STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2294

In the Matter of the Civil Commitment of: Mary Jane Anderson

Filed April 22, 2008
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-MH-PR-07-983

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Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant appeals from the district court's order to have her civilly committed as mentally ill. She contends that the district court erred when it found that she had failed to provide herself with necessary food, clothing, shelter, or medical care. Because clear and convincing evidence supports the district court's finding that appellant presents a substantial likelihood of harm to herself by refusing to seek medical care, we affirm.

FACTS

Appellant Mary Jane Anderson is a single woman born on July 17, 1960. Her parents and her only sibling are deceased. Appellant returned to Minnesota from California in December 2006 to attend her sister's funeral. She stayed with friends for a few days and then moved into her aunt's house. Appellant's aunt found it increasingly difficult to talk with appellant about anything. Appellant often talked about her delusions, including her belief that she was being sexually assaulted over the Internet and that reinforcing bars in a neighbor's newly cemented driveway were helping to send her messages. Appellant contends that she is being raped electronically because she feels some type of sensation in her groin.

On September 6, 2007, her aunt found appellant crying and wailing in the bathroom. She called 911. The police took appellant to a crisis center where she was placed on a 72-hour hold. At that time, the aunt gave appellant notice that she could no longer live in her house and would have to leave on October 7, 2007. Thereafter, the Hennepin County Attorney filed a petition seeking to civilly commit appellant as a person who is mentally ill.

Appellant was examined by a court-appointed psychologist on September 14, 2007. The psychologist, Dr. Nelson, determined that appellant suffers from a substantial psychiatric disorder and diagnosed her with paranoid schizophrenia. Dr. Nelson further concluded that appellant had failed to obtain necessary food, clothing, shelter, or medical care as a result of the impairment by having no housing, no health insurance, and no

substantive income. Dr. Nelson recommended continued inpatient hospitalization as the least restrictive treatment for appellant.

At the trial, which commenced on September 20, 2007, appellant testified that she does not believe she is a paranoid schizophrenic. She also testified that if she were not committed, she would try to find appropriate housing by speaking with her pastors and counselors at the Walk-In Counseling Center until she was forced to leave her aunt's house on October 7, 2007. In the alternative, she said she would utilize a handbook of available shelters in the Minneapolis/St. Paul area to find somewhere to stay. Appellant testified in detail about places where she could obtain a free meal and at what times these meals were served. She also testified that she owned winter clothing and knew where she could purchase a bag of clothes for $1. Appellant stated that she knew how to use Metro Transit. Dr. Nelson supported commitment but admitted that appellant could access shelters and live there indefinitely without cost.

Appellant also testified to having a history of health problems. She had a minor stroke while teaching in California. She stated that she takes baby aspirin in order to prevent another stroke. She also reported having had carpal tunnel surgery on both wrists, transient ischemic attacks, hypoglycemia, sciatica, and a chipped bone in her foot. Furthermore, she has rated the pain in her thumbs, feet, pelvic area, and head at an 11 on a scale from one to ten.

Appellant has been hospitalized in the past. She was kept on a 72-hour hold at Regions Hospital in 2006 after someone called police to say she was trespassing, but then released. She was also hospitalized at Hennepin County Medical Center (HCMC) for a

period in March 2007 after she called 911 to report that people were stalking her and monitoring her through electronic devices. While at HCMC, appellant frequently complained of pain in her bones and joints, pelvic area, and head. However, due to her mental illness, appellant has refused to allow physicians to examine her. She has refused the taking of vital signs, lab testing, x-rays, and scans needed to determine the extent of her medical problems. She has refused to enter the office of the obstetrician/gynecologist to be examined for the abnormal sensations in her groin.

Appellant refuses to apply for financial assistance because her name would need to be entered into a computer. At trial, appellant testified that she began the process to apply for social security benefits, but was unable to proceed after "they plugged [her] information into the computer" and she "started having the bad sensations in [her] body and it bothered [her]." She is also generally unwilling to sign her name on any application.

On October 9, 2007, the district court ordered that appellant be committed to the commissioner of human services and the head of Hennepin County Medical Center as a mentally ill person as defined in Minn. Stat. § 253B.02, subd. 13 (2006), under Minn. Stat. § 253B.09, subd. 1(a) (2006). This appeal follows.

