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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

IN THE INTEREST OF K.G., RESPONDENT

20050266

Stutsman County #2004-R-211
Supreme Court #20050266

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BRIEF OF APPELLEE

STATE OF NORTH DAKOTA

APPEAL FROM THE CONTINUING TREATMENT ORDER

FOLLOWING CONTINUING TREATMENT HEARING

ISSUED MAY 11, 2005,

IN STUTSMAN COUNTY DISTRICT COURT,

JAMESTOWN, NORTH DAKOTA

BY THE HONORABLE JAMES M. BEKKEN

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STATEMENT OF THE CASE AND FACTS

The Appellee, the North Dakota State Hospital, hereinafter "Hospital", adopts the statement of the case and statement of the facts of the respondent/appellant, hereinafter "K.G.".

ISSUE PRESENTED

Whether the district court erred by ordering hospitalization and finding that "a treatment program other than hospitalization is not suitable to the Respondent's treatment needs" (App. p. 8) without requiring a more comprehensive Petition for Continuing Treatment (App. p. 15, 15a), Report Assessing the Availability and Appropriateness for the Respondent of Treatment Programs other than Hospitalization (App. p. 13, 13a), Report of Examination (App. p. 14, 14a), as well as more thorough testimony and statements from the Petitioner in its consideration of less restrictive treatment alternatives under N.D.C.C. §25-03.1-21, N.D.C.C. §25-03.1-23 and N.D.C.C. §25-03.1-31(1).

LAW AND ARGUMENT

I. THE PETITION, REPORT ASSESSING AVAILABILITY OF ALTERNATIVE TREATMENT, TESTIMONY, AND SUPPORTING DOCUMENTATION COMPLY WITH STATUTORY REQUIREMENTS.

This is a case where a reporting doctor reasonably concluded that less restrictive alternatives to hospitalization simply do not exist. K.G. stated in open court that she agreed with the recommendation for treatment described by the testifying doctor and was willing to follow the recommendation. The documentation filed by the Petitioner provided K.G. with sufficient notice of issues and the allegations of the Petition supporting the request for continued commitment.

In the Interest of J.S., 545 N.W.2d 145, 148 (N.D. 1996), the Court stated,

"In some cases, a reporting doctor may reasonably conclude that less restrictive alternatives to hospitalization simply do not exist."

Section 25-03.1-21(1), N.D.C.C., provides:

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. See In the Interest of D.P., 2001 ND 203, 636 N.W.2d 921.

In the case, In Interest of L.B., 452 N.W. 2d 75 (N.D. 1990), the respondent alleged that the forms failed to provide adequate detail of the allegations. The court stated at p. 78 that the report substantially complied with the requirements of the statute and as required under O'Callaghan v. L.B. 447 N.W. 2d 326,328 (N.D. 1989). Merely because the report listed no alternative treatment options due to L.B.'s resistance to alternative treatment does not render the report submitted void for purposes of Section 25-03.1-21(1).

In the Interest of Cynthia Nyflot, 340 N.W.2d 178 (N.D. 1983), the respondent asserted that the doctor's report failed to provide a clear explanation of how she arrived at the conclusion that the respondent was a person requiring treatment. The Court in Nyflot, at p. 184 stated that while the documents were somewhat limited, the facts in the case demonstrated that there was adequate notice of the issues and stated further that the facts on which the doctor based her conclusions were clearly stated in the record and were known to the respondent.

In the case now before the court, there are specifics supporting the allegations set forth in the documents. Moreover, the doctor testified extensively relative to the issues. K.G.'s testimony clearly demonstrated that she too was well aware of the issues. She acknowledged the mal-adaptive behavior, "cheeking medications" and self abusive actions, and her failures in prior alternative treatment efforts.

