

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

IN THE INTEREST OF R.F., RESPONDENT

North Dakota State Hospital,)	
Petitioner & Appellee)	Supreme Court No.
)	20050053
)	
v.)	Stutsman County No.
)	04-R-472
)	
R.F.,)	
Respondent & Appellant)	

FILED IN THE OFFICE OF THE CLERK OF SUPREME COURT FEB 18 2005 STATE OF NORTH DAKOTA
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APPELLEE'S BRIEF

**Appeal from the Order for
 Hospitalization and Treatment
 Entered December 27, 2004,
 Issued in Stutsman County District Court
 by the Honorable Mikal Simonson
 Judge of the Southeast District Court**

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ISSUES PRESENTED

1. Whether the district court's finding that treatment other than hospitalization would not be adequate to meet R.R.'s needs or sufficient to prevent harm or injuries that he may inflict on others was clearly erroneous?

**STATEMENT OF THE CASE
AND
STATEMENT OF FACTS**

1. Petitioner and appellee North Dakota State Hospital (“NDSH”) will join in the appellant’s Statement of the Case. NDSH also joins the appellant’s Statement of Facts, subject to the following additions:

2. Although Dr. Pryatel testified the dementia appeared to be in its earlier stages, he indicated that R.F. already exhibited impaired cognitive ability and “very poor” memory. (Transcript, p. 5 lines 23-25). Likewise, while the doctor was “hopeful” that medication to impede the dementia’s progress could be identified and administered “in the future” (Transcript, p. 14 lines 14-21), he cautioned that further testing needed to be done; in fact, at the time of the hearing the cause of the dementia was still unknown. (Transcript, p. 8 lines 21-23; p. 13).

3. Dr. Pryatel also testified that dementia may have been a cause of R.F.’s accidental overdose of Lithium (Transcript, p. 7 lines 15-20). Moreover, despite R.F.’s insight into his condition and willingness to take his medication (Transcript, p. 8 lines 12-16; p. 20 lines 6-8), the doctor thought R.F. would be unable to manage his various medications for bipolar disorder, dementia, and hypothyroidism without supervision. (Transcript, p. 8, line 18 through p. 9, line 7; p. 10, line 19 through p. 11, line 3). The hospital staff did think that R.F. would be ready for placement in a nursing home or other managed care facility in the near future. (Transcript, pp. 11-12).

LAW AND ARGUMENT

4. THE DISTRICT COURT'S FINDING THAT ALTERNATIVE TREATMENT SUITABLE TO R.F.'S NEEDS WAS UNAVAILABLE WAS NOT CLEARLY ERRONEOUS

5. The district court entered an order committing R.F. to NDSH for not more than 90 days (N.D.C.C. §25-03.1-22(1)), after finding that (i) R.F. was mentally ill, (ii) there was a substantial likelihood of deterioration in R.F.'s physical health due to his poor judgment and consequent inability to manage his medications; and (iii) an alternative treatment order was not warranted until a suitable care facility had been found, since "discharging him to the streets [in mid-winter] is certainly not appropriate." (Transcript, p. 29). The petitioner must prove each of these elements by clear and convincing evidence. N.D.C.C. §25-03.1-19; Interest of J.S., 499 N.W.2d 604, 606 (N.D. 1993).

6. The appellant concedes that the first two findings were correct, and thus confines his appeal to the finding on the availability and appropriateness of treatment other than hospitalization. (N.D.C.C. §25-03.1-21(1)). This "two-fold inquiry" requires clear and convincing evidence that no less restrictive form of treatment exists which is both adequate to meet R.F.'s needs and available. However, the district court's finding that NDSH had met its burden will not be overturned unless this Court determines it was "clearly erroneous." Interest of J.S., 499 N.W.2d at 606. Under this standard of review, the lower court's findings must be sustained unless this Court is "firmly convinced [they are] not supported by clear and convincing evidence." Interest of R.N., 513 N.W.2d 370, 371 (N.D. 1994). A finding is "sufficient if [it] enables this court to understand the

reasoning behind the court’s decision,” and is not “consider[ed] . . . in a vacuum, but read in light of the entire record.” Id. at 371-72.

