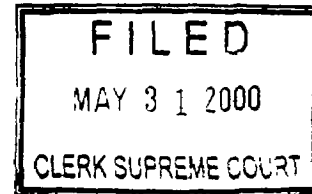


IN THE COURT OF APPEALS OF IOWA

No. 0-191 / 99-1528
Filed May 31, 2000

**IN THE MATTER OF M.M.,
Alleged to be Seriously Mentally Impaired,

M.M.,
Respondent-Appellant.**



Appeal from the Iowa District Court for Scott County, David E. Schoenthaler, Judge.

Respondent M.M. appeals the district court's order involuntarily committing her to outpatient treatment. **REVERSED.**

Cheryl J. Newport and Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for appellant.

Theodore J. Priester, Assistant County Attorney, for appellee-State.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Respondent M.M. appeals the district court's order involuntarily committing her to outpatient treatment. We reverse.

M.M. was released from an outpatient commitment in April of 1999. She ceased taking her medication. The record reveals M.M. grew increasingly paranoid, making calls to police and others about break-ins in the time preceding this commitment. In August of 1999, M.M. reported another break-in to police. Believing she would not receive adequate protection from the police, on August 9, 1999, she drove to a National Guard Armory and asked for additional assistance. Police were summoned and M.M. was taken to the emergency room.

Dr. Gary Olson filed an application to involuntarily commit M.M. for evaluation and treatment. M.M. received a hearing before a judicial hospitalization referee, who concluded M.M. was seriously mentally impaired and in need of outpatient treatment. M.M. appealed to the district court, which affirmed the referee's decision.

M.M. appeals. She contests the evidentiary support for the finding she is seriously mentally impaired. She has remained in outpatient treatment during the pendency of this appeal.

I. Scope of Review. An involuntary hospitalization proceeding is triable as an ordinary action at law. *In re Melodie L.*, 591 N.W.2d 4, 6 (Iowa 1999). Our review is for errors at law. *Id.* The allegations made in the application for involuntary commitment must be supported by clear and convincing evidence. See Iowa Code § 229.12(3) (1999); *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998).

There must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence. *J.P.*, 574 N.W.2d at 342. The district court's findings of fact are binding on us if supported by substantial evidence. *Id.*

II. Finding of Serious Mental Impairment. A person found to have a serious mental impairment may be committed involuntarily. See Iowa Code § 229.13. Serious mental impairment is defined as

the condition of a person with mental illness and [sic] because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:

- a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
- b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with the mental illness is allowed to remain at liberty without treatment.
- c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

Iowa Code § 229.1(15).

M.M. has a diagnosed mental illness—paranoid schizophrenia. However, the existence of a mental illness alone does not establish grounds for commitment. *J.P.*, 574 N.W.2d at 343. The State must prove two additional elements: inability to make sufficient judgment regarding hospitalization or treatment and dangerousness to self or others in a form described in section 229.1(15)(a), (b), or (c).

Regardless of whether the judgment element is met, we find no evidence of dangerousness. The danger a person poses to self or others must be evidenced by a "recent overt act, attempt or threat." *J.P.*, 574 N.W.2d at 344.

Socially unacceptable, even repugnant, behavior does not satisfy the overt act requirement. *In re Mohr*, 383 N.W.2d 539, 542 (Iowa 1986). An "overt act" connotes past aggressive behavior or threats by a respondent manifesting the probable commission of a dangerous act upon self or others that is likely to result in physical injury. *In re Foster*, 426 N.W.2d 374, 378 (Iowa 1988). Verbalized delusions, even though bizarre, do not constitute the type of overt act necessary to establish dangerousness. *See id.* at 379.

Only one witness testified for the State, Dr. Olson. He admitted M.M. was not a threat to others and had no past history of self-harm, such as suicide attempts. However, the court below concluded there was sufficient evidence of danger to self based on the fact M.M. had been under mental health care since at least 1988. She exhibited a pattern of taking medication and doing well, then going off of the medication and deteriorating into delusions. However, Dr. Olson did not testify M.M. was a danger to self or others in her delusional state. He concluded she represented a danger to herself based only on her past *pattern* of going off of medication and withdrawal into paranoia. He stated at the time of the hearing she was "withdrawn and paranoid and feels that she is going to be killed, poisoned, or her brain damaged." While this may be seen as a bizarre delusion, it cannot serve as the basis for an involuntary commitment. *See Foster*, 426 N.W.2d at 379.

The State asks us to find a factual basis for a predictive judgment of dangerousness in M.M's history of commitments and pattern of degeneration. Dr. Olson testified M.M. manifested a pattern of deterioration over the past decade. She has been hospitalized nine times and off of medication since April

of 1999. According to Dr. Olson's past experience with M.M. and his review of her medical records, M.M. goes off medication following a period of hospitalization. Her paranoia and delusions return and M.M. withdraws to the point where she cannot perform daily living activities, such as grooming, eating right, and even leaving the house. With a reasonable medical certainty, he stated the same pattern of destabilization would occur again. He also suggested her judgment was impaired with regard to her treatment. She believes that once her hospitalization ends, she is no longer mentally ill. Dr. Olson stated M.M. only posed a danger to herself *if* she went off of medication.

We do not find such a pattern constitutes substantial evidence of an overt act or dangerousness. While it indicates M.M. has a chronic mental illness, that is not a basis for involuntary hospitalization under our statute. M.M. had not deteriorated to the point where she was a danger to self or others. The record indicates she was currently able to care for her personal needs and Dr. Olson only *feared* she would decline again—she had not yet reached the point required by the law for involuntary commitment.

While we do not decide the question of whether a commitment based on a history of improvement and deterioration would even be possible under the current statutory scheme, we conclude the record here is insufficient for us to do so. There is insufficient detail of M.M.'s history of commitments and medications. While the State points out M.M. has been hospitalized nine times, the record does not reveal whether any or all of those were involuntary. Dr. Olson gave no indication when M.M. could go off medication, if ever, or when her current outpatient commitment would or could end. We do not know how much of the

last ten years M.M. has spent on medications or whether she has required increased or decreased dosages over that time period. We cannot assume M.M. will not get better.

We readily admit the result reached in this case is not particularly satisfying. M.M. has a long and unfortunate history of mental illness. A reasonable argument could be made that M.M. is unable to make informed treatment choices because of the effects of her illness. It is likely she would benefit from assisted outpatient treatment. Nevertheless, our current statutory scheme forbids involuntary treatment unless she is currently dangerous to herself or others. The argument that this test is too strict is not without appeal. Many states have changed their statutory schemes to allow involuntary treatment of persons obviously in need of care but incapable of making informed decisions about treatment due to the effects of their mental illness. On the other hand, we recognize prior amendments to our civil commitment law have occurred in response to national concerns about deprivations endured by individuals with chronic mental illness. *See generally, In re Oseing*, 296 N.W.2d 797, 798 (Iowa 1980) (citations omitted). Resolution of this debate regarding the civil commitment standard rests with our legislature. Under our current statutory scheme, we conclude there was not substantial evidence to support the district court's finding of serious mental impairment and reverse.

REVERSED.