

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

IN THE INTEREST OF V.K.

William Pryatel, M.D.,)
) Supreme Court No.
Petitioner/Appellee,)
)
v.)
) Stutsman Co. No. 47-2013-MH-00246
V.K.,)
)
Respondent/Appellant.)

APPEAL FROM THE ORDER FOR HOSPITALIZATION AND TREATMENT
ENTERED ON JANUARY 2, 2014 AND THE ORDER REGARDING
INVOLUNTARY TREATMENT WITH MEDICATION ENTERED ON JANUARY 3,
2014, SOUTHEAST JUDICIAL DISTRICT, HONORABLE JOHN E. GREENWOOD
PRESIDING

BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES

[¶1] Whether the trial court erred in finding there was clear and convincing evidence to support an order for involuntary in-patient treatment under chapter 25-03.1 of the North Dakota Century Code.

[¶2] Whether the trial court erred in ordering forced medication.

[¶3] Whether the trial court erred in not ordering less restrictive treatment for Respondent.

STATEMENT OF THE CASE

[¶4] This is an appeal from an order of the district court, Stutsman County, committing Respondent to in-patient treatment at the North Dakota State Hospital for up to 90 days and ordering forced medication. (File 47-2013-MH-00120, Docket Index (“D”) 11-12); Appendix (“A”) 10-11). A petition for involuntary commitment was filed on June 17, 2013.. (D. 1, A. 3). A Report of Examination was filed with the court (D. 4, A. 5) as well as a Request to Treat with Medications. (D. 6, A. 9). A Report Assessing Availability and Appropriateness of Alternate Treatment was filed with the court. (D. 5, A. 7). A treatment hearing was held on June 21, 2013, with the Honorable Thomas Merrick presiding. (D. 2, Tape). On June 24, 2013, the district court issued its Order for Hospitalization and Treatment (D. 12, A. 10) and an Order to Treat with Medication. (D. 11, A. 11). The Respondent files this appeal. (A. 12).

STATEMENT OF FACTS

[¶5] Kimberly Meyer (“Meyer”), is employed at the Human Service center and mental health case manager for V.K. (T. p. 5, l. p. 6, l. 1). Meyer testified that as part of her job she would try to help a patient and to watch to see how their symptoms and see how they were doing. (T. p. 6, l. 15 – p. 7, l. 2). Meyer testified that V.K. was taking the medication clozeril and that on December 10, 2013, Meyer went to V.K.’s house in

Jamestown for a scheduled appointment. (T. p. 7, l. 7 – p. 8, l. 7). Meyer testified that when she arrived she entered the home and found V.K. “sitting in the chair, she was nude with a towel wrapped around her breast similar to this [indicating]. And there was furniture just tossed all around the apartment. And I knocked and I said [V.K.] and she was just kind of yelling out we have 14-year-olds in here. She was kind of acting a little psychotic and wouldn’t answer the door, wouldn’t respond, she was yelling at me and I said okay, [V.K.], and I left”. (T. p. 9, l. 3-11). Meyer talked to their risk coordinator and it was decided to have the police do a welfare check. (T. p. 9, l. 16-19).

[¶6] Dr. William Pryatel (“Pryatel”), is a staff psychiatrist at the North Dakota State Hospital (“NDSH”). (T. 10, 12-14). Pryatel testified that V.K. was admitted to the NDSH on December 10, 2013. (T. 11, l. 4-5) and that at the time of the hearing was not taking any medication. (T. p. 10, l. 24 – p. 11, l. 1). Pryatel further testified that the circumstances described by Meyer led to V.K.’s admission to the NDSH (T. p. 11, l. 8-10) and that he has had V.K.” as a patient dating back 10 years or so, and that this was her 14th hospitalization, and that he has seen her very psychotic, very similar to what she is this time, and it’s pretty much the same situation over and over again. She gets off her medicine and becomes psychotic”. (T. p. 12, l. 8-15).

[¶7] Pryatel testified that since this admission he had attempted to talk with V.K. but she refused to talk to him, that V.K. appeared to be very disturbed and angry, talks to herself, she doesn’t make sense what she says. (T. p. 11, l. 13-23). Pryatel testified that V.K. has been diagnosed with schizoaffective disorder bipolar type (T. p. 12, l. 4-5) and symptoms that V.K. has include periods where she appears to be manic, very hyper, agitated, wired...and she gets very psychotic, disorganized speed, paranoid. (T. p. 12, l. 24 – p.

