

**ORIGINAL**

20060156

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA  
SUPREME COURT # \_\_\_\_\_

IN THE INTEREST OF J.S.

Daisy Van Valkenburg, M.D. , )  
for the North Dakota State Hospital, )  
 )  
Petitioner/Appellee. )  
 )  
-vs- )  
 )  
J.S., )  
Respondent/Appellant. )

Stutsman County #04-R-227

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
  
MAY 25 2006  
  
**STATE OF NORTH DAKOTA**

**BRIEF OF APPELLANT**

Appeal from the Order for Continuing Treatment  
Dated April 26, 2006

Southeast District Court Judge  
Honorable Mikal Simonson

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## **STATEMENT OF ISSUE PRESENTED FOR REVIEW**

1. Whether the district court erred by not ordering a less restrictive alternative for treatment under N.D.C.C. § 25-03.1-21(1) and N.D.C.C § 25-03.1-40(2)?

## STATEMENT OF THE CASE

An order appointing an attorney for J.S. was filed on May 11, 2004. (App. p. 19). On May 18, 2005, Honorable John Greenwood entered a continuing treatment order committing J.S. to the North Dakota State Hospital until May 18, 2006 a period of one year, or until further order of the court. (App. p. 18). On April 10, 2006, Daisy Van Valkenburg, M.D. filed a petition for continuing treatment and notice of procedures and rights and served these documents on J.S. (App. pp. 5-7) as well as the certificate of continuing treatment (App. p. 8), the report assessing availability and appropriateness of alternate treatment (App. pp. 9-10), and the report of examination including the diagnostic intake and plan. (App. pp. 11-17). A notice of continuing treatment hearing was then issued. (App. p. 4).

A hearing on the petition for continuing treatment was held on April 26, 2006 in Stutsman County before the Honorable Mikal Simonson. The court made oral findings on the record and found there was clear and convincing evidence that J.S. was a mentally ill person as defined by statute and continued to be a person requiring treatment, and that there was no alternative treatment available appropriate for J.S.. The court issued a continuing treatment order on April 26, 2006. (App. p. 3). J.S. filed a notice of appeal on May 25, 2006 pursuant to N.D.C.C. § 25-03.1-29 and Rule 2.1 N.D.R.App.P., respectfully seeking review by the North Dakota Supreme Court of the order. (App. p. 2).

## STATEMENT OF FACTS

J.S. is a 69-year-old male who carries a diagnosis of chronic paranoid schizophrenia. He also suffers from tardive dyskinesia, Type II diabetes, arthritis, and hypertension. Prior to his hospitalizations, J.S. was a mathematician and instructor, having earned his college degrees in this area. He receives intramuscular injections of the anti-psychotic medication Risperidone Consta. J.S. has resided at the North Dakota State Hospital (NDSH) since 1989. This is the eleventh time J.S. has appealed to the North Dakota Supreme Court. See In the Interest of J.S., 2004 ND159, 684 N.W.2d 657; In the Interest of J.S., 2003 ND 138, 667 N.W.2d 641; In the Interest of J.S., 2002 ND 7, 638 N.W.2d 45; In the Interest of J.S., 2001 ND 25, 625 N.W.2d 264; In the Interest of J.S., 2001 ND 10, 621 N.W.2d 582; In the Interest of J.S., 1998 ND 92, 578 N.W.2d 91; In the Interest of J.S., 545 N.W.2d 145 (N.D. 1996); In the Interest of J.S., 530 N.W.2d 331 (N.D. 1995); In the Interest of J.S., 528 N.W.2d 367 (N.D. 1995); In the Interest of J.S., 499 N.W.2d 604 (N.D. 1993).

Alan Broadhead, M.D., psychiatrist at the NDSH, testified that J.S. continues to be a person who is mentally ill and in need of treatment. He also concluded that there is no appropriate alternative treatment available to J.S. other than in-patient hospitalization. He stated that J.S. continues not to recognize that he has a mental illness and therefore has no insight into his illness. J.S. declined to call any witnesses and elected instead to testify on his own behalf. He denied having a mental illness and voiced his objection to taking medication for an illness he doesn't believe he has.