When an individual is found to be a person requiring treatment he has the right to the least restrictive conditions necessary to achieve the purposes of the treatment. In re J.K., 1999 ND 182, ¶15, 599 N.W.2d 337, N.D.C.C. §§ 25-03.1-21 and 25-03.1-40(2). The court must make a two-part inquiry: (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 the individual may inflict upon himself or others. In re J.K., at ¶15. The court must find by clear and convincing evidence that alternative treatment is not adequate or hospitalization is the least restrictive alternative. Id. This Court will not set aside the trial court's findings unless they are clearly erroneous. Id. See In the Interest of J.S., 2003 ND 138, ¶4, 667 N.W.2d 641,

See also, In the Interest of D.Z., 2002 ND 132, ¶10, 649 N.W.2d 231.

In K.G.'s case, the trial court found, based upon the testimony offered by the Petitioner relative to the history and current hospitalization and treatment as well as the acknowledgment of K.G., that a treatment program other than hospitalization would not be adequate to meet her needs or be sufficient to prevent harm or injury to herself. While there appeared to be a change in her approach to her hospitalization in the last month, the fact remains the doctor testified she is not ready to be released or placed in an alternative treatment setting at this point. If she is not hospitalized once again she would be at risk of danger to herself due to her inability to care for herself.

K.G. argues that the manner in which Dr. Pryatel, on behalf of the Petitioner, prepared the Petition for Continuing Treatment (App. p. 15, 15a), Report of Examination (App. p. 14, 14a), Report Assessing Availability and Appropriateness of Alternate Treatment (App. p. 13, 13a), was insufficient. In each case, the responses provided by Dr. Pryatel were in direct response to the requested information on the form.

In the Petition, it is indicated that K.G. is mentally ill and as a result of such condition she is a person who

requires further treatment. It states she is chemically dependant and as a result of that is in need of further treatment, treatment other than hospitalization is not in the best interest of K.G. based upon the fact that K.G. has problems controlling her impulses, and she needs "PRN" medication to keep from losing control. (App. p. 15)

The Petition describes her treatment program and the results of the program. (App. p.15,15a) The Petitioner states that it is estimated that it will take one year of further treatment. (App. p. 15a). Additional information was presented in testimony from Dr. Pryatel expanding on each of these factors and Petition provisions.

K.G. had adequate opportunity and did utilize that opportunity to question Dr. Pryatel relative to the Petition and his responses. K.G. criticized the testimony of Dr. Pryatel wherein he responds, "I don't know" when asked how long good behavior would be required. It was a correct response. A response of seven days, three weeks or four months would have been an inappropriate response. Based upon her history and illness, a precise release date is not possible. Her counsel at hearing acknowledged that.

K.G. similarly criticizes the manner of preparation of the Report of Examination and the Report Assessing Availability and Appropriateness of Alternative Treatment.

These criticisms are likewise without merit. The testimony of K.G. clearly indicated she is aware of why she is at the state hospital, the process for getting out of the hospital, and the plan designed for her to accomplish that result, or "goal," as she herself indicated.

The testimony of Dr. Pryatel, his cross examination, and clarification responses to the court all refute the allegations of K.G. in her brief asserting a lack of knowledge or caring on the part of Dr. Pryatel. The documents were understood by trial counsel and K.G. as is evident by the hearing proceedings.

The testimony of Dr. Pryatel exhibits a clear knowledge of K.G.'s case history from 1990 to present. He described her as an intelligent individual whose behavior has caused her repeated setbacks. He described in detail her diagnosis, her medications and their purposes, her behavior modification therapy, group therapy, cognitive type therapies, work therapy at Progress Enterprises, Inc., the system of privileges and consequences in the behavior therapy, and her history. He described her various mental illnesses and chemical dependencies and history.

Dr. Pryatel identified her impulsivity and self abusive behavior. He described her last attempt at alternative treatment as being one day in which she tried

to cut herself resulting in her return to the hospital in August of 2004. Dr. Pryatel described her maladaptive behavior in early April of 2005, and of her improved behavior in the month that followed. All this clearly displayed a doctor involved in the patient's case. Dr. Pryatel acknowledged her improvement but believed that she was not ready for alternative treatment at the present time based upon her current condition and her treatment history.