D E C I S I O N

Minnesota law allows for the judicial commitment of mentally ill individuals. The statute reads in relevant part:

> If the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill . . . and after careful consideration of reasonable alternative

> dispositions . . . it finds that there is no suitable alternative to judicial commitment, the court shall commit the patient to the least restrictive program . . . which can meet the patient's treatment needs . . . .

Minn. Stat. § 253B.09, subd. 1(a) (2006).

Minnesota law further defines a person who is mentally ill. The statute provides:

> A "person who is mentally ill" means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:
>
> (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
>
> (2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
>
> (3) a recent attempt or threat to physically harm self or others;
>
> or
>
> (4) recent and volitional conduct involving significant damage to substantial property.

Minn. Stat. § 253B.02, subd. 13(a) (2006).

Findings of fact justifying commitment "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01; *see also In re Schaefer*, 498 N.W.2d 298, 300 (Minn. App. 1993). The commitment may be reversed, however, if the

findings are insufficient to support the commitment. *In re McGaughey*, 536 N.W.2d 621, 624 (Minn. 1995). This court reviews "de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

There is no evidence in the record to indicate that Minn. Stat. § 253B.02, subd. 13(a)(2), (3), or (4), would be applicable to this case. Therefore, if appellant is mentally ill under the statute, it must be due to "a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment." Minn. Stat § 253B.02, subd. 13 (a)(1). As there is no evidence in the record to indicate that appellant failed to obtain necessary food or clothing, our analysis will focus on shelter and medical care.

I. Shelter

Appellant argues that she has not failed to obtain necessary shelter. Respondent asserts that the evidence demonstrates that appellant failed to maintain her housing and has no safe, adequate alternative. The district court found that appellant is unable to provide for her basic needs because she is homeless, destitute, unemployable, and unable to apply for financial assistance due to her fear of technology.

The Minnesota Supreme Court has stated that "speculation as to whether the person may, in the future, fail to obtain necessary food, clothing, shelter, or medical care or may attempt or threaten to harm self or others is not sufficient to justify civil commitment as a mentally ill person." *McGaughey*, 536 N.W.2d at 623. Appellant has not yet failed to obtain shelter. In fact, appellant stated at trial that she would "try to find appropriate housing," and has found such housing in the past. Mere speculation as to

whether appellant will become homeless is not enough to justify her commitment as a mentally ill person who poses a substantial risk of physical harm to herself or others.

Respondent focuses on the following language in *McGaughey* in an attempt to demonstrate that speculation is enough for commitment:

> This is not to say, however, that the person must either come to harm or harm others before commitment as a mentally ill person is justified. The statute requires only that a substantial likelihood of physical harm exists, as demonstrated by an *overt failure* to obtain necessary food, clothing, shelter, or medical care or by a recent attempt or threat to harm self or others.

Id. at 623-24 (emphasis added).

Respondent further cites to caselaw stating that a "court [is] not required to delay commitment until appellant or someone else [is] actually harmed, 'so long as the danger of appellant's condition ha[s] already become evident.'" *In re Terra*, 412 N.W.2d 325, 328 (Minn. App. 1987). Reliance on this language is misplaced. Although we do not require actual harm to occur, we do recognize that there must be an evident danger or overt failure to obtain the basic necessities of life. At the time of the trial, such a failure had yet to occur. Appellant was not homeless, and there is nothing in the record to indicate that such an outcome would result. Appellant stated that she would try to find adequate housing with the help of her pastors and counselors. She had found such housing in the past in California. Homelessness was a last resort, rather than a foregone conclusion.

Respondent cites to several cases for the proposition that poor living conditions may constitute a failure to obtain adequate shelter, food, and clothing. *See In re Edmond*,

366 N.W.2d 689, 690-91 (Minn. App. 1985) (stating that an individual who lived in an unsanitary house full of garbage, decomposing food, and cat feces posed a 'substantial likelihood of physical harm' as demonstrated by her failure to provide the necessities of life); *In re Schaefer*, 498 N.W.2d at 299 (stating that no electricity and no heat except for a space heater were important considerations in establishing that she posed a substantial likelihood of physical harm to herself). Respondent goes on to argue:

> Unlike [appellant], who has no housing or income, the appellants in *Edmond* and *Schaefer* did have housing, albeit unsanitary or inadequate in nature. Thus, [appellant's] assertion that access to homeless shelters, the bus system, and other resources meets the standard set forth in the statute simply because it is shelter in its most minimum form is incorrect.

