IN THE SUPREME COURT

STATE OF NORTH DAKOTA

IN THE INTEREST OF J.H., RESPONDENT

North Dakota State Hospital, Petitioner & Appellee	)	Supreme Court No. 20060373
v.	)	Stutsman County No. 06-R-340
J.H., Respondent & Appellant	)	

APPELLEE'S BRIEF

Appeal from the Order for
Hospitalization and Treatment
and the Order for Involuntary
Treatment with Medication
Entered November 30, 2006,
Issued in Stutsman County District Court
by the Honorable John T. Paulson
Judge of the Southeast District Court

Jay Schmitz (ID # 05705)
Assistant State's Attorney
Stutsman County
511 Second Avenue Southeast
Jamestown, ND 58401
(701) 252-6688
Attorney for Appellee

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STATUTES AND RULES: PARAGRAPH

ISSUES PRESENTED

1. Whether the petitioner North Dakota State Hospital met the procedural requirements for requesting a treatment hearing and hearing on the request for involuntary treatment with medication?

STATEMENT OF THE CASE
AND
STATEMENT OF FACTS

1. Petitioner and appellee North Dakota State Hospital ("NDSH") will join in the appellant's Statement of the Case, subject to the following addition: The documentation that NDSH filed with the Stutsman County Clerk of Court included the petition for involuntary treatment prepared by Shelly Paul of West Central Human Services ("West Central"). (See Appendix, p. 1a and pp. 21-24).

2. NDSH supplements the appellant's Statement of Facts as follows:

3. Although the exact procedural history of this matter was not fully understood by the parties at the time of the hearing on November 28, 2006, it is not really that "confusing." (1) In late August, the Burleigh County district court placed J.H. on a 90-day alternative treatment order under West Central's supervision; (2) by mid-November, West Central had decided that out-patient treatment was not suitable to J.H.'s condition, and the Burleigh County state's attorney's office therefore petitioned to modify the ATO; (3) the Burleigh County district court granted the modification by entering an "Order for Hospitalization and Treatment" on November 16, 2006, which committed J.H. to NDSH until November 29, 2006 (Appendix, p. 20).

4. At the time, however, NDSH was understandably confused as to the basis for J.H.'s commitment, due to a combination of inadequate and misleading documentation and an unlikely coincidence of dates. The only information provided to NDSH was (1) the petition filed by West Central and (2) the "Order for Hospitalization and Treatment" from

Burleigh County court. No one from Burleigh County told NDSH that the order actually was modifying an existing alternative treatment order; moreover, since the order was dated November 16 and ran through November 29, 2006, NDSH had no way of knowing the order was anything other than a "standard" 14-day preliminary commitment order.

5. NDSH could not have filed a timely petition for continuing treatment of J.H. since there were less than 14 days remaining on the existing ATO when the respondent arrived at NDSH. Thus, even if NDSH had been given sufficient information to understand the procedural background, the time to act on that information had already been allowed to lapse. Therefore, by the time the Burleigh County authorities decided to transfer responsibility for J.H.'s treatment to NDSH, the only option available was to petition for a new 90-day order.

LAW AND ARGUMENT

6. THERE IS NO DEFECT IN THE PROCEEDINGS IN STUTSMAN COUNTY DISTRICT COURT

7. The respondent bases this appeal entirely on alleged defects in the documentation filed by NDSH, and in the proceedings in the Stutsman County District Court. As appellee's counsel understands it, J.H.'s argument is that (1) since he was already subject to an ATO at the time he was transferred to NDSH, the hospital's only option was to petition for a continuation of the existing order under N.D.C.C. §25-03.1-22(2); and (2) NDSH failed to file a petition for continuing treatment; and (3) even if it had, the petition was untimely because it wasn't filed by November 15, 2006, i.e., at least 14 days before the existing order expired. See appellant's brief at pp. 8-10. That argument is specious.

8. J.H. cites no authority for the contention that because he was placed on a 90-day order in Burleigh County in August 2006, NDSH could not petition for a 90-day order in Stutsman County in November 2006 – and in fact, no legal authority exists for that contention. Section 25-03.1-22(2) states that "if [NDSH] believes that a patient continues to require treatment" it must petition to continue an existing order at least 14 days before the initial 90-day order expires. NDSH did not "drop the ball" by failing to file such a petition (appellant's brief, p. 11) – that ball had already been dropped by Burleigh County, because as J.H. acknowledges, the time to file a petition for continuing treatment elapsed on November 15, 2006, one day before NDSH even knew that J.H. existed. Therefore, after determining that J.H. was in fact in need of hospitalization, NDSH took the only avenue open to it by filing a petition for involuntary treatment, along with proper

supporting documentation, and a request for treatment with medication with the Stutsman County District Court on November 22, 2006. (See appendix, p. 1a; pp. 7-24).

