IN THE COURT OF APPEALS OF IOWA

No. 1-774 / 00-1600
Filed December 28, 2001

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

T.M.B.,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Mark J. Smith, Judge.

T.B. appeals from a district court ruling finding she was seriously mentally impaired and continuing her involuntary commitment. **AFFIRMED.**

William F. Creasey of Goedken & Creasey, Muscatine, for appellant.

Dana Christiansen, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

T.B. appeals from a district court ruling finding she was seriously mentally impaired and continuing her involuntary commitment. She claims the trial court's finding of serious mental impairment was not supported by clear and convincing evidence. We affirm.

I. Background Facts and Proceedings

T.B. is a college educated adult woman. She has a history of mental illness. In late May of 2000, she came to Iowa to live with her elderly parents. She asked to come home after experiencing an extended period of homelessness in Chicago.

During August of 2000, T.B. became increasingly withdrawn and began having angry outbursts accompanied by loud yelling. The outbursts were directed at T.B.'s parents who she believed were playing mind games with her. T.B.'s parents became increasingly concerned that T.B.'s outbursts would become physical. On one occasion, T.B. barricaded herself in her room.

On August 15, 2000, T.B.'s parents filed an application alleging serious mental impairment pursuant to Iowa Code section 229.6 (1999). On that same date an order for her immediate custody was entered pursuant to section 229.11. T.B. was detained and examined at the mental health institute in Independence.

A psychiatrist examined T.B. and determined that she was suffering from "a psychotic disorder not otherwise specified." The doctor found T.B. was not likely to physically injure herself or others, but that she was likely to inflict severe emotional injury on those unable to avoid contact with her.

A hearing was scheduled for August 18, 2000 before a judicial hospitalization referee. At T.B.'s request the hearing was continued so she could obtain a second psychiatric evaluation. The subsequent hearing was held September 18, 2000. T.B. did not offer a second psychiatric opinion at the hearing. Instead, she testified she prefers a mental health treatment approach that does not utilize medication. She testified she has read books on psychology and related subjects and attempts to keep herself physically and mentally healthy by taking vitamins and herbal extracts. A district court judge found T.B. was seriously mentally impaired and ordered her involuntarily committed.

T.B. appeals. She contends the trial court's finding of serious mental impairment was not supported by clear and convincing evidence. She further claims she is making responsible decisions regarding her treatment and is not dangerous to herself or others. The State has not filed a brief in this matter.

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. The Merits

A person found to have a serious mental impairment may be committed involuntarily. *See* Iowa Code § 229.13. Serious mental impairment is described 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(15).

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

> must be found to be (1) afflicted with a mental illness, consequently (2) to lack sufficient judgment to make responsible decisions 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) (internal quotations omitted); *see also In re Foster,* 426 N.W.2d 374, 376-77(Iowa 1998).

T.B. does not seriously challenge the conclusion she has a mental illness. A psychiatrist diagnosed T.B. as suffering from "psychotic disorder not otherwise specified." This diagnosis, while somewhat vague, was not rebutted by other evidence.

The second element that must be proven is that T.B. "lacks sufficient judgment to make responsible decisions with respect to her hospitalization or treatment." T.B.'s psychiatrist concluded that T.B. was incapable of making responsible decisions with respect to her hospitalization because of poor insight and judgment. The doctor concluded T.B. would likely benefit from anti-psychotic medication. Following hearing, the trial court found that T.B.'s condition is treatable, but that she lacks the judgment to obtain treatment on her own. We conclude the judgment element of the test of serious mental impairment has been met.

The third element of serious mental impairment involves likely physical injury to oneself or others, or the infliction of serious emotional injury on specified persons. In her report to the court, T.B.'s psychiatrist, Dr. Blanco, reported that T.B. was not likely to physically injure herself or others. Dr. Blanco opined that T.B. would be likely to inflict severe emotional injury on those unable to avoid contact with her.

The trial court made the general finding that T.B. presented a danger to self or others. We agree with T.B. that there was not substantial evidence to

conclude she was likely to be a danger to self or others. However, we conclude the record contains substantial evidence to conclude she was likely to inflict serious emotional injury on her elderly parents without commitment and treatment.

AFFIRMED.