IN THE COURT OF APPEALS OF IOWA

No. 1-117 / 00-820
Filed April 11, 2001

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CLERK SUPREME COURT

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

Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Thomas Koehler, Judge.

The respondent appeals from the district court's order affirming the referee's decision finding him seriously mentally impaired and involuntarily committing him. **AFFIRMED.**

Mary K. Hoefer of Mears Law Office, Iowa City, for appellant.

Anne M. Lahey, Assistant County Attorney, for appellee-State.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

STREIT, P.J.

Jason H. appeals the district court's order affirming the judicial hospitalization referee's finding that he is seriously mentally impaired. We affirm.

I. Background Facts & Proceedings.

Jason suffers from bipolar affective disorder. In February 2000, the same month he began a ten-year prison sentence, he voluntarily entered the patient program at the Iowa Medical and Classification Center (IMCC). He was discharged from the program in March 2000 for refusing to take his medications. While off of his medications, Jason threatened to kill IMCC personnel, banged his head on his cell door, and urinated on the floor. In April 2000 a referee found Jason was seriously mentally impaired and ordered he be placed in the Mental Health Institute at Independence for a psychiatric evaluation and treatment; the district court affirmed. On appeal, Jason claims there is not clear and convincing evidence he is seriously mentally impaired.

II. Standard of Review.

An involuntary commitment proceeding is triable as an ordinary action at law. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). We review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. 4. The contention Jason is seriously mentally impaired must be sustained by clear and convincing evidence. Iowa Code § 229.12(3) (1999).

III. The Merits.

A person found to have a serious mental impairment may be committed involuntarily. Iowa Code § 229.13. The statutory definition of serious mental impairment has 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). Only the latter two elements are at issue on appeal.

Jason argues that, while his judgment capacity may have been impaired prior to his hearing before the referee, it was not impaired as of his hearing before the district court. Jason made progress during the two weeks between the two hearings. However, he was committed during this period of time and had to take his prescribed medications. Before he was committed, Jason repeatedly refused to take his medications because they made him tired and because, in his words, "[he] was very upset with . . . the way the doctor [at IMCC] was treating [him]." His recent history thus supports the finding that, if he is not committed, he will quit taking his medications without any reasonable grounds for doing so. *Cf. J.P.*, 574 N.W.2d at 343 (respondent's decision not to take her medication was not indicative of an impaired judgment capacity given she had an educational background in psychology and counseling and was concerned about the side effects of the new medication and had also indicated she preferred psychotherapy to chemotherapy). Accordingly, Jason "lacks sufficient judgment to make responsible decisions with respect to [his] hospitalization or treatment." Iowa Code § 229.1(15).

Jason also argues there is not clear and convincing evidence he is likely to be dangerous to himself or others if he is not committed. The danger a person

poses to self or others must be evidenced by a recent overt act, attempt, or threat. *In re Mohr*, 383 N.W.2d 539, 542 (Iowa 1986). As was discussed above, Jason may quit taking his medications if he is not committed. When Jason was off of his medications while at the IMCC, he threatened to kill personnel and engaged in self-injurious behavior. As recently as January 2000 he attempted to hang himself. Accordingly, Jason "[i]s likely to physically injure [himself] or others if allowed to remain at liberty without treatment." Iowa Code § 229.1(15)(a). We affirm the district court.

AFFIRMED.