

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

In The Interest of A.M.K.

Teresa Smith, FNP-C,
Petitioner and Appellee.

Appellant's Brief

v.

File No.

A.M.K.,
Respondent and Appellant.

Grand Forks Co. No. 18-2022-MH-00118

An appeal from a Northeast Central Judicial District Court's Order Following Involuntary Treatment Hearing and an Order Regarding Involuntary Treatment with Medication, by Hearing Held on September 27, 2022, the Honorable Lolita Hartl Romanick, presiding.

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Case Law

<i>In Interest of M.B.</i> , 467 N.W.2d 902, 904 (N.D. 1991)	15
<i>In Interest of R.N.</i> , 246, ¶11, 572 N.W.2d 820 (N.D. 1997)	15

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 by clear and convincing evidence A.M.K. to be mentally ill and a person requiring treatment. Whether the District Court Erred in finding by clear and convincing evidence to grant the request for forced medication.

III. Statement of the Case

3 This is an expedited appeal of a Grand Forks County District Court's Order for Hospitalization following the Treatment Hearing and for an Order Regarding Involuntary Treatment with Medication. 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.

IV. Statement of Facts

4 On September 4, 2022, A.M.K. left her apartment in Grand Forks due to concerns of being stalked. A.M.K. reached out to various emergency housing options including: CVIC, the Mission, and local hotels. A.M.K. explained to the Mission that she is on disability and had medical needs therefore would be unable to fulfill all the tasks that are required for occupants. The Mission stated that she would need verification from

a provider.

5 On September 5, 2022, A.M.K. called her brother M.K. who found her sitting outside of the Columbia Mall in Grand Forks, ND. Her brother spoke with the Mission and then brought A.M.K. to the Altru ER for an evaluation. At Altru, A.M.K. explained her concerns about her previous apartment and agreed to stay in the hospital until a Psych evaluation could be completed.

6 A.M.K. was moved into the Behavioral Health unit and initially refused the medication. A.M.K. was under the impression that she had visited Altru for an evaluation and would be released to the Mission immediately after.

7 On September 13, 2022, a Preliminary hearing was held and A.M.K. was present. The court found her to be mentally ill and a serious risk of harm to others or to property, and that there was a substantial deterioration in physical and mental health. A.M.K. was ordered to undergo treatment at Altru Hospital for a period not to exceed fourteen days, ending on 9/27/2022.

8 On September 27, 2022, a treatment hearing was held and the Court again found A.M.K. to be mentally ill. She was calmer and not making any statements that she had made before. She was demonstrating rigid thinking by refusing to talk about the pre-admission behaviors. The Court found her to be a person requiring further treatment and ordered A.M.K. to undergo treatment at Altru for a period not to exceed 90 days, ending on December 26, 2022.

9 An Involuntary Medication Hearing was held on October 6, 2022, before the Honorable Jason McCarthy, Judge of the District Court. On October 7, 2022, the Court ordered the medications to be updated for the remainder of the September 27,

2022, medication order in effect until December 26, 2022.

10 After the conclusion of the court hearing, the Appellant made known her wish to appeal the ruling for treatment and forced medication. A.M.K. does not believe that she needs further treatment and that her refusing to speak with staff does not warrant forced holding and medication. A.M.K. was in a rough place and simply looking for alternative housing.

11 A.M.K. appeals the Court Order Following Treatment Hearing filed and signed September 27, 2022, committing the Respondent to Altru Hospital for up to 90 days, or December 26, 2022, by finding her to be a person requiring treatment, and the order regarding involuntary treatment with medication also filed and signed September 27, 2022.

V. Scope of Review

12 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.

13 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.

14 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)

VI. ARGUMENT

15 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 If the court does not find clear and convincing evidence to believe that the individual requires treatment, the petition must be dismissed. N.D. Cent Code Sec 25-03.1-19. If clear and convincing evidence is found that a person requires treatment, the court shall consider less restrictive treatment in which the court can order up to 1 year of treatment under a less restrictive alternative. N.D. Cent. Code Sec 25-03.1-22

16 There was not clear and convincing evidence that proved A.M.K. was “Mentally Ill” as Mandated by the North Dakota Century Code.

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

“Mentally ill person” or “person who is mentally ill” means an 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.

18 Dr. Sladkin, MD, stated that A.M.K. suffers from Psychosis unspecified. The Appellant does not believe it has been established by clear and convincing evidence that she is mentally ill based on a lack of evidence.

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

20 “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).

- 21 “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. Cent. Code Sec. 25-03.1-02(20).

22 The Appellant believes the court erred by finding there was clear and convincing evidence that A.M.K. is a person requiring treatment based on the information provided at the hearing.

23 The Court also erred by granting the request to treat with medication under N.D. Cent. Code Sec 25-03.1-18.1.

24 As part of a request to treat with medications, a psychiatrist not involved with the current diagnosis or treatment shall certify:

- (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

25 N.D. Cent. Code Sec. 25-03.1-18.1(1)(a). The Court may grant the request to treat

with medications only of each of the above elements are proved by clear and convincing evidence. N.D. Cent. Code Sec. 25-03.1-18.1(3). The appellant does not believe it has been established by clear and convincing evidence that he is a person requiring treatment. Furthermore, the appellant does not believe sufficient evidence was provided to establish the above medication factors by clear and convincing evidence.

VII. CONCLUSION

26 For the reasons set forth above, A.M.K. respectfully requests the North Dakota Supreme Court reverse the Order Regarding Involuntary Treatment with Medication dated September 27, 2022.

Dated: October 26, 2022

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I, Zachary S. Tomczik, do hereby certify that the Brief of the Appellant is in compliance with rule 32(a)(8) in that it does not exceed the page limit for a brief.

The brief is ten (10) pages long which is under the page limit.

Dated: October 26, 2022

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I, Zachary S. Tomczik, do hereby certify that on October 26th, 2022, I served the following documents:

1. Notice of Appeal
2. Appellant Brief
3. Certificate of Service
4. Order for Transcript

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to Ms. Gruber by email to the electronic address shown above and to A.M.K. in person to the address shown above.

Dated: October 26, 2022

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