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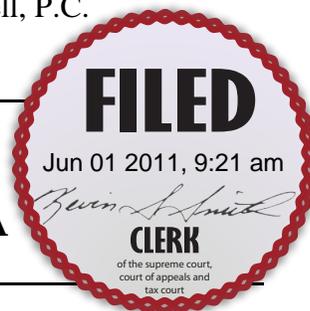
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**IN THE
COURT OF APPEALS OF INDIANA**



IN RE THE COMMITMENT OF A.K.,)

Appellant-Respondent,)

vs.)

MERIDIAN SERVICES,)

Appellee-Petitioner.)

No. 18A02-1011-MH-1199

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Linda Ralu Wolf, Judge
The Honorable Joseph M. Speece, Master Commissioner
Cause No. 18C03-1007-MH-200

June 1, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

A.K. appeals the trial court's order for his regular involuntary commitment. He raises one issue on appeal, which we restate as two: whether sufficient evidence was presented to support the commitment order, and whether A.K.'s attorney received adequate notice of the regular commitment hearing. Concluding the evidence is sufficient and finding no harmful error as to notice, we affirm.

Facts and Procedural History

The facts most favorable to the judgment are that on July 13, 2010, A.K.'s wife filed an application for his emergency detention, stating he was "acting and speaking irrationally," was "very agitated," and was not taking his bipolar medication. Respondent-Appellant's Appendix at 4. The accompanying physician statement by Dr. Kendal Baker stated based upon Dr. Baker's personal observation that A.K. was "gravely disabled & paranoid," not taking his medication, and "thought his house was full of raw sewage." *Id.* at 5. A.K. had taken his son to the emergency room although his wife knew the son to be healthy. The trial court granted the application for emergency detention, and A.K. was admitted to Ball Memorial Hospital.

On July 15, 2010, A.K. was examined by Dr. Sarfraz Kahn. Dr. Kahn filed a report stating there was probable cause to believe A.K. was suffering from bipolar disorder and was dangerous and gravely disabled. Dr. Kahn's report continued that A.K. exhibited paranoid delusions, had "no insight," refused to take medication, and did not believe he suffered from mental illness. *Id.* at 8. The report added that A.K. did not have family members or friends

willing and able to see that he take medication as prescribed. Dr. Kahn recommended inpatient treatment at Ball Memorial Hospital and subsequent follow-up with Meridian Services (“Meridian”). Upon receiving Dr. Kahn’s report, the trial court set a hearing for July 16, 2010 on the question of A.K.’s temporary commitment.

At the hearing, Dr. Kahn testified that A.K. presently suffered from Type I bipolar disorder with psychotic features, “which is the most severe form,” and that A.K. was angry, agitated, “fixated on his delusions of raw sewage,” and repeatedly told others that Meridian had been killing people. Transcript at 4. Dr. Kahn also testified that A.K. continued to refuse to take medication. Following the hearing, the trial court issued an order for temporary commitment of A.K. not to exceed ninety days, including inpatient treatment at Ball Memorial Hospital followed by outpatient treatment at Meridian. On or about August 9, 2010, A.K. was released from the hospital and began outpatient treatment at Meridian.

On September 21, 2010, Meridian filed a petition requesting that A.K.’s temporary commitment be extended to a regular commitment. The attached physician’s statement by Dr. Nitin Khadilkar stated that on September 20, 2010, Dr. Khadilkar examined A.K. and determined he was suffering from bipolar disorder. Dr. Khadilkar opined A.K. was gravely disabled in that he had poor insight, frequent manic episodes, and delusional thinking including that “sewage is causing all kinds of problems.” Respondent-Appellant’s App. at 26. Dr. Khadilkar also indicated that A.K. could not be relied upon to take medication as prescribed and there were no family members or friends willing and able to see that he take medication.

On October 5, 2010, the trial court held a hearing at which A.K. appeared in person and was represented by counsel. A.K.'s therapist at Meridian, a licensed social worker, testified that A.K., "[w]hen he's on his medication [is] fairly stable but he does have ongoing delusions and . . . very poor judgment and insight into his illness." Tr. at 13. The therapist also testified A.K. "doesn't seem to know that he should stay on his medications" and "has a history of going off his medications." Id. Dr. Khadilkar testified that A.K. suffers from "bipolar disorder, type one, manic" and has a history of seven mental health hospitalizations in the past twelve years. Id. at 17. Dr. Khadilkar noted that while A.K. was not presently displaying manic symptoms, the lack of symptoms was attributable to his present treatment, and that he has a history of going off his medication thus requiring his hospitalization. Dr. Khadilkar also testified A.K. "has chronic delusional feeling that a sewer is causing all kinds of problems . . . in the society, not just the health problems." Id. at 17-18. Dr. Khadilkar considered A.K. to be gravely disabled.

Following the hearing, the trial court issued its order for regular commitment, continuing A.K.'s commitment to Meridian outpatient treatment for a period up to one year. A.K. now appeals.

