

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

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|---------------------------|---|-------------------------------------|
| IN THE INTEREST OF A.K.M. |) | Supreme Court No. 20220316 |
| |) | |
| Theresa Smith, FNP, |) | District Court No. 18-2022-MH-00118 |
| |) | |
| Petitioner and Appellee, |) | |
| |) | |
| vs. |) | |
| |) | |
| A.M.K., |) | |
| |) | |
| Respondent and Appellant. |) | |

ON APPEAL FROM CASE No. 2022-MH-00118
NORTHEAST CENTRAL JUDICIAL DISTRICT, GRAND FORKS COUNTY
THE HONORABLE LOLITA HARTL ROMANICK PRESIDING.

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

- I. THE COURT PROPERLY FOUND, BY CLEAR AND CONVINCING EVIDENCE, THAT A.M.K. IS A PERSON IN NEED OF IN-PATIENT TREATMENT.

- II. THE DISTRICT COURT PROPERLY FOUND A.M.K. MET THE CRITERIA FOR TREATMENT WITH MEDICATION.

STATEMENT OF THE CASE

[¶1] On September 12, 2022, a Petition for Involuntary Commitment was filed in the Interest of A.M.K. Doc. 4. The information in the Petition for Involuntary Commitment was provided by Teresa Smith, Advanced Practice Registered Nurse. *Id.*

[¶2] On September 10, 2022, Teresa Smith, APRN, FNP-C, at Altru Hospital completed a Report of Examination for A.M.K. Doc. 6. Ms. Smith concluded that A.M.K. is an individual with organic, mental, or emotional disorder which substantially impairs A.M.K.'s capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations and is a mentally ill person. Doc. 6. Additionally, in the Report of Examination, Ms. Smith concluded that, as a result of the illness previously identified, there is a reasonable expectation that there exists a serious risk of harm to A.M.K., others, or property, namely, a substantial likelihood of 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, or other relevant factors, including the effect of the person's mental condition on the person's ability to consent. *Id.*

[¶3] On September 10, 2022, Ms. Smith completed the Report Assessing Availability and Appropriateness of Alternative Treatment. Doc. 7. On September 12, 2022, Dr. Carlin Barnes, MD, and Ms. Teresa Smith filed a Request to Treat with Medication as A.M.K. refused to take medication for her mental illness. Doc. 8.

[¶4] On September 13, 2022, the Preliminary Hearing in the Interest of A.M.K. was held in the Grand Forks County District Court before, the Honorable, John A.

Thelen, Judge of the District Court. On September 13, 2022, Judge Thelen, issued Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing, finding that A.M.K. was mentally ill, that there was a serious risk of harm to A.M.K, others or property, that there was serious risk of a substantial deterioration in physical or mental health of A.M.K., and that a less restrictive alternative to detention is not in the best interest of A.M.K. Doc. 15. The Order stated that A.M.K. is ordered to undergo treatment at Altru Hospital, for a period not to exceed fourteen days, ending on September 27, 2022. *Id.*

[¶5] On September 26, 2022, the Altru Psychiatry Hospital Progress Notes in the Interest of A.M.K. was filed. Doc. 27. On September 27, 2022, the hearings for Treatment and Medication in the Interest of A.M.K. were held in the Grand Forks County District Court before, the Honorable, Lolita G. Hartl Romanick, Judge of the District Court. On September 28, 2022, following the Treatment Hearing Judge Romanick issued Findings of Fact, Conclusions of Law, and Order Following Treatment Hearing, finding that there is clear and convincing evidence to warrant authorization to the facility for treatment with prescribed medication and ordered A.M.K. undergo treatment at Altru for up to 90 days Doc. 28. On September 29, 2022, the Order Regarding Involuntary Treatment with Medication was issued by Judge Romanick in Grand Forks County District Court. Doc. 32.

[¶6] On October 5, 2022, the second Request to Treat with Medication was filed by Ms. Teresa Smith to modify the medications listed in the original medication order from “alternative” to “specific” medications and remove some of the listed medications as they were no longer necessary. Doc. 34. On October 6, 2022, the

Medication Hearing was held in the Grand Forks County District Court before, the Honorable, Jason McCarthy, Judge of the District Court. On the October 7, 2022, the Order Following Involuntary Medication Hearing was issued by Judge McCarthy and the medications listed in the original order were modified. Doc. 48.

