COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00201-CV

IN THE MATTER OF T.C.

FROM COUNTY COURT AT LAW NO. 1 OF WICHITA COUNTY
TRIAL COURT NO. 40330-L-D

MEMORANDUM OPINION[1]

Appellant T.C. appeals the trial court's order authorizing forced administration of psychoactive medication. In two issues, he contends that the evidence is insufficient to support the requirements for such an order under section 574.106 of the Texas Health and Safety Code. *See* Tex. Health & Safety Code Ann. § 574.106 (West 2017). We affirm.

[1] *See* Tex. R. App. P. 47.4.

Background Facts

On May 24, 2017, Dr. Charlene Shero filed an application in which she asked the trial court to authorize the forced administration of psychoactive medication to appellant. In her application, Dr. Shero, who is appellant's attending physician, alleged that he was subject to a March 2017 order for court-ordered inpatient mental health services because he was adjudged incompetent to stand trial for a criminal offense. The clerk's record contains a March 20, 2017 "Agreed Judgment of Incompetency." That document recites that appellant's counsel in his criminal case filed a motion asking for a competency examination for appellant, that an expert examined appellant and found him to be incompetent, that both parties in the criminal proceeding agreed that he was incompetent, that the court found him incompetent, and that the court ordered his confinement to the North Texas State Hospital for "treatment toward the specific objective of attaining competency to stand trial."

Dr. Shero also alleged in her application that appellant is bipolar, exhibits psychosis, and prefers "mania despite intense negative consequences to the mania." She stated that appellant had refused to voluntarily take the proposed medication. She opined that without the medication, appellant would exhibit repeated aggression, episodes of self-harm, and an inability to regain competency to stand trial, but she stated that if he took the medication, he would have less "aggression, less head banging, more organized thought[,] and [the]

ability to be restored to competency." The trial court appointed counsel to represent appellant and set Dr. Shero's application for trial.

The trial occurred on May 30, 2017. The trial court heard testimony from Dr. Shero and from appellant. Dr. Shero testified that appellant was under an order to receive inpatient mental health services because he was adjudged incompetent to stand trial for a felony assault charge. She explained that appellant has bipolar disorder and exhibits mania, narcissism, and antisocial traits. Dr. Shero described the symptoms of appellant's mental illness as a "push of speech, a psychomotor elevation, intrusiveness, grandiosity, dismissing of his need for treatment, blaming others, demanding benzodiazepines, poor insight and judgment, [and] efforts to harm himself."

More specifically, Dr. Shero testified that five days before the trial, appellant had required mechanical restraints after "repeatedly stating that he wanted to harm himself." On that day, appellant had wrapped linens around his neck while "stating that he wanted to hurt himself and that his intent was to strangle peers as well." The day before that, appellant had to be restrained because he was beating his head against a window. Despite these acts, according to Dr. Shero, appellant did not see the need for treatment; instead, he stated that "all he need[ed] [was] cannabis and that's what makes his life perfect."

Dr. Shero asked the trial court to allow her to prescribe mood stabilizers, antipsychotics, and anxiolytics, and she expressed that appellant was not taking

most of those medications voluntarily. When asked why appellant would not take the medications voluntarily, Dr. Shero stated,

> Sometimes he'll engage in a meaningful discussion of that. Sometimes he won't. Often, he is dismissive or stands up and says that we don't understand that cannabis is all he needs. We're all fools. I don't know why they didn't teach you that in med school. Or he says he doesn't really need it; he's fine; we're all idiots. . . . So I've never even gotten to the other steps of what's available. Basically, he disregards the need for treatment despite repeated problems with behavior.

According to Dr. Shero, once medicated, appellant could stop harming himself, could stop aggression toward others, could be restored to competency, and could "play a meaningful role in his defense." Dr. Shero testified that there were no alternative treatments that were less intrusive. She also stated that appellant lacked capacity to make a decision concerning the administration of the medications because he was "crippled by his narcissism and . . . his bipolar mania."

On cross-examination, Dr. Shero acknowledged that appellant fears needles and that some of her proposed medication would require the use of needles, but she testified that the benefits of the medication would "far outweigh a bit of anxiety." Dr. Shero also acknowledged that the medication may have side effects, and she stated that she would "definitely review [the side effects] with [appellant] if he [was] willing to engage in a meaningful discussion."

Appellant testified that medication he had already taken at the state hospital had given him side effects of clogged sinuses, a bloody nose, restless

feet, and unclear thinking. Explaining his resistance to the medication, he stated, "I don't want to go to court . . . and have my head all messed up to where I can't defend myself in trial. You know, I want to be able to remember the facts and not just sit there and drool on the table . . . ."