13, l. 2). Pryatel further testified that she was currently in a psychotic state which was consistent with what he has seen from her in the past. (T. p. 13, l. 3-7).

[¶8] Pryatel testified that V.K. has problems that affect her ability to use self-control and judgment which was apparent in the state she was found in by Meyer “with the door open and the cold weather...I think she just kind of nipped it in the bud...I think it would just progress if she didn’t make an intervention”. (T. p. 13, l. 10-20). Pryatel testified that the problems V.K. was having were a result of the mental illness. (I. l. 21-23).

Pryatel testified that if V.K. did not receive treatment at this time there was potential substantial deterioration in her physical health because once V.K. gets psychotic she’s not able to provide food, clothing and shelter for herself, that her house is a mess and doesn’t...has the door open, and the cold weather. (T. p. 14. L. 4-14). Pryatel did not think that V.K. would be able to provide meals for herself and stay warm. (Id.). Pryatel testified that V.K. owned her home in Jamestown but even though she had shelter he was concerned about her ability to care for herself in her current mental state. (Id. l. 15-19-23).

[¶9] Pryatel testified that since being at the hospital, V.K. was isolated in her room, she comes out of the her room to utilize the bathroom, sporadically she eats the meals offered, she yells at staff and peers, on December 25 she threw supper at staff and yelling, on December 26 she was yelling get out of here you fucking whore, don’t you touch my fucking toys or I’ll kick your ass, sometimes she eats, sometimes she doesn’t when the meals are delivered to her room, and that she takes a shower maybe once a week. (T. p. 15, l. 4-17). Pryatel’s testimony was that V.K. had been verbally abusive but no assaultive behavior and that there was not a risk of suicide. (T. p. 17, l. 10-20).

Pryatel has not seen an improvement in V.K. during the three weeks she was at the NDSH. (T. p. 23, l. 2-5).

[¶10] Pryatel testified that there was a risk of substantial deterioration in her own mental health and that she could be a danger to herself by not getting the proper nutrition, would go more toward delirium and her mental state would get worse, and that her mental health would not improve without treatment at this time. (T. p. 15, l. 25 – p. 26, l. 8). Pryatel testified that the treatment plan was recommendation for inpatient hospitalization for up to 90 days and also involuntary medication. (T. p. 16, l. 9-12). Pryatel testified it was his opinion that there was no less-restrictive setting that would be both available and appropriate for V.K. at that time because she was not accepting the treatment at the NDSH “so she would be less-inclined to accept it as an outpatient, and she’s not really in a state yet where she could safely be treated as an outpatient”. (Id. l. 14-22). Pryatel testified that there was no other treatment available other than medication. (T. p. 16, l. 25 – p. 17, l. 1).

[¶11] Pryatel testified that he was requesting an order to treat with clozapine, haloperidol and olanzapine, and that another psychiatrist not involved in the V.K.’s current diagnosis or treatment agreed with that request. (T. p. 17, l. 24 – 13). Pryatel testified that the medications he was requesting were clinically necessary to provide effective treatment, were clinically appropriate, that there was a reasonable expectation if V.K. did not receive the medication there was a serious risk of harm could exist to herself or others, she had been offered and refused the medication clozapine, haloperidol and olanzapine, and that it was his opinion that this would be the least-restrictive form of intervention needed to meet her treatment needs. (T. p. 19, l. 14 – p. 20, l. 25). It was

Pryatel's testimony that the benefits would be to help V.K. track better, be more rational in her thinking and behavior. Get her to the point where she could get discharged from NDSH and maintained on her own in the community as well as take away her psychotic symptoms. (T. p. 20, l. 3-7). Pryatel testified that V.K. responds best to clozapine and that is only given in oral form and haloperidol and olanzapine have an injectable form and that is why they are requested in case the patient refuses the oral form. (T. p. 21, 12-25). It has been Pryatel's experience in the past that V.K. usually responds well to the medication. (T. p. 23, l. 15-18). Pryatel testified that it was his opinion that the proposed benefits of the treatment with the medicines outweighed the known risks to V.K., that he would be looking for a period of stabilization on the medicine, and that if it could be done within the 90-day period he would look at an outpatient setting for V.K. (T. p. 24, l. 24 – p. 25, l. 9).

