STATE OF MICHIGAN

COURT OF APPEALS

In re EB.

ALLEGRA RECKNAGEL,

Petitioner,

and

DANIEL ING,

Appellee,

v

EB,

Respondent-Appellant.

UNPUBLISHED
November 23, 2021

No. 356312
Washtenaw Probate Court
LC No. 20-000764-MI

Before: RICK, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order after a hearing on a petition for mental health treatment. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

This case arises from a mental health petition that was filed by petitioner, Allegra Recknagel, consistent with the provisions of the Mental Health Code, MCL 330.1001 *et seq*. Respondent was hospitalized in early November 2020. She was evaluated by two doctors, Dr. David C. Belmonte, a psychiatrist with Michigan Medicine PES in Ann Arbor, Michigan, and Dr. David DeVellis, a psychiatrist with St. Joseph Mercy Chelsea Hospital. Dr. Belmonte and Dr. DeVellis noted that respondent had a previous diagnosis of bipolar disorder and suffered from delusions, believing that the lesions on her skin were caused by some sort of infestation of "ticks"

or "mites." Subsequently, petitioner filed a petition seeking mental-health treatment for respondent due to concerns that respondent would injure herself or others. A hearing on the petition was scheduled for November 13, 2020. However, the hearing was canceled after respondent requested a deferral of the hearing. As part of that request, respondent agreed to combined hospitalization and outpatient treatment.

On January 14, 2021, Daniel Ing, the director of the Washtenaw County Community Mental Health services program, filed a demand for a hearing because he believed that respondent required additional treatment and was not suitable for voluntary treatment. Ing also requested that respondent be hospitalized pending the hearing and transported to the University of Michigan Hospital. On January 15, 2021, respondent was transported to Stonecrest Behavioral Health Hospital (Stonecrest) in Detroit, Michigan. On January 19, 2021, a second petition for mental health treatment was filed with accompanying clinical certificates from Dr. Luay Haddad, a psychiatrist with and the director of Stonecrest, and Dr. John Head, also a psychiatrist with Stonecrest.[1] Based on the record, a hearing regarding Ing's demand was scheduled for January 19, 2021, but, for unknown reasons, was not held that day. It is unclear from the record whether anyone appeared on January 19, 2021, and the record does not indicate whether the hearing was canceled by stipulation of the parties or by the trial court. A hearing was held on January 27, 2021. Additionally, a second demand for hearing appears to have been filed on January 25, 2021, by Dr. Haddad.[2]

At the January 27, 2021 hearing, Dr. Daniel Blake, a licensed psychologist, respondent, and respondent's father and guardian, JB, each testified.[3] After the testimony and closing arguments, the trial court found by clear and convincing evidence that respondent was a "person requiring treatment" and authorized the petition. The trial court ordered respondent to combined hospitalization and assisted outpatient treatment and authorized, among other things, the use of prescription medication to treat respondent's condition. This appeal followed.

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[1] The petition was dated January 16, 2021, and potentially received by the trial court on January 18, 2021 (Martin Luther King, Jr., Day). Additionally, as respondent notes, it appears the stamp used to indicate when a document is filed with the clerk's office was not updated to reflect the change from 2020 to 2021. Nonetheless, according to the register of actions, the second petition was not filed until January 19, 2021.

[2] Dr. Haddad's demand for a hearing was dated January 22, 2021, and appears to be received by the clerk's office and filed on January 25, 2021. However, this demand is not listed as being filed on January 25, 2021. Rather, the register of actions lists the second demand as being filed on January 21, 2021. The demand noted that respondent had been hospitalized at Stonecrest since she deferred the initial hearing on November 11, 2020. However, the record indicates that respondent was discharged from St. Joseph Mercy hospital on November 11, 2020, and not hospitalized with Stonecrest until January 15, 2021. We also note that the clinical certificate apparently submitted with the demand was dated January 21, 2021, and filed on January 22, 2021.