Appellant expressed that he was willing to discuss medications with Dr. Shero if the trial court did not force him to take them, and he expressed that he was willing to listen to Dr. Shero's advice. When appellant's counsel asked whether he had anything else to say, he stated (apparently to Dr. Shero),

> I'm really sorry, ma'am, for our shortness of discussions, but . . . I just felt like that it wasn't going anywhere either which way. I couldn't put in my two cents at first. I'm sorry. I know y'all gotta speak first and then me second, but, you know, if we can work on a good way to take just the pills on there, and that they're not allergic to me, I have no problem with that. But I believe that, you know, any time that I've ever healed myself in any way, it was without medicine. Drugs are just a thing to help you coast through your problems, not to actually solve them.

On cross-examination, appellant denied beating his head against a window; instead, he said that he "barely tapped [his] head . . . on the window trying to get [the] attention of a nurse." Appellant admitted that he had a history of using street drugs and conceded that he had bipolar disorder. Concerning whether he needed to be confined at the state hospital, appellant testified,

> I'm on the fence about that. I feel that I am competent enough to stand trial, and I know about the court system. I did two and a half years in a law library in Huntsville. So I'm pretty up to date on this stuff. And I don't want my head all [souped] up with all them drugs to where I can't get my head right, you know. And I'm trying to beat my court case because I'm innocent on my court case. And if I go over there halfway, you know, intelligent and half drugged out, I'll

> lose my court case. . . . But I believe if I went to court without medication, I believe I could win it because all they're waiting for is the court date. . . . I'm afraid of going to prison for life, and I want to have a clear head when I go into that courtroom.

On rebuttal testimony, Dr. Shero contradicted appellant's testimony about barely tapping his head; she explained that he had beaten his head "so much that nursing couldn't even finish . . . conducting their business with other patients. He was so intrusive . . . that in the name of humanity to the rest of the people that needed treatment, I gave him . . . Xanax. He was not fine [even] after that." Dr. Shero explained further that appellant was "beating on the plexiglass so hard that it resounded." She stated that he was on fifteen-minute watches because of a concern that he would harm himself. Finally, Dr. Shero stated that appellant "loves the manic state" and the grandiosity that comes with it and that his behavior at trial was the "calmest [she had] ever seen him."

At the end of the trial, the trial court granted Dr. Shero's application for forced administration of psychoactive medication. The court found that appellant did not have capacity to make a determination concerning the administration of the medication, that the medication would stabilize or improve the quality of his life, that he was awaiting trial in a criminal proceeding and had been ordered to receive inpatient mental health services within the preceding six months, that he was under a current court order to receive inpatient mental health services, that he presented a danger to himself or others at the state hospital, and that taking the medication was in his best interest. The court authorized Dr. Shero to

administer antipsychotics, anxiolytics, and mood stabilizers. Through new counsel, appellant brought this appeal.

Evidentiary Sufficiency

In two issues, appellant challenges the sufficiency of the evidence to support the trial court's forced medication order. Section 574.106 establishes certain requirements that a petitioner must prove by clear and convincing evidence to obtain an order authorizing psychoactive medication. *See id.* § 574.106(a-1). Clear and convincing evidence is a degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. *State v. K.E.W.*, 315 S.W.3d 16, 20 (Tex. 2010).

When the burden of proof is clear and convincing evidence, we apply a heightened standard of review to evidentiary sufficiency challenges. *In re C.H.*, 89 S.W.3d 17, 25 (Tex. 2002). As we recently explained in *In re M.T.*,

> When reviewing the legal sufficiency of the evidence in a case requiring proof by clear and convincing evidence, we determine whether the evidence is such that a factfinder could reasonably form a "firm belief or conviction as to the truth of the allegations sought to be established." We examine all evidence in the light most favorable to the finding, including every reasonable inference in favor of those findings, and assume that the factfinder resolved any disputed facts in favor of its finding, so long as a reasonable factfinder could do so.
>
> Likewise, the higher burden of proof alters the appellate standard of review for factual sufficiency. In reviewing the evidence for factual sufficiency under the clear and convincing standard, we inquire "whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." We consider whether disputed evidence is such

> that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. In so doing, we must give "due consideration to evidence that the factfinder could reasonably have found to be clear and convincing." We examine the entire record to determine whether "the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction"; if it is, the evidence is factually insufficient.

Nos. 02-17-00011-CV, 02-17-00012-CV, 2017 WL 1018596, at *5 (Tex. App.—Fort Worth Mar. 16, 2017, no pet.) (mem. op.) (citations omitted); *see In re M.H.*, No. 02-16-00160-CV, 2016 WL 4411114, at *2 (Tex. App.—Fort Worth Aug. 19, 2016, no pet.) (mem. op.).

