

ORIGINAL

IN THE SUPREME COURT

20060234

STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

Supreme Court No. 20060234
Morton Co. No. 30-06-K-0155

SEP 14 2006

In the Interest of

B.L.S.

Respondent/Appellant

RECEIVED BY CLERK
SUPREME COURT
STATE OF NORTH DAKOTA
SEP 14 2006

.....
BRIEF OF PETITIONER/APPELLEE
.....

**APPEAL FROM A COURT ORDER FOLLOWING [A] TREATMENT
HEARING AND AN ORDER REGARDING INVOLUNTARY
TREATMENT WITH MEDICATION DATED SEPTEMBER 5, 2006
MORTON COUNTY DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE GAIL HAGERTY**

Brian D. Grosinger, State I.D. 04500
Assistant State's Attorney
Morton County Courthouse
210 2nd Avenue N.W.
Mandan, ND 58554
(701) 667-3350
Attorney for Plaintiff/Appellee

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	2
ISSUES PRESENTED.....	3
STATEMENT OF FACTS.....	4
ARGUMENT.....	5
I. THERE WAS CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT IS MENTALLY ILL AND A PERSON REQUIRING TREATMENT.....	5
A. THERE IS CLEAR AND CONVINCING EVIDENCE THE RESPONDENT IS MENTALLY ILL.....	6
B. THERE IS CLEAR AND CONVINCING EVIDENCE THE RESPONDET IS A PERSON REQUIRING TREATMENT.....	7
II. THE TRIAL COURT CORRECTLY HANDLED THE ISSUE OF INVOLUNTARY TREATMENT WITH MEDICATION.....	8
III. THERE IS NO RELIEF TO BE GRANTED TO THE RESPONDENT ON THE ISSUE OF THE SPECIFIC MEDICATIONS ORDERED.....	9
CONCLUSION.....	11

TABLE OF AUTHORITIES

Page

CASES

In the matter of B.L.S.

2006 ND 216. 4

In the interest of C.H.

2005 ND 130, 699 N.W.2d 849. 6

In the interest of D.A.

2005 ND 116, 698 N.W.2d 474. 9

In the interest of M.M.

2005 ND 219, 707 N.W.2d 78. 6, 7, 10

STATUTES

N.D.C.C. 25-03.1-02 5

N.D.C.C. 25-03.1-18.1. 8, 10

ISSUES

I.

WHETHER THERE WAS CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT IS MENTALLY ILL AND A PERSON REQUIRING TREATMENT.

II.

WHETHER THE COURT CORRECTLY DECIDED THERE WAS CLEAR AND CONVINCING EVIDENCE ON THE ISSUE OF INVOLUNTARY TREATMENT WITH MEDICATION.

III.

WHETHER THE DISTRICT COURT CORRECTLY DECIDED THE ISSUE OF INVOLUNTARY TREATMENT WITH NON-PSYCHOTROPIC MEDICATION.

STATEMENT OF FACTS

The treatment hearing following the remand from *In the matter of B.L.S., 2006 ND 216* was held on September 5, 2006. At that second treatment hearing the Petitioner called two witnesses. The first was Capt. Rick Eckroth of the Morton County Correctional Center who provided testimony in regard to the factual allegations. This testimony included the bizarre behavior demonstrated by the Respondent in the Morton County Jail. The second witness was Dr. William Pryatel, a psychiatrist from the North Dakota State Hospital who provided the expert medical testimony in regard to diagnosis, prognosis and the statutory elements of the definition of a person requiring treatment. Dr. Pryatel's testimony included the Respondent's history of mental illness. Dr. Pryatel's testimony to psychiatric diagnosis was that the Respondent suffered from paranoid schizophrenia and a personality disorder with antisocial features. Dr. Pryatel's testimony made reference to his Report of Examination, **A. 26**, and his Report Assessing Less Restrictive Alternatives. **A. 28**. Dr. Pryatel's testimony was that the Respondent required inpatient treatment and that the less restrictive alternatives were not appropriate.

Dr. Pryatel was also the sponsoring witness regarding the request to allow the involuntary treatment with prescribed medication. **A. 30**. Dr. Pryatel provided testimony in regard to the four (4) psychotropic medications that were specified in the pleading. **A. 30**. Dr. Pryatel also provided testimony to the medications that are prescribed to deal with the Respondent's physical illness.

Following the hearing the Trial Court found for the Petitioner on both issues and entered an Order for Treatment and an Order for the Medication. **A. 58, 59**.

Prior to the Remand, the matter was initiated by a Petition for the Involuntary Commitment of the Respondent. **A. 2.** The Preliminary Hearing was held before the Honorable Gail Hagerty and the Order finding probable cause resulted. **A. 22.** The first Treatment Hearing was held before the Honorable Sonna M. Anderson on July 11, 2006. **A. 32.** The appeal that followed produced the reversal and remand due to the issue of representation by counsel as cited above.