[¶12] V.K. testified that she did not take showers when offered because there was no hot water and did not admit to throwing food. (T. p. 28, l. 12-25). V.K. testified that there were doctors in Fargo which she has appointments to meet with and that she would have transportation to those appointments. (T. p. 29, l. 3-21). V.K. also testified that there was no order for her to take the medication clozaril. (T. p. 30, l. 3-9).

[¶13] V.K. requests that the court dismiss the petition and that he be permitted to return home and continue outpatient treatment with Southeast Human Services at this time. (Tape).

[¶14] The district court that there was clear and convincing evidence that V.K. was mentally ill, who required treatment, that V.K.'s mental and physical health would decline without treatment, V.K. was at risk of serious deterioration and there exists a

serious risk of harm to herself, alternative treatment was not available, and that there was a need for forced medication due to refusal of medications and entered its 90 day Order.

The Order for hospitalization and treatment was entered on January 2, 2014 and the Order for Medication was entered on January 3, 2014.

[¶15] V.K. appealed the Orders.

ARGUMENT

[¶16] Whether the trial court erred in finding there was clear and convincing evidence to support an order for involuntary in-patient treatment under chapter 25-03.1 of the North Dakota Century Code.

[¶17] A person may not be involuntarily admitted under chapter 25-03.1 unless a court determines that the person requires treatment. N.D.C.C. § 25-03.1-07. A person requires treatment only if the person has a mental illness or chemical dependency and, absent the treatment, there exists a serious risk of harm to the person, others, or property. N.D.C.C. § 25-03.1-02(12). Serious risk of harm exists only if there is a substantial likelihood of:

- a. Suicide, as manifested by suicidal threats, attempts, or significant depression Significant depression relevant to suicidal potential;
- b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
- c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon poor recent self-control or judgment in providing one's shelter, nutrition, or personal care; or
- d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.

N.D.C.C. § 25-03.1-02(12). Accord Interest of M.B., 467 N.W.2d 902 (N.D. 1991).
(interpreting similar prior North Dakota statutory citations).

[¶18] The evidence was insufficient to establish by clear and convincing evidence that Respondent meets the criteria for commitment. The evidence did not support a finding that Respondent was in danger of suicide or a harm to others or property, and the court found neither. The evidence in support of such findings is neither clear nor substantial. V.K. owns her own home in Jamestown, has an income with which to take care of her needs, has doctor appointments lined up in Fargo to further take care of her medical needs. She is not physically aggressive toward others and is not suicidal.

[¶19] While dealing with his medical condition, Respondent has managed to obtain and maintain housing and work in the community without pay by helping others out.

[¶20] The court lacked clear and convincing evidence that Respondent's mental illness is untreated or that, absent the requested treatment order, Respondent presented a serious risk of harm to himself or others. The court should reverse the district court's finding that Respondent is mentally ill in need of further inpatient treatment and order the dismissal of the petition.

[¶21] Whether the trial court erred in ordering forced medication.

[¶22] Section 25-03.1-18.1 of the North Dakota Century Code authorizes a court to order the involuntary medication of a person upon notice and hearing after a request from a treating psychiatrist. "As part of the request, the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis and treatment of the patient" must certify that the medication is clinically appropriate, that the medication was offered and refused by the patient or the patient lacks the capacity to consent, that the medication is the least restrictive means of treating the patient, and that the known

benefits outweigh the risks.” N.D.C.C. § 25-03.1-18.1(1). When considering the request, the court “Shall consider all relevant evidence...including the danger the patient presents to herself or others, the patient’s current condition, treatment history, results of previous medical trials, “the efficacy of current or past treatment modalities concerning the patient,” the patient’s prognosis, and the effect the patient’s medical condition has on his ability to consent.” N.D.C.C. § 25-03.1-18.1(2)(a).

