DA 22-0014

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 26

IN THE MATTER OF:

M.T.H.,

Respondent and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DI 21-11
Honorable Howard F. Recht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Michael Marchesini, Kathryn G. Hutchison, Assistant Appellate Defenders, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Tammy K Plubell, Assistant Attorney General, Helena, Montana

Bill Fulbright, Ravalli County Attorney, Hamilton, Montana

Submitted on Briefs: December 6, 2023

Decided: February 13, 2024

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 M.T.H. appeals a November 12, 2021 ruling from the Twenty-First Judicial District Court, Ravalli County, ordering a three-month involuntary civil commitment to the Montana State Hospital and providing it authorization to involuntarily administer medications to M.T.H. during his stay.

¶2 We restate the issues on appeal as follows:

Issue One: Did the District Court erroneously determine a signed waiver constituted a sufficient record to commit M.T.H.?

Issue Two: Did the District Court erroneously authorize the Montana State Hospital to administer involuntary medications to M.T.H.?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On November 4, 2021, M.T.H. was arrested for criminal endangerment following an incident where he pulled the steering wheel in his mother's vehicle while she was driving.

¶4 On November 5, 2021, mental health professional Simone Schilthuis conducted an initial mental health assessment of M.T.H. Although M.T.H. was "generally pleasant" during his conversation with her, Schilthuis ultimately determined there was a "sense there is a disorganized and fragile state to his mind." When asked whether he collected weapons and/or intended to harm himself or others, M.T.H. provided evasive or unresponsive answers.

¶5 Schilthuis also spoke with M.T.H.'s mother, who reported that M.T.H. had demonstrated increasingly "bizarre, concerning, unsafe, and dangerous behavior." His

mother explained that M.T.H. had seen a psychiatrist during the previous two years. During that time, M.T.H. refused to take prescription medications, and his psychiatrist warned that M.T.H. should not be allowed to possess weapons due to the potential for harm to himself and others.

¶6 Schilthuis diagnosed M.T.H. with major depressive disorder and paranoid schizophrenia.

¶7 Based on Schilthuis' recommendations, the State filed a Petition for Commitment (Petition) recommending that M.T.H. be involuntarily committed to the MSH for a period not-to-exceed three months.

¶8 On November 8, 2021, the District Court found probable cause for M.T.H.'s detention and commitment. Accordingly, the District Court ordered a professional person to conduct a second examination and include a recommendation about whether M.T.H. should be diverted from involuntary commitment to short-term community inpatient treatment.

¶9 On November 12, 2021, the appointed professional person, Michael Foust, initially recommended a 14-day diversion to a behavioral health unit. During a hearing on the State's Petition the same day, however, the State introduced a revised recommendation from Foust suggesting M.T.H. be committed to MSH for up to 90 days. Foust also recommended authorization for MSH to involuntarily administer medications to M.T.H. Foust had reportedly changed his recommendation based on a review of Montana law and M.T.H.'s "lack of insight into his needs to take advantage of treatment."

¶10 M.T.H.'s counsel requested a brief recess during the hearing to discuss the implications of Foust's revised recommendation. After a roughly thirty-minute recess, M.T.H., his counsel, and the deputy county attorney signed a Stipulation to Commitment (Stipulation) waiving certain rights and agreeing to Foust's revised recommendations. M.T.H. did not stipulate to the involuntary administration of medications. Foust did not sign the Stipulation because he appeared for the hearing remotely.

¶11 Following the State's recommendation, the District Court committed M.T.H. to MSH for a period of up to three months and authorized the MSH to involuntarily medicate him. The Order of Commitment reflected M.T.H.'s waiver of rights, providing "Respondent discussed Respondent's rights with legal counsel. Respondent's legal counsel are satisfied that Respondent is capable of making a knowing and intelligent waiver of rights."

STANDARD OF REVIEW

¶12 We review a district court civil commitment order to determine whether its conclusions of law are correct and whether the court's findings of fact are clearly erroneous. *In re R.H.*, 2016 MT 329, ¶ 9, 385 Mont. 530, 385 P.3d 556. A district court's findings of fact are clearly erroneous if they are not supported by substantial evidence, if they misapprehend the effect of the evidence, or if they leave this Court with a definite and firm conviction that a mistake was made. *R.H.*, ¶ 9.

¶13 "We require strict adherence to the involuntary commitment statutory scheme, considering the utmost importance of the rights at stake." *In re S.D.*, 2018 MT 176, ¶ 8, 392 Mont. 116, 422 P.3d 122 (internal quotation omitted).

DISCUSSION

¶14 *Issue One: Did the District Court erroneously determine a signed waiver constituted a sufficient record to commit M.T.H.?*

¶15 M.T.H. argues the District Court erred because it "failed to make an adequate record" to permit the Stipulation. M.T.H. asserts he was "rushed" when he received Foust's recommendation during his hearing, and he argues the record does not sufficiently demonstrate his Stipulation constituted a valid waiver of rights.

¶16 The State counters that M.T.H. made a "knowing and intelligent waiver of his rights" when he signed the Stipulation. The State argues further that the District Court satisfied its obligations under the involuntary civil commitment statutes, Title 53, chapter 21, part 1, MCA.

¶17 Section 53-21-119(1), MCA, prescribes the requirements for a valid waiver of rights in involuntary civil commitment actions:

> A person may waive the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend of respondent . . . acting together if a record is made of the reasons for the waiver.

