

ORIGINAL (e-filed)

20050399

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
IN THE INTEREST OF M.M.

FILED
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DEC - 1 2005

STATE OF NORTH DAKOTA

William Pryatel, M.D.,)	
North Dakota State Hospital,)	
Petitioners & Appellees,)	Supreme Court No.
)	20050399
)	
vs.)	Stutsman County No.
)	2005-R-306
M.M.,)	
Respondent & Appellant.)	

APPELLEE'S BRIEF

Respondent appeals the Order for Hospitalization and Treatment and Order to Treat With Medication of November 16, 2005, by the Honorable Mikal Simonson District Court, Stutsman County

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ISSUES PRESENTED

1. Whether the district court's finding that M.M. is mentally ill was clearly erroneous?
2. Whether the district court's finding that M.M. is a person requiring treatment was clearly erroneous?
3. Whether the district court's finding that no less restrictive treatment alternative was available or suitable for M.M.'s condition was clearly erroneous?
4. Whether the district court's findings in support of the order for involuntary treatment with medication were 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 Facts (p. 8) discusses the side effects associated with the injectable medication Haldol (Haloperidol), principally involuntary muscle tics and tremors known as tardive dyskinesia (“TD”). Dr. Pryatel stated the risk of onset was “about five percent every year” and “much less with the other medications.” Transcript, p. 11, lines 13-18. He further testified that TD is a “serious thing that we try to avoid if we can” by monitoring the patient, and changing of medications if its onset is observed. Transcript, p. 12, lines 6-10.

3. Delusional thought was evident in the respondent’s testimony relating to the need for treatment of his kidney stones, i.e., a paranoid distrust of the medical profession. He refused to concede that the doctors at Trinity Hospital were telling him the truth about the existence of kidney stones, because “they didn’t show me any x-rays or any proof.” Transcript, p. 30, lines 17-19; page 31, lines 4-8. He also maintained that the Trinity staff took inordinate amounts of blood samples from him for no, or probably nefarious, reasons. Transcript, p. 31, lines 8-21. Dr. Pryatel testified the kidney stones would inevitably lead to renal failure and other urinary tract problems, and that M.M.’s paranoid distrust of doctors rendered him unable to manage his condition and treatment. Transcript, p. 4, lines 20-25; p. 8, lines 5-22; p. 20, lines 3-10; p. 21, lines 3-20.

LAW AND ARGUMENT

4. THE DISTRICT COURT'S FINDINGS DID NOT RESULT FROM AN ERRONEOUS VIEW OF THE LAW, AND WERE ALL SUPPORTED BY EVIDENCE

5. Respondent challenges all three of the findings underlying the district's court's 45-day Order for Hospitalization and Treatment, i.e., that (i) M.M. has a mental illness, psychotic disorder NOS. i.e., an "organic [or] mental . . . disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of [his] personal affairs" (N.D.C.C. §25-03.1-02(11)); (ii) he is a "person requiring treatment" due to a "serious risk of harm to self, others or property, and substantial likelihood of [s]ubstantial deterioration in physical, or substantial injury, disease, or death resulting from [M.M.'s] poor self-control or judgment in providing for [his] shelter, nutrition, or personal care" (N.D.C.C. §25-03.1-02(12)©)); and (iii) a treatment program other than hospitalization is currently not suited to the respondent's treatment needs. Appendix, p. 7.

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 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 findings must be upheld when reviewed under this three-pronged “clearly erroneous” standard. There is no indication the district court acted from an “erroneous view of the law”: The treatment order includes the necessary findings of mental illness, requiring treatment, and lack of a less restrictive alternative (see N.D.C.C. §§25-03.1-02(12), 25-03.1-20, 25-03.1-21); the medication order contains the findings required by Section 25-03.1-18.1; and the judge elaborated on the reasoning behind these findings at the hearing. Transcript, pp. 35-37. Further, the “clear and convincing” evidentiary standard was cited by respondent’s counsel in her closing argument at the treatment hearing. Transcript, p. 35, lines 9-20.

8. Nor can it be said there is “no evidence to support” the findings. The finding of mental illness is supported by Dr. Pryatel’s clinical diagnosis, and the numerous, diverse delusional statements made by M.M. at both Trinity Hospital and NDSH. See Appendix, pp. 14-15; Transcript, pp. 3-4. That finding also overlaps with the judge’s determination that M.M. requires treatment, i.e., the psychotic disorder impairs his judgment as to his medical condition and thereby poses a substantial risk of physical deterioration, based on the doctor’s testimony that the kidney stones will inevitably lead to renal failure or other life-threatening conditions if untreated, which clearly is M.M.’s intent. Transcript, p. 20, lines 3-10. The finding that out-patient treatment is not a viable option is indisputable,

since the respondent clearly will not get treatment of his mental *or* physical illnesses if left to his own devices – a fact aggravated by the fact that M.M. has no permanent home (“drifter” is probably more accurate than “homeless”). Thus, oversight and monitoring of his condition would be impossible in a non-hospital setting. Finally, all three findings are buttressed by the paranoid distrust of doctors that M.M. manifested on the witness stand.

