In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-23-00290-CV

IN THE MATTER OF L.G., JR.

On Appeal from Probate Court No. 1
Denton County, Texas
Trial Court No. MH-2023-00634

Before Birdwell, Womack, and Wallach, JJ.
Opinion by Justice Wallach

OPINION

Appellant L.G. appeals from the probate court's order authorizing the administration of psychoactive medications. In one issue, L.G. argues that the evidence is legally and factually insufficient to support a finding that he lacks the capacity to make a decision regarding the administration of psychoactive medication. Because we hold that there is legally and factually sufficient evidence to support the trial court's finding that L.G. lacks the capacity to understand the nature and consequences of the proposed treatment, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

L.G. was charged by indictment with aggravated robbery and aggravated assault with a deadly weapon in Denton County. On March 21, 2021, the district court[1] found L.G. incompetent to stand trial and ordered him committed to, and confined at, North Texas State Hospital (NTSH) at Vernon "for further examination and treatment toward the specific objective of attaining competency to stand trial." *See* Tex. Code Crim. Proc. Ann. art. 46B.073. While L.G. was in NTSH, multiple doctors examined or evaluated him.

On August 3, 2023, Dr. Feroz Yaqoob filed an application under Health and Safety Code Section 574.104 for an order to authorize the involuntary

[1]The 16th District Court of Denton County has jurisdiction over L.G.'s criminal cases. The order from which this appeal was taken was issued by Probate Court No. 1 of Denton County. We will refer to the two trial courts as the "district" court and the "probate" court to distinguish them.

administration of psychoactive medication to L.G. *See* Tex. Health & Safety Code Ann. § 574.104. Specifically, Dr. Yaqoob stated that the following classes of drugs were the proper and customary course of treatment for and in the best interest of L.G.: (1) antidepressants; (2) antipsychotics; (3) anxiolytics/sedatives/hypnotics; and (4) mood stabilizers. In the application, Dr. Yaqoob also indicated that he had diagnosed L.G. with schizophrenia and that L.G. lacked the capacity to make a decision regarding psychoactive medications because (1) he had refused to take psychoactive medications as prescribed for his mental illness; (2) he had "poor insight, poor judgement [sic]," and "active delusions related to the judicial system"; (3) he lacked an understanding of the consequences of refusal of appropriate treatment; and (4) he had a history of "poor medication compliance." The State then filed a motion to have L.G. examined, and the probate court ordered that he submit to an examination for mental illness by Dr. James G. Shupe, a physician. The probate court conducted an evidentiary hearing on the application at which Dr. Shupe and L.G. testified.

At the hearing, the parties stipulated that Dr. Shupe was an expert witness in the field of forensic psychiatry. Dr. Shupe said that he had met with L.G. "over Zoom" and had reviewed the medical records from NTSH. He testified that he was the treating psychiatrist at the Denton County Jail—where he first met L.G. Dr. Shupe had evaluated L.G. in the Denton County Jail and recommended to him that he take medications. He stated that he had offered L.G. treatment on more than one

occasion but that L.G. had declined to take any medication.

Based on his assessment, Dr. Shupe diagnosed L.G. with schizophrenia, which he described as "a thought disorder in which people chronically have some disorganization, perseveration[2] with their thinking" and "definitely have periods of hallucinations and paranoia as well as other delusions as part of the illness."[3] Dr. Shupe explained that in L.G.'s mind, his treatment in NTSH was going well and that "other than the disagreement over medications, everything ha[d] been fine." He opined, however, that L.G.'s treatment at NTSH was not going well because he was refusing to take the medications the hospital had recommended for him and therefore was not getting the improvement he needed.

Dr. Shupe testified that L.G.'s condition could not be sufficiently treated without psychoactive medications. He said that there would be other components to the treatment but that the medications were "absolutely necessary." He further described L.G. as lacking the capacity to make decisions regarding the administration of psychoactive medications due to the fact that he is "not able to rationally describe his current situation and, therefore, he doesn't appreciate or understand his illness and

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[2]Perseveration is a condition in which the patient "does the same thing over and over again without thinking about it." *In re Guardianship of Benavides*, 403 S.W.3d 370, 377 (Tex. App.—San Antonio 2013, pet. denied).

[3]On cross-examination, Dr. Shupe testified that L.G. was continuing to experience delusions and paranoia but not hallucinations. When L.G. testified, he denied experiencing any delusions or paranoia since he had been at NTSH.

his degree of dysfunction from his illness."

