

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

20200094

FILED MARCH 20, 2020
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
STATE OF NORTH DAKOTA

In The Interest of F. G.

North Dakota State Hospital,
Petitioner and Appellee

Appellant's Brief

v.

File No. _____

F. G.,
Respondent and Appellant

Stutsman Co. No 47-2017-MH-69

An appeal from a South East Judicial District Court's Order Following
Continuing Treatment Hearing Held on March 2, 2020.

The Honorable Mark Blumer, presiding.

Andrew Marquart

Bar License 06954

Fargo, North Dakota

701-238-8139

asmarquart@gmail.com

Table of Contents

Table of Authorities

I.	Jurisdiction	1
II.	Issues Presented for Review	2
III.	Statement of the Case	3
IV.	Statement of the Facts	4
V.	Scope of Review	7
VI.	Argument	10
VII.	Conclusion	19

The Certificate of Compliance is on the last page of this brief.

Table of Authorities

Statutes

N.D. Cent. Code Sec. 25-03.1-29	1,3,8
N.D. Cent. Code Sec. 25-03.1-19	11
N.D. Cent. Code Sec. 25-03.1-21	11
N.D. Cent. Code Sec. 25-03.1-22(2)	11
N.D. Cent. Code Sec. 25-03.1-02 (12)	13
N.D. Cent. Code Sec. 25-03.1-02 (13)	16
N.D. Cent. Code Sec. 25-03.1-02(20)	17

Rules

N.D.R.Civ. P. 52(a)	7,9
---------------------	-----

Case Law

<i>In Interest of M.B.</i> , 467 N.W.2d 902, 904 (N.D. 1991)	10
<i>In Interest of R.N.</i> , 1997 ND 246, ¶ 11, 572 N.W.2d 820	10

I. Jurisdiction

1 The district court had jurisdiction under North Dakota Const. Art. VI, Sec. 8, 25-03.1-03, and section 27-05-06(1) of the North Dakota Century Code. The appeal from the district court was timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. Art. VI, Sec. 6, sections 25-03.1-29, 29-01-12 and 29-28-06 of the North Dakota Century Code.

II. Issues Presented for Review

2 Whether the District Court Erred in Finding F.G. to be mentally ill and a person requiring treatment.

III. Statement of the Case

3 This is an expedited appeal of a Stutsman County District Court's Order for Hospitalization following Continuing Treatment Hearing. This appeal is taken under Section 25-03.1-29 of the North Dakota Century Code and Rule 2.1 of the North Dakota Rules of Appellate Procedure.

IV. Statement of Facts

4 A petition for continuing treatment was filed with the court on February 2, 2020. In the examination report written by Dr. Eduardo Yabut, M.D. filed February 6, 2020, the doctor gave the following reasons for the petition.

F.G. is a 73-year-old who is currently at the North Dakota state Hospital Geropsychiatric unit for ongoing psychosis and refusal to consider less restrictive setting. She was admitted there in the context of severe psychosis and mania that she displayed in the community. She was quite grandiose and easily agitated. She does have a guardian. She is clinically ready for nursing home placement. However she has refused all discussions about placement in a nursing home. She remains on the same medications. She has refused

labs and all other ordered assessments. Her judgment and insight remain quite impaired.

5 A Continuing treatment hearing was held at the Stutsman County Courthouse. Dr. Yabut testified that F.G. is diagnosed with schizoaffective disorder bipolar type and an unspecified neurocognitive disorder. Dr. Yabut testified that F.G.'s admissions are always preceded by med-noncompliance. When she is off her medications she becomes delusional. Dr. Yabut believes F.G. needs to reside at a locked unit basic memory care or a nursing home. She was forgetful on admission, but has improved. Dr. Yabut is concerned that she will stop taking her medications and deteriorate. Dr. Yabut also testified that F.G. is homeless. F.G. is refusing to consider a nursing home and they are unavailable at this time. Furthermore F.G. does not believe she is mentally ill or a person requiring treatment. The court found by clear and convincing evidence F.G. to be Mentally Ill, a person requiring treatment, and that no alternative treatment was appropriate or available. The court granted the request for continuing treatment, and the order expires on March 2, 2021. The Appellant informed me of her wish to appeal the continuing treatment order.

6 F.G. appeals the Court order signed March 6, 2020.

V. Scope of Review

7 North Dakota Supreme Court's Scope of Review of this Appeal is limited and the Standard is Governed by Rule 52(a) of the North Dakota Rules of Civil Procedure.

8 Pursuant to 25-03.1-29 this court is "limited to a review of the procedures, findings, and conclusions of the lower court." N.D. Cent. Code Sec. 25-03.1-29.

