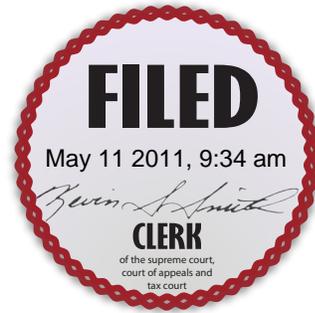


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE COMMITMENT OF J.K.

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)
)

No. 18A02-1010-MH-1090

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Linda Ralu Wolf, Judge
The Honorable Joseph M. Speece, Master Commissioner
Cause No. 18C03-1006-MH-173

May 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

J.K. appeals the trial court's decision to change his temporary involuntary commitment to Meridian Services ("Meridian") for mental health reasons to a regular commitment. J.K. raises one issue for our review, which we restate as whether he received due process in the form of adequate notice of Meridian's request to change his temporary commitment to a regular commitment.¹

We affirm.

Facts and Procedural History

J.K. resides in a group home in Muncie, Indiana, and suffers from paranoid-type schizophrenia with residual delusions about a Mafia family seeking his death. He also lacks the ability to address his day-to-day living requirements, suffers from memory difficulties, and requires constant supervision and assistance. At the time of the September 7, 2010, hearing giving rise to the order from which J.K. appeals, J.K. had resided in the group home for 2½ years, during which time Tammy Dodson ("Dodson")², an employee of Meridian, had served as both supervisor of the group home and J.K.'s case manager.

On June 22, 2010, based upon a Petition for Involuntary Commitment filed by Dodson and supported by a medical diagnosis of paranoid schizophrenia and opinion that J.K. was gravely disabled submitted by Dr. Saffraz Khan, the trial court ordered that J.K. be

¹ J.K.'s brief sets forth a standard of review compatible with an argument as to the sufficiency of the evidence, but makes no sufficiency argument, seemingly relying upon a statement of facts that does not conform to Appellate Rule 46(A)(6)(b), which requires that the appellant's statement of facts comport with the standard of review for the case. We remind counsel of this requirement, as well as the requirement that the arguments in briefs to this court refer to the record and applicable authorities. Ind. Appellate Rule 46(A)(8)(a).

² The transcript misspells Dodson's last name as "Dotson." (Tr. 1-3.)

temporarily committed to outpatient treatment with Meridian for ninety days.

On August 24, 2010, Dodson submitted a Report Requesting Extension of Temporary Commitment, seeking that the trial court again involuntarily commit J.K. for at least another ninety days because of grave disability resulting from J.K.'s psychiatric problems. This request was supported by the Physician's Statement of Dr. Boris S. Imperial ("Dr. Imperial"), who diagnosed J.K. with "Schizophrenia, Paranoid Type, Chronic" (App. 24), and indicated that Meridian sought a commitment period of ninety days or less.

On August 25, 2010, the trial court issued its Notice of Hearing Request for Extension of Temporary Commitment and Changed [sic] to a Regular Commitment, notifying J.K. and other anticipated participants that a hearing would be conducted on the request on September 7, 2010, and that within the scope of the hearing would be consideration of Meridian's request that J.K. be subject to regular, rather than temporary, commitment to outpatient care. In addition to J.K., the notice was sent to L. Ross Rowland ("Rowland") of the Delaware County Public Defender's Office, which provided J.K.'s representation in the commitment proceedings. A different attorney with the Public Defender's Office, Stan Wyrick ("Wyrick"), represented J.K. at the hearing.

At the September 7, 2010, hearing, the trial court heard testimony from Dodson, Dr. Imperial, and J.K. At the conclusion of the hearing, the trial court found that J.K. was gravely disabled due to mental illness, found that regular commitment was appropriate, and committed him to outpatient treatment with Meridian for the following year.

This appeal followed.

Discussion and Decision

J.K. frames his argument as an appeal of the sufficiency of the evidence supporting the trial court's decision to involuntarily commit him to Meridian's care. The substance of J.K.'s argument addresses a different claim, however: that he was deprived of due process because he did not receive adequate notice that Meridian sought a change in the nature of his commitment, and thus J.K. and his attorney were unable to prepare for the hearing.

Our standard of review for an appeal from an involuntary commitment is well established.

Proceedings for involuntary commitment are subject to federal due process requirements. For the ordinary citizen, commitment to a mental hospital produces "a massive curtailment of liberty" and thus "requires due process protection." Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). *** To satisfy the requirements of due process, the State must prove by clear and convincing evidence the facts justifying an involuntary commitment. Commitment of M.M., 826 N.E.2d 90, 96 (Ind. Ct. App. 2005), trans. denied.

Commitment of S.T. v. Cmty. Hosp. N., 930 N.E.2d 684, 687 (Ind. Ct. App. 2010), reh'g denied (Oct. 1, 2010).

J.K. raises his due process argument for the first time upon appeal. Our review of the record reveals that neither J.K. nor his attorney objected to the adequacy of the hearing notice at any point before pursuing this appeal. Thus, J.K.'s due process claims before this court are waived. Cf. Cheek v. State, 567 N.E.2d 1192, 1196 (Ind. Ct. App. 1991) (affirming involuntary commitment and finding that failure to object to lack of notice at the trial court resulted in waiver of the issue on appeal).

Waiver notwithstanding, the defects of which J.K. complains did not prevent him from

receiving notice, and they did not prevent Wyrick from representing J.K. in this matter. The notice states that the court would hold a hearing on “whether the Report . . . should be granted as a regular commitment for the Respondent,” J.K. (App. 29.) J.K. does not contend that he did not receive notice of the hearing; indeed, he appeared at the hearing with counsel and testified on his own behalf. The notice itself was defective as to J.K. only in that it misspelled his name by omitting a single letter from his last name, and then only in the address line; the caption and body of the document properly spell J.K.’s last name. The notice was sent to the proper street address, and J.K.’s name is sufficiently unique that the notice would not have been delivered to another occupant of the group home.

While the notice sent to the Public Defender’s Office was not addressed specifically to Wyrick, who represented J.K. at the hearing, it was addressed to Rowland, who was also an attorney with the Public Defender’s Office.³ Moreover, the trial court issued its notice on August 25, 2010, fourteen calendar days before the hearing. Thus, J.K. and his attorney were afforded ample time for preparation, and indeed J.K. cross-examined Dodson and Dr. Imperial and testified on his own behalf.

J.K. points out that the first time Dr. Imperial indicated that Meridian sought a regular commitment, rather than merely a renewal of the existing temporary commitment, came in Dr. Imperial’s testimony before the trial court. J.K. is correct that Dr. Imperial’s Physician’s Statement in support of the report requesting the regular commitment indicated that Meridian

³ Appellee’s brief notes that there is a rotation of attorneys from the Public Defender’s Office in Delaware Circuit Court Number 3, and that Rowland and Wyrick are on this rotation. This is not part of the record, but if true further undermines any claim that Wyrick lacked notice and opportunity to prepare for J.K.’s hearing.

sought a commitment period of ninety days or less. But J.K.'s argument disregards the report Dodson submitted requesting a longer commitment period. More crucially, J.K.'s argument also ignores the notice of hearing on the commitment proceeding, which clearly indicated that the hearing would cover the requested change in J.K.'s commitment from a temporary, ninety day period to a regular, one year period.

Having waived his due process claim for purposes of this appeal, and in any event having had due process, we affirm the trial court's order committing J.K. to Meridian's care for a one year, regular commitment.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.