The Petitioner acknowledges what has been stated by the Respondent that there are no transcripts on the matter. The undersigned acknowledges that he does not have the tapes of the second treatment hearing as this is being written. References in this brief to the evidence and occurrences at the second treatment hearing are subject to the undersigned's memory.

ARGUMENT

I.

THERE WAS CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT IS MENTALLY ILL AND A PERSON REQUIRING TREATMENT.

The burden of proof placed upon the Petitioner is to prove that the Respondent is mentally ill and a person requiring treatment as defined at **§25-03.1-02(11) of the North Dakota Century Code**. At the Treatment Hearing, September 5, 2006, the Trial Court found that the Petitioner had met that burden. As a result, the Trial Court issued its Findings and Order. **A. 59.** The Trial Court at the same hearing found the Petitioner had met its burden on the issue of Involuntary Treatment with prescribed medication pursuant to Section 25-03.1-18.1 of the North Dakota Century Code. The Trial Court issued this Order accordingly. **A. 58.**

There is precedent on the review of commitments upon appeal. This Court has held that Findings/Order will not be reversed unless clearly erroneous. *In the interest of M.M.*, 2005 ND 219, 707 N.W.2d 78. Further, this Court has rules: “we will affirm an order for involuntary treatment unless it is induced by an erroneous view of the law or if we are firmly convinced it is not supported by clear and convincing evidence.” (Citations omitted). *Id.* at ¶ 9. See also, *In the interest of C.H.*, 2005 ND 130, 699 N.W.2d 849.

In the instant case, there was clear and convincing evidence that the Respondent was mentally ill, and to the second prong, that the Respondent is a person requiring treatment. The facts show that there is a solid basis for this conclusion and that the Trial Court did not abuse its discretion in reaching this decision. Finally, the facts show that the decision is not clearly erroneous.

A. THERE IS CLEAR AND CONVINCING EVIDENCE THE RESPONDENT IS MENTALLY ILL.

The Trial Court found the Respondent to be a mentally ill person with a diagnosis of schizophrenia and a personality disorder with antisocial features. **A. 59.** There is ample basis to justify this court’s finding by clear and convincing evidence.

Capt. Eckroth testified as the Petitioner and covered many examples of the Respondent’s conduct. The Respondent had been in custody for approximately two months in the Morton County Correctional Center. Capt. Eckroth testified to what qualified as bizarre behavior, bad hygiene, aggressive and violent behavior and delusions. More specifically, Capt. Eckroth testified to incidents regarding washing in a toilet that had not been flushed, standing in a toilet to flood the cell, having to be removed from the toilet by significant use of force, having to be isolated due to his behavior, and to delusional behavior.

Dr. Pryatel testified to the diagnosis which included an Axis I diagnosis of Schizophrenia, Paranoid type and an Axis II diagnosis that included Personality Disorder NOS with Antisocial Features by history. Dr. Pryatel also testified to the basis for the diagnosis. Dr. Pryatel's testimony included bizarre behavior at the hospital and the plan for treatment. The substance of Dr. Pryatel's testimony is that the Respondent is a mentally ill person that requires treatment. This is consistent with the reports filed by Dr. Pryatel prior to the treatment hearing. **A. 15, 26.**

The testimony was that the Respondent had suffered from paranoid schizophrenia for quite some time and was diagnosed during prior State Hospital admissions. During his current hospitalization the problem with delusions continued. Dr. Pryatel testified to both delusions that were persecutory and grandiose. Both types of delusions, persecutory and grandiose, are specific to the diagnostic requirements. When presented with the evidence provided by Dr. Pryatel the Trial Court had more than ample evidence to find the diagnosis of mental illness by clear and convincing evidence. There was no abuse of discretion.

B. THERE IS CLEAR AND CONVINCING EVIDENCE THE RESPONDENT IS A PERSON REQUIRING TREATMENT.

The Respondent argues that the evidence shows only that the Respondent is a person that would "benefit" from treatment, as opposed to a person that "requires" treatment. The precedent does indeed make this distinction. *See e.g. In the interest of M.M., 2005 N.D. 219, 707 N.W.2d 78 at ¶9.* Although benefit versus requirement is an important distinction, in the instant case it is not a close call.

In the instant case due to the deterioration of the Respondent's mental health he is in danger of serious physical health problems. These physical health problems are

potentially life threatening. Renal failure could lead to coma and death. Stroke could lead to irreversible physiological damage. Dr. Pryatel testified to both of these dangers. Further, Dr. Pryatel's testimony included that by history the Respondent had responded favorable to the use of the psychotropic medications, and that if the treatment could be employed again; there should be the same success. Dr. Pryatel ultimately testified that upon the use of treatment the Respondent should reach a point of stability where his life could once again be fairly normal. The testimony indicated a scope of differing results that was quite dramatic. On the one end of the spectrum, should the Respondent remain untreated, he was at risk of stroke, kidney failure, and ultimately death. On the other end of the spectrum, successful employment of treatment could potentially provide the Respondent a return to an almost normal life. This provided the clear and convincing evidence of the need for treatment.