Dr. Shupe stated that he did not believe that L.G. was capable of rational deliberation, nor did he believe that L.G. had the ability to understand either the nature and consequences of the proposed treatment plan or the benefits, risks, and alternatives to a treatment plan. He testified that he and L.G. had discussed L.G.'s concerns and reasons for not taking the medications and had attempted to explain to L.G. why the treatment team (and Dr. Shupe) believed that he needed the medications. L.G. gave him two reasons why he was not taking the medications: (1) he did not believe he had schizophrenia, and (2) he believed he would have side effects such as swelling of his brain and other issues such as seizures. To that, Dr. Shupe said that he was not concerned by L.G.'s complaint of side effects because (1) there had been "a long track record of these medications being used," (2) any brain swelling and seizures would be "extremely unlikely," and (3) L.G. would be "monitored carefully" for any side effects to the medications. He did explain that tardive dyskinesia, sedation, and addiction are some of the possible side effects of the antidepressants, antipsychotics, anxiolytics, and mood stabilizers but that L.G. did not specifically complain of any of those side effects. Dr. Shupe added that a doctor would evaluate L.G. on an ongoing basis as he takes the medication and that "the nurses and mental health technicians [would be] on the unit with him 24 hours a day."

In contrast to the side effects, Dr. Shupe testified that the medications he was recommending would decrease the psychosis L.G. had been experiencing, "at which

point he would be able to understand his legal situation to the extent that he could be judged to be competent to stand trial." In Dr. Shupe's medical opinion, those potential benefits outweighed any risks to L.G. He opined that the treatment with the proposed medications was in L.G.'s best interest; that the administration of these medications was within the reasonable standard of care for the treatment of schizophrenia; and that there were no other reasonable, less-restrictive alternatives to the medications. Ultimately, Dr. Shupe believed that a court order was necessary to appropriately and effectively treat L.G.

L.G. also testified at the hearing. He stated he knew that he had been labeled "incompetent to stand trial" and that he was at "the state hospital in Vernon . . . to be found competent." He was able to describe in detail his daily routine at NTSH—including the competency class he had been taking—and the nature of the charges against him. L.G. said that he had never been diagnosed with a mental illness prior to being hospitalized at NTSH and that this was the first time he had heard that he had schizophrenia.[4] He did not believe that he needed medication to help him understand what was going on.

On cross-examination, L.G. confirmed that he did not believe that he had a mental illness and that he did not agree with the diagnosis that he had schizophrenia.

[4]Dr. Shupe had testified that he did not know when L.G. was first diagnosed with schizophrenia but that it had been his diagnosis "since he's been incarcerated or up at the state hospital."

He also testified that neither his treating physician nor anybody with NTSH had asked him to take any psychoactive medications.[5]

At the end of the hearing, the probate court announced its ruling:

> At this time, I'm going to grant the application for medications, and I am going to authorize the administration of medications in the categories of antidepressants, antipsychotics, anxiolytics, and mood stabilizers on the grounds that I believe the patient lacks capacity to make decisions regarding the administration of said medication and that the treatment with the proposed medication is in the best interest of [L.G.,] and the Court will order their administration.

The probate court reduced its findings to writing and entered an order. This appeal followed.

DISCUSSION

In one issue on appeal, L.G. challenges the legal and factual sufficiency of the evidence supporting the probate court's finding that he lacks the capacity to make a decision regarding the administration of psychoactive medication. L.G. does not challenge the probate court's finding that the proposed medication is in his best interest. Because we conclude that there is legally and factually sufficient evidence to support the probate court's finding that L.G. lacks the capacity to make a decision regarding the administration of the proposed medication, we will overrule L.G.'s sole issue.

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[5]L.G. clarified that Dr. "Joshi," a psychologist, had stated that he was "schizophrenic [and] to take schizophrenic or psychoactive medications." A Dr. Kumud Joshi is identified on L.G.'s psychiatric evaluation as the assessing clinician.

