

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

In The Interest of B.K.

Adam D. Miller, Psy.D,
Petitioner and Appellee

Appellant's Brief

v.

File No. 20150260

B.K.
Respondent and Appellant

Stutsman Co. No 47-2015-MH-204

An appeal from a South East Judicial District Court's Order for Hospitalization
and Treatment, by Hearing Held on August 17, 2015,

The Honorable Thomas Merrick, presiding.

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<i>In the Interest of S.S.</i> , 491 N.W.2d 721, 722-23. (N.D. 1992).	14

I. Jurisdiction

1 The district court had jurisdiction under North Dakota Const. Art. VI, Sec. 8, 25-03.1-03, and section 27-05-06(1) of the North Dakota Century Code. The appeal from the district court was timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. Art. VI, Sec. 6, sections 25-03.1-29, 29-01-12 and 29-28-06 of the North Dakota Century Code.

II. Issues Presented for Review

2 Whether the District Court Erred in Finding B.K. to be mentally ill and a person requiring treatment.

III. Statement of the Case

3 This is an expedited appeal of a Stutsman County District Court's Order for Hospitalization and Treatment finding the Respondent mentally ill, requiring treatment and ordering up to ninety (90) days of inpatient treatment at the North Dakota State Hospital. This appeal is taken under Section 25-03.1-29 of the North Dakota Century Code and Rule 2.1 of the North Dakota Rules of Appellate Procedure.

II. Statement of Facts

4 B.K. has had multiple admissions to the NDSH. His current admission started on July 7, 2015. A petition for involuntary commitment was filed with the court on August 11, 2015. In the petition, the doctor gave the following reasons for the petition.

Prior to his admission to the North Dakota State Hospital referral data notes that B.K. had presented to the police department requesting to be arrested. He was seen and assessed at Sanford Hospital but due to a lack of space was

transported to Altru Hospital where he was placed in a low stimulation area. Data notes that B.K. has presented as disorganized, paranoid and delusional and reportedly had been “verbally and physically aggressive with Altru Staff.” More recently B.K. has been demonstrating manic symptomology including, demonstrating pressured speech, spending “\$90 in a week while at NDSH on soda, snacks and 40+ packs of gum because, ‘they were on sale.’” Data notes that he continues to demonstrate grandiosity by discussing how he has invented many items and used his “money follows the person funds for patents on inventions.” Thus, he continues to require stabilization after which, when an apartment can be found by his guardians NDSH will look towards prompt discharge to this less restrictive setting.

5 On August 17, 2015 a treatment hearing was held at the Stutsman County Courthouse. The court found B.K. to be mentally ill, a person requiring treatment, and that no alternative treatment was appropriate at the time. On September 2, 2015 B.K. was released from the State Hospital on an Alternative Treatment Order to the South Central Human Service Center.

6 B.K. appeals this ruling.

IV. Scope of Review

7 North Dakota Supreme Court’s Scope of Review of this Appeal is limited and the Standard is Governed by Rule 52(a) of the North Dakota Rules of Civil Procedure.

8 Pursuant to 25-03.1-29 this court is “limited to a review of the procedures, findings, and conclusions of the lower court.” N.D. Cent. Code Sec. 25-03.1-29.

9 Under Rule 52(a) of the North Dakota Rules of Civil Procedure, this Court will not set aside a trial court’s decision unless that decision was “clearly erroneous.”

N.D.R.Civ. P. 52(a)

V. ARGUMENT

10 Whether a person requires treatment needs a two-step analysis. First, the court must find the person is mentally ill [or chemically dependent], and second, the

court must find there is a reasonable expectation that, if the person is not hospitalized, there exists a serious risk of harm to himself, others or property. *In Interest of R.N.*, 1997 ND 246, ¶ 11, 572 N.W.2d 820. It is not enough that a person would benefit from treatment, the person must require treatment. *See In Interest of M.B.*, 467 N.W.2d 902, 904 (N.D. 1991).

11 As stated above, there is a presumption in favor of the respondent. N.D.C.C. 25-03.1-19. The burden of proving, by clear and convincing evidence, that B.K. is a person who is mentally ill and requiring treatment is on the petitioner. *Id.*

12 There was no clear and convincing evidence that proved B.K. was “Mentally Ill” as Mandated by the North Dakota Century Code.

13 Section 25-.03.1-02 (12) of the North Dakota Century Code States:

“Mentally ill person” means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations.

14 “There are thus two focal points of mental illness under our statute: first, disorder, and second, substantial impairment.” *See In the Interest of S.S.*, 491 N.W.2d 721, 722-23. (N.D. 1992).

15 The Doctor testified that B.K. suffered from Schizophrenia, Bi-polar type. The Petitioner also needs to show that the mental illness will substantially impair use of self control, judgment, and discretion in the conduct of personal affairs and social relations. N.D. Cent. Code Sec. 25-03.1-02 (12). The Petitioner did not provide clear and convincing evidence that B.K. is mentally ill and that he suffers from such an impairment.

16 There was not clear and convincing evidence presented that showed B.K. as a “person requiring treatment” as mandated by the North Dakota Century Code.

17 “Person requiring treatment” means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that person, others, or property. N.D. Cent. Code Sec 25-03.1-02 (13).

18 “Serious risk of harm” means a substantial likelihood of

- a. Suicide, as manifested by suicidal threats, attempts, or 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 recent poor self-control or judgment in providing one’s shelter,
- d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of 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. Cent. Code Sec. 25-03.1-02(20).

19 The court erred by finding there was clear and convincing evidence that B.K. is a person requiring treatment.

VI. CONCLUSION

20 For the reasons set forth above, B.K. respectfully requests the North Dakota Supreme Court reverse the decision and order of the court below and dismiss the petition.

Dated: September 8, 2015

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