

ORIGINAL

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

20050209

IN THE INTEREST OF C.H., RESPONDENT

Stutsman County # 2005-R-122

Supreme Court #

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUN 22 2005

STATE OF NORTH DAKOTA

BRIEF OF APPELLANT

APPEAL FROM THE

ORDER FOR HOSPITALIZATION AND TO TREAT WITH MEDICATION

ISSUED MAY 20, 2005

IN STUTSMAN COUNTY DISTRICT COURT

JAMESTOWN, NORTH DAKOTA

BY THE HONORABLE JOHN T. PAULSON

Thomas E. Merrick, #04024
Merrick and Schaar, P.C.
Box 1900
Jamestown, ND 58402-1900
(701) 252-2090

Attorney for Appellant

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES.....	ii
ISSUE.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	4
LAW AND ARGUMENT.....	6
CONCLUSION.....	8

TABLE OF AUTHORITIES

<u>CASES:</u>	Page
<u>In Interest of D.H.</u> , 507 N.W.2d 214 (N.D. 1993).....	7
<u>In Interest of I.K.</u> , 2003 ND 101, 663 N.W.2d 197.....	6, 8
<u>In re M.H.</u> , 475 N.W.2d 552 (N.D. 1991).....	6, 7
<u>Interest of D.Z.</u> , 2002 ND132, 649 N.W.2d 231.....	6
<u>Interest of H.G.</u> , 2001 ND 142, 632 NW2d 458.....	6
 <u>STATUTES AND RULES:</u>	
N.D.C.C. § 25-03.1-02(12)	1
Rule 2.1(d) N.D.R.App.P.....	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

ISSUE

1. Whether C.H. is a person requiring treatment as defined by N.D.C.C. § 25-03.1-02(12).

STATEMENT OF THE CASE

1
2 On April 20, 2005, a petition was filed in Grand Forks County District Court
3 by Mark Milligan, the extended care coordinator at the Northeast Human Service
4 Center, to have C.H. involuntarily committed. (Appendix p. 2) C.H. was emergency
5 committed at the North Dakota State Hospital on April 21, 2005. (Appendix p. 10)
6 Following a preliminary hearing, the Honorable Sonja Clapp, District Court Judge,
7 issued an order to treat C.H. at the North Dakota State Hospital for a period of
8 fourteen days ending on May 11, 2005. (Appendix p. 7)

9 On May 4, 2005, Dr. William Pryatel, MD filed a request to treat C.H. with
10 medication. (Appendix p. 19) The treatment and medication hearing were
11 scheduled for May 11, 2005. (Appendix p. 21)

12 C.H. appeared in court on May 11, and requested a continuance so that he
13 could obtain new counsel. (Appendix p. 22) The court rescheduled the hearing for
14 May 20, 2005, (Appendix p. 23) and instructed court appointed counsel to appear at
15 the May 20, hearing unless notified that different counsel has been obtained. (Tape
16 recording of May 11 hearing).

17 On May 20, 2005, a treatment and medication hearing was held in the
18 Stutsman County Courthouse. Following the hearing, the court issued findings of
19 fact, conclusions of law and an order requiring C.H. to undergo treatment at the
20 North Dakota State Hospital for a period not to exceed 90 days and authorizing the
21 North Dakota State Hospital to medicate C.H. involuntarily with Risperdal,
22 Haloperidol, and Olanzapine until August 19, 2005. (Appendix p. 24) C.H. filed a

1 timely notice of appeal. (Appendix p. 26)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

STATEMENT OF FACTS*

1
2 C.H. was admitted to the North Dakota State Hospital (NDSH) on April 21,
3 2005 due to problems in the Grand Forks community. He has had three other
4 admissions between 1998 and 2003. Prior to his admission to NDSH, C. H. was
5 living in Galesburg, ND and performing farm labor. He is 33 years old and
6 divorced.

7 He bears a diagnosis of Schizoaffective Disorder (Bi-Polar Type). His
8 symptoms include anger, irritability, and rapid and pressured speech. At NDSH he
9 had been angry and confrontational with the staff and was refusing medication
10 except for occasionally taking a very small dose of Seroquel to calm himself. A
11 normal dose of Seroquel would be 600mg per day, but he would take just 25mg,
12 and only when he thought he needed it. He had voluntarily taken Seroquel on three
13 occasions since his admission.

14 According to Tim Boyle, a Grand Forks County Deputy who provides
15 courthouse security, C. H. had come to the courthouse about seven times over a
16 two week period. His behavior was erratic; he was not threatening but would
17 sometimes cry or say bizarre things. C. H. cooperated with the security procedures,
18 and did not cause any physical confrontation at the courthouse.

19 On April 19 C.H. came to the Northeast Human Service Center (NEHSC),
20 and talked to Mark Milligan, a social worker. C. H. wanted his medical records
21 changed to remove the mental illness diagnosis. He was accusing NEHSC of
22 spreading the diagnosis around town, thereby preventing him from getting

1 employment or getting into the National Guard. He talked of an ongoing
2 psychological operation against him. According to Milligan, C. H. was there for 30-
3 40 minutes and appeared to be paranoid and manic. C. H. was not aggressive, and
4 has never been aggressive at NEHSC, but was loud and using foul language.