K.G. is under a behavior plan at the state hospital. She has been identified as a high profile case requiring special review by senior hospital personnel. Her plan was described by Dr. Pryatel as behavior modification with rewards for good behavior, decrease in aggressive behavior, following rules, no self harm, cooperative attitude, non-threatening behavior, and no intimidating behavior. He discussed her current position in the plan allowing her escorted off-ward privileges three times a week and stated he believed she would soon be allowed unescorted off-ward privileges, then a move to a less restrictive ward, then to the Transitional Living Home (TLH) and ultimately, to the community and release.

K.G. evidences a clear understanding of her treatment plan in her testimony. She acknowledged her setbacks and voiced an understanding that it was her own behavior that

was her problem. She stated, "I am trying to change my behavior. My behavior before wasn't getting me anywhere, I was sabotaging myself". She specifically stated she wanted to do "like Dr. Pryatel said," get privileges and transferred. She acknowledged she was aware that she was classified as a special case and was aware what that meant. Clearly the hospital not only is closely monitoring her case but is keeping her informed as well.

K.G. acknowledged she was "cheeking" her medication in early April causing her behavior deterioration. The stated thirty days of good behavior she enjoyed was the longest she has had. She stated she wanted to follow the steps outlined by Dr. Pryatel to get back to the Transitional Living Home. She acknowledged her stays there in the past were from one day to nine months.

The testimony of Dr. Pryatel and K.G. completely refutes the assertions raised in K.G.'s brief. The provisions of the forms clearly, though succinctly, inform K.G. The testimony of K.G. clearly showed she understood the allegations and their meanings.

K.G. acknowledged that, "In some cases, a reporting doctor may reasonably conclude that less restrictive alternative to hospitalization simply do not exist." In Interest of J.S., 545 N.W. 2d 145, 148 (N.D. 1996). K.G.

then asserted that can only exist after the doctor has given his very best effort. This assertion ignores all of the extensive testimony establishing just such best effort.

The court considered multiple sources of evidence to determine whether there was substantial compliance with N.D.C.C. §25-03.1-21(1). There exists supporting documentation in other reports filed in this matter.

Testimony specifically indicating why alternative forms of treatment are not viable and why appropriate treatment methods are available only in a hospital may be sufficient to meet the statutory requirements where such testimony supports a written report. In the Interest of J.K., 1999 ND 182, ¶18, 599 N.W.2d 337. A less than fully adequate Report Assessing Alternate Treatment may be salvaged by subsequent supporting testimony presented at the treatment hearing. In the Interest of R.R., 479 N.W.2d 138 (N.D. 1992).

Dr. Pryatel testified that there is no less restrictive alternate treatment that is appropriate for K.G. He testified that K.G. had not yet established a sufficient period of self control. The report filed by Dr. Pryatel reasonably concluded that less restrictive alternatives to hospitalization simply do not exist in this case at this time. The trial court heard the testimony of

K.G. supporting and agreeing with Dr. Pryatel's plan of treatment. K.G. acknowledged her difficulties in alternative treatment in the past which was consistent with concerns expressed by Dr. Pryatel.

CONCLUSION

The Petition for Continuing Treatment, Report of Examination and Report Assessing Availability of Alternative Treatment, testimony, and supporting documentation comply with the statutory requirements.

The trial court properly found that K.G. was mentally ill, a person in need of treatment, and that there was no adequate alternative treatment appropriate for her at this time.

DATED this 11th day of August, 2005.

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
:
COUNTY OF STUTSMAN)

Jolene Brown, being first duly sworn on oath, does depose and say: that she is a citizen of the United States, of legal age, and not a party to the above entitled action.

That on the 11th day of August, 2005, this affiant deposited in the mailing department of the United States Post Office at Jamestown, North Dakota, a true and correct copy of the following documents filed in the above captioned action:

BRIEF OF APPELLEE

That the copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

Jodie Koch Scherr
Attorney at Law
Post Office Box 356
Valley City, ND 58072

To the best of your affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be served.

That the above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



JOLENE BROWN

SUBSCRIBED and SWORN to before me this 11th day of August, 2005.



LEO A. RYAN, Notary Public
Stutsman County, North Dakota
My Commission Expires: 2/03/06

