewing the Alternative Treatment Report and that the probate court erred in disregarding the report's recommendation. Regardless, the record makes clear that the probate court was aware of the Alternative Treatment Report and its recommendations. Moreover, a psychiatrist testified that respondent's current placement was adequate and appropriate. According to the testimony of the psychiatrist, respondent would receive ongoing medication management, individual psychotherapy, and group therapy. The psychiatrist did not believe that there was any alternative treatment that would be less restrictive. As a result, the probate court received the report as required by MCL 330.1453a and heard oral testimony regarding respondent's treatment and the appropriateness of that treatment pursuant to MCR 5.741(A). Consequently, there was no error by the probate court and respondent is not entitled to relief on this issue. See *In re Portus*, 325 Mich App at 381.

In addition, the record also makes clear that the probate court did not abuse its discretion in relying on the opinion of the testifying psychiatrist to determine the length of respondent's hospitalization. See *id.* Again, the record reveals that the probate court acknowledged that the ATR recommended 90 days of hospitalization; however, the probate court explained that it would rely on the recommendation of the psychiatrist, who had more contact with respondent. On appeal, respondent argues that the probate court erred in accepting this recommendation because the psychiatrist only had limited contact with respondent. At the outset, the psychiatrist explained that he had limited contact with respondent because respondent refused to participate in the interview. Further, it appears that the social worker prepared the ATR without having any contact with respondent. The ATR states that the recommendation was based on discussions with hospital and Summit Pointe staff. Therefore, contrary to respondent's arguments, the ATR would not be more reliable than the testimony of the psychiatrist.

At the hearing, the psychiatrist testified he was qualified as an expert in psychiatry. The clinical certificate explained that his recommendation was based on his interview with respondent, discussion with respondent's treating psychiatrist, and review of respondent's medical and legal records. The psychiatrist further testified that respondent continued to demonstrate symptoms of irritability, paranoia, and agitation. Respondent also had limited insight into his diagnosis. As a result, he recommended hospitalization for one year. Moreover, the petition requesting continuing mental health treatment for respondent recommended up to one year of hospitalization. Considering the record, the probate court's decision to rely on the psychiatrist's recommendation to determine the length of respondent's hospitalization did not amount to an abuse of discretion. See *id.* Accordingly, respondent is not entitled to relief.

Affirmed.

/s/ Jane E. Markey

/s/ Stephen L. Borrello

/s/ Mark T. Boonstra