ORIGINAL

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

SUPREME COURT #_____

IN THE INTEREST OF R.R.

North Dakota State Hospital,	)	Stutsman County Case # 04-R-328
	)	
Petitioner/Appellee,	)	
	)	
-vs-	)	
	)	
R.R.,	)	
Respondent/Appellant.	)	

BRIEF OF APPELLANT

Appeal from the Order for Hospitalization and Treatment
Dated August 19, 2004

Southeast District Court Judge
Honorable John E. Greenwood

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred by not ordering a less restrictive alternative for treatment under N.D.C.C. § 25-03.1-21(1) and N.D.C.C § 25-03.1-40(2).

2. Whether the prescribed treatment ordered is punishment prohibited under N.D.C.C. § 25-03.18.1(2)(b)?

STATEMENT OF THE CASE

On August 19, 2004, Honorable John E. Greenwood entered a ninety-day order for hospitalization and treatment committing R.R. to the North Dakota State Hospital until November 19, 2004, or until further order of the court. (App. p. 2) R.R. now appeals this order to the North Dakota Supreme Court.

Prior to this order, R.R. received treatment at the North Dakota State Hospital on a fourteen-day order entered by the District Court in Ward County, North Dakota on August 6, 2004. This order was entered subsequent to a petition for involuntary commitment signed by petitioner, Paul D. Olson, M.D., treating physician at the emergency room where R.R. was given care on August 2, 2004. (App. p. 8) Dr. Olson's report states that R.R. was brought to the emergency room for the second time that day after displaying symptoms of mental illness. R.R. had just been released from North Dakota State Hospital on July 27, 2004.

At the treatment hearing on August 19, 2004, the court made oral findings on the record and found there was clear and convincing evidence that R.R. was a mentally ill person as defined by statute and continued to be a person requiring treatment, and that there was no alternative treatment available appropriate for R.R.. The court then issued an order for hospitalization and treatment on August 19, 2004. (App. p. 2) R.R. filed a notice of appeal on September 17, 2004 pursuant to N.D.C.C. § 25-03.1-29 and Rule 2.1 N.D.R.App.P., respectfully seeking review by the North Dakota Supreme Court of the ninety-day order. (App. p. 1).

STATEMENT OF FACTS

R.R. is diagnosed with schizoaffective disorder, changed from a diagnosis of bi-polar disorder since his last admission to the North Dakota State Hospital. Since 1982, R.R. has had over twenty admissions to the North Dakota State Hospital. When he was released from the North Dakota State Hospital on July 27, 2004, he was sent back to Minot with medication. He was under no order to receive follow-up psychiatric services. Treating psychologist, Lincoln D. Coombs, Psy.D., testified that R.R. was admitted to the North Dakota State Hospital on August 6, 2004 following an incident at Trinity Hospital in Minot, North Dakota where R.R. displayed threatening and psychotic behavior. In the Report of Examination (App. p. 6), Dr. Coombs states that R.R. "exhibits manic behaviors including rapid speech, psychomotor agitation, flight of ideas, and distractibility" and purports a diagnosis of Schizoaffective Disorder, a change from just days before during R.R.'s last admission to the North Dakota State Hospital when Dr. Coombs had purported a diagnosis of Bi-Polar Disorder with malingering. R.R. prior admission had been spent on a "legal-hold" at the secure (forensic) unit at the North Dakota State Hospital.

Dr. Coombs further testified that he believed R.R. to be a person who is mentally ill and in need of treatment. He also concluded that there was no appropriate alternative treatment available to R.R. other than in-patient hospitalization. Dr. Coombs testified that R.R. was taking his medications willingly and that R.R. seems to be doing better than his last admission so that, even though R.R. was still on the secure (forensic) unit at the time of the August

19, 2004 hearing, it was his plan to step R.R. down a level to a less secure, albeit locked, unit as soon as possible. Dr. Coombs also related that there had been some kind of mix-up with R.R.'s medicine upon his last discharge and that since R.R. did not have access to his medication he had not been taking his medication after discharge as had been planned. Hence, R.R. ran into difficulties managing his illness.

R.R. neither called any witnesses nor testified on his own behalf.