Standard and Scope of Review

Clear and convincing evidence must support orders authorizing the administration of psychoactive medication. Tex. Health & Safety Code Ann. § 574.106(a-1). This quantum of proof is that measure or degree of evidence 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. *See In re S.P.*, 444 S.W.3d 299, 302 (Tex. App.—Fort Worth 2014, no pet.). While this is more than the mere greater weight of the credible evidence, clear and convincing evidence does not have to be unequivocal or undisputed. *See id.*

To determine if evidence is legally sufficient under the clear and convincing standard, we look at all the evidence in the light most favorable to the challenged finding to determine whether a reasonable factfinder could form a firm belief or conviction that the finding is true. *In re Commitment of Stoddard*, 619 S.W.3d 665, 674 (Tex. 2020). We assume that the factfinder settled any conflicts in the evidence in favor of its finding if a reasonable factfinder could have done so. *Id.* We disregard all evidence that a reasonable factfinder could have disbelieved, and we consider undisputed evidence even if it is contrary to the finding. *Id.* That is, we consider evidence favorable to the finding if a reasonable factfinder could, and we disregard contrary evidence unless a reasonable factfinder could not. *See State v. K.E.W.* (*K.E.W. I*), 315 S.W.3d 16, 20 (Tex. 2010). Although the trier of fact may draw inferences, those inferences must be reasonable and logical. *In re Z.N.*, 602 S.W.3d

541, 545 (Tex. 2020). The factfinder is the sole judge of the witnesses' credibility and demeanor. *In re J.F.-G.*, 627 S.W.3d 304, 312 (Tex. 2021).

Likewise, the higher burden of proof alters the appellate standard of review for factual sufficiency. *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002). 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 challenged finding. *Id.* at 25. We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002); *K.E.W. v. State* (*K.E.W. II*), 333 S.W.3d 850, 855 (Tex. App.—Houston [1st Dist.] 2010, no pet.). In so doing, we must give "due consideration to evidence that the factfinder could reasonably have found to be clear and convincing." *J.F.C.*, 96 S.W.3d at 266. 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, then the evidence is factually insufficient. *Id.*; *K.E.W. II*, 333 S.W.3d at 855. However, the factfinder is the sole arbiter of the credibility and weight of the evidence, which we may not second-guess. *See S.P.*, 444 S.W.3d at 302.

Psychoactive-Medication Orders

Trial courts may authorize the administration of one or more classes of

psychoactive medication to a patient who is under a court order to receive inpatient mental health services.[6] Tex. Health & Safety Code Ann. § 574.106(a)(1). The court may issue such an order if, after a hearing, the court finds by clear and convincing evidence that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the patient. *Id.* § 574.106(a-1)(1).

Capacity

"Capacity" as used in Section 574.106(a–1) means a patient's ability to "understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment," and to "make a decision whether to undergo the proposed treatment." *Id.* § 574.101(1). L.G. points to Dr. Shupe's testimony that his "behavior was quite calm" during their meeting right before the hearing and that L.G.'s symptoms were "significant" and "severe but not to the point that he cannot control his behaviors if he so desires." L.G. contends that this testimony does not support a finding of lack of capacity to make decisions regarding the administration of medication. But the patient's ability to have a coherent conversation regarding his condition and to control his behavior if he desires is not

[6]L.G. does not challenge either that he is awaiting trial or that he was under a court order to receive inpatient mental health services.

the statutory definition of capacity.[7] *Cf. id.* § 574.101(1). Further, in a legal sufficiency review, we examine all the evidence "in the light most favorable to the finding," including every reasonable inference in favor of those findings. *See J.F.C.*, 96 S.W.3d at 266.

We cannot agree with L.G. that "[t]here is no[] testimony or evidence to support lack of capacity." Dr. Shupe testified that both he and NTSH had diagnosed L.G. with schizophrenia. L.G. did not believe that he had schizophrenia or any mental illness at all. Dr. Shupe testified that he and L.G. had discussed L.G.'s concerns and reasons for not taking the medications and had attempted to explain to L.G. why medical professionals believed that he needed the medications. Based on that discussion, Dr. Shupe testified that L.G. was unable to rationally describe his current situation and that he did not "appreciate or understand his illness and his degree of dysfunction from his illness." Dr. Shupe thus reasoned that L.G. lacks the capacity to make a decision regarding the administration of psychoactive medications.

L.G. points out that when he testified at the hearing, he was able to "very clearly" describe his "current situation[,] including his reason for hospitalization, his criminal cases, and the possible outcome of his criminal cases." L.G. contends that his

[7]L.G. also directs us to Dr. Shupe's testimony that he had not discussed L.G.'s "informed consent" to take Haldol—an antipsychotic and the only medication L.G. was being offered at the time of the hearing—with L.G. "Without a discussion of informed consent," L.G. argues, "Dr. Shupe is unable to demonstrate that the patient lacks the capacity to make decisions regarding the administration of medication." L.G. cites no authority supporting this argument, and we have found none.