[3] In light of the sensitive nature of the discussion of respondent's health information, we do not identify respondent or respondent's father by name.

II. TIME LIMITATION FOR HEARING UNDER MCL 330.1452

Respondent argues that the trial court plainly erred when it failed to hold a hearing on the demand for a hearing as required by MCL 330.1452. As a result of this alleged statutory violation, respondent argues that the trial court's order requiring combined hospitalization and assisted outpatient treatment should be reversed. We disagree.

A. STANDARD OF REVIEW

An issue must be raised in the trial court for it to be preserved for appeal. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; ___ NW2d ___ (2020). "[I]ssue preservation requirements only impose a general prohibition against raising an issue for the first time on appeal." *Id*. This issue was not raised in or decided by the trial court and is, therefore, unpreserved. Therefore, we need not address the issue. *Id*.

However, this Court "has the power to consider an issue when necessary, even if unpreserved or not properly presented." *Id*. at 228. "[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for 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." *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006) (cleaned up). This issue involves a question of law and the facts necessary for its resolution have been presented. Therefore, we utilize our discretion to address the issue.

This Court reviews de novo questions of statutory interpretation. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature . . . ." *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009). "If the language is clear and unambiguous, this Court must enforce the statute as written. Unless defined by statute, words and phrases are to be given their plain and ordinary meaning, and this Court may consult a dictionary to determine that meaning." *Tree City Props LLC v Perkey*, 327 Mich App 244, 247; 933 NW2d 704 (2019) (cleaned up).

This Court reviews unpreserved issues for plain error affecting a party's substantial rights. *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008). "To avoid forfeiture under the plain-error rule, three requirements must be met: (1) an error must have occurred; (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights." *Id*. at 328-329 (cleaned up). "An error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 443; 906 NW2d 482 (2017) (cleaned up). Further, when a plain error has occurred, reversal is warranted when the error "seriously affected the fairness, integrity or public reputation of judicial proceedings . . . ." *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008) (cleaned up).

B. ANALYSIS

It is undisputed that the trial court did not conduct a hearing within the required seven day period following Ing's demand for a hearing filed on January 14, 2021, under MCL 330.1452(1)(d).

MCL 330.1452(1) provides:

> The court shall fix a date for every hearing convened under this chapter. Except as provided in subsection (2), the hearing shall be convened promptly, but not more than 7 days after the court's receipt of any of the following:
>
> (a) A petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist.
>
> (b) A petition for a determination that an individual continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist.
>
> (c) A petition for discharge filed under [MCL 330.1484].
>
> (d) A demand or notification that a hearing that has been temporarily deferred under [MCL 330.1455(6)] be convened.

Respondent deferred the hearing on the initial petition under MCL 330.1455(6). MCL 330.1455(8) provides:

> Upon receipt of a copy of the request to temporarily defer the hearing under [MCL 330.1455(6)], if the individual has agreed to remain hospitalized, the hospital director shall treat the individual as a formal voluntary patient without requiring the individual to sign formal voluntary admission forms. If the individual, at any time during the period in which the hearing is being deferred, refuses the prescribed treatment or requests a hearing, either in writing or orally, treatment shall cease, the hospitalized individual shall remain hospitalized with the status of the subject of a petition under [MCL 330.1434], and the court shall be notified to convene a hearing under [MCL 330.452(1)(d)].

MCL 330.1455(9) provides, in relevant part:

> If the individual, at any time during the deferral period, refuses the prescribed treatment or requests a hearing, either in writing or orally, treatment shall cease and the court shall be notified to convene a hearing under [MCL 330.1452(1)(d)]. Upon notification, the court shall, if necessary, order a peace officer to transport the individual to the hospital where the individual shall remain until the hearing is convened. The individual shall be given the status of the subject of a petition under [MCL 330.1434].

