STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1390

In the Matter of the Civil Commitment of:
Karl Leonard Meyer

Filed December 24, 2012
Affirmed
Stoneburner, Judge

Hennepin County District Court
File Nos. 27-MH-PR-12-386

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

Gregory R. Solum, Edina, Minnesota (for respondent Karl Leonard Meyer)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Larkin, Judge.

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

STONEBURNER, Judge

Appellant county challenges the district court's order dismissing its earlier order for respondent's judicial recommitment as mentally ill based on the district court's determination that it had no authority to issue a recommitment order after respondent's commitment expired. We affirm.

FACTS

In 2009, respondent Karl Leonard Meyer was found incompetent to stand trial on charges of first-degree burglary and violating a restraining order. By order dated December 16, 2009, Meyer was committed as mentally ill to the Minnesota Department of Human Services for six months. By order dated June 22, 2010, the district court granted a petition brought by appellant Hennepin County (the county) for a continued commitment of 12 months.

On June 1, 2011, the district court issued an order allowing Meyer's provisional discharge to Zumbro Running House in Bloomington. By order dated June 10, 2011, the district court recommitted Meyer as mentally ill for 12 months, and Meyer remained at Zumbro Running House.

On April 27, 2012, the county again petitioned for Meyer's recommitment. Although a hearing on the recommitment petition was held on June 6, 2012, a recommitment order was not issued until June 19, 2012, five days after the expiration of Meyer's commitment on June 14, 2012. Meyer moved for review and dismissal of the recommitment order, arguing that as of June 14, 2012, the district court lacked statutory authority to order a consecutive recommitment, citing Minn. Stat. § 253B.13, subd. 1 (2010), and *In re Robledo*, 611 N.W.2d 67, 68 (Minn. App. 2000) (holding that Minn. Stat. § 253B.13, subd. 1 (1998), precludes extension of a commitment beyond the expiration of a continued commitment unless, prior to the expiration of a continued commitment, a new petition has been heard and a recommitment determination issued). The district court granted Meyer's motion and dismissed the June 19, 2012

recommitment order, but sua sponte stayed the dismissal order for ten days to give the county "an opportunity to take the steps it believes may be necessary to safeguard [Meyer's] mental health." The county appealed the dismissal order and moved the district court for stay of the order pending appeal. The district court granted the stay pending appeal.

D E C I S I O N

A. Statutory requirements for recommitment

Under the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.01-.24 (2010 & Supp. 2011), an initial commitment may be continued for a period determined by the district court or 12 months, whichever is less. Minn. Stat. § 253B.13, subd. 1. For a continued commitment, the district court need not find that a mentally ill person has made a recent attempt or threat to harm himself or others, or recently failed to provide necessary personal food, clothing, shelter, or medical care for himself, as required for an initial commitment under section 253B.09. Minn. Stat. § 253B.12, subd. 4; *see* Minn. Stat. § 253B.02, subd. 13 (defining a person who is mentally ill). Instead, the district court must find that the patient is likely to attempt to do so unless involuntary commitment is continued. *Id.* But "at the conclusion of the prescribed period, *commitment may not be continued unless a new petition is filed pursuant to section 253B.07 and hearing and determination made on it*." Minn. Stat. § 253B.13, subd. 1 (emphasis added).

In this case, the district court determined that it was required to dismiss the recommitment order because the order was filed after the expiration of Meyer's

prescribed commitment period. The county argues that the district court has misinterpreted section 253B.13, subd. 1, to require that the recommitment order must be issued prior to expiration of the period of continued commitment.

The question of whether the district court properly construed section 253B.13 is a question of law subject to de novo review. *See State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2010). When the statute is free from any ambiguity, this court looks to the plain language of the statute. *Id.*

In *Robledo*, this court held that the plain language of section 253B.13, subdivision 1, requires that the recommitment order be issued before the expiration of the previous commitment period. 611 N.W.2d at 69-70. *Robledo* requires that, under Minn. Stat. § 253B.13, subd. 1 (1998), the petition must be filed and the hearing must be held and the determination must be made on the petition before the date specified on the previous commitment order because "[t]he legislature has specified that a mentally ill person may be subject to an involuntary commitment . . . only for a *determinate* length of time." *Id.*

In that case, the petition for recommitment was filed one day before the expiration of the continued-commitment period, leaving no time for the district court to conduct the hearing and make a determination before expiration of the continued-commitment period, and the district court issued an ex parte emergency order continuing the prior commitment order. *Id.* at 68. Robledo challenged the ex parte order as violating the statutory recommitment provisions and his constitutional rights to notice, legal

representation, and a timely hearing. *Id.* The county argues that *Robledo* is distinguishable because the district court did not issue any orders that violated Meyer's statutory rights to notice, legal representation, or a timely hearing, and did not violate the statutory requirement that a "commitment may not be continued unless a new petition is filed . . . and hearing and determination made on it." Minn. Stat. § 253B.13, subd. 1. The county argues that the district court's interpretation of section 253B.13, subdivision 1, "adds a limitation that the statutory language itself does not include." The county also notes that, in Meyer's case, the recommitment petition and hearing were timely and the untimely issuance of the recommitment order was due solely to the district court's error. But this court specifically held in *Robledo* that Minn. Stat. § 253B.13, subd. 1, requires that, to effectively recommit, the petition, hearing, *and determination* must be completed before the expiration of any existing commitment order. 611 N.W. 2d at 69-70. And although the district court in this case did not issue an ex parte order, it failed to timely issue the recommitment determination and thereby lost the authority to recommit Meyer under Minn. Stat. § 253B.13, subd. 1.

B. Equitable relief

The county alternatively argues that, if the statute precludes issuance of the recommitment order after the expiration of the previous commitment period, the district court erred by declining to exercise its equitable powers to uphold the recommitment order. The county relies solely on a civil case in which the supreme court stated that the

rule of nunc pro tunc[1] is "founded on the maxim that an act of the court shall prejudice no one." *Hampshire Arms Hotel Co. v. Wells*, 210 Minn. 286, 288, 298 N.W. 452, 453 (1941). But the county has not provided any authority that the doctrine of nunc pro tunc can be used to defeat a specific statutory timing requirement. And the exercise of equitable authority is discretionary with the district court. *See Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005) ("We review the district court's exercise of equitable relief for abuse of discretion."), *review dismissed* (Minn. Oct. 28, 2005). Because we conclude that the doctrine of nunc pro tunc does not apply in this case, the district court did not abuse its discretion by declining to fashion what the county deems to be an equitable remedy for the untimely recommitment order. Additionally, to the extent that equity might apply, we conclude that equity requires affording Meyer all of the protection from involuntary commitment provided by the legislature.

Affirmed.

[1] Nunc pro tunc is a Latin term meaning "[h]aving retroactive legal effect through a court's inherent power." *Black's Law Dictionary* 1174 (9th ed. 2009). "A *nunc pro tunc* entry of judgment is allowed only to correct the record and to supply a deficiency therein caused by the action of the court . . . [and] may be used for correcting an omission of the court, fixing a clerical error, or properly recording a step in the trial procedure which occurred but was omitted from the record." *Cnty. of Washington v. TMT Land V, LLC*, 791 N.W.2d 132, 135 (Minn. App. 2010) (quotations omitted).