STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0676

In the Matter of the Civil Commitment of:
Steven P. Lindquist.

Filed August 28, 2017
Affirmed in part and remanded
Cleary, Chief Judge

Kandiyohi County District Court
File No. 34-PR-17-24

Shane D. Baker, Kandiyohi County Attorney, Stephen J. Wentzell, First Assistant Kandiyohi County Attorney, Willmar, Minnesota (for respondent Kandiyohi County Health and Human Services)

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Considered and decided by Cleary, Chief Judge; Peterson, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Chief Judge

In this challenge to the district court's order committing him as mentally ill and approving the forced administration of neuroleptic medication, appellant argues that the district court erred by (1) considering his refusal to speak as evidence of mental illness, (2) permitting him to waive his appearance at the commitment hearing despite his

incompetence, and (3) failing to appoint a substitute decision-maker. Appellant also contends that the district court's findings are insufficient to support his commitment and the forced administration of neuroleptic medication. We affirm in part and remand for findings.

FACTS

Appellant Steven P. Lindquist was found unresponsive behind a dumpster in Willmar on March 6, 2017. In the emergency room, his blood alcohol concentration was .224 and he had elevated carbon monoxide levels. He was combative during treatment, and he was eventually transferred to a mental-health unit on a 72-hour hold. Kandiyohi County Health and Human Services (the county) filed a petition to civilly commit appellant and requested an order to permit administration of neuroleptic medication to him. During this process, appellant refused to speak to hospital or county personnel and instead communicated through notes or writings.

A commitment/*Jarvis*[1] hearing was held on March 28, 2017. In hand-written notes given to hospital staff, appellant refused to attend the hearing. After a short discussion, the district court concluded that appellant's absence was permitted under Minn. Stat. § 253B.08, subd. 5 (2016), and that appellant might be "seriously disruptive." The district court allowed the hearing to continue in appellant's absence.

[1] In *Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988), the Minnesota Supreme Court held that forced administration of neuroleptic medication must be preauthorized by a court order. Minn. Stat. § 253B.092, subd. 8(e) (2016) now provides the procedure and authority for forced administration of neuroleptic medication.

At the hearing, court-appointed examining psychologist Dr. Tinius stated that he attempted to interview appellant, who would not speak with him. Dr. Tinius concluded that appellant suffered from a psychosis, not otherwise specified. Dr. Tinius also opined that appellant was schizophrenic, but he was unable to be more specific because appellant refused to speak. Dr. Tinius believed that appellant's refusal to speak was "secondary," or attributable, to his mental illness. Dr. Tinius testified that there was no less-restrictive alternative to hospitalizing appellant and that medical treatment would reduce his symptoms. Dr. Tinius had considered "dismissal, voluntary outpatient, voluntary admission, appointment of a guardian or conservator, or release before commitment" and concluded that none of these alternatives would meet appellant's needs.

Dr. Scott, the hospital psychiatrist, testified that he interacted with appellant frequently between his admission and the hearing. Appellant also refused to speak to Dr. Scott, but appellant gave him "copious" notes containing "content of significant psychotic-type thinking, very paranoid thinking." The content of the notes frightened staff members, some of whom refused to work with appellant. Dr. Scott reviewed previous hospitalization records, spoke with appellant's family, and concluded that appellant "has a form of bipolar disorder, and . . . more likely schizoaffective disorder, due to the continuance of . . . psychotic and paranoid symptoms, even when he's been sober now for three weeks."

Dr. Scott testified that appellant needed an "injectable form of anti-psychotic medication that also can be used as a mood stabilizing agent." He attempted to persuade

appellant to voluntarily take medication, but appellant refused. Dr. Scott concluded that injectable Haldol would be the most appropriate medication because appellant's medical records indicated that he had been on Haldol before and had done well. Dr. Scott preferred another medication, Invega Sustenna, but protocol required oral administration to determine if a patient would have side effects, and appellant would not cooperate. He also mentioned Abilify Maintenna, but he opined that the medication might not be as effective as the other two. Dr. Scott testified that despite the potential for side effects, Haldol would probably permit appellant to be more quickly discharged to a less-restrictive setting. Dr. Scott described the protocols for preventing serious side effects. He concluded that there were no appropriate alternatives to administering neuroleptic medication to appellant. Finally, he stated that the benefits of using neuroleptic medication outweighed the risks involved.