testimony "clearly shows that he understands the nature and consequences of his situation[,] which demonstrates that he also has the capacity to make decisions regarding the administration of psychoactive medication." However, the applicable statute defines "capacity" not in terms of the patient's ability to understand the nature and consequences of his "current situation"—that is, the finding that he is incompetent, his hospitalization, and his pending criminal cases—but in terms of his ability to understand the nature and consequences of a "proposed treatment." Tex. Health & Safety Code Ann. § 574.101(1)(A). Here, L.G.'s own testimony at the hearing supported a rational inference that he did not have the ability to understand the nature and consequences of the proposed treatment:

> Q. Why are you unwilling to take psychoactive medications?
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> A. Because I know that if I had all these fractures in my head from AC assault and constant ear ringing in Denton County, it seems that if I take this medication from going to the MRI down the street emergency with Mrs. [Unintelligible] and my mother stating that papers came in saying I have brain swelling from that, taking schizophrenic medication that I don't know, I mean, I know it's going to worsen me. And I'm afraid of my health. Including that I have saline -- I got saline and all those dangers that Dr. Shupe explained that's a possibility if I take those medications so it's going to worsen my health.
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> . . . .
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> Q. Did you discuss any of those possible side effects with those doctors there at North Texas State Hospital?
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> A. No. I just -- I explained to her I don't want to take those medications, and I explained to her about the ear ringing since the minute I came over here and there's -- and they say -- it's been -- it's been less ear ringing but they still do a little ear ringing over here. I don't

> know if it's a broadband, how they do it, but I obey and it's usually when I go to sleep. Now, you know what I mean, so I went to the doctor, they checked my ears, and I don't know if they do favor more the facility than the person though but having a doctor on the outbound but those are the reasons why I'm scared not to take it and due to the fact I'm not schizophrenic. I've never been diagnosed. If I ever was at another place like in Life Path or -- not Life Path but a place similar where they evaluate you in McKinney just for a little bit for whatever reason, I know that the doctor labeled me competent and never schizophrenic.

Dr. Shupe did not testify about saline or "ear ringing," and he dismissed L.G.'s concern about brain swelling as "very irrational." As the factfinder, the probate court had to weigh L.G.'s testimony against Dr. Shupe's and resolve any conflicts in the evidence. *See In re J.R.*, No. 02-20-00150-CV, 2020 WL 4689847, at *8 (Tex. App.—Fort Worth Aug. 13, 2020, no pet.) (mem. op.) ("Here, the trial court had to weigh the credibility of Appellant's professions that he had the capacity to make his own medication decisions against the evidence of his behaviors, the concerns those behaviors created, and expert opinions that he did not yet have that capacity."). L.G.'s stated disbelief that he had a mental illness and that he needed medication further supports the probate court's finding that he lacks the capacity to make decisions regarding the administration of the proposed medication. *See State ex rel. T.M.*, No. 12-19-00160-CV, 2019 WL 4462675, at *2 (Tex. App.—Tyler Sept. 18, 2019, no pet.) (mem. op.) ("A patient does not have the capacity to make a decision regarding the administration of medications if the patient does not understand the nature of his mental illness or the necessity of the medications."); *State ex rel. D.W.*, 359 S.W.3d 383, 387 (Tex. App.—Dallas 2012, no pet.) (holding the evidence legally sufficient to show

that patient lacked the capacity to make a decision regarding the administration of the proposed medications based on expert testimony that patient did not understand the nature of her mental illness or the necessity of the medications); *A.S. v. State*, 286 S.W.3d 69, 73 (Tex. App.—Dallas 2009, no pet.) (same).

Deferring to the probate court's credibility determinations and considering the evidence in the appropriate light, we conclude that the probate court could have reasonably formed a firm belief or conviction that L.G. "lacks the capacity to make a decision regarding the administration of the proposed medication." *See* Tex. Health & Safety Code Ann. § 574.106(a–1)(1). Accordingly, we hold that the evidence is legally and factually sufficient to support the probate court's decision. *See In re M.T.*, Nos. 02-17-00011-CV, 02-17-00012-CV, 2017 WL 1018596, at *9 (Tex. App.—Fort Worth Mar. 16, 2017, no pet.) (per curiam) (mem. op.) (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"); *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.) (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").

CONCLUSION

Having held that the evidence was legally and factually sufficient to support the probate court's capacity finding, we overrule L.G.'s sole issue. We affirm the probate court's order authorizing the administration of psychoactive medication.

/s/ Mike Wallach
Mike Wallach
Justice

Delivered: December 7, 2023