

71031-1

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NO. 71031-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

J.M.,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN 27 PM 3:32

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BETH ANDRUS

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

Based upon the evidence presented, did the trial court err in finding that J.M was gravely disabled?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On September 30, 2013, the Honorable Beth Andrus presided over a probable cause hearing based on a petition for up to 14 days of involuntary treatment brought by Navos Inpatient Services (Navos) regarding respondent J.M. Navos was represented by Senior Deputy Prosecuting Attorney (DPA) Anne Mizuata. J.M. was present and represented by Marian Naden. RP 2. The petition alleged that J.M. posed a likelihood of serious harm to himself and others, was gravely disabled, and therefore requested that J.M. be ordered to remain at Navos for up to 14 days of involuntary inpatient mental health treatment. CP 13-16. At the hearing, petitioner dismissed the allegation of harm to others and proceeded only on the allegations of harm to self and grave disability. RP 3. Two witnesses testified on behalf of the petitioner. Rachel Long, a mental health case manager at Downtown Emergency Services Center (DESC), testified about her efforts to

maintain J.M. in the community as a client. RP 3-18. Dr. Rachel Renee Eisenhauer, a licensed clinical psychologist from Navos, provided expert testimony about J.M.'s presentation while hospitalized and gave her clinical opinion as to his mental state and recommendation for treatment. RP 19-28. J.M. did not present any evidence. At the conclusion of the hearing, the court found that J.M. suffered from a mental disorder and as a result was gravely disabled under prong (a) of the statute. RP 36-37. The court found insufficient evidence to establish the respondent presented as a risk of harm to himself and found insufficient evidence to establish the respondent was gravely disabled under prong (b) of the statute. RP 36-37. The court found that the opinion articulated by Dr. Eisenhauer was supported by the evidence and remanded him to up to 14 days of inpatient treatment at Navos. RP 37; CP 21-24. At a subsequent hearing, J.M. agreed to an order of 90 days less restrictive treatment. CP 39-41. That order expired on January 13, 2014. CP 39.

2. SUBSTANTIVE FACTS

Rachel Long testified that she has known J.M. since she began working in the DESC in 2008. RP 4. Ms. Long was familiar with J.M. in her role as a shelter counselor for three years and

became J.M.'s clinical case manager in July of 2013. RP 4. Ms. Long saw J.M. five or six times in the past several months. RP 4.

As observed by Ms. Long, J.M. was doing well when he stayed at the DESC shelter a few years ago. RP 5. He was more able to have a conversation, was more organized, and his hygiene was better. RP 4. Since working as J.M.'s case manager, Ms. Long observed J.M. as disorganized, speaking in word salad, and almost exclusively responding to internal stimuli – talking to himself constantly and making really bizarre gestures. RP 5. For example, she saw J.M. frequently hold doors open and stare in and out as if watching things walk through, when nobody was walking through the door. RP 6.

At the end of August 2013, J.M. went to see Ms. Long upon his release from jail. RP 6. J.M. was able to ask Ms. Long for assistance obtaining a bus ticket and was organized. RP 6. J.M. indicated he took medications in jail, but did not wish to continue taking medications. RP 6.

In the past several weeks, Ms. Long noticed changes in J.M.'s behavior during her interactions with him. R.P. 6 – 10. The majority of Ms. Long's meetings with J.M. occurred as evaluations when J.M. presented to emergency departments. RP 7. J.M.

presented in a decompensated state. RP 7. Specifically, on September 25, J.M. spoke in word salad, responded to internal stimuli, and was more despondent than Ms. Long had ever seen him. RP 8 – 9. J.M. told Ms. Long “DESC is not – is not doing enough to help me. I need a place to sleep. I can’t do it.” RP 8. He also acknowledged having suicidal thoughts over not having cigarettes. RP 8 - 9. Ms. Long had never seen J.M. present with suicidal ideation. RP 13. This was concerning for Ms. Long as this was a new symptom for J.M. and she noticed a recent decline in J.M.’s mental health.

Ms. Long also saw recent changes in J.M.’s physical appearance. RP 13 -14. J.M. had gotten thinner. RP 14. On August 30, Ms. Long could see J.M.’s spine poking through his shirt – something she had not noticed before. RP 14.

On September 24, Ms. Long advocated for the DESC shelter to allow J.M. to return there. RP 10 - 12. Ms. Long indicated the DESC shelter is the primary shelter J.M. uses and the DESC is familiar with J.M. and his difficult behaviors. RP 12. Upon learning he was barred from returning to the DESC shelter, J.M. was agitated about finding another place to stay. RP 12 -13. J.M. refused to cooperate with Ms. Long to come up with another plan

for his living arrangements. RP 13. When Ms. Long evaluated J.M. in the emergency department on September 25, J.M. did not have plan for his discharge. RP 13.