Those cases can be distinguished, however, in that they showed an overt lack of care for personal well-being. Those individuals actually were living in inadequate housing whereas it is only speculative that appellant will end up on the streets.

Respondent bases its argument on the fact that appellant will not be able to survive on the streets without causing physical harm due to her delusions, paranoia, lack of employment, and unwillingness to sign her name and receive assistance. This entire argument assumes that appellant will be living on the streets. At the time of trial, this was only speculation. Based on *McGaughey*, it was improper to commit appellant on this basis before she had overtly failed to provide herself with appropriate shelter.

II. Medical Care

Appellant refused to submit to medical examinations to determine if her psychosis is caused by an underlying physical condition. She argues that caselaw does not support

commitment for failure to have an unknown problem investigated by a medical doctor. Respondent argues that appellant's adamant refusal to be examined by physicians despite her reported history of medical problems constitutes a failure to obtain necessary medical care within the meaning of Minn. Stat. § 253B.02, subd. 13(a)(1).

The district court observed that "[t]here is always a possibility that a psychotic patient with no available history of mental illness has an underlying physical condition that is producing the psychotic reaction." Furthermore, the district court noted that appellant's stroke made "it even more important that her doctors get as accurate a picture as possible of her current physical conditions." The district court also found compelling HCMC staff's opinion that the sensations caused by the perceived electronic rapes may be related to an undiagnosed medical condition.

Respondent cites to several unpublished opinions of this court to support its contention that a failure to meet medical needs can be found solely upon a refusal to cooperate with a medical examination, even where the person did not have a specific medical condition. *See In re Bonine*, No. C0-01-1843, 2002 WL 264752, at *2-*3 (Minn. App. Feb. 26, 2002) (holding that appellant, who had an undiagnosed brain disorder, posed a substantial risk of physical harm to himself when he refused to obtain a diagnosis, preventing doctors from determining the proper treatment); *In re Zienty*, No. C6-02-660, 2002 WL 31172106, at *2 (Minn. App. Oct. 1, 2002) (finding that appellant posed a substantial likelihood of physical harm to herself because she refused to allow medical personnel to conduct a medical examination); *In re Sadek*, No. C9-02-1110, 2002 WL 31890951, at *4 (Minn. App. Dec. 31, 2002) (holding that appellant posed a

substantial likelihood of physical harm to herself when she frequently missed medical appointments and had a history of mismanaging medication). Although not precedential, the reasoning in these cases is somewhat persuasive. They generally hold that a medical exam may constitute necessary medical care, such that a failure to allow a medical exam, particularly in light of suspected maladies, may constitute a failure to obtain necessary medical care pursuant to Minn. Stat. § 253B.02, subd. 13(a)(1).

Appellant refuses to submit to any medical examination due to paranoia and delusions resulting from her mental illness. Appellant has complained of pain in her bones and joints, her pelvic area, and her head. Doctors have opined that a medical ailment may be causing the sensation of rape that appellant claims to feel in her groin. Appellant also suffered a stroke several years back, but refuses to undergo medical testing to determine the possibility of a reoccurrence. Appellant also suffers from transient ischemic attacks, hypoglycemia, sciatica, and a chipped bone in her foot. These ailments cause her acute pain. Lastly, she refuses to acknowledge that she has paranoid schizophrenia or to take any medications to help control her delusions.

Before judicial commitment is warranted, the plain statutory language requires that appellant refuse to submit to necessary medical care, thereby making it likely that physical harm will result. Based on her myriad health problems, it is substantially likely that appellant's refusal to submit to these medical examinations will result in harm. The exams could ultimately protect appellant and others if they can help doctors deal with the cause of appellant's delusions. It is even possible that these exams might save

appellant's life by preventing another stroke. This makes them necessary under the statute thereby supporting appellant's commitment as a mentally ill individual.

Therefore, we conclude that the district court's decision was supported by clear and convincing evidence when it held that appellant posed a substantial risk of harm to herself by refusing to be examined by physicians when she had a history of health problems, and when HCMC physicians believed that the recurrent sensations in her groin may in fact be related to an underlying medical condition.

Affirmed.