STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0818

In the Matter of the Civil Commitment of: William P. Call

Filed September 15, 2009
Reversed
Stoneburner, Judge

Hennepin County District Court
File No. 27MHPR09167

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Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

Appellant William P. Call challenges his commitment as mentally ill, arguing that the evidence does not support the district court's finding that the statutory criteria for commitment was proved by clear and convincing evidence. We agree and reverse.

FACTS

Appellant was born in 1954. He began drinking alcohol in early adolescence and has struggled with alcoholism throughout his life. In 2004, he attempted suicide by hanging and may have suffered brain damage due to lack of oxygen from this event. In 2006, Call was found unconscious in his room, having seizures. He apparently fell after having consumed a large quantity of alcohol and suffered a traumatic brain injury (TBI). In August 2006, Call was committed as chemically dependent (CD). This commitment was continued for one year in February 2007.

From March 2007 through mid-March 2008, Call resided at Minnesota Neurorehabilitation Hospital. In February 2008, Call was recommitted as CD and mentally ill (MI), based on a primary diagnosis of dementia, and personality change secondary to an acquired brain injury.

On March 19, 2008, Call was provisionally discharged from the hospital to Community Living Options Creek Valley TBI group home (the group home) in Harris. Call's MI commitment expired in August 2008, and his CD commitment expired in February 2009.[1] Nonetheless, Call remained at the group home, and in late February 2009, Hennepin County again sought his commitment as MI.

At Call's commitment hearing, the group home records, county case manger notes, and relevant medical records were admitted as exhibits. Char Wethern, the Designated Coordinator of the group home, testified about Call's treatment plan. Programming goals for Call include budgeting, taking medications, daily-living skills, and community

[1] From the record on appeal, it appears that Call has remained sober since August 2006.

integration. Before the group home will consider Call eligible for independent living, Call must demonstrate 90% compliance with his treatment plan for three months followed by 100% compliance for three months.

Staff record on daily data sheets whether Call engages in various types of behavior, such as physical or verbal aggression or isolation, and whether Call participates in "community integration" activities and "everyday living skills." Community integration activities include mowing the lawn, shoveling the snow, helping around the house, and other "work-related" activities. Everyday living skills include basic hygiene, waking up on time, and going to bed at an appropriate hour. Compliance with the medication goals requires Call to approach staff on his own at specified times and explain to staff what medication he takes, its purpose, what would happen if he did not take it, and the side effects of the medication. Call must initial a book indicating that he took his medications.

Wethern testified that Call chooses not to participate in the medical-compliance program, so staff remind him of medication times. Wethern testified that although Call is capable of cooking for the whole group home (four residents including Call), he chooses not to participate in the cooking program. The record indicates that Call is capable of budgeting, but chooses not to participate in the group home's budgeting program.

Wethern opined that Call, at the time of the commitment hearing, was not able to independently provide for necessary food, clothing, shelter, or medical care. She testified about one instance in the spring of 2008 when Call asked a neighbor to give him alcohol as indicating that Call would seek alcohol and injure himself if he is not committed. She

opined that Call would not be able to make and keep his medical appointments, would not take his medications, and would not eat the "proper amounts of proper foods" to maintain good nutrition. Wethern expressed her concern that Call tends to isolate himself rather than engage in the community-integration program, noting that, as of January 2009, Call was only 29% compliant with that program, and overall, Call was only 75% compliant with his treatment plan.

Call was assigned to Hennepin County Human Services and Public Health senior social worker Ross Newlund in late June 2008. Newlund testified about the need to repeat information to Call before he understands the information and the difficulty Newlund has experienced in dissuading Call from some beliefs and ideas, such as Call's belief that his brain injury is healed and that he no longer needs to be committed or to remain at the group home. Newlund testified that, in his opinion, Call is not able to independently meet his needs for food, clothing, shelter, and medical care because he does not have the ability to process information necessary to make sound judgments for his own care and safety.

