IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 0-554 / 00-0610
Filed November 8, 2000

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

J.J.,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

J.J. appeals the district court's order finding him to be seriously mentally impaired and committing him under Iowa Code Chapter 229 (1999). **REVERSED.**

Brian G. Sayer of Dunakey & Klatt, P.C., Waterloo, for appellant.

Thomas Ferguson, County Attorney, and Randall L. Jackson, Assistant County Attorney, for appellee-State.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

VOGEL, P.J.

James appeals the decision of the district court which found him to be seriously mentally impaired under Iowa Code chapter 229. He claims the court erred in finding that due to his mental illness he was unable to make responsible decisions and was a danger to himself or others. We reverse the district court decision.

James is a sixty-five year old man. He has been diagnosed with chronic paranoid schizophrenia, for which he has been prescribed psychotropic medications. James has also had problems with alcohol dependence for many years. He suffers from diabetes and takes insulin for this condition. James additionally suffers from polyneuropathy, a disorder of the nerves which results in a loss of sensation to the hands and feet.

Dr. Raja Akbar, James's treating psychiatrist, testified James's mental illness was under fairly good control through the use of psychotropic medication. Dr. Akbar warned James not to drink alcohol because it would interfere with the effectiveness of his medication. Dr. Akbar believed James had a decrease in cognitive ability due to his excessive drinking.

James had problems taking care of himself because of his abuse of alcohol. He told family members all he wanted to do was drink alcohol, and he did not care if he hurt himself. In November 1999, James, while intoxicated, took a taxicab to a bar. He fell and broke his hip. He went to a nursing home for rehabilitation and physical therapy.

James's daughter and her husband filed applications alleging James was seriously mentally impaired, pursuant to chapter 229, and a chronic substance abuser, pursuant to chapter 125. They asked to have him involuntarily committed.

The judicial hospitalization referee determined James was seriously mentally impaired and ordered him committed to the nursing home. The petition alleging James was a chronic substance abuser was dismissed. James appealed to the district court.

The case was heard de novo before the district court. Applicants argued that because review was de novo, the court could consider the applicants' claims under chapters 229 and 125. The court concluded James was both seriously mentally impaired within the meaning of chapter 229, and a chronic substance abuser within the meaning of chapter 125.

James filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). Upon consideration of the motion, the court determined the claims regarding chapter 125 had previously been dismissed and were not before the court. The court concluded it had erroneously found James was a chronic substance abuser. James appealed the determination he was seriously mentally impaired.

An involuntary hospitalization proceeding is triable as an ordinary action at law. *In re Oseing*, 296 N.W.2d 797, 800 (Iowa 1980). Our review is for errors at law. *In re Melodie L.*, 591 N.W.2d 4, 6 (Iowa 1999).

Before commitment under chapter 229 is warranted, applicants must establish by clear and convincing evidence all of the elements of section

229.1(15). *See In re Foster,* 426 N.W.2d 374, 376 (Iowa 1988).[1] Section 229.1(15) defines a "serious mental impairment" as:

> 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.
> *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 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) (emphasis added).

James admits he has schizophrenia, and this is a mental illness. He claims applicants have not shown that because of his mental illness he lacks sufficient judgment to make responsible decisions about his treatment, or that because of his mental illness he is a danger to himself or others.

There is very little evidence in the record about James's mental illness. Dr. Akbar testified James's compulsive drinking was a negative symptom of chronic paranoid schizophrenia, but that his mental illness was under fairly good control with the correct medications. While Dr. Akbar stated James was not really making good decisions, he stated this because James wanted to keep drinking. Dr. Akbar did not recommend hospitalization for James's mental illness,

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[1] At the time *In re Foster,* 426 N.W.2d 374 (Iowa 1988), was decided, the definition of "serious mental impairment" was found in section 229.1(2). This definition is now found in section 229.1(15).

but recommended a residential facility to keep him away from alcohol and give him time to recover.

The weight of the evidence in this case concerned James's problems with alcohol. The facts that James broke his hip, was not eating properly, and was not regularly taking his insulin, were linked to his excessive use of alcohol. However, the commitment action under chapter 125 was dismissed. There was no evidence James presented a danger to himself or others, as defined in section 229.1(15), due to his mental illness. The decision to consume alcohol, was characterized by Dr. Akbar as not a "good" decision. From James's own testimony, he acknowledged that alcohol does not mix well with the insulin he needs to take. He also stated he should cut back or at least slow down his drinking for both medical reasons and because of his advancing age. It is apparent from the record James likes to consume alcohol, contrary to the wishes of his family and doctor. It is also evident that James suffers some adverse consequences from drinking. However, we cannot say that under Iowa Code chapter 229, because of James's mental illness he lacks "sufficient judgment to make responsible decisions".

We find there is not sufficient evidence in the record to support a finding James is seriously mentally impaired as defined in chapter 229. We reverse the decision of the district court.

REVERSED.

Miller, J., specially concurs; Hecht, J., dissents.

MILLER, J. (specially concurs)

I concur. James makes some poor decisions concerning his treatment for mental illness, such as continuing to drink, including drinking to excess at times. However, the fact that he may make some poor decisions does not clearly and convincingly demonstrate that he lacks sufficient judgment to make responsible decisions.

James suffers from paranoid schizophrenia which was diagnosed at least thirty-seven years ago. However not even his psychiatrist believes that hospitalization is required. James has been seeing the same psychiatrist since 1983. He continues to keep the substantial majority of appointments with his psychiatrist. He normally takes his prescribed psychotropic medications. These facts show that he continues to have "sufficient judgment to make responsible decisions with respect to [his] . . . treatment," and rule out a finding that the evidence clearly and convincingly demonstrates the contrary.

HECHT, J. (dissenting)

Involuntary civil commitment proceedings are special actions triable to the court. The district court's findings of fact are the equivalent of a special verdict and are binding on us if supported by substantial evidence. Evidence is "substantial" if a reasonable mind would accept it as adequate to reach a conclusion. Dr. Akbar, the appellant's treating psychiatrist, testified the patient's compulsive drinking is a negative symptom of chronic paranoid schizophrenia. I believe this testimony is substantial evidence supporting the district court's finding appellant is seriously mentally impaired as defined in Iowa Code section 229.1(15). I cannot join in the majority's compartmentalization of the alcohol abuse from the chronic schizophrenia in view of the expert's testimony linking the two disease processes together. In view of the clear and convincing evidence appellant's behavior is, and will continue to be, injurious to himself if he is not placed in an alternate residential facility, I would affirm the district court's judgment and order.