Discussion and Decision

I. Sufficient Evidence

When reviewing the sufficiency of the evidence to support a trial court's commitment order, we neither reweigh the evidence nor judge the credibility of witnesses. In re Commitment of A.W.D., 861 N.E.2d 1260, 1264 (Ind. Ct. App. 2007), trans. denied. We

look to the evidence most favorable to the trial court's decision and all reasonable inferences to be drawn therefrom. J.S. v. Ctr. for Behavioral Health, 846 N.E.2d 1106, 1112 (Ind. Ct. App. 2006), trans. denied. "If the trial court's commitment order represents a conclusion that a reasonable person could have drawn, the order must be affirmed, even if other reasonable conclusions are possible." In re Commitment of G.M., 743 N.E.2d 1148, 1151 (Ind. Ct. App. 2001).

The trial court ordered a regular commitment, which permits involuntary treatment of a person whose commitment is expected to exceed ninety days. See Ind. Code § 12-26-7-1; J.S., 846 N.E.2d at 1111. In commitment proceedings, the petitioner "is required to prove by clear and convincing evidence that: (1) the individual is mentally ill and either dangerous or gravely disabled; and (2) detention or commitment of that individual is appropriate." Ind. Code § 12-26-2-5(e). The trial court found A.K. is mentally ill as "suffering from Bi-polar, Type I, Manic Type" and that A.K. is gravely disabled. Respondent-Appellant's App. at 34. A.K. does not challenge the trial court's finding that he is mentally ill. Rather, he challenges the trial court's finding that he is gravely disabled. "Gravely disabled" is defined as:

[A] condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual:

- (1) is unable to provide for that individual's food, clothing, shelter, or other essential human needs; or
- (2) has a substantial impairment or an obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently.

Ind. Code § 12-7-2-96.

A.K. argues that the evidence presented at the hearing on his regular commitment was insufficient to establish that he is gravely disabled. In Golub v. Giles, 814 N.E.2d 1034 (Ind. Ct. App. 2004), trans. denied, this court rejected the appellant's contention that the trial court could only base its decision on evidence presented at the commitment hearing. We cited to Indiana Code section 12-26-7-5(a), which provides a trial court may enter an order for regular commitment after "completion of the hearing" and "consideration of the record." We explained "the trial court could have properly considered any information contained in the record, including, presumably, all previous applications for and reports following [the appellant]'s emergency detentions." Golub, 814 N.E.2d at 1039.

Looking to the whole record, we find clear and convincing evidence to conclude A.K. is gravely disabled. At the times of both the temporary and regular commitment hearings, the opinion of the mental health professionals who examined and treated A.K. was that he displayed delusional thinking and lack of insight into his mental illness. The professionals indicated he could not be relied upon to take medication voluntarily and that there were no family members or friends who could ensure he would continue to take his medication. His past failures to take medication had resulted in repeated manic episodes and ensuing hospitalizations, equaling an inability to function independently during those episodes. It was reasonable for the trial court to use A.K.'s prior history as the best predictor of what would happen in the future if his commitment was not continued, i.e. that without a commitment order to ensure he remained on medication, he would likely regress to requiring another hospitalization. Thus, the trial court reasonably concluded A.K. was gravely disabled

because he was unable to provide on his own for the essential need of managing his bipolar disorder, and because his impaired judgment as to his need for treatment made him unable to obtain treatment or otherwise function independently. While A.K. testified that he was willing to take medication and wished to have his prescriptions reviewed by a different psychiatrist, we may not reweigh the evidence to conclude he would have necessarily followed through. See J.S., 846 N.E.2d at 1113 (concluding evidence was sufficient that respondent was gravely disabled when she had a history of stopping her medication and, as a result, developing significant psychotic symptoms).

II. Notice

For the first time on appeal, A.K. asserts that the public defender who represented him at the October 5, 2010 regular commitment hearing was not notified that the hearing would be for a one-year commitment. The record shows that notice of the regular commitment hearing was addressed to a different public defender, in the same public defender office, who had represented A.K. at the temporary commitment hearing. Generally a party may not raise an issue for the first time on appeal, particularly issues of a trial court's procedure, see Mitchell v. Stevenson, 677 N.E.2d 551, 558 (Ind. Ct. App. 1997), trans. denied, so we find this issue to be waived.

Waiver notwithstanding, we note that Indiana Code section 12-26-2-2(b)(1) provides that in commitment proceedings, the respondent has the right to "receive adequate notice of a hearing so that the individual or the individual's attorney can prepare for the hearing." Regardless of whether a commitment is to be temporary (not exceeding ninety days) or

regular (up to one year), the substantive standard is the same: whether the respondent is mentally ill and either dangerous or gravely disabled. See Ind. Code § 12-26-2-5 (referencing both Indiana Code articles 12-26-6 (temporary commitment) and 12-26-7 (regular commitment)). Here, the hearing transcript indicates A.K.'s attorney knew this was the substance of the issue to be decided by the trial court, and A.K. does not claim that a defect in notice left his attorney unable to prepare for the hearing. In these circumstances, A.K. has suffered no prejudice warranting reversal. See Ind. Trial Rule 61 (providing that harmless error, that which does not affect the substantial rights of the parties, is not a ground for reversal).

Conclusion

Sufficient evidence supports the trial court's commitment order, and any defect in notice to A.K.'s attorney was harmless. The judgment of the trial court is affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.