Newlund testified that the CD group residence that Call would like to live in is not available to Call, and that commitment to the group home is "a fine compromise" and the only alternative available at this time because Newlund has not been able to secure a conservator or guardian for Call. Newland testified that there are less restrictive "board and care" facilities that would assist Call with medical appointments and provide food, but opined that Call needs more supervision than such facilities provide.

Court-appointed examiner and licensed psychologist Dr. Terry Nelson characterized Call's diagnosis as "a cognitive impairment due to an acquired brain injury as a result of falls, alcohol, seizure and perhaps [oxygen deprivation] from a failed suicide attempt by hanging back in 2004." Nelson described Call's symptoms of dementia as affecting memory, reasoning, judgment, attention, calculation, and comprehension, all of which affect Call's ability to live independently "*at least to a mild degree in terms of probability.*" Nelson noted that Call has done well in a controlled environment, citing his cooperation with physical and occupational therapy and attendance at alcoholics anonymous (AA), but testified that there are "too many other missing steps" for Call to be capable of independent living at this time. Specifically, Nelson referenced Call's finances, access to resources, and lack of evidence of ability to make and keep appointments. He testified that if Call needs reminders for daily activities, this fact does not bode well for independent living. Nelson opined that although Call "presented quite well" at his examination, his judgment has been grossly impaired as demonstrated by his desire to live in a "sober house," and his having asked a neighbor for alcohol.

Call testified about his desire to live in the Twin Cities near his AA sponsors, church, friends, Hennepin County Medical Center, and the University of Minnesota. He testified that he intends to remain sober for the rest of his life and noted that despite his structured setting, he has had "plenty of opportunities to cheat if [he] had wanted to." Call testified that he was working on applying for Social Security to assist with living expenses. He believes he understands his own limitations and is willing to live in a group

residence that would assist with meals. There is no evidence in the record that Call intends to live alone without assistance or services from any source.

The district court found that Call suffers from an organic disorder that meets the statutory definition of mental illness. The district court concluded that as a consequence of his mental illness, Call "engages in grossly disturbed behavior or experiences faulty perceptions" and poses a substantial likelihood of causing physical harm, rendering him incapable of independent living at the time of the hearing. The district court found that Call has not met the group-home criteria for transfer to a less structured setting, stating that he does not eat properly without prompts, refuses medications at times, and is not able to make and keep appointments without help from staff. The district court found that Call is not aware of his own limitations because he believes his brain injury is healed and that he is capable of independent living. The district court found that the group home is the least-restrictive appropriate alternative and committed Call as MI. This appeal followed. While the appeal was pending, Call's commitment ended.

D E C I S I O N

We first note that despite the fact that Call is no longer committed, the appeal is not moot because, as both parties argued to this court, collateral consequences attach to an MI commitment. *See In re McCaskill*, 603 N.W.2d 326, 331 (Minn. 1999) (holding that because of early intervention provisions of the Minnesota Commitment and Treatment Act, collateral consequences attach to an MI commitment, making a post-commitment appeal not moot).

When reviewing a district court's MI commitment, this court's review is limited to a determination of whether the district court complied with the Minnesota Commitment and Treatment Act. *In re Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). The district court's findings of fact will not be overturned unless clearly erroneous, but we review de novo whether the evidence is sufficient to satisfy the requirements of the statute. *Id.* The record is considered in a light most favorable to the district court's decision. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

Under Minn. Stat. § 253B.09, subd. 1(a) (2008), a district court may commit a person as MI if there is clear and convincing evidence that the person:

> has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by: . . .
>
> > (2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided.

Minn. Stat. § 253B.02, subd. 13(a)(2) (2008).[2]

Call argues that, in this case, the record contains only speculation—not clear and convincing evidence—that he is *unable* to provide for necessary food, clothing, shelter,

[2] The county sought commitment only under subdivision 13(a)(2) of the statute.

or medical care or that it is more probable than not that, absent commitment, he will suffer the type of harm described in the statute. Although this is a close case, we agree.

