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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0892**

In the Matter of the
Civil Commitment of:
Brian Lowell Knippel.

**Filed October 7, 2008
Affirmed
Klaphake, Judge**

Rice County District Court
File No. 66-PR-08-1203

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Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Brian Lowell Knippel challenges his commitment as a mentally ill and chemically dependent person. He claims that the district court abused its discretion in permitting amendment of his commitment petition to include the ground of mental illness, as well as the ground of chemical dependency, which had been alleged in the original petition. Because the issue of mental illness was tried by consent and there was

no alleged or actual prejudice to appellant resulting from amendment of the petition, we affirm.

D E C I S I O N

Under Minn. R. Civ. P. 15.01, a party may amend pleadings after a responsive pleading has been served only by leave of court or with the written consent of the adverse party. A district court may allow a party to freely amend a pleading when justice so requires. *Id.* Whether amendment should be allowed “depends upon a number of factors, including, in particular, prejudice to the adverse party.” *Wilson v. City of Eagan*, 297 N.W.2d 146, 151 (Minn. 1980). A district court’s decision on whether to allow a party to amend its pleadings is discretionary, and an appellate court will not disturb that decision unless there has been an abuse of discretion. *Utecht v. Shopko Dep’t Store*, 324 N.W.2d 652, 654 (Minn. 1982); *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 474 (Minn. App. 2006).

When an issue not raised in the pleadings is addressed at trial, the district court may allow post-trial amendment of the pleadings to conform to the evidence, even after entry of judgment. Minn. R. Civ. P. 15.02. A district court may imply consent to litigate an issue not raised in the pleadings when a party does not object to evidence relating to the new issue or offers evidence relating to that issue. *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983); *Shandorf v. Shandorf*, 401 N.W.2d 439, 442 (Minn. App. 1987).

Appellant asserts that the amendment provisions of rule 15 should not apply here because the rules of civil procedure do not apply to commitment proceedings. Under

Minn. R. Civ. P. 81.01(a), commitment proceedings are special proceedings to which the civil rules do not apply, but only “insofar as they are inconsistent or in conflict with” the rules for special proceedings. Appellant cites the summary nature of civil commitment proceedings as a reason for not allowing amendment of respondent Rice County’s commitment petition.

We conclude that rule 15 is neither in conflict nor inconsistent with the pertinent hearing procedures pertaining to appellant’s civil commitment. Under Minn. Stat. § 253B.08, subd. 1 (2006), a commitment hearing must be held within 14 days of filing of the commitment petition, or up to an additional 30 days for good cause shown. Appellant’s commitment petition was filed on March 31, 2008, and the commitment hearing was held on May 1. The original hearing date of April 10 was rescheduled “for good cause shown” after appellant sought a second medical examination, as allowed by law. Thus, in this instance, rule 15 does not conflict with the rules for civil commitment proceedings. *See, e.g., In re Irwin*, 529 N.W.2d 366, 373 (Minn. App. 1995) (applying Minn. R. Civ. P. 15.01 to determine timeliness of motion to amend commitment petition), *review denied* (Minn. May 16, 1996). In addition, because the court must “make its determination upon the entire record,” Minn. Stat. § 253B.08, subd. 7 (2006), and the initial investigation and screening of appellant’s case were summary due to the emergency manner in which appellant was hospitalized before the filing of the petition, we note that it was in the interests of justice to allow the petition to be amended to conform to appellant’s medical records and other evidence that later became part of the record.

We further conclude that the district court did not abuse its discretion by allowing respondent to amend the commitment petition. Appellant had notice of the amendment and the opportunity to respond, and he was able to address the issue of his mental health at the commitment hearing. Further, appellant did not object when respondent introduced evidence pertaining to appellant's mental health and has not alleged or shown prejudice because of inclusion of this evidence at the commitment hearing. Under these circumstances, the issue of appellant's mental illness was tried by consent, and the district court properly allowed amendment to align the pleadings with the evidence. *See* Minn. R. Civ. P. 15.02 (allowing amendment of pleadings to conform to evidence); *see also Folk*, 336 N.W.2d at 267 (allowing issue not raised in pleadings to be tried by consent where party does not object to evidence relating to issue or offers evidence on issue); *Shandorf*, 401 N.W.2d at 442 (same).

Affirmed.