The "six months preceding" requirement

In his first issue, appellant contends that the evidence is factually insufficient to support the trial court's finding that he had been ordered to receive inpatient mental health services in the six months preceding the trial, and he asserts that this finding is necessary to authorize the administration of medication "in a case like the one at bar." Appellant acknowledges that the clerk's record contains a copy of the criminal court's order that he receive inpatient mental health services, but he contends that we cannot consider that order because it was not admitted as evidence at trial.

Section 574.106(a) states that the court may issue an order authorizing the administration of psychoactive medication to a patient who "(1) *is* under a court order to receive inpatient mental health services; *or* (2) is in custody awaiting trial in a criminal proceeding and *was ordered* to receive inpatient mental health

services in the six months preceding a hearing under this section." Tex. Health & Safety Code Ann. § 574.106(a)(1)–(2) (emphasis added). The trial court found both that appellant was under a current court order to receive inpatient mental health services *and* that he was in custody awaiting trial in a criminal proceeding and was ordered to receive mental health services in the six months preceding the hearing. *See id.*

Appellant challenges only the second of these findings; he does not challenge the sufficiency of the evidence to prove the first finding or explain why the first finding is insufficient to support the trial court's order. At trial, Dr. Shero explicitly stated that appellant was under a current court order to receive inpatient mental health services. On appeal, appellant acknowledges that there is "no doubt that he was a patient at the North Texas State Hospital, and that Dr. Shero was his treating physician." Thus, because the evidence is factually sufficient to support the trial court's finding that appellant was under a court order to receive inpatient mental health services under section 574.106(a)(1) at the time of the trial and because appellant does not challenge that finding, we conclude that the evidence is sufficient to establish the prerequisite for the administration of psychoactive medication under section 574.106(a), and we overrule appellant's first issue. *See id.* § 574.106(a); *State ex rel. A.S.*, No. 12-13-00300-CV, 2013 WL 6798153, at *2 (Tex. App.—Tyler Dec. 20, 2013, no pet.) (mem. op.) (holding that other disjunctive provisions within section 574.106 provide "alternative bases for court ordered administration of psychoactive medications"); *In re A.S.K.*,

No. 02-13-00129-CV, 2013 WL 3771348, at *3 (Tex. App.—Fort Worth July 18, 2013, no pet.) (mem. op.) (holding the same); *see also In re N.L.D.*, 412 S.W.3d 810, 818 (Tex. App.—Texarkana 2013, no pet.) (holding that when a parent failed to challenge on appeal a ground for termination of parental rights, the court could affirm on the unchallenged ground without examining the sufficiency of evidence to support challenged grounds); *In re Elamex, S.A. de C.V.*, 367 S.W.3d 879, 888 (Tex. App.—El Paso 2012, orig. proceeding) ("If the appellant fails to challenge all possible grounds, we must accept the validity of the unchallenged independent grounds and affirm the adverse ruling.").

Lack of capacity and best interest

In his second issue, appellant argues that the evidence is legally and factually insufficient to establish that he lacked the capacity to make a decision regarding the administration of medication and to establish that the administration of medication is in his best interest. Section 574.106(a-1) states, in relevant part, that a court may issue an order authorizing psychoactive medication if it finds by clear and convincing evidence

> (1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; *or*
>
> (2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and . . .
>
> > (A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being

> treated as a result of a mental disorder or mental defect as determined under Section 574.1065 . . . .

Tex. Health & Safety Code Ann. § 574.106(a-1)(1)–(2)(A).

Like in the first issue discussed above, the trial court found that both of these alternatives justified the order authorizing psychoactive medication, and appellant challenges only one of the alternatives—lack of capacity and best interest under section 574.106(a-1)(1)—on appeal. Thus, at least in part, we are authorized to affirm the trial court's order on the unchallenged grounds contained within section 574.106(a-1)(2)(A), although we recognize that the patient's best interest is a component of both grounds. *See A.S.K.*, 2013 WL 3771348, at *3; *Elamex, S.A. de C.V.*, 367 S.W.3d at 888.

