MEMORANDUM DECISION

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 the Matter of the Commitment of M.W.

M.W.,

Appellant-Respondent,

v.

Evansville State Hospital,

Appellee-Petitioner.

August 2, 2022

Court of Appeals Case No. 22A-MH-554

Appeal from the Monroe Circuit Court

The Honorable Stephen R. Galvin, Judge

Trial Court Cause No. 53C07-2002-MH-77

Weissmann, Judge.

[1] After M.W.'s involuntary commitment to the Evansville State Hospital (Hospital) two years ago with a diagnosis of schizophrenia, some of his symptoms improved with medication. But M.W. continued his habit of kissing floors, walls, and wall appliances. M.W. sought to end his commitment, claiming his remaining symptoms were idiosyncratic and that he no longer was gravely disabled. The trial court, relying on the testimony of M.W.'s treating physician, disagreed and continued M.W.'s commitment. M.W. appeals, and we affirm, concluding the trial court correctly determined that M.W. remains gravely disabled.

Facts

[2] In February 2020, M.W. was found unconscious and suffering from hypothermia in a park. The petition for involuntary commitment filed shortly after his admission to a hospital intensive care unit alleged that he had been diagnosed with schizophrenia, his paranoia led to physical aggression, and his "marked impairment" left him unable to meet his basic needs. App. Vol. II, p. 11. The trial court found M.W. was gravely disabled and ordered him involuntarily committed for a period expected to exceed 90 days.

[3] Within three months of that order, M.W. was transferred to Hospital. He was experiencing "ongoing psychosis, bizarre behaviors (licking floors or taking off clothes), disorganization, delusions, and hallucinations, which seem to be resistant to treatment with medications." *Id.* at 27. He also had not responded

to medication. M.W. has remained at Hospital ever since. Some of his symptoms have improved or disappeared, but others continue.

[4] After two years of treatment at Hospital, M.W. petitioned for release. He argued that he was no longer gravely disabled and could care for himself. At the resulting hearing, M.W.'s treating physician testified that M.W. remained gravely disabled. The physician stated that M.W.'s continued kissing of walls, floors, and doorknobs risked his health and impeded his transfer to a group home. The trial court rejected M.W.'s request for release and continued the involuntary commitment. M.W. now appeals.

Discussion and Decision[1]

[5] M.W. contends he is not gravely disabled by his mental illness. As M.W.'s commitment could continue only upon such proof, M.W. claims the trial court's extension of his regular commitment was improper. Contrary to M.W.'s claim, the evidence supported the trial court's finding that he remains gravely disabled.

I. Standard of Review

[6] A regular commitment, meaning involuntary civil commitment lasting more than 90 days, may be ordered when the petitioner proves by clear and

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[1] Hospital argues this appeal is moot. Its argument hinges on the proposition that M.W., on appeal, sought either transfer to a group home or discharge and that M.W.'s placement in a group home would render the appeal moot. But M.W.'s request for appellate relief is limited to discharge. We thus do not address the mootness argument further.

convincing evidence that the person is mentally ill and either dangerous or gravely disabled. Ind. Code § 12-26-2-5(e).[2] A regular commitment continues until the patient is discharged from the facility, the patient is released from the therapy program, or the trial court orders the patient's release. Ind. Code § 12-26-7-5(b).

[7] The patient's attending physician or facility superintendent must provide a "review of the individual's care and treatment" at least once annually and more often if ordered by the court. Ind. Code § 12-26-15-1(a). This review must describe the mental condition of the individual, whether the individual is dangerous or gravely disabled, and whether the individual needs to remain in the facility or may be cared for under a guardianship. Ind. Code § 12-26-15-1(a)(1)-(3). M.W. specifically requested a hearing for review or dismissal of his commitment, as allowed by Indiana Code § 12-26-15-3. In response, the trial court conducted an evidentiary hearing before ruling that M.W. was gravely disabled and continuing his commitment.

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[2] An adult person in Indiana may be civilly committed either voluntarily or involuntarily. "Involuntary civil commitment may occur under four circumstances if certain statutorily regulated conditions are satisfied: (1) "Immediate Detention" by law enforcement for up to 24 hours, *see* Ind. Code § 12–26–4 *et seq.;* (2) "Emergency Detention" for up to 72 hours, *see* Ind. Code § 12–26–5 *et seq.;* (3) "Temporary Commitment" for up to 90 days, *see* Ind. Code § 12–26–6 *et seq.;* and (4) "Regular Commitment" for an indefinite period of time that may exceed 90 days, *see* Ind. Code § 12–26–7 *et seq.*" *Civil Commitment of T.K. v. Dep't of Veterans Affairs*, 27 N.E.3d 271, 273 (Ind. 2015). In this case, Hospital sought continuation of T.K.'s regular commitment.