9 Under Rule 52(a) of the North Dakota Rules of Civil Procedure, this Court will not set aside a trial court's decision unless that decision was "clearly erroneous."

N.D.R.Civ. P. 52(a)

VI. ARGUMENT

10 Whether a person requires treatment needs a two-step analysis. First, the court must find the person is mentally ill [or chemically dependent], and second, the court must find there is a reasonable expectation that, if the person is not hospitalized, there exists a serious risk of harm to himself, others or property. *In Interest of R.N.*, 1997 ND 246, ¶ 11, 572 N.W.2d 820. It is not enough that a person would benefit from treatment, the person must require treatment. *See In Interest of M.B.*, 467 N.W.2d 902, 904 (N.D. 1991).

11 If the court does not find clear and convincing evidence to believe that the individual requires treatment, the petition must be dismissed. N.D. Cent Code Sec 25-03.1-19. If clear and convincing evidence is found that a person requires treatment, the court shall consider less restrictive treatment. N.D. Cent. Code Sec 25-03.1-21. The length of the continuing treatment order may not exceed one year. N.D. Cent Code Sec 25-03.1-22(2).

12 The Appellant does not believe there was clear and convincing evidence that proved F.G. was “Mentally Ill” as Mandated by the North Dakota Century Code.

13 Section 25-.03.1-02 (12) of the North Dakota Century Code States:

“Mentally ill person” or “person who is mentally ill” means an individual with an organic mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations.

14 Dr. Yabut stated that F.G. suffers from schizoaffective disorder bipolar type and a unspecified neurocognitive disorder. The Appellant believes there was a lack of

evidence based on the information provided to establish this diagnosis by clear and convincing evidence that the Appellant is mentally ill.

15 There was not clear and convincing evidence presented that showed F.G. as a “person requiring treatment” as mandated by the North Dakota Century Code.

16 “Person requiring treatment” means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that person, others, or property. N.D. Cent. Code Sec 25-03.1-02 (13).

17 “Serious risk of harm” means a substantial likelihood of

- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
- b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
- c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one’s shelter, nutrition, or personal care; or
- d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person’s thoughts or actions or based upon acts, threats, or patterns in the person’s treatment history, current condition, and other relevant factors, including the effect of the person’s mental condition on the person’s ability to consent.

N.D. Cent. Code Sec. 25-03.1-02(20).

18 The appellant does not believe evidence established a serious risk of harm that would support a finding of clear and convincing evidence that she is a person requiring treatment. She does not believe that she is a risk of harm to herself or others and there was not sufficient evidence to establish by clear and convincing evidence that she poses a risk of harm.

VII. CONCLUSION

19. For the reasons set forth above, F.G. respectfully requests the North Dakota Supreme Court reverse the Order Following Continuing Treatment Hearing signed March 6, 2020.

Dated: March 20, 2020

By: Andrew Marquart

Bar License 06954

Fargo, North Dakota

701-238-8139

asmarquart@gmail.com

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

In The Interest of F. G.

North Dakota State Hospital,
Petitioner and Appellee

Certificate of Compliance

v.

File No. _____

F. G.,
Respondent and Appellant

Case No. 47-2017-MH-69

I, Andrew Marquart, do hereby certify that the Brief of the Appellant is in compliance with rule 32(a)(8) in that it does not exceed the page limit for a brief. The brief is 8 pages long which is under the page limit.

Dated this 20th day of March, 2020

Andrew Marquart
Attorney for Appellant/Respondent
Bar ID 06954
701-238-8139
asmarquart@gmail.com

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

In The Interest of F. G.

North Dakota State Hospital,
Petitioner and Appellee

Certificate of Service

v.

File No. _____

F. G.,
Respondent and Appellant

Case No. 47-2017-MH-69

I, Andrew Marquart, do hereby certify that on March 20th, 2020, I served the following documents:

1. Notice of Appeal
2. Appellant Brief
3. Appellant Appendix
4. Certificate of Service
5. Request for Transcript

Leo Ryan
Dalsted And Ryan, P.C.
208 Second Ave. S.W., Ste 201
P.O. Box 1727
Jamestown, ND 58402-1727
dalstedandryan@dakotalaw.net

Ms. F. G.
2605 Circle Drive
Jamestown, ND 58401-6905

to Mr. Ryan by email to the electronic address shown above and to F.G. by

U.S. mail to the address shown above.

Dated this 20th day of March, 2020

Andrew Marquart
Attorney for Appellant/Respondent
Bar ID 06954
701-238-8139
asmarquart@gmail.com