5 C. H. denies any mental illness and denies the need for medication. He
6 blames most of his problems on false statements made by his father. He claims he
7 had gone to the courthouse so frequently in an unsuccessful attempt to obtain a
8 restraining order against his parents. He admitted making comments to Judge
9 Kleven about her ruling in an earlier mental health proceeding, but denied
10 threatening the judge. He denies being a danger to himself or others. He alleges
11 that because he is loud, vulgar and speaks his mind he is misunderstood.

12

13

14

15

16

17

18

19 The statement of facts is from the tape recording of the hearing, which is
20 substituted for a transcript pursuant to Rule 2.1(d) N.D.R.App.P.

21

LAW AND ARGUMENT

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

The petitioner must prove by clear and convincing evidence that C. H. is a person requiring treatment. In Interest of I.K., 2003 ND 101, ¶ 15, 663 N.W.2d 197. There is a presumption the respondent does not require treatment. Interest of H.G., 2001 ND 142, ¶ 4, 632 N.W.2d 458.

Determining whether an individual is a person requiring treatment is a two-step process. Interest of H.G., ¶ 4. First, the court must find that the individual is mentally ill. Second, the court must find there is a reasonable expectation that if the person is not treated, there exists a serious risk of harm to himself, to others, or to property. Id. As this court has pointed out, the statutory definition of a person requiring treatment is not the same as a medical opinion or diagnosis that such a person is in need of treatment. It may well be "conclusive" from a medical standpoint that a given individual requires treatment for that person's optimum health, but still not satisfy the statute. In this sense, a court should not accept as conclusive an opinion of a medical expert that a person requires treatment, unless that opinion is supported by facts. In re M.H., 475 N.W.2d 552, 554, n. 1 (N.D.

1 1991).

2 That is precisely the situation presented here. There may be sound medical
3 reasons to treat C. H., but the statutory standard has not been met. Treatment
4 might well benefit him, but that does not mean treatment is mandated. The
5 standard for involuntary commitment remains clear and convincing proof that the
6 mentally ill individual is a person who requires treatment as defined by statute, not
7 one who would benefit from treatment. In Interest of D.H., 507 N.W.2d 314, 316
8 (N.D. 1993).

9 There was not clear and convincing evidence that C. H. presented a serious
10 risk of harm to himself, others or property. In fact, the testimony demonstrated that
11 although C. H. is loud and persistent he is not a serious risk of harm to anyone. He
12 went to the Grand Forks County Courthouse at least seven times in a two week
13 period, and yet there were no incidents. The security guard said he found the
14 things C. H. said to be bizarre, but he also said C. H. was cooperative. Most
15 revealing, the security guard never had to intervene in C. H.'s dealings with the
16 courthouse staff. Likewise, social worker Mark Milligan of NEHSC spent 30-40
17 minutes with C. H. just prior to his admission to NDSH but articulated no risk
18 presented by C. H. during their encounter. He described C. H. as "paranoid and
19 manic" but did not mention any threatening speech or actions.

20 There was some testimony of C. H. previously showing aggression toward
21 his father and being in an altercation at a wedding party some years earlier. That
22 testimony was not descriptive of present behavior and there was no testimony that

1 C. H. would revert to such behavior if left untreated. Interest of I.K., ¶ 24.

2 The need to treat C. H. has not been shown by the clear and convincing
3 evidence required by our statutes. The lower court was clearly erroneous when it
4 determined that C. H. is a person requiring treatment.

5 **CONCLUSION**

6 The findings of the lower court that C. H. is a person requiring treatment are
7 clearly erroneous. The order for hospitalization and treatment with medication must
8 be reversed.

9 Dated this 20th day of June, 2005.

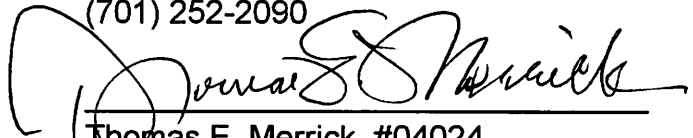
10 **MERRICK & SCHAAR, P.C.**

11 Attorneys for appellant

12 Box 1900

13 Jamestown, ND 58402-1900

14 (701) 252-2090

15 

16 Thomas E. Merrick, #04024

17 A member of the firm
18

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
 : ss
COUNTY OF STUTSMAN)

Sandra M. Young, being first duly sworn on oath, deposes and says: I am a citizen of the United States, over the age of 21 years and not a party to the above entitled action.

On the 20 day of June, 2005, I deposited in the United States Post Office of the city of Jamestown, North Dakota, an original and eight true and correct copies of the Brief of Appellant and Appendix.

The original and seven copies of the Brief of Appellant and Appendix were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Penny Miller, Clerk
North Dakota Supreme Court
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

One copy of the Brief of Appellant and Appendix were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Jay Schmitz
Assistant State's Attorney
511 2nd Ave SE
Jamestown, ND 58401

To the best of my knowledge, information and belief, such addresses as given above were the actual post office addresses of the parties intended to be so served. The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Appellate Procedure.

Sandra M. Young

Sandra M. Young

Subscribed and sworn to before me this 20th day of June, 2005.

Shirley M. Nitschke

Shirley M. Nitschke
Notary Public
State of North Dakota
My Commission Expires: 7-26-06

