STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0128

In the Matter of the Civil Commitment of: Nicholas D. Webster.

Filed June 15, 2020
Affirmed
Connolly, Judge

Scott County District Court
File No. 70-PR-19-21686

James P. Conway, Jaspers, Moriarty & Wetherille, P.A., Shakopee, Minnesota (for appellant)

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Susan Dredge, Bloomington, Minnesota (guardian ad litem)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

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

CONNOLLY, Judge

On this appeal from the district court's civil commitment of appellant and authorization of the involuntary administration of neuroleptic medication to him, appellant argues that the district court erred by declining to appoint a substitute decision-maker.

Because the district court's failure to appoint a substitute decision-maker was harmless error, we affirm.

FACTS

On December 27, 2019, Scott County filed a petition for judicial commitment of appellant Nicholas D. Webster. Appellant was 18 years old at the time and is currently 19 years old. The petition arose after appellant used a cannabis vaping device with concentrated THC on a daily basis for approximately five to six months while he was attending college. Appellant was hospitalized for one month in November and December 2019 "for management of delusional psychosis." Shortly after he was released from the hospital, he left his parents' house, where he resided, without proper winter clothing. He reportedly believed that his parents had been replaced by actors who had kidnapped him to be on an internet streaming show. The police found appellant and transferred him to the hospital.

The county also filed a petition to authorize treatment with neuroleptic medication, based on the recommendations of doctors at the hospital. Neuroleptic medication is designed to relieve the psychotic symptoms of mental illnesses. The county noted that appellant had clearly refused the treatment.

The district court held a commitment hearing on January 8, 2020. At the hearing, the court-appointed examiner recommended that appellant be civilly committed and receive neuroleptic medication. Appellant's guardian ad litem also recommended that the court authorize the recommended treatment of appellant. The district court heard testimony

that appellant had refused to take neuroleptic medication since December 31, 2019, even though it had been offered to him every day.

Appellant's mother testified at the hearing. She requested to be appellant's substitute decision-maker, so that she would be authorized to make decisions for appellant regarding what medication to take. Appellant's mother did not want the hospital to administer two specific neuroleptic drugs because she believed that they had been ineffective. Appellant's counsel later reiterated this concern to the district court. He had no objection to the forcible administration of four neuroleptic drugs but requested that the court exclude the two drugs that appellant's mother had mentioned. He also asked that the district court appoint appellant's mother as a substitute decision-maker. Appellant did not testify at the hearing.

The district court issued orders on January 10, 2020, granting the county's petitions. First, it determined that appellant was "mentally ill and chemically dependent with a diagnostic impression of Schizophrenia [and] Cannabis Use Disorder." Accordingly, it committed him to the treatment facility for an initial period of six months.

Second, the district court authorized treatment with neuroleptic medication. It concluded that neuroleptic medication was necessary to treat the symptoms of appellant's mental illness, that appellant had not sufficiently responded to less intrusive forms of treatment, and that appellant's "need for treatment with neuroleptic medication has been clearly shown to greatly outweigh the intrusiveness and possible side effects of the treatment." The district court found that appellant had consistently refused to take neuroleptic medication since December 31, 2019. It then determined that appellant lacked

the capacity to decide whether to take the medication and concluded that a reasonable person would consent to the administration of the medication.

As such, the district court authorized the treatment facility to administer neuroleptic medication to appellant without his consent. The district court authorized the use of six different neuroleptic drugs, including the two drugs to which appellant's mother and counsel had objected. The court's order did not address the appointment of a substitute decision-maker.

On January 14, 2020, appellant requested that the district court amend its order to appoint a substitute decision-maker, arguing that such an appointment was mandatory by statute. The county opposed appellant's request. The district court denied appellant's request, stating that it was "not convinced that appointing a substitute decision maker is mandatory in this case." This appeal follows.

D E C I S I O N

Appellant contends that the Minnesota Civil Commitment Act required the district court to appoint a substitute decision-maker under these circumstances.[1] "[T]his court reviews de novo questions of statutory construction and the application of statutory criteria to the facts found." *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 650 (Minn. App. 2017), *review denied* (June 20, 2017). When interpreting a statute, appellate courts

[1] At oral argument, the county suggested that appellant had waived this argument because he did not present it to the district court. But appellant's counsel requested that the district court appoint a substitute decision-maker at the commitment hearing and repeated that request in a letter to the district court after the district court issued its orders. This issue is therefore properly before this court.

"construe a statute as a whole and interpret its language to give effect to all of its provisions." *State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015). Furthermore, "various provisions of the same statute must be interpreted in the light of each other." *Id.* (quotation omitted).

Appellant points to Minn. Stat. § 253B.092, subd. 6(a) (2018). That provision provides:

> Upon 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 medication, the court shall appoint a substitute decision-maker with authority to consent to the administration of neuroleptic medication as provided in this section.

Minn. Stat. § 253B.092, subd. 6(a). Appellant argues that all the circumstances listed in the statute were present here—treatment by neuroleptic medication was recommended, appellant lacked the capacity to make decisions, and he requested a substitute decision-maker. Since those circumstances were present, he maintains that the statute required the district court to appoint a substitute decision-maker.

