DA 20-0602

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 152N

IN THE MATTER OF:

B.A.B.,

Respondent and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DI 20-15
Honorable Howard F. Recht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, James Reavis, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Brad Fjeldheim, Assistant Attorney General, Helena, Montana

William E. Fulbright, Ravalli County Attorney, Danielle Gornick, Deputy County Attorney, Hamilton, Montana

Submitted on Briefs: June 22, 2022

Decided: July 26, 2022

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 B.A.B. appeals from the October 26, 2020 Order of the Twenty-First Judicial District Court, Ravalli County, committing him to the Montana State Hospital (MSH) for a period not to exceed three months. B.A.B. argues the State failed to establish to a reasonable medical certainty that he had a mental disorder sufficient to justify involuntary commitment. We affirm.

¶3 B.A.B. was arrested by Ravalli County Sheriff's deputies on October 6, 2020, after he allegedly interfered at the scene of another driver's routine traffic stop, injuring one officer and requiring law enforcement to pepper spray and stun him with a taser several times. Officers at the Ravalli County Detention Center initiated the process for involuntary commitment on October 22, 2020. Officers reported that B.A.B., who is a member of the Church of Jesus Christ of Latter-day Saints, refused to remove his religious undergarments, to eat, or to communicate with detention center staff about medications he was taking. On October 23, 2020, certified mental health professional (MHP) Simone Schilthuis evaluated B.A.B. over Zoom. After additional conversations with detention center staff and members of B.A.B.'s family, Schilthuis diagnosed B.A.B. with Bipolar I, single manic episode, severe with psychotic behavior. The District Court granted the State's petition for

commitment, appointed B.A.B. a public defender, and ordered Schilthuis, or another qualified and state-certified "professional person," to conduct an examination and provide a recommendation to the court pursuant to § 53-21-123, MCA.

¶4 B.A.B. met with MHP Allison Janes over Zoom for 45 minutes the morning before his initial hearing on October 26, 2020. At the hearing, Janes testified that B.A.B. had gone 88 hours without eating at the detention center and he told her that he was "looking forward for more fasting or prepared for more fasting" if he were to return to the detention center. Janes testified that B.A.B. considers himself "100% mentally stable." Based on her conversation with B.A.B., Schilthuis's prior evaluation, and conversations with nursing staff at MSH and detention center staff, Janes concluded that B.A.B. was suffering from a mental disorder and recommended he be committed to the MSH. Janes testified that, primarily due to his lack of insight related to the severity of his actions on the night he was arrested and concerns over his health and safety while in the detention center, "the symptoms of [B.A.B.'s] mental health disorder have put him at risk of harm to others, ultimately at risk of harm to himself; and he appears to be unable to basically attend to his basic needs . . . at this point in time."

¶5 B.A.B. testified at the hearing, explaining that fasting, for him, is "a regular religious practice," and that he chose to fast at the detention center for three reasons: "health, spiritual, and choosing to act instead of being acted upon." B.A.B. stated that he refused to put on the jail jumpsuit because "I have garments issued by my church, which are sacred. And since the ordeal, I feel the red, white and blue that I'm wearing is religiously significant to me because I believe our Constitution is divine." Additionally, B.A.B.

testified that he was taking Estazolam, an oral benzodiazepine, as-needed, "[d]ue to a chemical imbalance that has caused my family concern," and informed the District Court that a sibling is bipolar and his family "thought perhaps [he] was bipolar," too.

¶6 At the conclusion of the hearing, the District Court found that B.A.B. suffers from a mental disorder requiring commitment. The District Court stated:

> I find the testimony of the mental health professional credible, that the Respondent is currently suffering from a manic phase with psychotic features of Bipolar I, and her opinion is supported by facts that a mental health professional would typically rely upon, which includes other examinations from mental health professionals, medical reports, collateral information, [and] nurse staffing feedback.

The court further found that Janes's report "helps us understand the significant risk that the Respondent caused to himself and others because of his mental disorder," and because B.A.B. "lacks insight and will not voluntarily otherwise comply with treatment, and because of the felony charges he currently faces, the [MSH] is essentially the only placement available at this time."

¶7 Three days later, the MSH decided to unconditionally terminate B.A.B.'s commitment. The hospital released B.A.B. the following week.

¶8 This Court reviews a district court's civil commitment order to determine whether its findings of fact are clearly erroneous and its conclusions of law are correct. *In re M.K.S.*, 2015 MT 146, ¶ 10, 379 Mont. 293, 350 P.3d 27. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if, after reviewing the record, this Court is left with the definite and firm conviction that the district court made a mistake. *In re S.H.*, 2016 MT 137, ¶ 8, 383 Mont.

497, 374 P.3d 693. In reviewing the sufficiency of the evidence in a civil commitment, we review the evidence in a light most favorable to the prevailing party and do not substitute our judgment as to the strength of the evidence for that of the district court. *In re Mental Health of W.K.*, 2020 MT 71, ¶ 13-14, 399 Mont. 337, 460 P.3d 917.

¶9 Under § 53-21-126(1)-(2), MCA, in a civil commitment proceeding, the State bears the burden of proving (1) "to a reasonable degree of medical certainty," that the respondent suffers from a mental disorder; and (2) that the respondent requires commitment. *In re Mental Health of W.K.*, ¶¶ 13, 17. A mental disorder is defined as "any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions." Section 53-21-102(9)(a), MCA. "[P]roof of mental disorders to a reasonable degree of medical certainty is sufficient if, considered with all the other evidence in the case, the trier of fact is led to the conclusion that the mental disorder exists by clear and convincing proof." *In re G.P.*, 246 Mont. 195, 197, 806 P.2d 3, 4 (1990).

¶10 B.A.B. argues that the State failed to establish his mental disorder by clear and convincing proof because Janes, the State's only testifying witness, relied on a bipolar diagnosis from a non-testifying MHP's report, which relied on statements from B.A.B.'s mother, other collateral contacts, and only a 10-minute conversation with B.A.B. The State counters that, viewed in the light most favorable to the State, the District Court correctly found that B.A.B. suffered from bipolar disorder because Janes's substantial evaluation and testimony concurred with the prior MHP's diagnosis.

¶11 There was substantial uncontested evidence presented at the hearing to support the District Court's finding that B.A.B. suffered from a mental disorder. Schilthuis, a qualified and certified MHP, diagnosed B.A.B. with Bipolar I based on a brief but personal interaction and follow-up conversations with several collateral contacts. Three days later, a second qualified and certified MHP, Janes, re-evaluated B.A.B. Janes testified as to the underlying facts that informed her concurring determination that B.A.B. was suffering from a Bipolar I single manic episode with psychotic features. B.A.B.'s own testimony that he had a "chemical imbalance" and family history of bipolar disorder, while not dispositive, further supported the factual basis for the bipolar diagnosis. When considered with all the other evidence in this case, the District Court had clear and convincing proof that a mental disorder exists. *In re G.P.*, 246 Mont. at 197, 806 P.2d at 4.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. Having reviewed the evidence in the light most favorable to the State, we conclude that the District Court had sufficient evidence to support its finding that, to a reasonable degree of medical certainty, B.A.B. had a mental disorder.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR