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SUPREME COURT

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court No. 990260
Morton Co. No. 99-R-1055

FILED
IN THE OFFICE OF THE
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AUG 23 1999

STATE OF NORTH DAKOTA

In the Interest of

J.K. a/k/a W.J.,

Respondent and Appellant.

BRIEF OF THE APPELLEE

APPEAL FROM THE DISTRICT COURT'S ORDER FOR HOSPITALIZATION
TREATMENT FOLLOWING A TREATMENT HEARING DATED JULY 20, 1999

FOR THE APPELLANT:

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES	ii
I. QUESTIONS PRESENTED FOR REVIEW, STATEMENT OF THE CASE AND STATEMENT OF THE FACTS ON APPEAL	1
II. ARGUMENT	1
III. CONCLUSION	6

TABLE OF AUTHORITIES

NORTH DAKOTA CASES

In the Interest of Goodwin

366 N.W.2d 809 (N.D. 1985) 2

In the Interest of Rambousek

331 N.W.2d 548 (N.D. 1983) 2

NORTH DAKOTA STATUTES

N.D.C.C. § 25-03.1-02 2

N.D.C.C. § 25-03.1-21 5

N.D.C.C. § 25-03.1-29 1

OTHER STATUTES

Mental Health Act § 25-03.1-02 2, 3

RULES

N.D. R. Civ. P. 52(a) 1, 2

I. QUESTIONS PRESENTED FOR REVIEW, STATEMENT OF THE CASE AND STATEMENT OF THE FACTS ON APPEAL

The Appellee expresses no dissatisfaction with the Appellant's statement of issues, statement of the case, and statement of the facts on appeal, with the exception that the Appellee disagrees with the Appellant's contention that the Court's standard of review should be changed.

II. ARGUMENT

The Lower Court's Order for Commitment and Treatment Was Based Upon Clear and Convincing Evidence.

The Appellee argues on appeal that the lower Court had clear and convincing evidence at its disposal at the treatment hearing, in the form of the qualified, expert opinion from Dr. William Pryatel, and that the Respondent's spoken threats to commit suicide, as related to the Petitioner prior to the filing of the instant Petition for Involuntary Commitment, supported the magistrate's order for involuntary commitment.

The Appellee agrees with the Appellant's contention that the scope of review on appeal is limited to a review of the procedures, findings, and conclusions of the lower court, pursuant of the provisions of Section 25-03.1-29 of the North Dakota Century Code.

The Appellee also agrees with the Appellant's contention on appeal that the lower court's order for commitment is subject to review under the auspices of the "clearly erroneous" analysis set forth in Rule 52(a) of the North Dakota Rules of Civil Procedure, which states in pertinent part: "**Findings of fact, whether based on oral or**

documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” N.D. R. Civ. P. 52(a).

However, the Appellee departs from the Appellant’s view of the proceedings from the court below in arguing that clear and convincing evidence supported the magistrate’s findings that the Appellant was mentally ill and was a “person requiring treatment” under the North Dakota Mental Health Act.

To carry the Appellee’s burden of showing by clear and convincing evidence that the Appellant was a mentally ill person requiring court-ordered treatment. Dr. William Pryatel, a licensed psychiatrist from the North Dakota State Hospital was present and testified at the treatment hearing. **Tr. p. 3 - 16.**

As the Appellant aptly points out at page 3 in his brief on appeal, “only a licensed psychiatrist or [clinical] psychologist [trained in a clinical program] may make an evaluation of the [Respondent’s] mental status.” citing N.D.C.C. Section 25-03.1-02(6), **In the Interest of Goodwin**, 366 N.W.2d 809,814 (N.D. 1985), **In the Interest of Rambousek**, 331 N.W.2d 548 551 (N.D. 1983). (parentheticals added)

At the outset of Dr. Pryatel’s direct testimony, the Appellant stipulated to Dr. Pryatel’s qualifications as an expert examiner under Section 25-03.1-02(6) of the Mental Health Act. **Tr. p. 4.** As the Appellant’s treating psychiatrist, Dr. Pryatel testified that upon his initial hospitalization the Appellant had to go to seclusion a couple of times. **Tr. p. 4.** Dr. Pryatel testified that the Respondent had been taking the antipsychotic medication, Seroquel. **Id.** During the period of evaluation at the North Dakota State

Hospital, the Appellant made threatening statements to staff, calling the nurse a(n) “expletive deleted” liar and failing to take direction or redirection from the nursing staff. **Id.** at pp. 4, 5.

The expert examiner supplemented the Appellant’s earlier diagnosis of paranoid delusional schizophrenia. Given as examples, which were taken from the Appellant’s chart from the North Dakota State Hospital, were delusional statements made by the Appellant, such as he is the father of over 70 cows, and that [the Appellant] is inventing a new religion to use against his doctor. **Tr. p. 5, 7.**

The Appellant has suffered from his mental illness for quite some time, resulting in numerous hospitalizations for delusions, with the Appellant’s most recent local hospitalization being at the North Dakota State Hospital in 1995. **Tr. p. 6, App. p. 16.** At the treatment hearing in the instant case, Dr. Pryatel testified that the Appellant’s treatment history of repeated hospitalization for his delusional schizophrenia was a relevant factor insofar as it related to the expert examiner’s opinion that the Appellant was a person requiring treatment under the Mental Health Act. **Id.**

Notwithstanding the paranoid and delusional symptoms related to the court by Dr. Pryatel at the treatment hearing, the Appellee argues on appeal that it was the Appellant’s suicidal statements that became the fundamental basis for Dr. Pryatel’s opinion that the Appellant posed a danger to himself and was therefore a “person requiring treatment”.