[¶7] On the October 26, 2022, the Notice of Expedited Appeal was filed by A.M.K.'s attorney, Tyler Morrow, regarding the Order Following Involuntary Medication Treatment Hearing entered in the District Court of Grand Forks on September 27, 2022. Doc. 48.

[¶8] On October 31, 2022, a Notice of Release was filed indicating A.M.K. was discharged from Altru Hospital. On November 1, 2022, the District Court ordered less restrictive treatment for A.M.K. in the form of outpatient treatment at Center Inc. in Grand Forks, North Dakota.

STATEMENT OF FACTS

[¶9] On September 10, 2022, an Application for Emergency Admission was filed for a psychiatric evaluation, stating that A.M.K. believes that “someone is stalking her, poisoning her, and trying to murder her” and her “past medical history of cognitive dysfunction and somatic delusions.” Doc. 1.

[¶10] Dr. Shrestha, a psychiatrist with Altru Hospital in the City of Grand Forks testified as an expert in the field of psychiatry. Prelim. Hrg. Tr. at 3:00. The doctor testified that A.M.K. suffers from paranoid schizophrenia and continues to be paranoid with instances of agitation. Prelim. Hrg. Tr. at 7:40. He stated that A.M.K.’s behavior caused “one staff member [having] to end an interview early due to” A.M.K.’s symptoms of agitation. Prelim. Hrg. Tr. at 9:30. At the preliminary hearing, A.M.K. made a variety of statements on the record that the presiding judge found were evidence of her need for hospitalization for her mental illness, such as statements regarding murder and an agenda by the staff at Altru Hospital and the Court to harm her. Prelim. Hrg. Tr. at 26:50. Additionally, A.M.K. stated that she had been “poisoned long, long, long, ago, but also recently...”. *Id.*

[¶11] Following the Preliminary Hearing, the Judge Thelen entered the Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing, with findings that A.M.K. was mentally ill, that there was a serious risk of harm to A.M.K, others or property, that there was substantial deterioration in physical or mental health of A.M.K., and that a less restrictive alternative to detention is not in the best interest of A.M.K. Doc. 15.

[¶12] On September 27, 2022, the hearings for Treatment and Medication in the Interest of A.M.K. was held in the Grand Forks County District Court before the Judge Romanick. Present at the hearing were A.M.K., Respondent, David D. Dusek, counsel for Respondent at the time of the hearing, and Madison E. Gruber, Assistant State's Attorney representing the State of North of Dakota. Tr. at 1:00.

[¶13] Dr. Sladkin, psychiatrist at Altru Hospital, testified that A.M.K. was diagnosed with psychosis, unspecified type. Tr. at 3:00. Dr. Sladkin stated that A.M.K. had no realistic plans for the future and no plans to take care of herself. Tr. at 1:35:40. Dr. Sladkin testified that A.M.K. did not want to speak about anything except being discharged, however, A.M.K. could not conceptualize what she would do if the discharge was granted. *Id.* Dr. Sladkin explained that A.M.K. has rigid thinking to the point that she keeps repeating herself. Tr. at 8:35. Dr. Sladkin gave an example of A.M.K.'s rigid thinking that while at Altru Hospital, A.M.K. repeated over and over that keeping her here is criminal and we're criminal. *Id.* Dr. Sladkin explained that A.M.K. does not want to talk about, or think about, or express some of the other psychotic thoughts she was having prior to admission. Tr. at 10:50. During direct examination, Dr. Sladkin testified that A.M.K. is an individual requiring medication; however, A.M.K. refuse[s] all medication. Tr. at 21:50. Further, Dr. Sladkin testified that symptoms of psychosis require medication and individuals with psychosis do not spontaneously recover from the symptoms without medical treatment. Tr. at 59:00.

[¶14] Dr. Sladkin testified as to all necessary elements for prescribed medication. Tr. at 20:00. He explained that psychotic symptoms require medication and A.M.K. is a person requiring treatment. *Id.* Dr. Sladkin provided testimony that supported

that the proposed medications are clinically appropriate and necessary to effectively treat the patient. Tr. at 26:00. He testified that the patient was a person requiring treatment. *Id.* He stated A.M.K. was offered the medication multiple times and had refused it every time. *Id.* He also testified the prescribed medication would be the least restrictive form of intervention necessary to meet the treatment needs of the patient as a treatment plan that includes medication is the only treatment plan that is effective in patients with psychotic symptoms, and the benefits of the treatment outweigh the known risks to the patient as the medications are safe. Tr. at 21:50. The doctor outlined the primary risks as weight gain, stiff muscles, and facial twitches and the benefits as decreased paranoia, and an ability to live a normal life. Tr. at 26:00.