LAW AND ARGUMENT

1. R.R. asserts that the district court erred by not ordering a less restrictive treatment alternative pursuant to N.D.C.C. § 25.03.1-21; 25-03.1-40(2)

When an individual is found by the trial court to be a "person requiring treatment" under N.D.C.C. § 25.03.1-02(12), he or she has the right to the least restrictive conditions necessary to achieve the purposes of treatment. N.D.C.C. § 25.03.1-21; 25-03.1-40(2). The North Dakota Supreme Court held in In the Interest of J.K., 1999 ND 182, 599 N.W.2d 337 (N.D. 1999) that the district court is required to make a two prong assessment: (1) whether a treatment program other than hospitalization is adequate to meet the individual's treatment needs, and (2) whether an alternative treatment program is sufficient to prevent harm or injuries which an individual may inflict on himself or others. Furthermore, the district court must find, by clear and convincing evidence, that the alternative treatment is not adequate or that the hospitalization is the least restrict alternative. Id.

N.D.C.C. § 25-03.1-21 (1) states:

> 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.

Additionally, N.D.C.C.§ 25-03.1-01 provides that "the provisions of this chapter are intended by the legislative assembly to: (5) Encourage, whenever appropriate, that services be provided within the community. R.R. asserts that little, if any, meaningful attempt was made by the petitioner to fully explore suitable and available treatment alternatives.

In the report of examination and report assessing availability and appropriateness of alternate treatment prepared by Lincoln Coombs, Psy.D., "human service center", "medication monitoring", "psychiatric follow-up", "representative payee", and "structured living center (??)" were listed respectively as the alternatives available to hospitalization. "In some cases, a reporting doctor may reasonably conclude that less restrictive alternative to hospitalization simply do not exist." In the Interest of J.S., 545 N.W. 2d 145, 148 (N.D. 1996).

However, some things just don't add up in this case. First, R.R. was released straight back into the community on July 27, 2004 following a ninety-day stay at the secure (forensic) unit at the North Dakota State Hospital. Second, for whatever reason, there was a mix-up with R.R.'s medication that he was to take to treat his Bi-Polar Disorder following discharge resulting in R.R. not getting his medication. Oddly enough, there apparently was no psychiatric follow-up required, nor medication-monitoring put in place upon R.R's July 27, 2004 discharge. Third, even though Dr. Coombs testified that during R.R.'s prior admission that it was his belief that R.R. was malingering (i.e. "faking") his illness to get out of consequences for an alleged criminal act, he now believes R.R. really does have a mental illness and has decided on a new diagnosis of

Schizoaffective Disorder for him. It appears there has been an unusual swing from believing R.R. could be released straight into the community to the current opinion that the only available treatment appropriate for R.R. is in a locked forensic unit.

The findings of the district court are critical to make certain the basis of the district court's decision is clearly articulated and shows the careful and serious consideration so clearly intended in the contest of an involuntary commitment proceeding in fact has been given. In the Interest of Palmer, 363 N.W.2d 401. 403 (N.D. 1985). Since there is insufficient evidence that lesser restrictive treatments have been fully explored and, given the episode of the last discharge, R.R. argues that he deserves the opportunity to experience an alternative treatment/placement to the highly restrictive environment he now endures.

2. R.R. argues that the prescribed treatment ordered is punishment as prohibited under N.D.C.C. § 25-03.18.1(2)(b).

According to N.D.C.C. § 25-03.18.1(2)(b), involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment. Although, R.R. is not making medication part of this issue, he is relying on this statute to argue that the treatment he is receiving, that is the treatment on the secure (forensic) unit, is the very kind of punishment of which the intent and purpose of this statue is meant to prohibit.

Specifically, R.R. is back on the GM Ward, which is known as the secure (forensic) unit, at the North Dakota State Hospital even though this time there is absolutely no evidence to substantiate a legal-hold justification. When questioned about R.R.'s placement on this most restrictive of all units, Dr. Coombs conceded that R.R. was doing much better, was complying with his medication, and had had no incidents of violence or property damage since his admission on August 6, 2004. As such, Dr. Coombs then testified that it was planned for R.R. to be stepped down to a less restrictive, although locked, unit such as L-400. Upon hearing this, R.R. chose not to call any witnesses nor testify on his own behalf because he generally was satisfied with getting treatment if a lesser restrictive environment, such as L-400, was to be his placement.