7. R.F. is a homeless man who was committed to NDSH after he accidentally ingested a potentially-fatal overdose of Lithium, which he has taken for many years to treat bipolar disorder. He blamed his mistake on “worrying” over his 94-year-old mother, although the exact reason wasn’t clear (Transcript, p. 18, lines 8-10; p. 21, lines 1-5); and on darkness, i.e., he couldn’t turn on the lights at the homeless shelter because “there was three guys in my room and they hollered like heck at me if I turned the lights on.” (Transcript, p. 22, lines 3-5). Testing at NDSH revealed R.F. also suffers from dementia, cause unknown, as manifested by impaired cognitive abilities and “very poor” memory. Dr. Pryatel testified “confusion” probably caused the accidental overdose, and that R.F. could no longer safely manage his own medication due to the dementia. (See Statement of Facts, above). In fact, the doctor had switched the medication for R.F.’s bipolar condition to Depakote because of its lower toxicity in the event of another overdose. (Transcript, p. 10).

8. As the appellant notes, Dr. Pryatel said the dementia seemed to be at an early stage. NDSH also has no reason to doubt R.F. took medication for his bipolar disorder without supervision and without mishap for 10+ years prior to this incident, or that he was fully capable of living on his own (with a few checkups a year by a psychiatrist in Alexandria, MN) until now. But there was clear evidence at the treatment hearing that R.F.’s mental abilities are now impaired by dementia – in addition to Dr. Pryatel’s testimony, R.F.’s poor memory and unclear reasoning were evident during his own testimony. Likewise, there was clear proof that the “poor self-control or judgment” caused by the onset of

dementia posed a “substantial risk” to R.F.’s health – he took so much Lithium that his blood levels were more than the twice “high normal”, so much that he easily could have given himself a heart attack (Transcript, p. 9, lines 8-25). Dr. Pryatel said dementia was a contributing, perhaps primary, cause of the overdose. R.F. initially blamed his near-fatal mistake on “worrying about his family”, then seemed to discard that explanation in favor of “taking Lithium in the dark so my roommates wouldn’t holler like heck.” (Transcript, p. 22, lines 10-14). The district court found the doctor’s reasoning and conclusions more credible, and was convinced that in his current condition R.F. cannot safely administer his medications without supervision. The appellant has not shown that these findings were clearly erroneous, and does not contest the testimony that a suitable basic care facility had not yet been identified. Therefore, the district court’s decision must be upheld.

CONCLUSION

9. For the foregoing reasons, petitioner and appellee North Dakota State Hospital respectfully requests that the Court affirm the district court’s findings and its order that R.F. undergo treatment at the State Hospital for a period not to exceed 90 days.

RESPECTFULLY SUBMITTED this 18th day of February, 2005.

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) :ss
COUNTY OF STUTSMAN)

Jay A. Schmitz, being first duly sworn on oath, does depose and say:

That he is a citizen of the United States, of legal age, and not a party to the above entitled action.

That on the 18th day of February, 2005, the affiant caused the Appellee's Brief in the matter of In the Interest of R.F. to be filed electronically with the Clerk of the North Dakota Supreme Court by attaching the computer file containing said Brief to an e-mail transmission sent to the following address:

supclerkofcourt@ndcourts.com

That the Appellee's Brief was served electronically on counsel for the appellant herein by attaching the computer file containing said Brief to an e-mail transmission sent to the following address provided by an employee of the appellant's attorney herein:

mermecklaw@hotmail.com

That to the best of the affiant's knowledge, information and belief, such addresses as given above were the actual e-mail addresses of the parties intended to be served.

Signed: Jay A. Schmitz

SUBSCRIBED and SWORN to before me this 18th day of February, 2005.

Signed: Julie A. Swangler
NOTARY PUBLIC
My Commission Expires: March 15, 2005