IN THE COURT OF APPEALS OF IOWA

No. 0-786 / 99-1947
Filed February 28, 2001

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FEB 2 8 2001
CLERK SUPREME COURT

IN THE MATTER OF
W.K., Alleged to be
Seriously Mentally Impaired,

W.K.,

Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

William K. appeals the district court's ruling that he is seriously mentally impaired. He contends the district court erred in finding (1) there was clear and convincing evidence that he was dangerous to himself or others such that he could be involuntarily committed and (2) there was not a less restrictive placement for him. **AFFIRMED AND REMANDED.**

Jack E. Dusthimer, Davenport, for appellant.

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

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

William appeals the district court's ruling that he is seriously mentally impaired. He contends the district court erred in finding there was clear and convincing evidence that he was dangerous to himself or others and in not finding there was a less restrictive placement for him. We affirm the finding of serious mental impairment, and remand to the district court for further proceedings concerning placement.

I. BACKGROUND FACTS AND COURSE OF PROCEEDINGS

William was taken to a hospital on September 22, 1999 after an auto accident in Scott County when he took his hands off the steering wheel of his vehicle because God told him to do so. He claims God's command was a test of his trust in the Lord and he is His humble and obedient servant.

An application requesting William's involuntary hospitalization, supported by a written statement of a licensed physician, was filed pursuant to Iowa Code section 229.6 (1999) on the day of the accident. On that same date an order for his immediate custody was entered pursuant to Code section 229.11. William was detained and examined at Genesis Hospital in Davenport.

A hearing was then held on September 27, 1999 before a judicial hospitalization referee. The referee found that William was seriously mentally impaired as defined in Code section 229.1(15) and ordered him committed to the Mental Health Institute at Independence (MHI).

William filed a timely notice of appeal pursuant to Iowa Code section 229.21(3)(a). While at the MHI he was evaluated by Dr. Modha. Dr. Modha conducted several psychiatric interviews with William over the course of six or

seven days and initially diagnosed him with a psychotic disorder NOS (not otherwise specified). William was then sent to the University of Iowa Hospitals in Iowa City, where he was further evaluated over the next two weeks. He was diagnosed as having schizophrenia, paranoid type, a diagnosis with which Dr. Modha agrees.

A de novo trial on William's appeal was held before the district court on November 5, 1999 pursuant to Code section 229.21(3)(c). At the hearing William moved for dismissal both at the end of the Applicant's case and again at the end of the evidence. The district court overruled both motions. At the conclusion of the hearing the court stated, "The appeal to the District Court will be denied." In a written ruling filed the same day the district court found it had been proved by clear and convincing evidence that William "has a pending diagnosis of schizophrenia, paranoid type," and that "[a]s a result of this illiness, is seriously mentally impaired, as that term is defined in Iowa Code Section 229.1(15)." In neither its statement at the conclusion of the hearing nor its written order did the district court specify the hospital or facility to which William was to be committed, or whether he was to be committed as an inpatient or outpatient, as required by Code section 229.13. William appeals.

William contends the trial court erred in finding that the Applicant met its burden to prove by clear and convincing evidence that he was a danger to himself or others such that he could be involuntarily committed. He further argues the court erred in not finding there was a less restrictive placement for him. We address these issues separately.

II. STANDARD OF REVIEW

This involuntary commitment proceeding is a special action triable to the court as an ordinary action at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). Thus, we review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. 4; *J.P.*, 574 N.W.2d at 342. The contention that the respondent is seriously mentally impaired must be sustained by clear and convincing evidence. Iowa Code § 229.12(3). Clear and convincing evidence is more than a preponderance of the evidence but less than evidence beyond a reasonable doubt. *J.P.*, 574 N.W.2d at 342. The trial court's findings of fact have the effect of a special verdict and will be upheld if there is substantial evidence to support them. *In re Mohr*, 383 N.W.2d 539, 541 (Iowa 1986). "Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence." *J.P.*, 574 N.W.2d at 342. "We will not set aside the trial court's findings unless, as a matter of law, the findings are not supported by clear and convincing evidence." *Id.*

III. MERITS

Involuntary civil commitment is not warranted unless the elements of serious mental impairment as defined in Iowa Code section 229.1(15) are proven by clear and convincing evidence. A "serious mental impairment" is defined in Code section 229.1(15) which provides in relevant part:

> "*Seriously mentally impaired*" or "*serious mental impairment*" describes the condition of a 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.

. . .

This definition has been interpreted by our supreme court to contain three express elements. The respondent,

> must be found to be (1) "afflicted with a mental illness," consequently (2) to lack "sufficient judgment to make responsible decision with respect to his or her hospitalization or treatment," and (3) to be likely, if allowed to remain at liberty, to inflict physical injury on himself or others or to inflict emotional injury on the designated class of persons.