Therefore, the Petitioner has met the burden by clear and convincing evidence and under the defined standard of review there is no basis for reversal.

II.

THE TRIAL COURT CORRECTLY HANDLED THE ISSUE OF INVOLUNTARY TREATMENT WITH MEDICATION.

The issue of treatment with medication involuntarily is governed by **§25-03.1-18.1 N.D.C.C.** The application for involuntary treatment with prescribed medication and the Trial Court's decision, have the same following elements:

- (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;

(2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about treatment;

(3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and

(4) That the benefits of the treatment outweigh the known risks to the patient.

See e.g. *In the interest of D.A.*, 2005 ND 116, 698 N.W.2d 474.

In regard to the first element, the testimony of Dr. Pryatel indicated that the anti-psychotic medication is clinically appropriate and necessary to treat the Respondent. In regard to the second element, the Respondent was offered the medication and refused the same. Although there may be some dispute regarding the Respondent's compliance while a previous order was in effect, it was nevertheless clear during the hearing the Respondent did not intend to accept the medication. On the third element, that was met on the basis that the substance of the testimony was clear that there was no alternative to the administration of the anti-psychotic medication. Finally, the fourth element was met as well. On the balance, the catastrophic mental and physical health concerns in regard to the Respondent control. Because all four elements were met, by more than clear and convincing evidence, the Trial Court was correct in its decision to grant the request to treat involuntarily with medication.

III.

THERE IS NO RELIEF TO BE GRANTED TO THE RESPONDENT ON THE ISSUE OF THE SPECIFIC MEDICATIONS ORDERED.

As stated above, this issue is governed by **Section 25-03.1-18.1 of the North Dakota Century Code**. Reading the whole statute there is no language of the statute that limits the issue to psychotropic medications.

Further, the Petitioner argues that to limit the authority to psychotropic medications would run contrary to subsection (2) which requires the court to analyze the issue in terms that constitute the best interests of the patient, as well as others. If the patient is treated for psychiatric ailments to the exclusion of the physical ailments, the goal of the protection of a vulnerable individual is lost.

At the treatment hearing the Trial Court heard testimony that included the physical problems experienced by the Respondent. The Trial Court also heard testimony that due to the fact that the Respondent does not trust the medication for his physical problems, which is a result of his psychiatric problems; his physical health was at risk. The testimony also indicated that there would be a period of time until the Respondent reached a point in his psychiatric treatment that would allow him to be rational in regard to his physiological treatment. Under these circumstances, the Trial Court exercised appropriate discretion in the order.

A case persuasive to this point is *In the interest of M.M.*, 2005 ND 219, 707 N.W.2d 78. In that matter both an involuntary commitment order and order to treat involuntarily with medication were upheld by this Court. The facts of that case were much less severe than the instant case in terms of the Respondent's symptoms of mental illness. In *M.M.* the respondent was refusing kidney surgery, and his refusal of the surgery was a significant factor in the medical diagnosis. In the instant case, the delusions demonstrated by the Respondent continue at the time of the treatment hearing. Under these circumstances it is apparent that the Respondent's decisions are not rational. The Trial Court in the instant case did not abuse discretion.

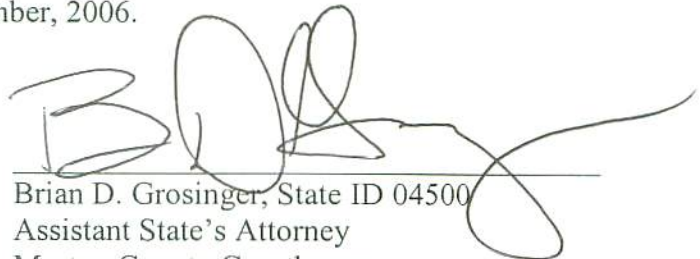
Under these circumstances the Trial Court acted appropriately and did not abuse its discretion in the order for medication.

If this Court rules for the Respondent on this issue the Petitioner argues that any reversal should only go to the Order for Medication, and that the underlying commitment order should not be disturbed.

CONCLUSION

For the reasons stated above, the Petitioner/Appellee respectfully requests the Judgment and Order of the trial court be affirmed in all respects.

Dated this 14th day of September, 2006.



Brian D. Grosinger, State ID 04500
Assistant State's Attorney
Morton County Courthouse
210 2nd Avenue N.W.
Mandan, ND 58554
(701) 667-3350

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20060234
Morton Co. No. 30-06-K-0155

In the Interest of

B.L.S.

Respondent/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I made service of a copy of the foregoing **BRIEF OF PETITIONER/APPELLEE** upon **GREGORY I. RUNGE** on this 14th day of September, 2006, pursuant to Rule 5(b), N.D.R.Civ.P., by hand delivery.


Allen Koppy, State ID 04201
Morton County State's Attorney
Morton County Courthouse
210 2nd Avenue NW
Mandan, ND 58554