IN THE COURT OF APPEALS OF IOWA

No. 9-473 / 98-628
Filed October 27, 1999

FILED
OCT 27 1999
CLERK SUPREME COURT

IN THE INTEREST OF S.L., ALLEGED TO BE SERIOUSLY MENTALLY IMPAIRED,

S.L.,
Appellant,

vs.

STATE OF IOWA,

Appellee.

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

S.L. appeals a district court ruling in a civil mental commitment proceeding concluding there was sufficient evidence of S.L.'s mental impairment justifying her commitment to a mental health institute. **REVERSED.**

Mary Lynne Wolf, Clinton, for appellant.

Jeffrey L. McCraw, Assistant County Attorney for appellee.

Considered by Streit, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Sharon L. appeals a district court ruling in a civil mental commitment proceeding concluding there was sufficient evidence she had a serious mental impairment justifying her commitment to a mental health institute. We find the district court ruling unsupported by substantial evidence and reverse.

On February 22, 1998, Ed Jordan, Sharon's landlord and a long-time friend of her family, heard loud swearing and yelling coming from Sharon's apartment. Having prior experience with Sharon, Jordan knew Sharon had a mental illness and often talked to herself. Out of concern, he called the hospital. Police officer Michael LeBlanc was dispatched. He did not take Sharon into custody. However, Officer LeBlanc contacted Sharon's family with his concerns.

On February 26, 1998, Sharon's brother and sister filed an Application Alleging Serious Mental Impairment. Following a March 3, 1998 hearing, a judicial hospitalization referee ruled that Sharon was seriously mentally impaired and ordered her committed. Sharon timely appealed the referee's order to the district court. On March 11, 1998, a hearing was held before the district court. The judge also found Sharon was seriously mentally impaired and ordered her committed to the Mental Health Institute (MHI) in Independence, Iowa. Sharon now appeals. The State has not filed a brief in this matter but by letter conceded the issues raised by Sharon.

Sharon was released from the MHI in April of 1998 but remains under an outpatient-treatment commitment order.

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. Iowa Code § 229.12(3) (1997); *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. *Id.* 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 the person with mental illness and 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 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(14).

Sharon does not challenge the conclusion she has a mental illness. She has been diagnosed as a paranoid schizophrenic. 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 Iowa Code section 229.1(14)(a), (b), or (c). Regardless of whether the judgment element is met, we find no evidence of dangerousness.

> Regarding Sharon's dangerousness, the district court found
>
> > Lay witnesses say no, however Dr. Pisipati says she is a danger to herself and others. This "diagnosis" and prediction by the Doctor outweighs the lay testimony. There is clear and convincing evidence of dangerousness.

We do not find substantial evidence in the record to support this conclusion. 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 the respondent manifesting the probable commission of a dangerous act upon himself 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 Foster*, 426 N.W.2d at 379.

This commitment proceeding was prompted by an episode where Sharon was in her apartment yelling and swearing. While this type of behavior may be annoying to neighbors, it is not threatening. Her landlord and family friend of many years testified Sharon has never been threatening to other tenants. He described her as kind

and gentle. All four lay witnesses, the officer, her landlord, and two of her siblings, stated Sharon had not physically or verbally menaced them. They testified she was capable of taking care of herself. She appeared neat and clean, as did her apartment. Finally, there was no finding and no evidence she was likely to inflict 'serious emotional injury' on family members or others. Her siblings had not had significant contact with her for several years and no one in her apartment building complained at the hearing.

Dr. Pisipati did not testify at the commitment hearing. The doctor's written report to the court only contains the statement "Because of her paranoid ideation, she could be dangerous to herself or others." The doctor provided no facts from which this conclusion was derived. The Iowa Supreme Court's rules for involuntary hospitalizations require doctors to specifically describe the overt acts and the basis for their diagnoses and conclusions. *See* Iowa Sup. Ct. R. for Involuntary Hospitalization 13 and 25. While it is true Sharon exhibited severe paranoia, none of her delusions involved harming herself or others. She considered herself the object of surveillance and did not want to interact with people at the hospital or her family because she thought they were drug dealers. None of these delusions described by the doctor involved harm to self or others. She was simply uncooperative but never physically threatening.

There was not substantial evidence to conclude Sharon was likely to be a danger to self or others or that she was likely to inflict 'serious emotional injury.'

There was no evidence Sharon was unable to care for herself and her needs for clothing, nourishment, shelter or essential medical care to the extent she would be likely to suffer physical injury. While we are sympathetic to the fact Sharon needs medication and treatment, she cannot be involuntarily committed unless the statutory standards are met.

REVERSED.