[8] The standard of review applicable to that judgment is identical to that governing an initial appeal of a commitment order. *See Civ. Commitment of T.K.*, 27 N.E.3d at 273. Hospital must have established by clear and convincing evidence that M.W.: 1) is mentally ill and either dangerous or gravely disabled and 2) detention or commitment of him is appropriate. *See also* Ind. Code § 12-26-2-5(e). M.W. does not contest that he is mentally ill, and Hospital did not allege M.W. was dangerous. The only issue on appeal is whether M.W. is gravely disabled.

[9] When reviewing the sufficiency of that evidence, we consider only the evidence most favorable to the trial court's decision and any reasonable inferences supporting it without reweighing the evidence or assessing witness credibility. *Id.* We will affirm if a reasonable trier of fact could find the necessary elements proven by clear and convincing evidence. *Id.*

II. Sufficient Evidence

[10] M.W. claims he does not meet the statutory definition of "gravely disabled," which is:

> 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. As that statute is written in the disjunctive, clear and convincing evidence of only one of its two prongs proves the individual is gravely disabled. *B.J. v. Eskenazi Hosp./Midtown CMHC*, 67 N.E.3d 1034, 1039 (Ind. Ct. App. 2016).

[11] The evidence that M.W. was gravely disabled came from the testimony of M.W.'s physician, Dr. David Gray. He testified that "the most problematic behavior that is ongoing, [M.W.] will frequently kiss the floor, doorknobs [and] various appliances attached to the wall and that's the primary symptom that's keeping him here at the hospital at the present time." Tr. Vol. II, p. 6. Dr. Gray stated that the hygiene risks from kissing various unsanitary locations could render a person gravely disabled and, in fact, M.W. was gravely disabled. *Id.* at 8. M.W. would be transitioned to a group home if M.W. ceased the kissing behaviors, according to Dr. Gray. *Id.* at 7.

[12] M.W. argues that his kissing behaviors do not equate to a grave disability and, instead, amount to the type of idiosyncratic behavior considered inadequate to justify an involuntary commitment. *See Addington v. Texas*, 441 U.S. 418, 427 (1979) ("Loss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior.") But the idiosyncratic behaviors identified in *Addington* were "abnormal behavior which might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable." *Id.* at 426-27. Such behaviors include leaving derogatory flyers on cars, screaming and intimidating hospital staff, and criticizing the

pharmaceutical industry. *Civ. Commitment of T.K.*, 27 N.E.3d at 275-77. The evidence showed M.W.'s behaviors were more than idiosyncratic, as they were not "within a range of conduct that is generally acceptable." *See Addington*, 441 U.S. at 426-27.

[13] Dr. Gray further testified that M.W. had "a substantial impairment or obvious deterioration in his judgment, reasoning, or behavioral [sic] that results in his inability to function." Tr. Vol. II, p. 6. He based that opinion mainly on M.W.'s kissing behaviors, noting the risk that those behaviors presented to M.W.'s health given the global pandemic. *Id.* at 8. Dr. Gray's testimony suggested that M.W. still suffered from hallucinations, although they had "diminished" since M.W.'s admission to Hospital 1½ years earlier. *Id.* at 7. Dr. Gray believed M.W. likely would be unable to meet his basic needs if not hospitalized.

[14] In addition, the current treatment plan filed with the court suggested that M.W. likely would not comply with a therapy plan if released, given his history of "medical noncompliance and prior failed community placements." App. Vol. II, p. 34. Noncompliance with a medication regime is evidence of a grave disability. *Commitment of C.P.*, 10 N.E.3d 1023, 1027 (Ind. Ct. App. 2014).

[15] M.W.'s challenges to Dr. Gray's testimony essentially amount to requests to reweigh the evidence. Clear and convincing evidence established that M.W. is gravely disabled because he has a substantial impairment or an obvious deterioration of his judgment, reasoning, or behavior that results in his inability to function independently. *See* Ind. Code § 12-7-2-96(2). And the evidence

showed that M.W. could not be placed in a less restrictive treatment environment—a group home—because of his kissing behaviors.

[16] We affirm the trial court's judgment finding that M.W. is gravely disabled and continuing his commitment.

Robb, J., and Pyle, J., concur.