In response, the county argues that subdivision 6(a) does not apply here. Instead, it contends that the statute "only requires the appointment of a Substitute Decision Maker when the Substitute Decision Maker has the authority to consent to treatment under Subdivision 6," and "a Substitute Decision Maker does not have authority to consent to treatment under Subdivision 6 when the patient refuses to take the medication." The county notes that because appellant refused to consent to treatment, a substitute decision-maker could not override that decision. The county maintains that Minn. Stat. § 253B.092, subd.

8 (2018), articulates the proper procedure here. That provision addresses situations in which the patient refuses to consent to neuroleptic medication. It provides that, if the patient refuses the medication, then "neuroleptic medications may not be administered without a court order." Minn. Stat. § 253B.092, subd. 8(a).

Appellant is correct that the requirements of Minn. Stat. § 253B.092, subd. 6(a), for appointing a substitute decision-maker were satisfied here. The court-appointed examiner and guardian ad litem recommended neuroleptic medication, the examiner opined that appellant lacked the capacity to make decisions regarding the administration of the medication, and appellant's mother and counsel requested a substitute decision-maker. We have held that Minn. Stat. § 253B.092, subd. 6(a), is mandatory, so the district court must appoint a substitute decision-maker when those circumstances are present. *In re Civil Commitment of Raboin*, 704 N.W.2d 767, 772-73 (Minn. App. 2005). However, there is an important distinction between this case and *Raboin*—here, appellant had already refused to take neuroleptic medication when he requested a substitute decision-maker, whereas there is no indication that the patient in *Raboin* had made such a refusal. *See id.* at 768.

It is undisputed that appellant had refused neuroleptic medication since December 31, 2019. That refusal changes the application of the statute. Generally, a substitute decision-maker has the authority to consent to the administration of neuroleptic medication. Minn. Stat. § 253B.092, subd. 6(a). But medication may be administered "[i]f the substitute decision-maker gives informed consent to the treatment *and the person does not refuse*." *Id.*, subd. 6(b) (2018) (emphasis added). "If the substitute decision-maker refuses or withdraws consent *or the person refuses the medication*, neuroleptic medication

may not be administered to the person without a court order or in an emergency." *Id.* (emphasis added). Because of appellant's refusal to take the medication, even if the district court had appointed appellant's mother as a substitute decision-maker, neuroleptic medication could not have been administered unless there was a court order or an emergency. Indeed, that was the entire purpose of the court order—to override appellant's refusal to consent to neuroleptic medication.

The appointment of appellant's mother as a substitute decision-maker would change nothing in this case. Appellant's mother would not be able to consent to the administration of neuroleptic medication, since appellant already refused to take the medication. Nor would she be able to refuse particular neuroleptic drugs on appellant's behalf (which was her primary reason for wanting to be substitute decision-maker) because the district court has already authorized the administration of the two drugs that appellant's mother objected to.

Therefore, we conclude that the district court's failure to appoint a substitute decision-maker was harmless error. *See* Minn. R. Civ. P. 61 (providing that the court at every stage of the proceeding must disregard any error that does not affect substantial rights); *cf. In re Muntner*, 470 N.W.2d 717, 719 (Minn. App. 1991) (holding that patient must show that he was prejudiced by the absence of his guardian ad litem at hearing on administration of neuroleptic medication to justify reversal of the district court's order), *review denied* (Minn. Aug. 2, 1991). Although Minn. Stat. § 253B.092, subd. 6(a), requires the district court to appoint a substitute decision-maker under the circumstances that were present here, the district court's failure to do so had no impact on the proceedings.

Additionally, appellant contends that the district court's failure to appoint a substitute decision-maker violated his right to substantive due process. Specifically, he asserts that treatment with neuroleptic medication infringes on his state constitutional rights to privacy and bodily autonomy. Appellant argues that the district court's actions were subject to strict scrutiny and did not satisfy strict scrutiny because they were not narrowly tailored. According to him, the appointment of a substitute decision-maker is a "less restrictive alternative" to "an order for forced treatment against the will of the patient," so the district court infringed upon his "right to be subjected only to the least restrictive method to meet his needs" when it failed to appoint a substitute decision-maker.

We cannot discern how appointing a substitute decision-maker would have been a less restrictive alternative to the hearing that appellant received. When a patient refuses neuroleptic medication, as appellant did here, a court order is the only method for administering the medication, regardless of what the substitute decision-maker decides. *See* Minn. Stat. § 253B.092, subd. 6(b). The district court held a hearing on the matter and then issued an order. Judicial review, such as occurred here, has long been considered the primary way to vindicate patients' substantive-due-process rights to privacy and bodily autonomy. *See Price v. Sheppard*, 239 N.W.2d 905, 913 (Minn. 1976) (holding that hospitals must obtain a court order before administering intrusive forms of treatment against patients who are incompetent or refuse consent); *see also Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988) (holding that the administration of neuroleptic medication is an intrusive treatment, so hospitals must follow the procedures from *Price* when administering it against incompetent patients who refuse consent).

Because appellant received full judicial review in the district court before the neuroleptic medication was administered, the district court did not violate his substantive-due-process rights.

Affirmed.