**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-12**

In the Matter of the Civil Commitment of: Tsegaye D. Tefera

**Filed June 8, 2010**
**Affirmed**
**Muehlberg, Judge**[*]

Hennepin County District Court
File No. 27-MH-PR-09-863

Kurt M. Anderson, Minneapolis, Minnesota (for appellant Tefera)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

Considered and decided by Schellhas, Presiding Judge; Connolly, Judge; and Muehlberg, Judge.

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

**MUEHLBERG**, Judge

Appellant challenges his commitment as mentally ill, arguing that: commitment was not the least-restrictive alternative disposition and the district court made insufficient findings on this requirement; the affidavits supporting his ex parte hold failed to meet constitutional requirements; and the district court failed to comply with the rule requiring

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

notice by mail of the commitment order. Because the district court sufficiently found, by clear and convincing evidence, that no reasonable alternative disposition exists for appellant's treatment; appellant failed to raise the constitutional issue before the district court; and appellant was not prejudiced by the manner of delivery of notice of the order, we affirm.

## FACTS

Appellant Tsegaye Tefera was taken to North Memorial Medical Center by ambulance on September 1, 2009, after he called 911 and reported that he had fallen. Ambulance staff found appellant lying on a fecal-soaked mattress in his apartment, unable to get up because of weakness. The apartment contained rotting food, ants and cockroaches, urine, and fecal matter. Appellant remained at North Memorial for five days, refusing recommendations to go to a nursing home. He was discharged to his home with a recommendation for in-home services and was reported to Hennepin County Adult Protection Services as a vulnerable adult.

A week later, appellant was rehospitalized at Abbott Northwestern Hospital. He remained isolated in his room and refused to cooperate with evaluations and testing. He complained of constant pain in his right foot and leg, but declined to take medication, except an occasional Ibuprofen. Appellant was placed on a 72-hour physician's emergency hold.

On September 22, 2009, a notarized petition for judicial commitment, signed by the director of patient care at Abbott Northwestern, was filed in district court. The petition alleged that appellant's behavior provided a factual basis for believing that he

was mentally ill and that no suitable alternative to involuntary hospitalization existed. The petition was supported by an exhibit which referenced appellant's medical history and a physical taken by a court-appointed medical examiner, as well as notes and progress reports of a licensed social worker and a registered nurse. The exhibit indicates a diagnosis of depressive disorder, not otherwise specified, and adjustment disorder, not otherwise specified. The district court issued an ex parte hold order on September 22 and, three days later, held a preliminary hearing and ordered a continuing hold on appellant until trial.

The district court continued the matter for dismissal, with conditions that appellant voluntarily remain hospitalized and follow all directions for treatment; cooperate with aftercare planning and follow an aftercare plan; and cooperate with his assigned social worker. Three weeks later, the county attorney moved to vacate the continuance on allegations that appellant, who had been discharged to Richfield Health Care Center, had failed to follow directions of the treating doctor and treatment team by refusing to participate in therapeutic treatment, to take medications, and to eat properly.

The district court held a single hearing on the motion to vacate and the case in chief. The director of social services at the health care center testified that since appellant's admission to that facility a month earlier, appellant had been generally not ambulatory, not participating in therapy, refusing medications, not eating, and refusing nutritional supplements. The director testified that appellant had experienced significant weight loss, and without adequate nutrition or medication, was at significant risk of having his organs begin to fail, necessitating a return to the hospital. The director

testified that, although appellant had been observed walking, he had generally refused physical and occupational therapy and stayed in his bed. Although appellant claimed that he had pain in his foot, hospital records had not shown a clear etiology for his pain, and the care center staff had been unable to investigate it because he refused to cooperate.

The director testified that appellant's treatment team believed that he needed to be under commitment for more supervision and, if necessary, to have him return to the hospital. He acknowledged that appellant's treating nurse practitioner expressed a wish to wait to initiate neuroleptic medication pending further evaluation. But he testified that, although continuing at the health care center would be the least restrictive option for appellant, commitment would better meet his needs because if a commitment order specified that appellant was to comply with treatment, including taking prescribed medications, there would be "more authority to engage [appellant] in the importance of [treatment]."

The court-appointed examiner, a licensed psychologist, testified that she had diagnosed appellant with recurrent major depressive disorder, with psychosis. She testified that appellant was entertaining "bizarre somatic ideation" focused on the pain in his foot. She testified that appellant's judgment, behavior, capacity to recognize reality, and capacity to reason or understand were impaired, and that although he may have pain, his management of that pain indicated a thought disorder. She believed that his lack of cooperation was an abnormal response and a product of his mental illness. She recommended commitment, with the least restrictive alternative of appellant remaining at the health care center, with more authority to order cooperation with treatment. She

testified that although she did not believe that appellant would try to leave the care center, merely keeping him there without treatment was not a least restrictive alternative because he would "continue to fail to thrive without psychiatric treatment." The district court observed that a commitment order would not give the health care center authority to force treatment on appellant, but would give the possibility for transfer to a hospital if personnel did not believe they could manage his care.

The district court ordered appellant's commitment as a mentally ill person. The district court found that appellant's illness could not adequately be treated by dismissing the petition or other alternatives to commitment. The district court found that commitment was the least restrictive, appropriate, available placement, and that it did not consider other placements because recent attempts to treat appellant in other settings had failed because appellant was unable to cooperate with treatment. This appeal follows.

