

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1770**

In the Matter of the Civil Commitment of:
Tsegaye Tefera.

**Filed March 8, 2011
Affirmed
Crippen, Judge***

Hennepin County District Court
File No. 27-MH-PR-09-863

Kurt M. Anderson, Minneapolis, Minnesota (for appellant Tsegaye Tefera)

Lori Swanson, Attorney General, Barbara Berg Windels, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Human Services)

Michael Freeman, Hennepin County Attorney, John L. Kirwin, William Neiman, Assistant County Attorneys, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Worke, Presiding Judge; Stauber, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Tsegaye Tefera contends that the circumstances of this case uniquely call for reversal of the district court's intrusive-treatment order because it calls both for electroconvulsive therapy (ECT treatment) and extraction of loose teeth needed to reduce

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

the hazards of ECT treatment. Because the evidence in the record provides substantial support for the district court's determination that the treatment, both ECT and teeth extraction, is reasonable and necessary, we affirm.

FACTS

Appellant was committed as mentally ill on November 4, 2009. He was admitted to the Anoka Metro Regional Treatment Center (AMRTC) and diagnosed with major depression with psychotic features. The patient appealed his commitment, and we affirmed. *In re Commitment of Tefera*, No. A10-12, 2010 WL 2266677 (Minn. App. June 8, 2010). Appellant is confined to a wheelchair due to his belief that several of his bones are fractured and cause pain that prevents him from walking. His inability to walk, however, has no medical explanation.

AMRTC sought and received authority to administer neuroleptic medicines and, later, ECT treatment. Appellant did not appeal these orders. In preparing to administer ECT treatment, appellant's medical team realized that many of his teeth were loose as a result of severe periodontal disease and were at risk of falling out during the treatment, potentially causing choking or infection if inhaled. Consequently, all of the oral surgeons who examined appellant recommended removing all but a few molars before administering ECT treatment. AMRTC sought court authority to remove appellant's teeth, and the district court held a hearing to evaluate the need for ECT treatment in light of the teeth extraction required.

At the hearing, the director of AMRTC's Medical Psychiatric Unit testified about the need for ECT treatment. He stated that appellant is "quite regressed behaviorally"

and delusional as to his belief that he cannot walk. He estimated that appellant has a 50% chance of significant improvement with ECT treatment and another 20-30% chance of partial improvement. Patients with a mild or moderate recovery can often manage their symptoms pharmacologically and live in less restrictive environments. He explained that appellant's underlying medical conditions limit the medications that could be used to treat appellant. The director concluded that he saw "no clinical evidence of improvement" in appellant with his current treatment regimen; that his prognosis without ECT treatment was "extremely poor"; and that he would likely require nursing-home-level care indefinitely without ECT treatment.

The court-appointed examiner also testified that ECT treatment "would provide the highest likelihood of a very successful outcome." He shared the director's estimations of the chance of improvement with ECT treatment and stated his belief that without ECT treatment, appellant was unlikely to ever be able to care for himself or live with family members.

The record indicates that appellant's teeth are held in his mouth by soft tissue, not bone. Appellant testified that he recently lost a tooth. His medical records show that AMRTC staff became aware of appellant's dental condition when they found a "moderate amount" of blood in his trash can, which appellant said came from his teeth. The ensuing dental consultation revealed "very poor dentation" and "very decayed teeth." Oral surgeons indicated to the director that appellant's teeth will have to be extracted at some point because of the severity of his periodontal disease, regardless of whether ECT treatment is administered. But because appellant's "dental condition is so frail and his

teeth are so loose” appellant cannot receive ECT treatment without the extraction. The record shows that AMRTC will provide dentures at no cost while appellant is committed, and appellant’s county case manager can help him receive dentures and dental care through Medical Assistance after he is discharged.

The district court found that “ECT gives [appellant] the only realistic hope for improvement in his near-totally incapacitated condition” and concluded that the benefits of ECT treatment outweigh the risks and justify the intrusion on appellant’s privacy. It found that the extraction of teeth was necessary to aid the life and health of the patient and that the treatment was supported by evidence of the advanced stage of his periodontal disease. Appellant challenges the authorization to remove his teeth, and in the alternative, he requests this court to require AMRTC to “provide appellant with dentures for the rest of his life.”

D E C I S I O N

1.

If a mentally ill patient is incompetent, the district court must determine the necessity and reasonableness of an intrusive treatment such as ECT by balancing the patient’s need for treatment against the intrusiveness of the prescribed treatment. *Price v. Sheppard*, 307 Minn. 250, 262-63, 239 N.W.2d 905, 913 (1976). The Minnesota Supreme Court has outlined the factors to consider in this balancing, including the patient’s ability to make a choice of treatment and the expected positive effects of treatment but also including the extent of intrusion into the patient’s body, the pain connected with the treatment, and the risks of adverse side effects. *Id.*; *see also* Minn. R.