In the interest of justice, however, we will analyze appellant's issue. "Capacity" means a patient's ability to understand the nature and consequences of proposed treatment—including the benefits, risks, and alternatives to the proposed treatment—and to decide whether to undergo the proposed treatment. Tex. Health & Safety Code Ann. § 574.101(1) (West 2017). Concerning appellant's capacity to decide about the administration of medication, the evidence shows that he was under an order to receive inpatient mental health services because of his incompetency to stand trial but that he nonetheless proclaimed himself competent to stand trial. The evidence also shows that appellant's mental illness and the symptoms of the illness had caused him to speak and to act in ways that risked self-harm and harm to others and that

despite these risks, he opposed treatment, would sometimes not engage in meaningful conversations about treatment, was dismissive of Dr. Shero's recommendations, and desired only cannabis. Dr. Shero's testimony indicates that appellant resisted treatment because he preferred the manic and grandiose states that accompanied his mental illness. Appellant's testimony established his belief that he could be "healed" without medicine. We conclude that these facts are legally and factually sufficient to support the trial court's finding by clear and convincing evidence that appellant lacked capacity to make a decision regarding the administration of psychoactive medication. *See* Tex. Health & Safety Code Ann. § 574.106(a-1)(1); *see also M.T.*, 2017 WL 1018596, at *9 (holding that a patient lacked capacity to make a decision concerning the administration of psychoactive medication when the patient lacked insight into his mental illness and "wanted to get off all medications because he did not think that he needed them"); *A.S.K.*, 2013 WL 3771348, at *3 (concluding that a patient lacked capacity because he "did not fully appreciate the nature of his illness or the necessity of the medications"); *In re T.O.R.*, No. 02-12-00376-CV, 2013 WL 362747, at *4 (Tex. App.—Fort Worth Jan. 31, 2013, no pet.) (mem. op.) (affirming a lack-of-capacity finding when the patient "incorrectly believe[d] that the benefits of the proposed medications ha[d] no application to him").

Next, section 574.106(b) sets forth several factors by which a trial court may determine a patient's best interest concerning treatment with psychoactive

medication. *See* Tex. Health & Safety Code Ann. § 574.106(b). Those factors include

> (1) the patient's expressed preferences regarding treatment with psychoactive medication;
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> (2) the patient's religious beliefs;
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> (3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;
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> (4) the consequences to the patient if the psychoactive medication is not administered;
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> (5) the prognosis for the patient if the patient is treated with psychoactive medication;
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> (6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and
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> (7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

Id.

Applying these factors, we conclude that legally and factually sufficient evidence supports the trial court's finding by clear and convincing evidence that administration of psychoactive medication is in appellant's best interest. *See id.* Although appellant's preference to not take the medication, his fear of needles, and the side effects of taking the medication (including appellant's bloody nose and restless feet) weigh against the trial court's decision, the trial court could have reasonably found that the other factors weighed more heavily in favor of authorizing the administration of medication. *See M.H.*, 2016 WL 4411114, at *5 (stating that a "trial court could have considered but disregarded [the patient's]

preferences regarding treatment with psychoactive medication"). Dr. Shero testified that upon the administration of the medication, appellant could regain his competency to stand trial and could play a "meaningful role in his defense," which was the purpose of his inpatient confinement. While appellant feared that taking the medication would cause "messed up" thinking and would negatively impact his criminal defense, the trial court, which was in the best position to determine the witnesses' credibility, could have rationally relied on Dr. Shero's expert opinion that the medication would allow appellant to better participate in his defense. *See M.T.*, 2017 WL 1018596, at *7 ("[R]eliability and credibility determinations are within the province of the factfinder at a commitment and court-ordered medication hearing."); *In re K.S.*, No. 02-16-00096-CV, 2016 WL 3086058, at *3 (Tex. App.—Fort Worth May 31, 2016, no pet.) (mem. op.) ("[A]lthough K.S. offered some contrary evidence, the trial court nevertheless could reasonably have formed a firm belief or conviction that it was in K.S.'s best interest to be treated with psychoactive medication.").

Dr. Shero also testified that appellant had spoken about harming himself and had acted in self-harming ways. The trial court could have reasonably found that there was a continuing danger of self-harm or harm to others if psychoactive medication was not administered. Dr. Shero explained that the administration of the medication could stop appellant's self-aggression.

Dr. Shero testified that there were no less intrusive treatments that were likely to produce the same positive results as the psychoactive medication. Her

testimony about appellant's dismissive attitude also indicates that without the court's order, she was not likely to secure his voluntary use of the medication.

We conclude that this evidence along with the remaining evidence presented in the trial court constitutes legally and factually sufficient evidence to support the trial court's clear-and-convincing-based finding that appellant's treatment with psychoactive medication was in his best interest. *See* Tex. Health & Safety Code Ann. § 574.106(a-1)(1), (b). Because we hold that the evidence is legally and factually sufficient to support the basis for administration of the medication under section 574.106(a-1)(1), we overrule appellant's second issue.

Conclusion

Having overruled both of appellant's issues, we affirm the trial court's order authorizing the administration of psychoactive medication.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; MEIER and SUDDERTH, JJ.

DELIVERED: July 3, 2017