Since that time however, R.R. has requested to appeal the court's order for hospitalization and treatment because he remains on the secure (forensic) unit and prays for relief from that very restrictive environment.

R.R. argues that he is being literally held in a prison environment wherein he is under no legal hold, nor has committed no crime. Rather, he is a person who requires treatment for a mental illness. R.R. does not argue the court's findings that he is a person with a mental illness in need of treatment. On the contrary, R.R. wants treatment, that is, appropriate treatment. He willingly is taking his medication and is trying, even according to Dr. Coombs' testimony, to get along better in the unit. But, R.R. asserts, being held in a secure (forensic) unit is causing him undue stress and anxiety, which makes it more difficult for him to get well. In this manner, R.R. relies on N.D.C.C. § 25.03.1-21 and N.D.C.C. §

25.03.1-40(2) that he has a right to be treated in the least restrictive environment available, even if that means being in another locked, albeit not forensic, ward and that his treatment should not be used as a means of punishment.

R.R. does not deny that he may not be the most jovial, easy-going person on the face of the planet. But, having a "difficult personality" which may tax others' patience is not sufficient to justify placement on the forensic unit so that he does not "bother" staff on the regular wards. In this regard, R.R. argues that his "treatment" on the forensic unit is really veiled punishment as prohibited under N.D.C.C. § 25.03.1-18.1(2)(b).

R.R. also asserts that how he was discharged from the North Dakota State Hospital on July 27, 2004, including being shocked by the transition from a three-month long stay in a forensic unit straight back into the community with no support services or follow-up planned, not to mention the medication issue, in fact set him up for failure in terms of managing his mental illness "on the outside". It then probably should not have been a surprise when he began displaying symptoms of his mental illness within a week of this discharge. Upon discharge, the North Dakota State Hospital/Dr. Coombs could have petitioned the court for a continuing treatment order for up to one year, which would have provided a "safety net" for R.R. and helped with his transition back into his community. He chose not to do this. Rather, Dr. Coombs' actions were consistent with his prior testimony and report that he felt R.R. was malingering. However, now all of a sudden, it becomes clear to Dr. Coombs that R.R. is not only mentally ill but is so mentally ill that he changes R.R.'s baseline diagnosis from Bi-Polar Disorder to

Schizoaffective Disorder in a ten-day time period? R.R. asserts that this is, at best, very odd. If, in fact, Dr. Coombs had been treating R.R. during the prior ninety-day order and had any kind of rapport with R.R. whatsoever, shouldn't some of these "red flags" have been apparent? Shouldn't have Dr. Coombs recognized that R.R. did, in fact, have a mental illness and was not "faking" it? Shouldn't have the responsible course of action for Dr. Coombs been to see that R.R. had the tools available to him to succeed in his transition? Yet, as presented through testimony, this clearly was not done. R.R. uses this example as one illustration of the point that the "treatment" he receives on the forensic unit really is not treatment at all, at least not the appropriate kind treatment for mental illness that R.R. has a right to under the statutes of North Dakota.

Therefore, R.R. asserts that the district court erred in its finding of continued hospitalization, because the petitioner failed to present clear and convincing evidence that a lesser restrictive treatment is not available or adequate to prevent harm to R.R. or others.

As such, R.R. seeks a modification of the District Court's hospitalization and treatment order and prays for relief in the form of an alternative, less restrictive treatment order.

CONCLUSION

R.R. appeals from the District Court's Hospitalization and Treatment Order dated August 19, 2004 and asserts his reasons stated in the above law and argument. R.R. asserts that the District Court erred in its order because the evidence and testimony provided is insufficient to show that there is no

appropriate alternative, less restrictive treatment available to R.R.. He also asserts the treatment he receives is punishment prohibited by law. Therefore, R.R. respectfully requests the order for hospitalization and treatment order be either reversed or remanded so that appropriate treatment can be provided and prays for relief accordingly.

Dated this 17 day of September, 2004.

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