The district court concluded that "commitment is appropriate for a period not to exceed six months" and that the benefits of neuroleptic medication outweighed its risk. The district court issued an amended order on April 14, 2017. This appeal followed.

D E C I S I O N

A court may commit a person if it finds by clear and convincing evidence that the person is mentally ill and there is no suitable alternative to judicial commitment. Minn. Stat. § 253B.09, subd. 1 (2016). This court is limited to examining whether the district court complied with the commitment act's requirements. *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). We review the district court's findings

of fact for clear error and the question of whether the evidence is sufficient to support a commitment de novo. *Id.* This court reviews the record in the light most favorable to the district court's decision. *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 539 (Minn. App. 2005).

A district court may order the forced administration of neuroleptic medication if it finds that the patient lacks capacity to decide whether to take medication. Minn. Stat. § 253B.092, subd. 8(e). Before issuing such an order, the district court must consider: (1) whether the use of neuroleptic medication would offend the patient's family and community, or the patient's moral, religious, and social values; (2) the risks and benefits of treatment and any alternatives to treatment; (3) whether past use of the medications has been effective; and (4) any other relevant factors. Minn. Stat. § 253B.092, subd. 7(b) (2016). We review the district court's findings for clear error. *In re Thulin*, 660 N.W.2d 140, 145 (Minn. App. 2003).

I.

Appellant argues that the district court erred by relying on medical testimony that his refusal to speak supported a finding of mental illness. Appellant asserts a constitutional right to remain silent and contends that (1) medical personnel should not have commented on his silence, and (2) without inferences drawn from his refusal to speak, the evidence is insufficient to support the court's finding that he is mentally ill.

Both the United States Constitution and the Minnesota Constitution state that a person cannot be compelled to be a witness against himself in any criminal case. U.S.

Const. amend. V; Minn. Const., art. I, § 7. "The object of the [Fifth Amendment] was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he had committed a crime." *In re Contempt of Ecklund*, 636 N.W.2d 585, 588 (Minn. App. 2001) (quotation omitted). Civil commitment, while a significant restraint on liberty, is not considered to be a criminal proceeding because the restraint is for treatment and not for punitive purposes. *See Call v. Gomez*, 535 N.W.2d 312, 319-20 (Minn. 1995) (discussing commitment as a psychopathic personality as remedial rather than punitive). Appellant's claim of a constitutionally protected right to remain silent during medical examinations preceding a civil commitment is without merit. Furthermore, this record does not support his claim that his commitment was based solely on his silence.

II.

Appellant argues that the district court erred by failing to inquire whether he had the capacity to waive his appearance at the commitment/*Jarvis* hearing. A hearing on a commitment petition must be held within fourteen days after the filing of the petition. Minn. Stat. § 253B.08, subd. 1 (2016). The proposed patient has the right to attend and to testify at the hearing. *Id.*, subd. 3 (2016). But the proposed patient may also waive attendance at the hearing or the court "may exclude or excuse a proposed patient who is seriously disruptive or who is incapable of comprehending and participating in the proceedings." *Id.*, subd. 4(a), (b) (2016). When the court excludes or excuses a proposed patient, the court must state with "specificity" its reasons for doing so. *Id.*, subd. 4(b).

At the hearing, appellant's attorney indicated that appellant refused to attend the hearing, and the district court stated that the mental-health unit administrator notified the court that appellant refused to attend and took a "strong position." The district court accepted the county's position that appellant could be excluded from the proceedings if he would be "seriously disruptive," and "agree[d] it would be inappropriate to make any further efforts [to compel attendance]." *See* Minn. Stat. § 253B.08, subd. 5(b) (2016). The district court's decision to excuse appellant from attendance, based on appellant's own strongly held position, was not error.