[¶15] Following the Treatment and Medication Hearings, the Grand Forks County District Court entered the Findings of Fact, Conclusions of Law, and Order Following Treatment and Medication Hearing, with findings that A.M.K. was mentally ill, that there was a serious risk of substantial deterioration in physical or mental health of A.M.K., and that a less restrictive alternative to detention is not in the best interest of A.M.K. The Court further ordered court-ordered medication for A.M.K. Doc. 32.

ARGUMENT

[¶16] The North Dakota Supreme Court’s review of this appeal under N.D.C.C. Ch. 25-03.1 is limited to a review of the procedures, findings, and conclusions of the District Court. In re J.D., 2002 ND 50, ¶ 13, 640 N.W.2d 733. The district court’s findings of fact are reviewed on appeal under the clearly erroneous standard. In re W.J.C.A., 2012 ND 12, ¶ 6.

A 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 record [the appellate court] is left with a definite and firm conviction it is not supported by clear and convincing evidence.’

Id. (quoting In re W.K., 2009 ND 218, ¶12, 776 N.W.2d 572). Under this standard of review, the appellate court does not replace the district court’s decision with its own. In re R.N., 513 N.W.2d 370, 371 (N.D. 1994). “When one or more reasonable inferences can be drawn from credible evidence, this Court must accept the inferences drawn by the trial court.” In re D.Z., 2002 ND 132, ¶ 9, 649 N.W.2d 231.

I. THE COURT PROPERLY FOUND, BY CLEAR AND CONVINCING EVIDENCE, THAT A.M.K. IS A PERSON IN NEED OF IN-PATIENT TREATMENT.

[¶17] In order to civilly commit an individual, the court must find, based on clear and convincing evidence, that the Respondent is a “Person Requiring Treatment.” In re B.D.K., 2007 ND 186, ¶ 16, 742 N.W.2d 41, 45. Additionally, the court must consider the least restrictive form of treatment that will meet the Respondent’s treatment needs. In re J.S., 2006 ND 143, ¶ 6. Each of these items will be considered in turn.

A. The finding that the Respondent is a “Person Requiring Treatment” was supported by clear and convincing evidence.

[¶18] A “Person Requiring Treatment” is defined as:

[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.C.C. § 25-03.1-02 (13). To determine if the Respondent is a “Person Requiring Treatment,” the court must find the following: (1) the Respondent is “mentally ill,” and (2) there is a reasonable expectation that if the Respondent is not treated, there exists a serious risk of harm to that person, others, or property.

i. The District Court properly found that A.M.K. is “mentally ill.”

[¶19] Pursuant to North Dakota Century Code § 25-03.1-02 (12), “mentally ill person” is defined as:

[A]n individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations.

[¶20] A.M.K. was diagnosed with psychosis-unspecified type, a mental illness by Dr. Sladkin, a staff psychiatrist at Altru Hospital In-Patient Behavioral Health Unit, who was qualified by the District Court as an expert in the field of psychiatry. Tr. at 6:40 and 5:00. Dr. Sladkin testified he was A.M.K.’s current treatment provider and he had reviewed the notes of A.M.K.’s previous providers during her current stay at the hospital. Tr. at 5:15. The Respondent was initially brought to Altru Emergency Department by her brother, who informed Altru staff that the Respondent had made concerning statements to him. Tr. at 12:00. Statements made to her brother that her brother reported to Altru staff include: That the Respondent is being abused, she cannot stay in her apartment because

she is being stalked and people are coming in a stealing things, she has not been eating much because she believes demons will possess her if she does, she has been poisoned, and she has already been murdered. Tr. at 12:00. The Respondent's brother also reported to Altru staff that the Respondent appeared to have lost significant weight. Tr. at 13:00. Dr. Sladkin testified that reports of concerns about A.M.K. were made to Altru by A.M.K.'s brother and sister. Tr. at 1:03:35.