Further, MCL 330.1400b provides, "A reference to a time frame under this chapter of 12 hours to 168 hours or an equivalent amount of days excludes Sundays and legal holidays."

The trial court apparently set a hearing regarding Ing's demand for January 19, 2021. However, no hearing was apparently held on January 19, 2021, and the record contains no explanation regarding why the hearing was not held. A hearing was not conducted until January 27, 2021. Therefore, under MCL 330.1400b, the hearing was held ten days after the court received Ing's demand for hearing (excluding two Sundays and a holiday for Martin Luther King, Jr., Day on January 18, 2021). Our Supreme Court has "repeatedly held that in proceedings to commit persons as mentally ill the statute under which they are committed must be strictly complied with." *In re Wojtasiak*, 375 Mich 540, 544; 134 NW2d 741 (1965). We note that a second petition for mental health treatment was filed on January 19, 2021, the same day the demand hearing was scheduled to occur, by providers at Stonecrest. It is possible that the trial court delayed the demand hearing in lieu of holding a hearing on the second petition. Nonetheless, the record is unclear as to why the demand hearing was not held on January 19, 2021. However, in compliance with MCL 330.1452(1), the January 27, 2021 hearing was held within 7 days after the trial court received the January 19, 2021 petition. Therefore, because the error is not obvious or clear, respondent has failed to establish plain error.

However, even if we had found plain error, respondent has entirely failed to address how the error affected her substantial rights or that the error entitled her to reversal. "An appellant may not merely announce [her] position and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [she] give issues cursory treatment with little or no citation of supporting authority." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003), "An appellant's failure to properly address the merits of [her] assertion of error constitutes abandonment of the issue." *Id*. at 339-340. Accordingly, because respondent failed to properly address the merits of her assertion of error, she has abandoned this issue. Additionally, respondent has not established that the alleged plain error would warrant reversal because she has not established that the error "seriously affected the fairness, integrity or public reputation of judicial proceedings . . . ." *In re Utrera*, 281 Mich App at 9 (cleaned up). The record indicates that a hearing was held and that respondent was represented by counsel at the hearing. Further, as discussed below, the trial court found clear and convincing evidence that respondent was a person requiring mental health treatment and granted the petition after the January 27, 2021 hearing. Therefore, respondent has failed to establish that an error affecting the outcome of the lower court proceedings occurred that requires reversal. See *Lawrence*, 320 Mich App at 443.

Respondent also argues the trial court plainly erred when it failed to address or acknowledge that the order related to Ing's demand for hearing stated respondent was to be taken to the University of Michigan Hospital. However, respondent's argument related to this issue is presented in a single paragraph that does not contain any supporting authority. Nor does respondent assert that the failure to transport her to the University of Michigan Hospital prejudiced her in any manner. Accordingly, respondent abandoned this issue by failing to properly address its merits, and we decline to address it. See *Houghton*, 256 Mich App at 339-340.

In sum, respondent has not established that the alleged error affected her substantial rights.[4] Accordingly, respondent has not satisfied the requirements to avoid forfeiture under the plain-error rule.

III. PERSON REQUIRING TREATMENT

Finally, respondent asserts that there was not clear and convincing evidence that the hospital's proposed order for treatment was necessary or in her best interest and argues that the trial court's order requiring combined hospitalization and assisted outpatient treatment should be reversed.[5] We disagree.

A. STANDARD OF REVIEW

> 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. 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. The probate court necessarily abuses its discretion when it makes an error of law. [*In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018) (cleaned up).]

However, "we defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *Id.* at 397 (cleaned up).

B. ANALYSIS

Before a probate court may order an individual to receive involuntary mental health treatment, it must find that the individual is "a person requiring treatment." *Id.* at 385. The Mental Health Code defines a "person requiring treatment" as meeting any one of the following:

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[4] We note that as a result of Ing's demand on January 14, 2021, respondent was involuntarily hospitalized until the January 27, 2021 hearing, which might raise due-process concerns. See *In re KB*, 221 Mich App 414, 421; 562 NW2d 208 (1997) (concluding that "the procedures embodied in the Mental Health Code satisfy due process guarantees."). However, respondent did not raise this issue below or on appeal.