In the alternative, appellant argues that the district court erred by not appointing a substitute decision-maker. "Upon the request of any person, and upon a showing that administration of neuroleptic medications may be recommended and that the person may lack capacity to make decisions regarding the administration of neuroleptic medications, the court shall appoint a substitute decision-maker with authority to consent to the administration of neuroleptic medication." Minn. Stat. § 253B.092, subd. 6 (2016). Although a court must appoint a substitute decision-maker in this situation, no request was made during this proceeding and the appellant was represented by counsel. This distinguishes the matter from *In re Civil Commitment of Raboin*, 704 N.W.2d 767, 772-73 (Minn. App. 2005), in which this court held that the district court erred by failing to appoint a substitute decision-maker despite a request made by the patient. The district court did not err by failing to sua sponte appoint a substitute decision-maker.

III.

Appellant challenges the sufficiency of the evidence to support both his commitment and the forced administration of neuroleptic medication. The county has the burden of proving by clear and convincing evidence that a patient is mentally ill and subject to civil commitment. *See In re Colbert*, 454 N.W.2d 614, 615 (Minn. 1990). In this matter, the county was required to demonstrate by clear and convincing evidence that appellant had an "organic disorder of the brain or a substantial psychiatric disorder" that: (1) grossly impaired his judgment, behavior, capacity to recognize reality, or to reason or understand; (2) manifested itself "by instances of grossly disturbed behavior or faulty perceptions"; and (3) created a substantial likelihood that he would physically harm himself or others. Minn. Stat. § 253B.02, subd. 13(a) (2016). A "substantial likelihood of physical harm to self or others" is demonstrated in various ways, including "an inability for reasons other than indigence to obtain necessary . . . medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, psychiatric deterioration or debilitation or serious illness, unless appropriate treatment or services are provided." *Id.*

Civil commitment and forced administration of neuroleptic medication, although intended to protect and assist those suffering from serious mental illness, represent serious constraints on an individual's liberty interests. Because of this, a reviewing court must carefully consider whether the district court has made "a good faith attempt to isolate the most important factors" supporting civil commitment. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 23 (Minn. 2014) (quotation omitted). "As the trier of fact, the district court

will be in the best position to determine the weight to be attributed to each factor [supporting civil commitment], as well as to evaluate the credibility of witnesses—a critical function in these cases that rely so heavily on the opinions of experts." *Id.* at 23-24. To conduct a thorough review and to determine if clear and convincing evidence supports a civil commitment, this court relies on the district court's findings.

We cannot conduct a thorough review when the district court's findings are conclusory and fail to address the statutory bases for commitment. *See In re Civil Commitment of Spicer*, 853 N.W.2d 803, 809 (Minn. App. 2014). Minn. Stat. § 253B.09, subd. 2 (2016), requires "the findings of fact and conclusions of law [to] specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for commitment is met." Here, in addition to the boilerplate language of the form[2], the district court found that appellant "poses a threat to himself and staff, and is very combative. He is bipolar and suffers from a schizoaffective disorder." The district court made some additional findings on the record at the commitment hearing:

> The Court understands that [appellant] has been somewhat oppositional regarding this case, and I understand that he opposes the prescriptions. He also opposes the commitment. However, based upon the testimony of Dr. Tinius it is quite clear that [appellant] is struggling with mental illness, really quite severe symptoms, including a bipolar condition and schizoaffective disorder. So a

[2] We note that the preprinted form used by the district court omits some of the statutory language in its conclusion of law that appellant is mentally ill. The omitted statutory language states that a substantial likelihood of physical harm to self or others can be "demonstrated by . . . a failure to obtain necessary food [and] clothing." *See* Minn. Stat. § 253B.02, subd. 13(a)(1) (2016).

> commitment is appropriate for a period not to exceed six months.

In addition, the district court acknowledged the risk associated with the neuroleptic medication but concluded that the benefits outweighed the risks. However, these findings do not address the basis for commitment set forth in Minn. Stat. § 253B.02, subd. 13(a), and lack the specificity required under the statute.

Therefore, we remand to the district court for more detailed findings that address the statutory factors. *See Stiff v. Assoc. Sewing Supply Co.*, 436 N.W.2d 777, 779 (Minn. 1989) (acknowledging that an appellate court may remand for additional findings necessary to support a district court's conclusion on a disputed issue).

Affirmed in part and remanded.