There is no evidence in the record that Call poses a likelihood of harm to anyone but himself, and, although the record contains evidence of a valid concern about Call's perception of his limitations, there is no clear and convincing evidence that Call is actually unable to meet his basic needs such that it is more probable than not that, without commitment, he will suffer "substantial harm, significant psychiatric deterioration or debilitation, or serious illness."

Much of the testimony at Call's civil commitment hearing focused on Call's alcoholism. But there was no testimony from Call's chemical-dependency counselors indicating that chemical-dependency treatment was not successful or that without continued MI commitment he will suffer a relapse. The possibility of relapse plainly exists and may be heightened by Call's brain injury, but we conclude that speculation about a chemical-dependency relapse is not sufficient to support Call's commitment as MI, particularly in light of his involvement in AA, his desire to be closer to his AA sponsors, and his desire to live in a sober house, despite his lack of eligibility for the particular facility he would like to live in.

There was also a focus on fear that, absent commitment, Call would refuse to take his prescribed medications. The exquisitely detailed accounts of Call's daily life at the group home reveal only eleven occasions between March 19, 2008, and February 26, 2009 when Call refused to take medications. On each of those occasions, Call refused medications at 11:00 a.m. but presented himself for lunch and took his 2:00 p.m.

medications without any record of prompting. There is no record of what specific medications were refused and no evidence of any consequences of Call's refusing these medications. There was testimony that Call has stated that he does not need medication, but none of these comments is reported in the group home's written records, and Call testified that he would take his medications voluntarily, even if not committed.

Regarding Call's ability to make and keep medical appointments, the record is very sparse. There is testimony that Call needed assistance both in making appointments and getting to appointments timely. But aside from a reference to long-neglected-but-much-needed dental work, there is no evidence about the necessity or frequency of medical appointments or any attempts to have Call take individual responsibility for making and attending medical appointments. Additionally, Newlund testified that he assists some of his non-committed clients with making and attending medical appointments. The record lacks any evidence of the possible consequences to Call of failing to make or keep medical appointments. The district court's finding that there is clear and convincing evidence that Call's occasional failure to take medications and difficulty with making or keeping medical appointments poses a *substantial likelihood* of causing Call physical harm is not supported by the record.

Regarding Call's failure to eat properly, it is fortunate for the majority of Americans that poor eating habits are not a conclusive basis for MI commitment. The record contains evidence that Call lost eight pounds and that he needed assistance in properly choosing adequate portions of the balanced food groups offered, but there is no evidence that his poor eating habits are caused by his mental illness or that he will suffer

substantial harm as a result of his nutritional choices. The group-home records do not document that he ever failed to appear for meals.

Nelson characterized Call's mental illness as affecting Call's ability to live independently to "a mild degree in terms of probability." Nelson conditioned his opinion that Call cannot live independently on his understanding that Call needed prompting to engage in activities necessary for daily living, and Nelson implied that he was concerned about Call's financial ability to provide for the necessities of life. But indigence is specifically excluded as a basis for commitment. Minn. Stat. § 253B.02, subd. 13(a)(2). And the group-home records note Call's regular attention to hygiene in his person and surroundings, his regular sleep habits, and his ability to interact with staff and peers. The record describes incidents when Call was upset and even "verbally aggressive," but for each such incident, staff recorded a cause, indicating that, although Call may be easily irritated, he is not irrationally irritated.

The absence of clear and convincing evidence to support Call's MI commitment is demonstrated by Newlund's testimony that if he were able to find a conservator or guardian for Call, commitment would not be necessary, and that commitment to the group home is a "fine compromise" because Call is well cared for there. Clearly, everyone involved with this case wants Call to receive the best care available, but we cannot condone a desirable end as justifying an MI commitment that is not supported by clear and convincing evidence of the need for commitment as set forth in the law.

Reversed.