[¶21] Dr. Sladkin testified A.M.K. demonstrated rigid thinking at Altru Hospital and has paranoia that is overwhelming to her. Tr. at 8:35 and 20:55. This was evidenced by excessively repeating herself and her black and white approach to discussions with Altru Hospital staff. Tr. at 8:35. The doctor explained an example of this black and white thinking was A.M.K. repetitively responding to staff with "No. Stop. Don't." as well as accusing hospital staff of being criminals and repetitively stating that she, herself, is not a criminal. Tr. at 9:30. Dr. Sladkin testified that this manner of speech is likely due to her paranoia, a symptom of psychosis. Tr. at 10:55. Dr. Sladkin further testified A.M.K had not been willing to voice her plan for self-care if discharged, and accusing staff at Altru Hospital of being criminals. Tr. at 10:10.

[¶22] On September 22, 2022, at a preliminary hearing on this case, held before Judge Thelen, A.M.K. made comments on the record. A.M.K testified at the preliminary hearing that:

"I am willing to try to defend my life and, therefore, all life [...] if this process continues, you know you are committing murder [...] I am not supposed to be here. It was supposed to be life, liberty, and the pursuit of happiness for all we the people no matter how many me's in the we there are rather than because they think they are bigger stronger or more powerful therefor allowed to harm or damage for their will be done instead

of every me me me there will ever be be be to be free free free and by that free I have to qualify liberties because they claim I constantly talk wrong and they can not only not understand what I am saying but somehow that doesn't curtail their agenda for all the me's and the we's down in weeville this is not ok. I want to go home. The same home all the me's want or will ever need [...] you are conspiring against the State and you will not be allowed to compromise the conditions for my life".

Pelim. Hrg. Tr. at 24:12. A.M.K. additionally stated "I have not been charged and their lies are worse and you know it". Prelim. Hrg. Tr. at 21:45. Judge Thelen noted on the record that A.M.K. appeared to have twenty to thirty pages of information to present and the statements made by A.M.K. at the hearing were further evidence of her mental illness. Prelim Hrg. Tr. at 27:00.

ii. The District Court properly found that there is a substantial likelihood that there exists a "serious risk of harm" to A.M.K., others, or property.

- [¶23] "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, 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 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.C.C. § 25-03.1-02 (20).

[¶24] The District Court made a finding that there is a substantial likelihood that the Respondent poses a significant risk of "substantial deterioration in her physical

health, or substantial injury, disease, or death resulting from recent poor self-control or judgment in providing one's shelter, nutrition, or personal care." Doc. 28. The District Court further found N.D.C.C. § 25-03.1-02 (20)(c) and (d) applied because there was a significant risk of substantial deterioration in A.M.K.'s physical or mental health. Tr. at 1:34:45. Specifically, the Respondent was refusing to take her medication, she had no plan for self-care or housing outside of the hospital, and she exhibited rigid thinking and delusional thoughts. Tr. at 1:25:40.

[¶25] Dr. Sladkin testified that individuals do not spontaneously recover from psychosis and medication is necessary to treat psychotic symptoms. Tr. at 59:10. Dr. Sladkin expressed concern that the Respondent would revert back to her condition prior to her admission if not properly treated and would not be able to care for herself. Tr. at 15:00 and 16:00. Dr. Sladkin testified that suicidal behavior was a concern initially as it relates to her current stay at the hospital. Tr. at 15:30. A.M.K. was brought to the hospital due to concerns including: wandering around; stating she was being abused, she had been poisoned, she had already been murdered, she was possessed by demons, she thought if she ate that demons would possess her, and she could not stay in her apartment because she was being stalked; and her brother's observations that A.M.K. had lost weight. Tr. at 15:50. Dr. Sladkin testified A.M.K. had not been eating much at the hospital and he felt there was a serious risk that, if released from inpatient care, A.M.K. would continue not eating, which would cause a substantial deterioration in her physical health. Tr. at 16:00. Dr. Sladkin testified as to A.M.K.'s need for a structured environment in order for her to stabilize. Tr. at 19:55.

[¶26] The Court may consider that at least one of A.M.K.'s conditions has improved since the time of her admission to the hospital as Dr. Sladkin testified that A.M.K. has calmed down since her admission and is not actively reporting thoughts about stalking. Tr. at 13:40. It is important to note, however, that the court is to consider the Respondent's risk if not treated, rather than the risk she poses in a secured treatment setting. See N.D.C.C. § 25-03.1-02(13) (stating "there is a reasonable expectation that if the person is not treated... there exists a serious risk of harm"). However, even while in a secured setting, the doctor testified the Respondent's comments have been consistent with someone experiencing psychotic symptoms. Tr. at 38:57. The Respondent had been unable to identify a concrete plan for her release to provide for her basic needs and treatment of her decompensating mental illness. Tr. at 8:15.

iii. The District Court properly considered less restrictive forms of treatment in finding that the Respondent is in need of in-patient treatment.