## LAW AND ARGUMENT

### 1. J.S. asserts that the district court erred by not ordering a less restrictive treatment alternative.

When an individual is found by the trial court to be a “person requiring treatment” under N.D.C.C. § 25.03.1-02(12), he or she has the right to the least restrictive conditions necessary to achieve the purposes of treatment. N.D.C.C. § 25.03.1-21; 25-03.1-40(2). The North Dakota Supreme Court held in In the Interest of J.K., 1999 ND 182, 599 N.W.2d 337 (N.D. 1999) that the district court is required to make a two prong assessment: (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 an individual may inflict on himself or others. Furthermore, the district court must find, by clear and convincing evidence, that the alternative treatment is not adequate or that the hospitalization is the least restrict alternative.

Id.

N.D.C.C. § 25-03.1-21 (1) states:

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.

Additionally, N.D.C.C. § 25-03.1-01 provides that “the provisions of this chapter are intended by the legislative assembly to: (5) Encourage, whenever appropriate, that services be provided within the community. J.S. asserts that little, if any, meaningful attempt was made by the petitioner to explore suitable and available treatment alternatives.

In Dr. Van Valkenburgs’s report of examination and report assessing availability and appropriateness of alternate treatment, no options were listed as alternatives available to hospitalization. (App. 7-12). “In some cases, a reporting doctor may reasonably conclude that less restrictive alternative to hospitalization simply do not exist.” In the Interest of J.S., 545 N.W. 2d 145, 148 (N.D. 1996). In this case, J.S. has now been a resident of the North Dakota State Hospital for approximately sixteen years. Until this past year, J.S. was given Haldol to treat the diagnosed schizophrenia. Now, Risperidone Consta is administered intramuscularly to J.S. The Report of Examination indicates that J.S. is now showing signs of tardive dyskinesia evidenced by involuntary tongue protrusion as a side effect of Haldol.

Dr. Broadhead testified that J.S. refuses to cooperate with any community placement and the only real improvement in J.S.’s behavior is that recently he did attend an exercise group. Otherwise, J.S. overall mental health remains unchanged. Dr. Broadhead explained that J.S. needs to have insight into his diagnosis in order to gain understanding of how to cope with his illness and is basically unresponsive to any other form of treatment. As such, J.S. continues to live out his life at the NDSH isolating himself and stagnating.



This Court held that involuntary commitment includes a “massive curtailment of liberty.” In the Interest of J.S., 410 N.W.2d 530, 532 (N.S. 1987). J.S. asserts that other than incarceration, there is no greater loss of liberty than involuntary commitment and should be taken with the utmost of seriousness. North Dakota does not allow capital punishment, yet in many respects, here is a man who is being sentenced to his death by year after year commitments to a mental institution. J.S. has lived at the NDSH for the past sixteen years with very little, if any change, in his purported condition. The treatment J.S. receives does not work for him. After sixteen years, J.S. argues it is time for the NDSH to carry out its burden of seeking results-orientated treatment for him including thorough exploration and research to find suitable alternative options that are more appropriate and less restrictive in nature.

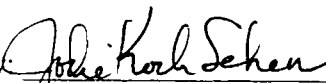
J.S. is clearly suffering the results of the long-term Haldol injections. Yet, NDSH’s position seems to be that until J.S. admits to being schizophrenic, there is really nothing that can be done for him. This is circular reasoning. J.S. has not, does not, and will not admit to being mentally ill. This has not changed in sixteen years. If this lack of insight is a symptom of J.S.’s purported illness then he cannot be held responsible for not having insight. Knowing that, instead of waiting for J.S. to have some revelation of insight into his diagnosis, this institution has a responsibility itself to recognize that this is not going to happen, that the purported illness remains unchanged and that other means and modes of treatment need to be explored. NDSH should not be allowed to continue to hang its hat on the lack of insight issue, knowing full well that nothing will change

under the current circumstances. J.S. is not to blame for his purported illness, nor should the hospital put the onerous on J.S. to regain his mental health. If J.S. is in fact as ill as the NDSH asserts, then instead of looking to J.S. to have an epiphany of insight, the NDSH should be taking the bull by the horns in terms of seeking out a more appropriate, effective and ultimately less restrictive treatment for J.S.

### CONCLUSION

There is insufficient evidence to show that there is no appropriate alternative treatment available to J.S. Therefore, J.S. respectfully requests the continuing treatment order be reversed or vacated and prays for appropriate relief.

Dated this 25<sup>th</sup> day of May, 2006.

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