In re Oseing, 296 N.W.2d 797, 799 (Iowa 1980); *see also In re Foster*, 426 N.W.2d 374, 376-77 (Iowa 1988). The first two elements required to prove serious mental impairment are not contested by William in this appeal.[1] It is the third element relating to the issue of injury to self or others that is the challenged here.[2] This third element has been referred to as the "dangerousness" element, because the district court is required to make a predictive judgment about whether the respondent poses a danger to himself or others. *Foster*, 426 N.W.2d at 377; *see also Oseing*, 296 N.W.2d at 801.

A. Element of Dangerousness

The trial court made no explicit finding as to the element of dangerousness. Although it found that the first element, mental illness, had been

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[1]We note that if these elements were at issue the record is sufficient to prove them. There is clear evidence of a diagnosis of mental illness, although the specific nature of such illness has changed somewhat through the course of William's evaluation. Furthermore, there is sufficient clear and convincing evidence to show William lacked judgment to make a "rational decision" about his treatment. William's denial to medical professionals that he needed treatment or had an illness in the face of multiple diagnoses that he has such a condition is a significant indication of his inability to make a rational decision about treatment. *See Mohr*, 383 N.W.2d at 541.

[2] We note that the dangerousness element can be proven in two different ways, either by showing the person is likely to inflict *physical injury* on himself or others or *serious emotional injury* on others. The only issue here is whether William is likely to *physically* injure himself or others if allowed to remain at liberty without treatment. No danger of *serious emotional injury* is alleged here.

proved it thereafter stated only a conclusion of law, that William was "seriously mentally impaired, as that term is defined in Iowa Code Section 229.1(15)," and denied the appeal. A separate written finding of fact on each element, each issue of fact, is contemplated by our rules of civil procedure. *See* Iowa R. Civ. P. 179(a). One of the primary purposes of that rule is to inform the parties and the appellate court of the bases of the trial court's decision so the issues for appeal may be readily determined. *U.S. Cellular Corp. v. Bd. of Adjustment of City of Des Moines*, 589 N.W.2d 712, 719 (Iowa 1999). The district court's ruling here was subject to a motion to enlarge or amend under Iowa Rule of Civil Procedure 179(b). As no such motion was made here, "we assume as fact an unstated finding that is necessary to support the judgment." *Brichacek v. Hiskey*, 401 N.W.2d 44, 46 (Iowa 1987); *see also PEB Practice Sales, Inc. v. Wright*, 473 N.W.2d 624, 626 (Iowa Ct. App. 1991) (same). Based on these principles we will assume and interpret the trial court's conclusion that William "is seriously mentally impaired, as that term is defined by Iowa Code Section 229.1(15)" to incorporate an affirmative finding on the "dangerousness" element as well.

It is the Applicant's burden to show by clear and convincing evidence that William is *likely* to inflict physical injury on himself or others if allowed to remain at liberty without treatment. There is a presumption in favor of the person alleged to be seriously mentally impaired. Iowa Code §229.12(3). In *Oseing* our supreme court construed "likely" to mean "probable or reasonably to be expected." *Oseing*, 296 N.W.2d at 801. The court further held that the dangerousness element "requires a predictive judgment, 'based on prior manifestations but nevertheless ultimately grounded on future rather than past

danger'." *Id.* (quoting Bezanson, *Involuntary Treatment of the Mentally Ill in Iowa: The 1975 Legislation*, 61 Iowa L. Rev. 261, 304 (1975)). This element thus requires that the threat the patient poses to himself or others be evidenced by a "recent overt act, attempt or threat." *Mohr*, 383 N.W.2d at 542 (quoting *Stamus v. Leonhardt*, 414F. Supp. 439, 451 (S.D. Iowa 1976)).

William argues it has not been proven that his current mental illness creates a danger or risk of physical harm to himself or others. He points to the fact that neither he nor anyone else was injured by his recent act of taking his hands off the steering wheel. He also argues that Dr. Modha's testimony voicing concerns about what he "might" do if released from the hospital if he "happens" to receive a different message from God is not sufficient to meet the Applicant's burden of showing by clear and convincing evidence that he is a danger to himself or others. We find the record contains substantial evidence supporting the trial court's implicit finding the third, "dangerousness," element was proved by clear and convincing evidence.

First, the testimony of Dr. Modha makes it clear that William took his hands off the steering wheel of his vehicle while he was driving on a highway and this caused him to be hospitalized. This was a recent overt act. While he was lucky enough not to have been injured or to have injured anyone else, the law does not require actual injury. Rather, what is required is a showing that the person poses a *threat* of physical injury to himself or others, as shown by a recent over act (or attempt or threat). *Mohr*, 383 N.W.2d at 542. Clearly the act of letting go of the steering wheel of a vehicle while driving on a highway posed a

threat of physical injury to William as well as to any others who may have been nearby.