[¶23] Forced medication may not be ordered solely for the convenience of the medical staff or for purposes of punishment. N.D.C.C. § 25o-03.1-18.1(2)(b). Petitioner has the burden of proving by clear and convincing evidence the factors supporting forced medication. § 25-03.1-18.1(3).

[¶24] Conclusory statements by a treating physician and other physician are not helpful in determining whether forced medication should be authorized. Interest of J.D., 2002 ND 50, ¶24, 640 N.w.2d 733. Without evidence that other forms of intervention were considered, a court has no basis for a finding that forced medication is the least restrictive form of intervention necessary for a person’s treatment. *Id.* at ¶25.

[¶25] There is no clear and convincing evidence that Respondent has an untreated mental illness for which the requested forced medications would be required. The only element of the test for ordering forced medication that was supported by clear and convincing evidence was that Respondent had been offered the medication and refused it; however she had voluntarily She has a right to his own input in his treatment plan and the court should not be forcing medications merely to make it easier for medical staff to have a more dictatorial position in regards to how they treat patients. Respondent cannot be ordered to take medication merely because it might make life more convenient for the

medical staff or for his family members. N.D.C.C. § 25-03.1-18.1(2)(b). As V.K. testified, she had doctors in Fargo with which she had appointments and that she intended to meet with those doctors for treatment. V.K. was not suicidal and was not physically aggressive toward others. Additionally, V.K. owned her own home in Jamestown and did have an income with which to pay for her needs.

[¶26] The order for forced medication was not supported by clear and convincing evidence and should be reversed.

[¶27] Whether the trial court erred in not ordering less restrictive treatment for Respondent.

[¶28] Section 25-03.1-21 of the North Dakota Century Code 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 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.

[¶29] There was not clear and convincing evidence for the court to order in-patient treatment for 90 days or for forced medication. The evidence did not support a finding that Respondent was mentally ill in need of inpatient treatment as defined by law or that if he was mentally ill that alternative treatment was not available..

[¶30] Even if there had been enough evidence to support a finding of untreated mental illness, ordering in-patient treatment and forced medication clearly went well beyond the least restrictive means of treating the Respondent. The court was given sufficient evidence that Respondent should be allowed to attempt his proposed plan of taking oral medication and working with Southeast Human Services Center on an outpatient basis so he could return home and resume his life and take care of pending work opportunities in the community.

CONCLUSION

[¶31] The Petitioner did not meet its burden of proof for a commitment to involuntary in-patient treatment. This court should reverse the findings and order of the district court and order that the petition for involuntary commitment be dismissed. The court should further reverse the order for involuntary medication and the order for forced medical treatment and procedures. In the alternative, the court should remand the matter back to the district court with instructions to order appropriate less restrictive treatment.

Respectfully submitted this 30th day of January, 2014.



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)	CERTIFICATE OF SERVICE
Respondent/Appellant.)	

I, Mark T. Blumer, do hereby certify that on 5th day of February, 2014, I served the following documents:

1. Appellant Brief
2. Appellant Appendix
3. Certificate of Service

on

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Jamestown, ND 58401
tjlefevre@nd.gov

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Jamestown, ND 58401

to Troy LeFevre by electronic mail to the email address shown above and to V.K. by 1st Class U.S. Mail to her full name at the address shown above, prepaid and depositing with the U.S. Post Office, Fargo, ND. (Previous email address used for service on the 3rd day of February, 2014 was incorrect).

Dated this 5th day of February, 2014.



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)	CERTIFICATE OF SERVICE
Respondent/Appellant.)	

I, Mark T. Blumer, do hereby certify that on 3rd day of February, 2014, I served the following documents:

1. Notice of Appeal
2. Request for Transcripts
3. Certificate of Service

on

Troy LeFevre
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Jamestown, ND 58401

to Troy LeFevre by electronic mail to the email address shown above and to V.K. by 1st Class U.S. Mail to her full name at the address shown above, prepaid and depositing with the U.S. Post Office, Fargo, ND.

Dated this 3rd day of February, 2014.


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Jamestown, ND 58401

to Troy LeFevre by electronic mail to the email address shown above and to V.K. by 1st Class U.S. Mail to her full name at the address shown above, prepaid and depositing with the U.S. Post Office, Fargo, ND.

Dated this 3rd day of February, 2014.



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