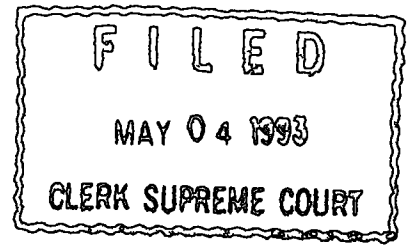


IN THE COURT OF APPEALS OF IOWA

No. 3-151 / 92-1376



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IN THE MATTER OF J.D.D., Alleged to be
Seriously Mentally Impaired,

J.D.D.,
Respondent-Appellant.

Appeal from the Iowa District Court for Jasper County,
Scott D. Rosenberg, District Associate Judge.

The respondent is appealing his adjudication as one who
is seriously mentally impaired. **AFFIRMED.**

Randal B. Caldwell of Caldwell, Caldwell & Caldwell,
Newton, for appellant.

James R. Wilson, County Attorney, for appellee State.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

SACKETT, J.

Appellant, a seventeen-year-old man¹ found to be seriously mentally impaired, appeals contending the application to have him found seriously mentally impaired should have been dismissed and there is not clear and convincing evidence he was seriously mentally impaired. We affirm.

The Jasper County Attorney who appeared at the trial court level in support of the application has failed to file an appellee's brief. We, therefore, do not have the benefits of arguments for affirmance. The failure to file an appellee's brief does not entitle appellant to reversal as a matter of right but does provide a basis for sanctions. *State ex rel. Buechler v. Vinsand*, 318 N.W.2d 208, 209 (Iowa 1982); *Pierre v. Iowa Dep't of Social Servs.*, 334 N.W.2d 359, 360 (Iowa App. 1983). Not having an appellee's brief has made our review more difficult.

The young man's mother on August 3, 1992, filed an application for involuntary hospitalization alleging the young man had a serious mental impairment as defined by Iowa Code section 229.1(14) (1991). The application alleged he was out of control and definitely a danger to himself and possibly other people. The young man's grandmother also filed a corroborating affidavit. The application was filed on August 3, 1991, and was scheduled

¹ Appellant was born January 7, 1975, and is now an adult.

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to be heard on August 6, 1992 at 9:00 a.m.

An attorney was appointed to represent him and Dr. Jerry Lewis was appointed to examine him. At 7:56 a.m. on August 6, 1992, a report was filed from Dr. Lewis, a Board Certified Psychiatrist, indicating the young man was mentally impaired, a danger to himself and others, and in need of hospitalization. The hearing commenced at 10:00 a.m.

Prior to the hearing, the attorney for the young man was given the opportunity to question the young man's mother and grandmother for the purpose of making a motion to dismiss. At that time, the young man's mother testified she was no longer concerned the young man was a danger to himself or others if released to her custody and she wanted the application dismissed. The young man's grandmother agreed. A motion was then made by the young man's attorney to dismiss. The motion was denied.

A hearing was held and Dr. Lewis testified by telephone that the said young man probably had a conduct disorder. Lewis defined a conduct disorder as a disorder in people under the age of eighteen where they have a difficult time complying with society's rules when they are frequently having problems with the law, their behavior, and their temper, but they don't exhibit any disorders of thought, hallucinations, or anything of that nature. The doctor testified there was no indication the young man was a danger to himself, but he had hit his girlfriend and his

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siblings. The doctor gave the opinion, based on the young man's history, he was probably dangerous to others. The doctor characterized his problems as a behavioral disorder rather than a mental disorder. He said there was controversy within his profession as to whether the condition was a mental illness. The doctor did not have the young man on medication at the time of the hearing, but he did not discount putting him on medication. The doctor recommended the young man be treated in a facility that specialized in conduct disorder or child adolescent problems.

The doctor was asked, "Do you consider the young man to be seriously mentally impaired at this time?", and the doctor answered, "Yes".

A police officer testified the young man and his girlfriend had been involved in an altercation in a local park. The girlfriend had tried to terminate their relationship and apparently the young man ultimately hit her and was charged with simple assault. The police officer released him to his mother with the understanding he would not again contact his girlfriend. The officer described him as very upset and aggravated.

The young man's girlfriend testified she and he had had an argument when she tried to terminate their relationship and he hit her car mirror and broke the windshield of her car. She said he also grabbed her and attempted to keep her from leaving because he wished to talk to her. The

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girlfriend also testified when he gets angry he hurts material things, not people, and he does get stressed out like others.

We review to correct errors of law. See B.A.A. v. University of Iowa Hosps., 421 N.W.2d 118, 120 (Iowa 1988). The first question is whether the young man's mother had the absolute right to dismiss the application she commenced by filing a verified application for the young man's involuntary hospitalization. The young man cites a number of civil cases as support for his position. We do not find cases involving civil actions applicable. While the person filing the application is referred to as an applicant, the applicant in essence is a witness reporting facts that he or she feels should make hospitalization necessary. When the motion to dismiss was made, the District Associate Judge had before him the written report from Dr. Lewis indicating the young man was mentally impaired and a danger to himself and others. In assessing the motion, the judge was required to consider the statements of the application and corroborating witnesses as well as Lewis's report. The judge correctly denied the motion to dismiss the application. See B.A.A., 421 N.W.2d at 121.

The young man's second complaint is there is not clear and convincing evidence he suffers from "serious mental impairment." Iowa Code section 229.12(3), in part, provides:

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[T]here shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding. (Emphasis supplied).

Iowa Code section 229.1(14) defines seriously mentally impaired:

"Seriously mentally impaired" or "serious mental impairment" describes the condition of a person who is afflicted 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 afflicted person if the afflicted person 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 substantial physical injury, serious physical debilitation, or death within the reasonable foreseeable future.

The statute does not consider the decision to forcibly treat an individual as a decision to be made exclusively or predominately by one in the medical profession, B.A.A., 421 at 122, and that decision rests on the extent society will tolerate 'deviant' behavior. Id.

Because a civil commitment for any purpose is a significant deprivation of liberty and can only be justified if there is a legitimate state interest, the

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reasons for committing a person must be established in a proceeding where the constitutional safeguards of the person to be committed are protected. See Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 1809, 60 L. Ed. 2d 323, 330-31 (1979).

To be committed, the person must be seriously mentally impaired and, as a result of that illness, lack judgmental capacity regarding treatment, and be dangerous. B.A.A., 421 N.W.2d at 124. The likelihood of physical injury to himself or herself or another creates a legitimate state interest in commitment. Id.

There is clear and convincing evidence meeting this standard. The doctor gave an opinion the young man was mentally impaired and created a danger to others. While there was confusion in his testimony about whether the young man suffered a behavioral disorder or a mental illness, the doctor ultimately gave the opinion the young man suffered a mental impairment.

We note that the young man is no longer hospitalized.

AFFIRMED.

Oxberger, C.J., dissents.

Oxberger, C.J. (dissenting)

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I respectfully dissent.

An involuntary civil commitment is not warranted unless elements of serious mental impairment are proven by clear and convincing evidence. In re Oseing, 296 N.W.2d 797, 799 (Iowa 1980). The examining psychiatrist, Dr. Lewis, testified J.D.D. suffered from a behavioral disorder rather than a mental disorder. He also testified there was controversy within his profession as to whether a behavior disorder satisfies the criteria necessary to constitute a mental illness. I do not believe his testimony was sufficient to constitute clear and convincing evidence of serious mental impairment.