[¶27] Before entering an order for hospitalization, the Court is to consider if there are any less restrictive forms of treatment appropriate for the Respondent. N.D.C.C. § 25-03.1-21(1) provides:

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 serious risk of harm, the court shall order the respondent to receive whatever treatment, other than hospitalization, is appropriate for a period of ninety days.

[¶28] When deciding whether alternative treatment to hospitalization is adequate, the district court is to make a two-part inquiry: "(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

that an individual may inflict on himself or others.” In re J.S., 2006 ND 143, ¶ 6, 717 N.W.2d 598. When available alternative treatment programs are insufficient to prevent harm or injuries that an individual may inflict on himself or others, less restrictive treatment cannot be ordered. *Id.* A district court’s finding that no less restrictive treatment program other than hospitalization is appropriate, will not be reversed unless clearly erroneous. In re M.M., 2005 ND 219, ¶ 9, 707 N.W.2d 78.

[¶29] Dr. Sladkin testified there were no less restrictive forms of treatment available to meet the Respondent’s treatment needs. Tr. at 20:10 and 36:00. He also testified less restrictive treatment would pose a risk to A.M.K. or others because A.M.K. continued to require a structured environment, and he does not think she would be compliant with treatment. *Id.* Dr. Sladkin explained that A.M.K. is refusing her recommended treatment at Altru Hospital. Tr. at 32:00. Additionally, A.M.K. has not been cooperating with treatment providers in that she refused to allow providers access to speak with her. Tr. at 37:40.

II. THE DISTRICT COURT PROPERLY FOUND A.M.K. MET THE CRITERIA FOR TREATMENT WITH MEDICATION.

[¶30] In order for a district court to order involuntary treatment with medication, the court must find the following:

- 1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
- 2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
- 3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and

- 4) That the benefits of the treatment outweigh the known risks to the patient.

N.D.C.C. 25-03.1-18.1(1)(a). See also In re M.M., 2005 N.D. 219, ¶ 9, 707 N.W.2d 78.

[¶31] On September 12, 2022, Altru Hospital submitted a Request to Treat with Medication for A.M.K. Tr. at 21:40. Advanced Practice Registered Nurse, Teresa Smith and Dr. Ashok Bansal proposed that the court order the medications of Zypreza, Risperdal, Haldol, and Invega or Invega Sustenna. Tr. at 22:30. Dr. Sladkin testified as to the requisite four elements listed in N.D.C.C. § 25-03.1-18.1(1)(a). Tr. at 25:20. Furthermore, the District Court made findings that each of the four elements listed in N.D.C.C. § 25-03.1-18.1(1)(a) have been met. Tr. at 1:34:00.

[¶32] Dr. Sladkin provided testimony that supported that the proposed medications are clinically appropriate and necessary to effectively treat the patient and that the patient was a person requiring treatment, A.M.K. was offered the medication multiple times and had refused it every time. Tr. at 26:00. He testified that A.M.K. would not even take medication for headaches when appropriate, not that that was required of her. *Id.* He further testified the prescribed medication would be the least restrictive form of intervention necessary to meet the treatment needs of the patient as a treatment plan that includes medication is the only treatment plan that is effective in patients with psychotic symptoms, and the benefits of the treatment outweigh the known risks to the patient as the medications are safe. Tr. at 21:50. He testified that the chances of recovery from psychotic symptoms without the use of medication is less than ten percent. *Id.* The doctor outlined the primary risks as weight gain, stiff muscles, and facial twitches and the benefits as decreased paranoia, and an ability to live a normal life. Tr. at 26:00.

[¶33] The Court considered and found clear and convincing evidence for the necessary elements for involuntary treatment with medications under N.D.C.C. § 25-03.1-18.1(1)(a). Tr. at 1:28:00. Therefore, it was not clearly erroneous for the Grand Forks County District Court to order involuntary treatment with medications.

CONCLUSION

[¶34] It was not clearly erroneous for the Grand Forks County District Court to conclude the Respondent was a person requiring in-patient treatment with medication. Given the testimony and evidence presented, this Court should affirm the Grand Forks County District Court's findings of fact, conclusions of law, and order for hospitalization and medication.

DATED this 2nd day of November 2022.

/s/ Madison E. Gruber
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