9515.0500-.0600 (2009) (codifying factors for consideration before medical director can petition for authorization to administer ECT treatment involuntarily).

The district court's findings must be affirmed if clear and convincing evidence supports them. *See In re Peterson*, 446 N.W.2d 669, 672 (Minn. App. 1989) (concluding that a petitioner must show clear and convincing evidence that administration of neuroleptic medicines, also subject to *Price* balancing, is necessary), *review denied* (Minn. Dec. 1, 1989). Whether the record contains clear and convincing evidence is a question of law, which we review de novo. *Id.* (reviewing sufficiency of the evidence de novo). We do not reweigh evidence on appeal, but instead determine whether the evidence as a whole sustains the district court's conclusions. *See Johnson v. Noot*, 323 N.W.2d 724, 728 (Minn. 1982) (reviewing district court decisions on petitions for discharge).

The parties do not dispute that ECT is an evidence-based treatment for major depression. They also agree that appellant is not competent to make an informed decision as to the desirability of ECT treatment and the accompanying extraction of his teeth. Appellant instead argues that the district court did not correctly balance the possibility of improvement from ECT treatment against the certainty of the extraction of nearly all of appellant's teeth.

The record contains clear and convincing evidence that supports the district court's conclusion that ECT treatment, including the required extraction, is necessary and reasonable. The district court heard testimony from the medical director and the court-appointed examiner that ECT treatment offered a 70-80% chance for improvement and

the only possibility that appellant could eventually live in a non-institutionalized setting. Both doctors agreed that appellant was stable and not in immediate danger, but they also agreed that pharmacological treatment options had been exhausted and appellant would likely remain depressed and delusional without ECT treatment. The record shows that appellant suffers from advanced periodontal disease, that he loses teeth on occasion as a result, and that extraction of many of his teeth is inevitable if perhaps not imminent. The fact that the need to remove appellant's teeth to administer ECT treatment coincides with the severity of his periodontal disease mitigates the intrusiveness of this procedure. Evidence that AMRTC would fit appellant with dentures and that dentures and dental care are currently available through Medical Assistance was also uncontradicted.

Although administration of ECT treatment, which is intrusive, requires the even more substantial step of removing many of appellant's teeth, the record supports the district court's conclusion that ECT treatment is reasonable and necessary because it presents the only possibility for appellant's improvement. The alternative appellant appears to advance is waiting until appellant's teeth fall out or must be removed due to his periodontal disease before administering ECT treatment. In the meantime appellant's mental health would likely continue what the medical director described as an "abysmal trajectory." The record does not demand this.

2.

Appellant argues that if AMRTC is authorized to administer ECT treatment and remove appellant's teeth, it should be obligated to provide him "with dentures for the rest of his life" as a matter of substantive due process. But this argument is based on

speculation that appellant will be discharged and that dentures through a public program may become unavailable in the future.

“The existence of a justiciable controversy is a prerequisite to adjudication.” *Izaak Walton League of Am. Endowment, Inc. v. State, Dep’t of Natural Res.*, 312 Minn. 587, 589, 252 N.W.2d 852, 854 (1977). “Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable.” *Lee v. Delmont*, 228 Minn. 101, 110, 36 N.W.2d 530, 537 (1949). To establish the existence of a justiciable controversy, the litigant must show a “direct and imminent injury.” *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979).

Appellant’s claim that he must be guaranteed dentures for the rest of his life predicts a future deprivation. Because the record establishes that dentures will be provided by AMRTC for the duration of appellant’s commitment and are available through Medical Assistance after his discharge, appellant has not shown that he is at risk of imminent injury. Consequently, appellant’s claim that his due-process rights have been violated because the state is removing his teeth without guaranteeing dentures in the future is not ripe and cannot be reviewed by this court. *See, e.g., Bailey v. Noot*, 324 N.W.2d 164, 167-68 (Minn. 1982) (noting that because appellant could not predict that he would be deprived of treatment while in prison, his argument was premature); *In re Pope*, 351 N.W.2d 682, 683-84 (Minn. App. 1984) (noting that claim about receiving “inadequate treatment is speculative and premature” because no deprivation of treatment had occurred); *In re Kennedy*, 350 N.W.2d 484, 485 (Minn. App. 1984) (noting that right-to-treatment issue can only be raised after deprivation of treatment); *In re*

Martenies, 350 N.W.2d 470, 472 (Minn. App. 1984) (noting that without deprivation of treatment, issue was premature because appellant had not yet been sent to commitment facility), *review denied* (Minn. Sept. 12, 1984).

Affirmed.