

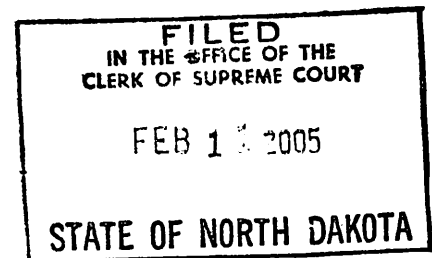
ORIGINAL

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA
IN THE INTEREST OF R.F., RESPONDENT**

Stutsman County # 2004-R-472

20050053

Supreme Court #



BRIEF OF APPELLANT

**APPEAL FROM THE ORDER FOR
HOSPITALIZATION AND TREATMENT
DATED DECEMBER 27, 2004, ISSUED
IN STUTSMAN COUNTY DISTRICT COURT
JAMESTOWN, NORTH DAKOTA
BY THE HONORABLE MIKAL SIMONSON**

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TABLE OF AUTHORITIES

1 **CASES:**

2 In re J.S., 545 NW2d 145 (N.D. 1996)

3 Interest of D.T., 2001 ND 203, 636 N.W.2d 921

4 Interest of D.Z., 2002 ND 132, 649 N.W.2d 231

5 Interest of J.A.D., 492 N.W.2d 82 (N.D. 1992)

6 Interest of Kupperion, 331 N.W.2d 22 (N.D. 1983)

7 **STATUTES AND RULES:**

8 N.D.C.C. § 25-03.1-01

9 N.D.C.C. § 25-03.1-17

10 N.D.C.C. § 25-03.1-21(1)

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ISSUES

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2 1. Whether in-patient hospitalization is the least restrictive form of treatment for

3 R.F.

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1 **STATEMENT OF THE CASE**

2 This is an expedited mental health appeal. On December 8, 2004, a petition
3 for the involuntary commitment of R.F. was filed in Grand Forks County District
4 Court. (Appendix pp. 2-6) A preliminary hearing pursuant to N.D.C.C. § 25-03.1-17
5 was held in Grand Forks County on December 13, 2004. (Appendix pp. 7-8)
6 Following that hearing, the Honorable Bruce Bohlman found probable cause to
7 believe that R.F. is mentally ill and a person requiring treatment and ordered him to
8 undergo treatment at the North Dakota State Hospital for a period not to exceed 14
9 days. (Appendix p. 8)

10 The North Dakota State Hospital filed a report on the appropriateness of
11 alternative treatment (Appendix pp. 11-12) and a report of examination, (Appendix
12 pp. 13-21) and a treatment hearing was scheduled for December 27, 2004.
13 (Appendix p. 9) The hearing was held on that date by interactive television.
14 (Appendix p. 9) Following the hearing, the Honorable Mikal Simonson issued an
15 order for hospitalization and treatment of R.F. until March 27, 2005, a period of 90
16 days, or until further order of the court. (Appendix p. 22)

17 On January 21, 2005, Judge Simonson issued an order extending the time to file a
18 notice of appeal until February 11, 2005. (Appendix p. 23) Notice of appeal was
19 filed within the extension granted by the court. (Appendix p. 24)

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STATEMENT OF FACTS

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2 R.F. is a 64 year old resident of Minnesota. (Transcript p. 16) R.F. had
3 been living independently in a rented home in Sauk Centre, Minnesota for six years
4 before moving to Crookston, Minnesota for about one month before his
5 hospitalization. (Transcript pp. 17-18) R.F. receives Social Security Disability
6 Benefits of more than \$900.00 per month. (Transcript p. 19) He had been under
7 the regular care of Dr. Rasmussen of Alexandria, Minnesota, (Transcript p. 18)
8 whom he saw every three or four months. (Transcript p. 26) He had seen Dr.
9 Rasmussen as recently as November 4th or 5th. (Transcript p. 27)

10 R.F. has had a longstanding diagnosis of bipolar disorder. (Transcript p. 5;
11 23) He has been taking medication for that condition for at least eleven years.
12 (Transcript p. 24) While at a shelter in Crookston, Minnesota, R.F. accidentally
13 took an overdose of Lithium. R.F. admitted the overdose, saying, "... I just slipped
14 up. I didn't know how many I was taking." (Transcript p. 22) He attributed the
15 overdose to two factors. First, he was worried about something which probably
16 caused some distraction. (Transcript p. 18) Secondly, it was so dark at the mission
17 that he simply could not see how many pills he was taking. He stated, "And it was
18 so dark there I couldn't see them at night, and they didn't like when you turned the
19 light on." (Transcript p. 20)

20 On December 4, 2004, R.F. traveled to Altru Hospital in Grand Forks to have
21 his heart tested. (Transcript pp. 16-17) At the hospital he was confused and

1 disoriented, which was linked to Lithium overdose. (Transcript p. 5) Testing
2 revealed his Lithium level at more than twice the normal level. (Transcript p. 9)
3 Such high levels of Lithium can lead to cardiac arrest. (Transcript p. 9) R.F. was
4 admitted to Altru Hospital, where he remained on the psychiatric ward until admitted
5 to the North Dakota State Hospital on December 9, 2004. (Appendix p. 4)