Dr. Rachel Renee Eisenhauer testified as a licensed clinical psychologist on behalf of Navos. RP 19 – 29. Defense counsel stipulated to the professional qualifications of Dr. Eishenhauer. RP 19. Dr. Eisenhauer testified that she is employed by Navos and that she evaluated J.M. on two occasions prior to the hearing. RP 19 -20.

Dr. Eisenhauer testified that J.M. has a mental impairment and a working diagnosis of schizoaffective disorder. RP 20. She testified that his mental disorder had a substantial, adverse effect on J.M.'s cognitive and volitional functions. She opined that he was both gravely disabled and presented a substantial risk of physical harm to himself. RP 20 - 21.

In forming her opinion, Dr. Eisenhower testified she considered J.M.'s long psychiatric history, including his past diagnosis of schizophrenia. She considered that prior to admission at Navos, his case manager noted J.M. as disorganized, confused, and nonsensical in his speech. RP 21. During Dr. Eisenhauer's evaluation of J.M. on September 27, she observed J.M. had a

flattened affect, was slow to respond, and had impoverished speech. Dr. Eishenhauer also stated as a basis for her opinion, that J.M.'s medical chart from Navos noted that J.M. presented as being rapid and nonsensical in his speech, was internally preoccupied, had a restriction in his affect, and was illogical in his thinking – confused and disorganized. RP 21 - 22.

As to forming her opinion that J.M. was gravely disabled, Dr. Eisenhauer expressed concern that prior to admission, J.M. lost approximately 20 pounds in 2.5 months. RP 23. J.M. admitted to Dr. Eisenhauer on September 20, that he did suffer weight loss, although he was unable to expand on it. RP 23. J.M. also admitted that he lost his housing, that he had no place to go, and was unable to offer any plans for his discharge from Navos. RP 24. As a basis for her opinion, Dr. Eisenhauer noted that since hospitalization in February 2013, J.M. frequented emergency departments 37 times this past year alone, and 27 of those presentations were to Harborview Medical Center. RP 26. Dr. Eisenhauer opined that given J.M.'s continued disorganization, impoverished speech, and inability to make plans, he would be at risk if discharged and unable to adequately care for himself. RP 24. She indicated J.M. had

difficulty functioning on his own in the community and goes to the emergency departments instead of managing his own care. RP 26.

Dr. Eisenhauer stated that she has concerns over J.M.'s ability to adequately engage in shelters since he was unable to offer shelter use as a discharge plan. RP 27. Despite having used shelters in the past and having access to resources, J.M. lost weight, frequented emergency departments, and had not done well. RP 27. J.M. had poor insight into his need for treatment. RP 27. Dr. Eisenhauer recommended further inpatient treatment for further stabilization before going back to an outpatient program. RP 27.

On redirect, Dr. Eisenhauer testified that although J.M.'s independent living skills and health were noted as strengths in the Navos medical chart, he was still losing substantial weight, had difficulty functioning in his environment, and required frequent emergency department visits. Those strengths were relative to other functions and did not indicate that he was showing great ability in the areas of independent living skills or health. RP 28.

After hearing argument from both parties, the court found, by a preponderance of the evidence, that J.M. suffered from a mental disorder - specifically schizoaffective disorder. RP 35 – 37. The court based that finding, in strong part, on Ms. Long's testimony as

well as the court's own observations during the course of the hearing. RP 36. The court found that J.M.'s mental disorder was evident by his disorganization, responding to internal stimuli, inability to find shelter, and significant weight loss. RP 36. Furthermore, J.M.'s mental disorder had an adverse effect on his cognitive and volitional functioning, and as a result, J.M. was a substantial risk of danger of serious harm to himself resulting from his inability to provide for his essential health and safety needs. Specifically, J.M. was "not able to feed himself and was not able to find safe and appropriate housing despite assistance from Ms. Long to do so." RP 37.

The court denied the petition as to grave disability under prong (b) of the statute and as to harm to self. RP 37.

C. ARGUMENT

1. THERE WAS SUFFICIENT EVIDENCE FOR THE COURT TO FIND THAT J.M. WAS GRAVELY DISABLED; THE TRIAL COURT'S DECISION SHOULD BE AFFIRMED.