We have explained that the statute requires a district court to make "some record" prior to permitting waivers of rights in involuntary commitment proceedings. *In re A.M.*, 2014 MT 221, ¶ 11, 376 Mont. 226, 332 P.3d 263 (citing *In re P.A.C.*, 2013 MT 84, ¶ 13, 369 Mont. 407, 298 P.3d 1166).

¶18 We have not, however, established parameters identifying specifically what a record must contain in order to validate a waiver. "At a minimum, the record must reflect that the attorney discussed the waiver with [their] client, that the client desired to waive his rights,

and that the attorney was satisfied that [their] client understood his rights and the nature of the proceeding." *A.M.*, ¶ 11

¶19 The record here shows that both the Petition and M.T.H.'s rights were read to him before M.T.H. signed the Stipulation. After discussing Foust's revised recommendation with his counsel for roughly thirty minutes, M.T.H. and his counsel confirmed that M.T.H. was prepared to waive his rights. The record also demonstrates that M.T.H. had the ability to make that decision. When asked what he would do if he was not allowed back home, for example, M.T.H. explained that he would "probably stay somewhere like MSH," and joked that at MSH he was "having more social stimulation" than he would at home. Except Foust, who appeared at the hearing remotely, each party signed the Stipulation, which provided "Respondent is capable of making an intentional, knowing decision regarding Respondent's rights, including the right to be physically present at a hearing."

¶20 The facts here align with *S.D.*, where we explained the district court was not "required to assess in open court [S.D.'s] capacity to make an intentional and knowing waiver." *S.D.*, ¶ 16. S.D. was committed to MSH after a mental health professional established that she was a danger to herself due to her physical and mental health condition. *S.D.*, ¶¶ 2-3. Following a virtual hearing, S.D. and her counsel filed a waiver acknowledging that she had "received a copy of the State's petition; that she discussed the petition with her attorney; and that she was aware of the 'fundamental rights' set forth in the petition, as well as other rights." *S.D.*, ¶ 5. A mental health professional had established that S.D. was able to make a knowing and intelligent waiver in part because she possessed "a clear stream of thought without bizarre or illogical elements." *S.D.*, ¶ 2.

We held that the record sufficiently established the waiver was valid, and the district court had no additional obligation to set a hearing on the matter. *S.D.*, ¶ 19. The State notes that the elements underlying S.D.'s claims are nearly identical to M.T.H.'s. We agree, particularly given the District Court was in the best position to assess the circumstances under which the waiver was given. The record reflects that M.T.H. had the presence of mind to consider his position logically, and he was afforded the opportunity to discuss the implications of the waiver with his attorney as long as he needed to.

¶21 Of course, a party's waiver is not always valid in involuntary civil commitment proceedings. We will reverse an involuntary commitment order if the record does not contain an "affirmative determination . . . that the person to be committed understands his procedural rights . . . ." *A.M.*, ¶¶ 15, 18. In *A.M.*, we reversed an involuntary commitment order even though A.M. testified expressly about his wish to be committed to MSH. *A.M.*, ¶¶ 4, 5, 18. We ruled that "neither A.M. nor his attorney made any representations to the District Court that A.M. understood his rights and the nature of the proceedings . . . ." *A.M.*, ¶ 14. Unlike A.M., M.T.H. clearly affirmed that he understood his procedural rights when he signed the Stipulation after a thorough discussion with his counsel.

¶22 We are not left with a definite and firm conviction that a mistake was made below. *R.H.*, ¶ 9. M.T.H.'s waiver and the District Court's order committing him are sufficient to constitute an intentional and knowing waiver under § 53-21-119(1), MCA.

¶23 *Issue Two: Did the District Court erroneously authorize the Montana State Hospital to administer involuntary medications to M.T.H.?*

¶24 The State concedes the District Court clearly erred by authorizing MSH to administer medications to M.T.H. involuntarily. Nevertheless, we find it necessary to emphasize the importance of the due process protections afforded individuals in instances of involuntary medication. *See, e.g., Washington v. Harper*, 494 U.S. 210, 236, 110 S. Ct. 1028, 1044 (1990) (requiring "essential procedural protections" be in place prior to the administration of involuntary medications). The constitutional rights at stake in such cases are paramount, thus we require "strict adherence to the statutory scheme." *In re R.H.*, ¶ 18 (quoting *In re C.R.*, 2012 MT 258, ¶ 13, 367 Mont. 1, 289 P.3d 125).

¶25 The statutory scheme for involuntary commitments provides that district courts may authorize involuntary medication only when the court finds it is "*necessary* to protect the respondent or the public or to facilitate effective treatment." Section 53-21-127(6), MCA (emphasis added). In order to protect individuals' liberty interests against unnecessary or excessive involuntary medication, the State therefore must demonstrate a need before a court may authorize it.

¶26 Evidenced by its concession on this issue, the State made no such showing here. Even though M.T.H. may have refused medications in the past, it was incumbent on the State to explain why MSH needed prior authorization to administer medications at the time of his petition hearing. In making his recommendation, Foust simply asserted prior authorization was necessary because MSH often medicates individuals with M.T.H.'s

condition, and M.T.H. had a history of refusing medications. Significantly, Foust also testified that at that point, M.T.H. had otherwise been a compliant patient.

¶27 We refuse to endorse the proposition that healthcare providers should be given prior authorization to medicate individuals involuntarily simply because a particular condition often warrants the use of prescription medications.

CONCLUSION

¶28 The District Court did not err when it determined M.T.H.'s signed Stipulation constituted a valid waiver of rights. The District Court did, however, erroneously provide the MSH prior authorization to medicate M.T.H. even though the State did not establish the authorization of involuntary medications was necessary.

¶29 Affirmed in part and reversed in part.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE