IN THE SUPREME COURT

STATE OF NORTH DAKOTA

IN THE INTEREST OF C.H.



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| William Piyatel M.D.<br>Petitioner & Appellee | ) Supreme Court No.<br>20050209 | STATE OF NORTH DAKOTA |
| v. | ) Stutsman County No.<br>2005-R-122 | |
| C.H.,<br>Respondent & Appellant | ) | |

# APPELLEE'S BRIEF

**Respondent appeals the Order for Hospitalization and Treatment of May 20, 2005, by the Honorable John T. Paulson District Court, Stutsman County**

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## ISSUES PRESENTED

1. Was the district court's finding that C.H. is a person requiring treatment was clearly erroneous?

## STATEMENT OF THE CASE
## AND
## STATEMENT OF FACTS

1. Petitioner North Dakota State Hospital ("NDSH") joins appellant's Statement of the Case and Statement of Facts, subject to the following clarifications and additions:

2. The appellant's Statement of the Case (p. 2, lines 21-22) quotes the portion of the written Order for Hospitalization and To Treat With Medication ("Order") which authorizes NDSH to involuntarily administer "Risperdal, Haloperidol, and Olanzapine [to C.H.] until August 19, 2005" (see Appendix, p. 25). It should be noted that the listed medications are clinically "equivalent" anti-psychotic drugs, however, and thus only one of them will be administered to the Respondent at any given time.

3. In addition to threatening statements, C.H. does have some history of physical aggression and confrontational behavior, particularly with his father and other family members. Prior to his admission to NDSH in 2003, he threw his father against a wall, pushed his mother to the floor, and said he would kill them if they tried "to take his kids away"; he also was "beaten up" after he refused to quit "preaching" to some construction workers at a local bar. C.H.'s animosity toward his father was clear from his testimony; he attributed the altercation at the bar to the workers' "misunderstanding."

## LAW AND ARGUMENT

4. THE FINDING THAT C.H. REQUIRED TREATMENT BASED ON THE LIKELIHOOD OF SUBSTANTIAL DETERIORATION IN HIS MENTAL HEALTH WAS NOT CLEARLY ERRONEOUS

5. This appeal is limited to the Order for Hospitalization,[1] and more specifically, to the district court's Finding of Fact that C.H. presents a "serious risk of harm to self, others or property, and a substantial likelihood of [s]ubstantial deterioration in mental health which would predictably result in dangerousness to [C.H.], others, or property, based upon acts, threats, or patterns in [C.H.'s] treatment history, current condition and other relevant factors" (Appendix at p. 24), and therefore is a "person requiring treatment" pursuant to N.D.C.C. §25-03.1-02(12)(d). This Court recently summarized the standards of review applicable to this appeal:

6. [R]eview of an appeal under N.D.C.C. ch. 25-03.1 is limited to a review of the procedures, findings, and conclusions of the trial court. Balancing the competing interests of protecting a mentally ill person and preserving that person's liberty, requires trial courts to use a clear and convincing standard of proof while we use the more probing clearly erroneous standard of review. A trial court's 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

[1] It should be noted that although C.H. has not challenged the Order to Treat With Medication directly, NDSH concedes that the medication order would be invalid if the underlying Order for Hospitalization is set aside on this appeal.

entire evidence this Court is left with a definite and firm conviction 'it is not supported by clear and convincing evidence.' [Citations omitted]. In the Interest of D.A., 2005 ND 116, ¶11.

7. NDSH respectfully submits that the district court's finding must be upheld when reviewed under the three prongs of the "clearly erroneous" standard. The district judge obviously did not have an "erroneous view of the law"; the Order explicitly states that the findings of fact were based on "clear and convincing evidence," and the "requiring treatment" finding incorporates the language of Section §25-03.1-02(12)(d). Likewise, it clearly cannot be held that there is "no evidence to support" the finding, given that the Order enumerates behavior and statements by C.H. which evidenced his deteriorating mental state the Order. See Appendix at pp. 24-25. Hence, the only possible ground for reversal is that after looking at the entire record, this Court is left with a "definite and firm conviction that [the finding] is not supported by clear and convincing evidence." In the Interest of D.A., supra.

8. The trial court's written finding identifies some of the evidence showing that C.H.'s mental state was deteriorating and would continue to do so unless treated. Moreover, C.H.'s manic/delusional thought processes were obvious throughout his own testimony; by way of contrast, both Dr. Pryatel, the NDSH psychiatrist, and Mark Milligan, C.H.'s case manager from Northeast Human Services, testified that the Respondent does quite well in the community when he is on medication. NDSH respectfully submits that the trial court made the only finding possible from the evidence presented at the hearing; in any event, the record cannot support a "definite and firm

conviction" that there was insufficient evidence to find that C.H.'s mental state was declining.

9. N.D.C.C. §25-03.1-02(12)(d) also requires proof that C.H.'s mental deterioration gave rise to a reasonably predictable threat of harm to himself or others in light of the nature of his illness, his history, and his recent behavior. Although the written Order admittedly is less specific with respect to this aspect, a finding of fact is sufficient if it "enables this court to understand the reasoning behind the [trial] court's decision," and is not "consider[ed] . . . in a vacuum, but read in light of the entire record." In the Interest of R.N., 513 N.W.2d 370, 371-72 (N.D. 1994) (citation omitted). Dr. Pryatel testified that C.H. has a chronic mental illness (schizoaffective disorder, bi-polar type) which involves both delusional thoughts and extended periods of hyper-manic activity; thus, a risk of harm is to some extent inherent in the diagnosis. C.H. clearly has very poor insight as to his condition, and a pattern of discontinuing his medication if not subject to a treatment order. This Court has held that a respondent's "chronic mental illness [of] bi-polar disorder" and "tend[ency] to quit taking her medicine because she lacks insight into her illness . . . clearly and convincingly shows that R.N. suffers from a mental illness impairing her judgment and self control." Interest of R.N., 513 N.W.2d at 372.

10. Moreover, there was evidence of C.H.'s history of physical aggression and threats. "[A] court is entitled to consider what has happened in the past as relevant "prognostic" evidence of what is likely to occur in the future. [An] extensive treatment history, combined with [a doctor's] opinion that R.N. would deteriorate . . . if untreated, is clear and convincing evidence that she requires continued treatment." In the Interest of

R.N., 513 N.W.2d at 372-73. C.H. admitted on cross-examination that he assaulted his parents prior to his admission to NDSH in 2003 (although he minimized the incident and accused his father of abusing him). He also admitted to a confrontation with a groomsmen at his brother's groom's supper, in which he made vague references to "Judgment Day" (taken as threats by his brother, the groomsmen and others, but dismissed as a misunderstanding by C.H.). In fact, C.H. claimed he is always "misunderstood" – the vulgar comment he made to Judge Kleven at the Grand Forks Courthouse wasn't a threat; the construction workers in a local bar beat him up because they mistakenly believed he wouldn't stop "preaching" to them.

11. This history must be viewed in light of the testimony of his case manager and the deputy at the Grand Forks Courthouse about his increasingly-bizarre behavior and comments prior to admission to NDSH;[2] his own testimony about his efforts to get Human Services and the courts to destroy their "false" mental health records so he can join the "Special Forces"; and the unmistakably aggressive-confrontational impression he conveys in person. At the very least, a consideration of all this evidence does not leave one with a "definite and firm conviction" that the trial court's finding was just another "mistake" visited upon the Respondent by the unjust and/or misinformed world, i.e., it was not clearly erroneous and must be affirmed.

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[2] As noted in the appellant's Statement of Facts (at p. 4), Deputy Boyle said he did not see C.H. engage in any threatening or confrontational behavior. However, the deputy said he had security concerns about C.H. due to the continuous flow of bizarre statements and the fact that he seemed to be talking to an "imaginary friend."

## CONCLUSION

12. For the foregoing reasons, petitioner and appellee North Dakota State Hospital respectfully requests that the Court affirm the trial court's Order for Hospitalization And To Treat With Medication.

RESPECTFULLY SUBMITTED this 27th day of June, 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 27th day of June, 2005, the affiant caused the Appellee's Brief in the matter of In the Interest of C.H. 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 27th day of June, 2005.

Signed: Julie A. Swangler
NOTARY PUBLIC
My Commission Expires: March 15, 2011