6 After admission to the North Dakota State Hospital, Dr. William Pryatel
7 noticed that R.F. had impaired cognitive abilities and a poor memory. (Transcript p.
8 5) Psychological testing revealed that R.F. has dementia. (Transcript p. 6) Dr.
9 Pryatel was of the opinion that the dementia was in its earlier stages. (Transcript p.
10 13)

11 The bipolar disorder is under control with medication. (Transcript p. 13)
12 R.F. wants to be released to the community. (Transcript p. 20) He was arranging
13 for housing (Transcript p. 19) and is willing to remain on his medication, which he
14 can get from a pharmacy. (Transcript p. 26)

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1 **LAW AND ARGUMENT**

2 This court reviews the trial court’s findings in mental health proceedings
3 under the clearly erroneous standard of review. Interest of D.Z., 2002 ND 132, ¶6,
4 649 N.W.2d 231. A finding of fact is clearly erroneous if it is induced by an
5 erroneous view of the law, if there is no evidence to support it, or if, although there
6 is some evidence to support it, on the entire evidence, the court is left with a
7 definite and firm conviction that a mistake has been made. Id.

8 North Dakota’s statutory procedures guarantee that a mental health patient
9 has a right to the least restrictive conditions necessary to achieve the purpose of
10 treatment. Interest of D.T., 2001 ND 203 ¶ 12, 636 N.W.2d 921. If the court finds
11 that a treatment program other than hospitalization is adequate to meet the
12 respondent’s treatment needs and is sufficient to prevent harm or injuries which the
13 individual may inflict upon the individual or others, the court shall order the
14 respondent to receive whatever treatment other than hospitalization that is
15 appropriate for a period of 90 days. N.D.C.C. § 25-03.1-21(1) The District Court
16 must find, by clear and convincing evidence, that alternative treatment is not
17 adequate or that hospitalization is the least restrictive alternative. Interest of D.T., ¶
18 12.

19 R.F. has a long history of treating his mental illness outside the confines of a
20 hospital. He has been on medication for his bipolar disorder for at least the last 11
21 years. During that time he has lived independently thanks to proper medication.

1 He has no history of failing to take medication or failing to seek psychiatric care. In
2 fact, the record shows that R.F. willingly took medication and maintained contact
3 every three or four months with a psychiatrist.

4 A court can use what has happened in the past as prognostic evidence to
5 help predict future conduct. In re J.S., 545 N.W.2d 145, 149 (N.D. 1996). Because
6 R.F. has been able to safely reside in the community, and has properly sought
7 treatment for his mental illness in the past, it is easy to predict that he will continue
8 to do so. He also testified that he would continue to seek proper care. When
9 asked what he would do if he needed to get his pills refilled he replied, "Isn't there a
10 drug store in town here?"

11 Making its decision to hospitalize R.F., the court stated, "[R.F.] does not have
12 a home to return to at this point. He does receive \$900 per month in Social Security
13 disability, which is some income that would be -- could assist with low income
14 housing. And I think it is possible that he could get an apartment, although his
15 planning and the necessary steps to apply and those types of things have not
16 occurred at this point." (Transcript p. 29) The court further stated, "However,
17 discharging him to the streets certainly is not an option, and another place, another
18 setting has not been arranged." (Transcript p. 29)

19 The court underestimates R.F.'s abilities. R.F. was arranging low income
20 housing. While in Crookston he had been able to find a place to live without any
21 problem. While there, he at first stayed with friends, but when he could no longer

1 stay with them, he went to a shelter. He is resourceful, and since he has income,
2 finding lodging should not present R.F. with great difficulties. Even if he cannot
3 immediately find a place to live, there is no presumption that a homeless person will
4 neither will be able to fend for himself nor be able to take care of his needs.
5 Interest of J.A.D., 492 N.W.2d 82, 85 (N.D. 1992) R.F. has financial resources, and
6 a history of taking medication, seeking psychiatric and medical care and finding
7 proper shelter. It is clearly erroneous under those facts for the court to order
8 hospitalization rather than alternative treatment through the local Human Service
9 Center.

10 Dr. Pryatel expressed his concern that the recent onset of dementia could
11 prevent R.F. from properly taking medication. However, that condition is in its early
12 stages, and it did not prevent R.F. from seeking medical treatment or obtaining
13 shelter just prior to his admission to the hospital. He was able to do that without
14 any assistance from mental health professionals. With the additional safeguards
15 available through the Human Service Center, safety should be insured for both R.F.
16 and the community. It is public policy to safeguard individual rights and encourage,
17 whenever appropriate, that services be provided in the community. N.D.C.C. § 25-
18 03.1-01.

19 In the report assessing the availability of alternative treatment, case
20 management, psychiatric appointments and continued medication were presented
21 as alternatives to hospitalization. (Appendix p. 11) There was no evidence

1 presented to rule out that alternative. The court must find by clear and convincing
2 evidence that alternative treatment is not adequate. Interest of D. T., ¶ 12. The
3 burden of proof in these proceedings lies with the petitioner. In Interest of
4 Kupperion, 331 N.W.2d 22, 26 (N.D. 1983). It is when other forms of treatment like
5 community placement and outpatient treatment have unsuccessfully been utilized
6 that there may be cause for hospitalization. Interest of J.A.D., at 87. As in J.A.D.,
7 these alternatives have not been attempted.

8 **CONCLUSION**

9 The judgment of the lower court should be reversed and an order of
10 alternative treatment entered.

Dated this 11th day of February, 2005.

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