On direct examination at the treatment hearing, Dr. Pryatel testified:

A. “Well, prior to coming to Medcenter One, he [the Appellant] was living in a motel. And according to the history we had, he called his mother over and was making a number

of suicidal statements about ending it all and killing himself and some pretty overt suicidal statements. And so that's why we checked the box there [on the Report of Examination] for suicide." Tr. p. 7, App. p. 17. (parentheticals added)

The Petitioner also testified at the treatment hearing, and reiterated to the court that the Respondent had made suicidal statements to the Petitioner, resulting in part, with the filing of the Petition For Involuntary Commitment. Tr. p. 18, App. pp. 3-6. The Petitioner, who is also the Appellant's mother, also testified as to the Appellant's treatment history, and the symptoms displayed by the Appellant when he fails to take his medication. The Petitioner testified to the court about the Appellant's relapse thusly:

"When he's - - when he takes his medication and he's - - it's finally taking effect with him, he does pretty well. We have to see how he does. You know, I can't really - - he is very abusive when he is not on his medication, and I can't have him in our house then. We did that so many times, and it's really hard. Tr. p. 19.

Therefore, based upon Dr. William Pryatel's expert opinion, Dr. Pryatel's explanation of his assessment of the Appellant's condition, the Appellant's treatment history, and coupled with the clear and convincing evidence that the Respondent had made suicidal statements to the Petitioner while suffering his latest paranoid, delusional relapse, which was not controverted by any other evidence, the Appellee asks the Court on appeal to affirm the findings and conclusions of the lower court.

The Lower Court Did not Err by Ordering Inpatient Treatment Instead of a Less Restrictive Alternative.

In the lower court's order for involuntary treatment following the treatment

hearing on July 20, 1999, the magistrate cited “suicidal statements” and “suicide” as the overriding, countervailing consideration militating against a less restrictive treatment venue than the North Dakota State Hospital. **Tr. p. 25, App. p. 21.**

In his brief on appeal, the Appellant argues that the trial court erred in not ordering the least restrictive alternative. In support of his contention, the Appellant cites the statute governing the court’s analysis on the issue, Section 25-03.1-21(1) N.D.C.C., entitled in part, Order for Treatment - Alternatives to Hospitalization, and which states in pertinent part:

1. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent’s treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon the individual or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days. **N.D. Century Code 25-03.1-21(1).**

The lower court appeared to have gone an extra step beyond the factors and reasons stated in Dr. Nadeem Haider’s REPORT ASSESSING AVAILABILITY AND APPROPRIATENESS OF ALTERNATE TREATMENT, which listed “Patient is not stable” and “Has history of medication noncompliance” as the relevant factors for not recommending a less restrictive treatment placement at the time of the July 20, 1999, treatment hearing. **App. p. 18.** Rather, the magistrate listed “suicide” as the court’s basis for not ordering less restrictive treatment other than hospitalization following the treatment hearing. **Tr. p. 21.**

However, Dr. Pryatel’s in-court testimony at the treatment hearing buttressed Dr.

Haider's conclusion that the Appellant was still in need of hospitalization, when Dr. Pryatel testified "Generally, we like to play it safe to be conservative and, you know, we like to have - - make sure they are doing fine before we release them into the community, into any setting. **Tr. p. 11.**

The Appellee on appeal argues that the Appellant's previously spoken suicidal threats, made to his mother, the Petitioner, was indeed a relevant risk that factored into the lower court's analysis of the matter, when the district court found that an alternate treatment program would not prevent harm or injury to the Appellant or others. **App. p. 21.**

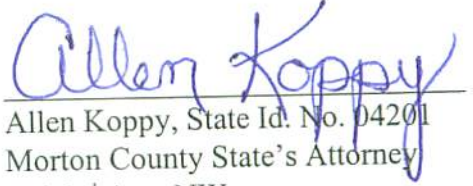
Therefore, based upon the reasons stated above the Appellant argues that under the facts and circumstances of the instant case on appeal, that at the time of the treatment hearing on July 20, 1999, the lower court did not err in ordering further hospitalization and treatment for the Appellant following the treatment hearing.

III. CONCLUSION

Based upon the points and authorities discussed above, the Appellee respectfully urges the Court to affirm the findings of facts, conclusions of law, and order for treatment made by the lower court following the treatment hearing on July 20, 1999.

Dated at Mandan, North Dakota, this 26th day of August, 1999.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Supreme Court No. 990260
Morton County No. 99-R-1055

I hereby certify that on the 26th day of August, 1999, I served a true and correct copy of the attached:

BRIEF OF THE APPELLEE

upon the following named party by _____ personal delivery to said party or, ✓ by depositing the documents in the United States mail at Mandan, North Dakota, postage prepaid, to:

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