Second, we do not believe, as William attempts to argue, that the psychiatric testimony as to his dangerousness was framed only in terms of what "might" happen or "may" happen. Dr. Modha testified that in his expert opinion and observations without treatment William could be dangerous. He further testified that William's condition would not improve without proper treatment, that behavior such as the steering wheel incident could recur if the illness was not properly treated, and that it was his opinion that William required hospitalization until there is some improvement in his thinking process.

Furthermore, the psychiatric testimony concerning the likelihood that William would cause physical injury to himself or others is not determinative because such testimony was not couched in legal terms and must be weighed in context. *See Oseing*, 296 N.W.2d at 802. This was only one aspect of the evidence on the issue of William's dangerousness. The trial court was entitled to consider, and presumably did consider, all of the evidence and was not limited by Dr. Modha's testimony in determining this issue. Dr. Modha's testimony must be considered in conjunction with William's recent overt act, which, as noted above, can certainly be seen as posing a threat of physical injury to himself or others.

There was also testimony from Dr. Modha that at the time of trial William was still indicating he was having conversations directly with God and getting messages from Him. This, coupled with Dr. Modha's testimony that if William's illness is left untreated behavior similar to his recent act can recur, indicates that William could still reasonably be expected to engage in similar behavior and thus

that there is a probability of future danger as well. *See Oseing*, 296 N.W.2d at 801. Based on Dr. Modha's testimony, taken in conjunction with William's recent overt act, the trial court could reasonably find that William's mental illness would be likely to cause him to make irrational decisions, such as letting go of the steering wheel while driving on a highway, and he would thus be likely to physically injure himself or others if allowed to remain at liberty without treatment.

The record contains clear and convincing evidence that William is likely to physically injure himself or others if allowed to remain at liberty without treatment. The trial court did not err in its implicit finding that the "dangerousness" element had been proved.

B. Least Restrictive Placement

If the trial court determines a respondent is seriously mentally impaired and should be involuntarily committed, it must then determine what level of placement is appropriate and commit the respondent to the care of a specified hospital or facility. Iowa Code §§ 229.13 and 229.21. "It is not only the customary procedure, but the constitutionally and statutorily mandated requirement, to treat even seriously mentally impaired persons in the least restrictive environment medically possible." *Leonard v. State*, 491 N.W.2d 508, 512 (Iowa 1992) (citing *B.A.A. v. University of Iowa Hosp.*, 421 N.W.2d 118, 124 (Iowa 1988), and 441 Iowa Admin. Code 28.4(6)) (giving patient right to least restrictive conditions necessary to achieve treatment objectives).

William argues that the trial court erred in not finding there was a less restrictive placement for him. However, the trial court made no order for commitment to any hospital or facility, as required by section 229.13. We

assume based on the record that at the time of de novo trial before the district judge William was still under Dr. Modha's care at the MHI in Independence where he had been since the hospitalization referee ordered him committed there. We further assume, based on the nature of this issue as raised on appeal, that William was returned to the MHI after the trial de novo. However, it is clear there was no finding as to whether the MHI was the least restrictive placement available to meet William's needs and there was no order that he be committed to the MHI. There was testimony that arguably suggests a less restrictive placement was available and might be medically feasible.

It was the trial court's duty to determine what was the least restrictive placement appropriate for the type of care and treatment William needed and to order him committed to a specific hospital or facility that was appropriate for such treatment. This is not a case in which we can assume as fact an unstated finding necessary to support a trial court's judgment ordering commitment to a hospital or facility, because the trial court's ruling contains no order as to where William is to be committed. The case must be remanded to the district court for it to determine the least restrictive placement for William consistent with the type of care and treatment he needs and to enter an order for an appropriate commitment, if events and passage of time have not rendered any such order moot at this point in time. Because William's condition may now be significantly different than at the time of the trial de novo in district court, a hearing may be required and any order for commitment must be based on present circumstances as shown by appropriate findings.

IV. CONCLUSION

We conclude the trial court did not err in its unstated finding the Applicant had proved by clear and convincing evidence that William was likely to physically injure himself or others if allowed to remain at liberty without treatment. Thus, there was sufficient evidence to support the trial court's finding that William was seriously mentally impaired as defined in Iowa Code section 229.1(15). The trial court did not order William committed to any hospital or facility and made no finding as to what would be the least restrictive placement for him. Therefore, we must remand to the trial court to determine the least restrictive placement and enter an appropriate order unless events and passage of time have rendered the need for such an order moot.[3] If a determination as to the least restrictive placement is necessary, it must be based on William's present situation and current treatment needs. We do not retain jurisdiction.

WE AFFIRM AND REMAND.

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[3] We note that an order dated January 11, 2000 changes the venue of this case from Scott County to Linn County. A possibility exists that the issue of least restrictive placement may be moot.