9. Nothing in Section 25-03.1-22(2) requires or even suggests that because a patient is subject to an ATO issued in another county, and the time to extend that order has elapsed, NDSH cannot petition for a new 90-day order under Section 25-03.1-19 when it believes that patient is in need of hospitalization and treatment. Indeed, for NDSH to simply throw up its hands and walk away on grounds that "there's nothing we can do" would be professionally unethical – and the fact that NDSH was unaware of the existing order does not change the situation, since the time to file a petition to continue it had already expired. J.H.'s argument is the ultimate in "form over substance": He essentially argues that if NDSH had checked into the procedural background, it would have known that the proper way to proceed was to file an untimely petition to extend the existing order.

10. J.H.'s argument also suffers from fundamental misapprehensions of fact and law. Most glaringly, he asserts that "in this case, there is not a petition for J.H. to request to be dismissed." Brief at p. 11. The first document listed on the Stutsman County Clerk of Court's register of action (appendix, p. 1a) is a "Petition for Involuntary Commitment (Burleigh County)." J.H. apparently is arguing that NDSH must prepare a new petition for filing in Stutsman County, i.e., that it cannot simply adopt the original petition as its own. Again, the respondent cites no authority for that position – and again, there is none. Section 25-03.1-08 states that a petition may be filed by "any person [at least] eighteen years of age." Section 25-03.1-09(1) specifies the duties of the clerk of court "upon the filing of a petition." Section 25-03.1-26(1) states that if NDSH believes a person requires

treatment, it shall "file a petition." Nowhere does chapter 25-03.1 require that a petition be prepared by the person or entity that files it, or that the clerk of court must determine, let alone ensure, that the petitioner personally prepared the petition.

11. The respondent's assertion that NDSH should have petitioned for a preliminary 14-day treatment order in this case (see appellant's brief, p. 12) also is incorrect. J.H. was committed on a modification order issued in Burleigh County. The fact that NDSH believed it was a preliminary 14-day commitment order matters not at all, because as J.H. concedes, this was not an emergency commitment to NDSH. Under Section 25-03.1-17, a preliminary hearing is required *only* if the respondent was the subject of an emergency detention under Section 25-03.1-25. Therefore, only a treatment hearing was required to be held within seven days after the report of examination was filed. Section 25-03.1-19. NDSH filed the report on November 22, 2006 (appendix, p. 1a) and the hearing was held pursuant to proper notice on November 28, 2006 (appendix, p. 6).

12. This appeal is clearly, and entirely, "form over substance." First and foremost, J.H. does not challenge any of the district court's findings that both the petition for involuntary treatment and the request to treat with medication were supported by clear and convincing evidence. The implication of that telling omission is reinforced by the fact that J.H. nonetheless contends NDSH should "remedy" the situation by starting all over with a petition for a 14-day preliminary treatment order (brief, at pp. 11-12). In other words, J.H. concedes that his need for treatment and medication has been proven by clear and convincing evidence – but argues that NDSH "dropped the ball" procedurally – but argues that the "wrong" can be "remedied" simply by requiring NDSH to first prove

the same facts at a preliminary hearing – at which the standard of proof would be probable cause. Section 25-03.1-17.

13. The appellant's argument would be unpersuasive even if J.H. could cite some legal support for his claim of procedural defect. He has not. Therefore, the district court's decision and orders were proper, and should be affirmed.

CONCLUSION

14. For the foregoing reasons, petitioner and appellee North Dakota State Hospital respectfully requests that the Court affirm the district court's orders that (1) J.H. undergo treatment at the North Dakota State Hospital for a period not to exceed 90 days, and (2) J.H. may be involuntarily treated with medication.

RESPECTFULLY SUBMITTED this 28th day of December, 2006.

STUTSMAN COUNTY STATE'S ATTORNEY OFFICE
Attorneys for Appellee
511 2nd Avenue SE
Jamestown, ND 58401
(701) 252-6688

Signed: JAY A. SCHMITZ
Assistant State's Attorney (ID# 05705)

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 28th day of December, 2006, the affiant caused the Appellee's Brief in the matter of In the Interest of J.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 listed in the 2006 Directory of Lawyers and Judges published by the North Dakota State Board of Law Examiners:

jodie.scherr@gmail.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 28th day of December, 2006.

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