9. As for the medication order, Dr. Pryatel testified that medication is the only known, effective treatment for psychotic-delusional mental illnesses (Transcript, p. 10, lines 3-16) – and therefore both “clinically appropriate” and the “least restrictive form of treatment.” See Subsections (1)(a)(1) & (3), N.D.C.C. §25-03.1-18.1. The doctor also stated that the benefits of anti-psychotic medication(s) would outweigh the risks to the respondent (as discussed in the Statement of Facts, above, the principal potential side effect is tardive dyskinesia). Subsection (1)(a)(4); see Transcript, pp. 12-13. Again, there is no dispute that M.M. was and is refusing to take the necessary medication(s).

10. Since neither the first or second prong of the “clearly erroneous” standard applies in this case, the only possible ground for reversal is that after looking at the entire record, this Court has a “definite and firm conviction that [the finding] is not supported by clear and convincing evidence.” In the Interest of D.A., *supra*. As discussed below, the petitioners respectfully submits that the record does not support such a conclusion.

11. THE DISTRICT COURT’S FINDINGS RE: THE TREATMENT AND
MEDICATION ORDERS ARE NOT CLEARLY ERRONEOUS

12. In applying the “clearly erroneous” standard, this Court has held that a finding of fact is sufficient if it “enables this court to understand the reasoning behind the [district]

court's decision"; in addition, a particular finding 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). The judge's reasoning is clear in this case: He found (i) the respondent was mentally ill based on the doctor's testimony and multiple, delusional statements made by M.M. (Transcript, pp. 35-36); (ii) the respondent required treatment because the psychotic disorder impaired his ability to make rational decisions regarding treatment of his kidney stones (Transcript, pp. 36-37); (iii) out-patient treatment was not suitable to M.M.'s needs because he would not accept treatment and was homeless (Transcript, p. 36, lines 8-14); and (iv) the evidence presented on the "forced" medication issue satisfied the statutory requirements. Transcript, p. 36, lines 8-16.

13. These findings must be evaluated based on all the evidence presented to the trial court. Interest of R.N., *supra*. The supporting evidence has already been summarized and discussed above. The contrary evidence is M.M.'s testimony that (i) he does not believe he is mentally ill and has no treatment history (Transcript, p. 25, lines 18-20; pp. 26-27); (ii) the delusional statements at Trinity and NDSH were products of his physical pain (Transcript, pp. 28-29); (iii) he is capable of dealing with his kidney stones if the problem recurs – although he doesn't believe there is any problem (Transcript, p. 27, lines 14-21).

14. With regard to the issue of mental illness, it should be noted that both petitioner's counsel and the judge commented that M.M. appeared "rational" and "non-delusional" at the hearing (Transcript, p. 28, lines 3-4; page 36, lines 1-2); however, the judge ultimately concluded that "so many different types of delusions [were exhibited by the respondent at Trinity and NDSH]" that it was "hard to believe" M.M.'s explanation that all of them

were merely products of physical pain. Transcript, p. 36, lines 4-7. On appeal, Rule of Civil Procedure 52(a) requires that “due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.” In giving effect to Rule 52(a)’s mandate, this Court has held that “a choice between two permissible view of the evidence is not clearly erroneous when the trial court’s findings are . . . based on credibility determinations.” Peters-Riemers v. Riemers, 2002 ND 72, ¶24, 644 N.W.2d 197, 208 (N.D. 2002).

15. On the “requiring treatment” issue, the district court acknowledged that the respondent claimed to understand the nature and gravity of his kidney stone condition, and that he had the right to seek second opinions and make a deliberate decision on the recommendation for surgery. Ultimately, however, the judge found M.M.’s testimony showed he was unwilling or unable to make a decision to treat a serious malady, and therefore while he may have done “very well [on his own] without that medical condition, . . . once he has it [and refuses to acknowledge or treat it] I think he is a danger to himself.” Transcript, p. 36, line 15, through p. 37, line 7. M.M.’s credibility on that issue was also undermined by the paranoid distrust toward doctors which was manifest in his testimony; in addition, his refusal to provide NDSH with any verifiable information on his identity and background certainly has some bearing on the credibility of his testimony regarding his mental health and treatment history. See Transcript, p. 23, lines 4-20.

16. Given Dr. Pryatel’s unchallenged testimony on the necessity and efficacy of medication in treating psychotic disorders, and the respondent’s clear refusal to take any, the findings of fact underlying the medication order cannot be deemed clearly erroneous.

Therefore, NDSH respectfully submits that all of the district court's findings were well supported by the evidence presented at the treatment hearing. For purposes of this appeal, moreover, a review of the entire record (Interest of R.N., supra) does not leave one with a "definite and firm conviction" that there was not clear and convincing evidence to support the findings. Interest of D.A., supra.

CONCLUSION

17. For the foregoing reasons, petitioner and appellee North Dakota State Hospital respectfully requests that the district court's Order For Hospitalization And Treatment and Order To Treat With Medication be affirmed.

RESPECTFULLY SUBMITTED this 1st day of December, 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 1st day of December, 2005, the affiant
caused the Appellee's Brief in the matter of In the Interest of M.M. 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, as shown in the 2005 edition of the
Directory of Lawyers and Judges published by the State Board of Law Examiners:

jodie@scherrcom.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
1st day of December, 2005.

Signed: Julie A. Swangler
NOTARY PUBLIC

March 15, 2011

My Commission Expires:

AMENDED AFFIDAVIT OF SERVICE BY MAIL

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an e-mail transmission sent to the following addresss provided by the appellant and
respondent`s counsel herein:

jodie.scherr@gmail.com

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