[5] On appeal, respondent does not argue that the trial court clearly erred with regard to its factual findings underlying its order. Rather, she specifically argues that she opposed the psychotropic medications sought to be administered by the treatment plan and that she would have better served by an outpatient treatment program.

> (a) An 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.
>
> (b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
>
> (c) An individual who has mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others. [MCL 330.1401(1)(a) through (c).]

Under MCL 330.1465, "[a] judge or jury shall not find that an individual is a person requiring treatment unless that fact has been established by clear and convincing evidence."

"The clear-and-convincing-evidence standard is the most demanding standard applied in civil cases." *In re Conservatorship of Bittner*, 312 Mich App 227, 237; 879 NW2d 269 (2015) (cleaned up). "Clear and convincing proof produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established" and "of the precise facts in issue." *Id*. (cleaned up). "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." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 115; 793 NW2d 533 (2010) (cleaned up). Additionally, this Court has held that "MCL 330.1469a requires that a preponderance of the evidence support the probate court's findings with respect to its determinations regarding an individual's treatment and placement." *In re Portus*, 325 Mich App at 393.

We conclude that the trial court did not abuse its discretion by ordering combined hospitalization and assisted outpatient treatment and the use of medication.

Following the January 27, 2021 hearing, the trial court found by clear and convincing evidence that respondent was a "person requiring treatment" under MCL 330.1401(1)(c). During the hearing, the trial court concluded there was "a common thread [of] psychosis," and found clear and convincing evidence that respondent had a mental illness that "causes delusional, agitated behavior; erratic, loud, and disruptive behavior." The trial court also found respondent had "limited insight" and did not "understand her need for treatment for the mental illness." The trial court acknowledged there "may be, on top of this, other issues," but it appeared to the trial court there was "an underlying mental illness that, when appropriately addressed, will then make it such that [respondent will] be able to get the treatment that she needs for the substance issue."

Accordingly, the trial court concluded that respondent "qualifie[d] under the mental health statute" and granted the petition.

The trial court ordered respondent to receive combined hospitalization and assisted outpatient treatment "for no longer than 180 days," with hospitalization for up to 60 of those days, and that respondent's assisted outpatient treatment service would be supervised by Washtenaw County Community Mental Health, or another designated facility. Additionally, the trial court ordered respondent be provided a variety of services, including medication monitoring, and required respondent to "take medication as prescribed." The trial court indicated that "Stonecrest or any approved hospital [could] provide treatment, which is adequate and appropriate to the individual's condition."

The trial court did not clearly err by finding there was clear and convincing evidence that supported its order of combined hospitalization and assisted outpatient treatment and the use of medication to which respondent objected. Dr. Blake, who testified after speaking with Stonecrest staff and reviewing medical records, diagnosed respondent with "bipolar disorder with psychosis." Dr. Blake noted respondent had disorganized thoughts and issues with mood regulation, was "delusional at times," and was "found by the police wandering."

Dr. Blake seemingly disagreed with prior diagnoses of schizophrenia, noting that schizophrenia would suggest she was "like [this] all the time," i.e., always delusional. However, Dr. Blake was "not convinced" respondent was delusional when she was "stable." Dr. Blake also believed respondent was a danger to herself, could not attend to her own needs, and exhibited erratic and unpredictable behavior. Dr. Blake also noted that respondent had been provided "multiple emergency medications for agitation and disruptive behavior," a "history of substantial mental illness and prior psychiatric admissions," and had refused to take medications prescribed by her treating psychiatrist. Moreover, Dr. Blake agreed that respondent had impaired judgment and did not understand the need for treatment, as demonstrated by her refusal of medication. Dr. Blake suggested combined hospitalization and outpatient treatment, with up to 60 days of hospitalization, including facilitating mental-health and substance-abuse treatment after her discharge. However, Dr. Blake did not think respondent would require the full 60 days of hospitalization once she was medicated.