**D E C I S I O N**

This court's review of an involuntary civil commitment is limited to an examination of whether the district court complied with the requirements of the commitment statute and whether the commitment is "justified by findings based upon evidence at the hearing." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We accord great deference to the district court's factual findings and will not set them aside unless they are clearly erroneous. *Id.* But we review de novo whether clear and convincing evidence supports the district court's conclusion that a person meets the standards for commitment. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

A district court may order a person to be civilly committed if it finds, based on clear and convincing evidence, that the proposed patient is "mentally ill" and that "after careful consideration of reasonable alternative dispositions, . . . there is no suitable alternative to judicial commitment." Minn. Stat. § 253B.09, subd. 1(a) (2008). If commitment is found to be the only suitable alternative, the district court "shall commit the patient to the least restrictive treatment program . . . which can meet the patient's treatment needs." *Id*.

The district court found that appellant's mental illness could not be adequately treated by dismissing the petition or other alternatives, such as voluntary care on an inpatient or outpatient basis, appointing a guardian or conservator, or conditional release. The district court found that commitment is "[t]he least restrictive, appropriate available placement." The district court also found that it "considered no other placements because recent attempts to treat [appellant] in hospitals, in a nursing home, and at home with services have all failed due to [appellant's] inability to cooperate with such treatment."

Appellant does not contest the district court's determination that he is mentally ill. But he argues that the district court "inappropriately concluded that commitment was the [least] restrictive alternative" based only on evidence that without commitment, the treating medical professionals would not prescribe neuroleptic therapy. Appellant maintains that the witnesses at the hearing failed to articulate another material benefit to commitment. He argues that the district court had a statutory duty to consider reasonable alternative dispositions, and that clear and convincing evidence does not support the determination that commitment was the only suitable treatment alternative.

The record shows that although appellant would likely have remained in the nursing home voluntarily, he was unwilling to cooperate with treatment and remained in bed, unable to provide self-care or eat properly. Although the record implies that the administration of neuroleptic medication may be a further step in appellant's treatment, the district court based its commitment decision on undisputed evidence that in alternative treatment settings, appellant had been similarly unable or unwilling to cooperate with treatment or adequately care for his needs. Thus, the district court's finding that appellant's illness could not be adequately treated with other alternative dispositions is not clearly erroneous, and clear and convincing evidence supports the determination that no suitable alternative to commitment exists. *See, e.g., In re Melas*, 371 N.W.2d 653, 655 (Minn. App. 1985) (upholding involuntary commitment when patient's lack of insight into mental illness, inability to agree to voluntary treatment, and refusal to cooperate with treatment justified district court's rejection of alternatives).

Appellant argues, in the alternative, that the district court's findings were insufficient to support its determination that no suitable alternative disposition exists. When ordering commitment, the district court must specifically find the facts and state conclusions of law setting forth the patient's conduct which forms the basis for determining each of the requisites of commitment. Minn. Stat. § 253B.09, subd. 2 (2008); *In re Brown*, 640 N.W.2d 919, 922 (Minn. 2002). Legally insufficient findings require a remand. *In re Danielson*, 398 N.W.2d 32, 37 (Minn. App. 1986).

Appellant argues that the district court's findings do not articulate why the district court believes that an involuntary commitment would succeed. Although the district

court did not articulate a specific finding on this issue, the district court made findings on specific alternatives to commitment, based on appellant's recent conduct in different treatment settings. The district court found that appellant was unable to care for his needs, that he was rehospitalized after an attempt at in-home services, that he remained isolated and refused to cooperate with testing and evaluation in both the hospital and the care center, and that since he left the hospital, "his ability to cooperate with any treatment remains severely impaired." These findings sufficiently support the district court's commitment decision.

Appellant also maintains, for the first time on appeal, that the district court's September 22 ex parte hold order violated his Fourth Amendment right to be free from unreasonable searches and seizures, on the ground that the documentation supporting the hold did not provide probable cause to seize him because it was not based on sworn information. *See* U. S. Const., amend. IV; Minn. Const. art. I, § 10. Generally, constitutional claims cannot be raised on appeal if not presented to the district court. *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981).

Appellant points out that this court has previously held that the Commissioner of Human Services need not first seek district court review when challenging an ex parte order requiring the Commissioner to pay care and transportation costs in commitment proceedings. *See In re Bowers*, 456 N.W.2d 734, 737 (Minn. App. 1990). But we noted that the claims in *Bowers* depended on "[v]arious statutes and state rules [which] set out a complex statutory scheme for determining responsibility for mental health services," and "[t]hese issues may not be determined in the context of commitment proceedings to

which Commissioner was not a party." *Id.* The concerns recited in *Bowers* do not apply to this appeal, and appellant has waived his constitutional argument by failing to raise it before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that issue not presented to district court is forfeited).

Finally, appellant argues that the record does not show that appellant or his counsel received notice by mail of the entry or filing of the commitment order, as required by Minn. R. Civ. P. 77.04. When an order has been filed, the court administrator "shall serve a notice of the filing or entry by mail upon every party affected thereby or upon such party's attorney of record." Minn. R. Civ. P. 77.04. Because the rules of civil commitment do not address this issue, rule 77.04 applies to this proceeding. *See* Minn. R. Civ. P. 81.01(a) (stating that rules of civil procedure do not apply in special proceedings to extent that they are "inconsistent or in conflict with rules" for those proceedings). But the purpose of rule 77.04 is to ensure that district courts make a good faith effort to serve orders on affected parties. *Tombs v. Ashworth*, 255 Minn. 55, 63, 95 N.W.2d 423, 428-29 (1959). Although the clerk of court lacks discretion to ignore the rule, failure to comply with its terms does not affect the time for filing an appeal. *Id.* at 59, 63, 95 N.W.2d at 426, 429.

Appellant filed a timely appeal and does not assert how he was prejudiced by any failure to receive notice of the filing of the order. Any technical failure to comply with the notification provision does not require reversal of the commitment order.

**Affirmed.**