"In reviewing an involuntary commitment order, the Court considers whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment." *In re LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). The burden of proof at a 14 day commitment

proceeding is a preponderance of the evidence, which means the ultimate fact must be shown to be “more probably true than not.” *Presnell v. Safeway Stores, Inc.*, 60 Wn.2d 671, 374 P.2d 939 (1962). “If a petition is filed for fourteen day involuntary treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person, and at the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department.” RCW 71.05.240(1), (3).

In challenges to Involuntary Treatment Act (ITA) cases, such as this, Washington courts have already held that, “when a trial court has weighed the evidence, appellate review is limited to whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court’s conclusions of law and judgment.” *In re A.S.*, 91 Wn. App. 146, 162 (Div. 1, 1998).

“‘Substantial evidence’ is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Id.* The party challenging a finding of fact bears the burden of demonstrating the finding is not supported by substantial evidence.” *Id.*

Thus, it is J.M.’s burden here to prove that Judge Andrus lacked substantial evidence to reach the findings of fact and conclusions of law that she did by a preponderance of the evidence. It does not appear from J.M.’s brief that there is any dispute that J.M. suffers from a mental disorder. Rather, the issue challenged is whether the court properly found that it is more probable than not that J.M. is gravely disabled as a result of that mental disorder.

Ultimately, this Court must decide if Judge Andrus had substantial evidence, such that her decision was one that would have been reached by a “fair minded person” under the standard set forth in *In re A.S.* J.M. simply claims the State failed to prove that J.M.’s weight loss was detrimental to J.M.’s overall health.

“Gravely disabled,” found under RCW 71.05.020(17)(a), is defined as, “a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a

failure to provide for his or her essential human needs of health or safety.” Taken alone, J.M.’s weight loss would not necessarily impact J.M.’s health and safety. However, there is an indication that J.M. may be eating when people present food to him, but not otherwise. Furthermore, J.M. demonstrated an inability to find safe and appropriate housing, despite assistance from Ms. Long to do so. J.M.’s active symptoms of his mental disorder prevented J.M. from forming and implementing a plan for his health and safety upon discharge from the hospital. Despite having stayed in shelters in the past, J.M. was unable to articulate going to a shelter as an option upon his release. J.M.’s frequent visits to emergency departments demonstrates his inability to find any other place for shelter.

The State is required to prove that a person is in danger of harm, not that the harm has occurred. *In re LaBelle* explains the practicality of this distinction: “By the time the State files a petition for 14, 90 or 180 days of involuntary commitment under the gravely disabled standard, the individual will already have been detained in a hospital or treatment center for a period of time. The care and treatment received by the detained person in many cases will have lessened or eliminated the ‘imminence’ of the danger of serious

harm caused by that person's failure to provide for his essential health and safety needs. A requirement of 'imminent' danger as a prerequisite to continued confinement could result in the premature release of mentally ill patients who are still unable to provide for their essential health and safety needs outside the confines of a hospital setting but who, because of their treatment there, are no longer in 'imminent' danger of serious physical harm." *Id* at 144, 203. The court properly found that J.M. was gravely disabled due to his inability to provide for his essential needs of health and safety outside of the hospital.

The State requests this Court find that the evidence has met the requisite threshold and that Judge Andrus's decision be affirmed.

2. THE STATE IS NOT ARGUING THAT THE CASE IS MOOT

The State is not arguing that this appeal is moot, and respectfully requests that the court instead decide this case on the merits, as outlined above.

D. CONCLUSION

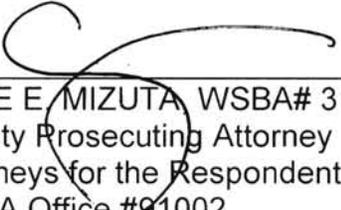
For the foregoing reasons, the State requests that the Court deny the Appellant's appeal on all issues raised above and affirm the trial court's rulings.

DATED this 27 day of June, 2014.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By:



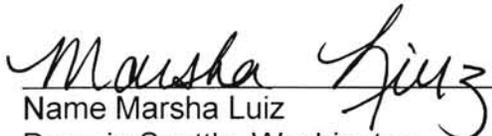
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer Winkler, the attorney for the appellant, at Nielsen, Broman & Koch, PLLC, 1908 – E. Madison St., Seattle, WA 98122, containing a copy of the Brief of Respondent, in In re the Detention of J.M., State of Washington, Respondent v. J.M. Appellant, Cause No. 71031-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 27th day of June, 2014


Name Marsha Luiz
Done in Seattle, Washington