The clinical certificates submitted to the trial court further support the trial court's findings. Attached to the November 2020 petition, Dr. Belmonte and Dr. DeVellis both noted respondent's delusions related to her skin lesions, indicating she believed they were caused by "mites" or "ticks" under her skin, her history of bipolar disorder and psychosis, and their respective concern that respondent would injure herself treating "perceived infections, particularly if she is delusional." Dr. Belmonte and Dr. DeVellis both concluded respondent was a "person requiring treatment." Attached to the January 19, 2021 petition, Dr. Haddad and Dr. Head concluded respondent was mentally ill, and both diagnosed her with schizophrenia. Dr. Haddad noted JB's refusal to allow respondent to take any "anti-psychotic medications," thereby "limiting the care she needs[.]" Dr. Head asserted that respondent was "delusional and manic" and that she refused treatment. Dr. Haddad and Dr. Head both determined that there was a likelihood respondent would injure herself and others, would be unable to attend to her basic physical needs, and was unable to understand the need for treatment. Further, Dr. Haddad and Dr. Head both recommended a combination of

hospitalization and assisted outpatient treatment. All four doctors asserted that respondent lacked insight and had poor judgment that could lead to further injury.

At the hearing, respondent testified that she did not have a mental illness, including schizophrenia or bipolar disorder. However, she indicated that she had issues with substance abuse. She also testified that she had previously had poor responses to psychotropic medications, which made her reluctant to try medications. Respondent asserted that she was capable of "handling her own affairs" and requested to be discharged on the day of the hearing to begin treatment for substance abuse. JB testified that respondent suffered from "psychosis," which led to the filing of the first mental health petition in this case. JB also noted that respondent was "very sensitive to medications" and that psychotropic medications could "greatly affect her."

We conclude that the hearing testimony and clinical certificates provided clear and convincing evidence that respondent was a "person requiring treatment." Although respondent and JB testified about their opposition to the use of "psychotropic medications," the hearing testimony supports a finding that respondent lacked insight into her need for treatment. Specifically, respondent testified that she knew "for a fact" that she did not have schizophrenia or bipolar disorder. JB, on the other hand, confirmed that respondent had suffered from psychosis. Dr. Blake's testimony, and the clinical certificates of four other doctors, were sufficient to "produce[] in the mind of the trier of fact a firm belief or conviction as to the truth" of the facts at issue related to respondent's mental-health status. *In re Conservatorship of Bittner*, 312 Mich App at 237. As indicated, "we defer to the probate court on matters of credibility . . . ." *In re Portus*, 325 Mich App 394 (cleaned up). Further, although respondent would have rather participated in only outpatient treatment, the record supports the trial court's conclusion that a combined hospitalization and outpatient treatment was required. After the first petition was filed, respondent agreed to combined hospitalization and outpatient treatment. However, Ing's demand for a hearing and the second petition and subsequent hearing testimony indicates that respondent was refusing treatment.

Therefore, we conclude that the trial court did not clearly err by finding that there was clear and convincing evidence that supported its order requiring combined hospitalization and assisted outpatient treatment and the use of medication. Although respondent and JB opposed requiring the use of medication in respondent's treatment, the testimony at the hearing supported the trial court's order requiring it, and we find no clear error in that regard. Finally, because the trial court's order was supported by clear and convincing evidence, it did not abuse its discretion by requiring a combined hospitalization and assisted outpatient treatment for respondent. See *In re Portus*, 325 Mich App at 393 (applying the preponderance-of-the-evidence standard to the probate court's findings with respect to determinations "regarding an individual's treatment and placement.").

Affirmed.

/s/ /Michelle M. Rick
/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron