MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Deborah Markisohn
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Bryan H. Babb
Bose McKinney & Evans LLP
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Civil Commitment of:

T.D.,

Appellant-Respondent,

v.

Health and Hospital Corporation d/b/a Sandra Eskenazi Mental Health Center,

Appellee-Petitioner.

September 7, 2021

Court of Appeals Case No. 21A-MH-151

Appeal from the Marion Superior Court

The Honorable Steven R. Eichholtz, Judge
The Honorable Kelly M. Scanlan, Judge Pro Tempore

Trial Court Cause No. 49D08-2010-MH-36169

Weissmann, Judge.

[1] T.D. challenges the trial court's extension of her temporary mental health commitment to a regular commitment, arguing only that Health and Hospital Corporation d/b/a Sandra Eskenazi Mental Health Center ("Eskenazi") failed to prove by clear and convincing evidence that she was "gravely disabled." Finding that standard was met, we affirm.

Facts

[2] T.D. is a 38-year-old woman with a longstanding diagnosis of schizoaffective disorder bipolar type. During the last five months of 2020, T.D. was hospitalized at Eskenazi five times: from August 15-26, September 4-18, September 22 to November 19, November 20-25, and December 16 through the date of the trial court's judgment on January 13, 2021. Her latest hospitalization, recommended by her intensive outpatient treatment team, occurred after escalation of her symptoms, including hallucinations, paranoia, and disorganized thought processing. During that hospitalization, Eskenazi petitioned to extend T.D.'s temporary commitment to a regular commitment, alleging T.D. was gravely disabled and "in need of continuing custody, care or

treatment in an appropriate facility." App. Vol. II, p. 7.[1] T.D. opposed the regular commitment.

[3] Only T.D. and Dr. Kenneth Smith, who treated T.D. during most of her hospitalizations, testified at the hearing on Eskenazi's petition. Dr. Smith indicated Eskenazi had begun a state psychiatric hospital referral for T.D. during her hospitalization from September 22 to November 19, 2020. That referral was based on concerns about the intensity of T.D.'s symptoms and the difficulty in keeping her stable enough to remain in outpatient care. T.D. had been accepted at the state psychiatric hospital, but no bed was yet available.

[4] Dr. Smith's testimony revealed T.D. had a history of decompensating after her release from hospitalization. TD's "thought processing" and ability to remain organized would deteriorate, leaving her unable to take her medications consistently. T.D. also had informed Dr. Smith that she would not take certain medications outside the hospital setting including mood stabilizers important to her treatment. Other than through Eskenazi's intensive outpatient team, T.D. has little support outside the hospital. She receives Social Security disability

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

payments, with Eskenazi serving as payee, but is incapable of living by herself, according to Dr. Smith.

[5] The trial court concluded T.D. was gravely disabled and extended her temporary commitment to a regular involuntary commitment. T.D. responded by calling the judge "racist" and using an expletive. Tr. Vol. II, pp. 28-29.

Discussion and Decision

[6] T.D. does not dispute that she is a person with mental illness. Instead, she claims the trial court's extension of her temporary commitment to a regular commitment was improper because Eskenazi failed to prove she was "gravely disabled," as required by Indiana Code § 12-26-2-5(e).

[7] When an involuntary commitment of a patient with mental illness is sought, the petitioner must prove by clear and convincing evidence that: 1) the patient is mentally ill and either dangerous or gravely disabled; and 2) detention or commitment of that individual is appropriate. I.C. § 12-26-2-5(e). In this context, "gravely disabled" means "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.

I. Standard of Review

[8] When reviewing the sufficiency of the evidence supporting a civil commitment, we consider only the probative evidence and reasonable inferences supporting it, without weighing evidence or assessing witness credibility. *Id.* We will affirm if clear and convincing evidence supports the trial court's judgment. *Id.* Clear and convincing evidence requires proof that the existence of a fact is "highly probable." *Matter of Commitment of C.N.*, 116 N.E.3d 544, 547 (Ind. Ct. App. 2019).

II. Evidence of Grave Disability Was Sufficient

[9] T.D. claims Dr. Smith's testimony—the only evidence presented by Eskenazi—was inadequate to support the trial court's determination that she was gravely disabled. The trial court specifically found that T.D. "is in danger of coming to harm because she is demonstrating a substantial impairment in her judgement, reasoning and behavior that results in her inability to function independently." Tr. Vol. II, p. 28; *see* I.C. § 12-7-2-96(2).

[10] By a more circuitous route, the trial court also appeared to implicitly find that T.D. was gravely disabled because she was unable to provide for her essential human needs, specifically housing. Tr. Vol. II, pp. 28-29; *see* I.C. § 12-7-2-96(1). The trial court viewed T.D. as "at risk of being homeless" because the record contained no evidence of any available boarding home placement for her and her pattern of decompensating upon release from hospitalization would have left her unable to "navigate" housing issues. Tr. Vol. II, p. 28.

[11] T.D. notes Dr. Smith testified her symptoms had improved and she had been compliant with medications while hospitalized during the weeks before the hearing. Dr. Smith found it "difficult to say" whether T.D. was likely to take her medication when not hospitalized. Tr. Vol. II, p. 14. As T.D. suggests, a regular commitment may not be based solely on hypotheticals or future contingencies. *See B.J. v. Eskenazi Hosp./Midtown CMHC*, 67 N.E.3d 1034, 1040 (Ind. Ct. App. 2016).

[12] Although Dr. Smith testified that a regular commitment was in T.D.'s "best interest," T.D. contends that is not the same as saying that the regular commitment was the least restrictive alternative, which is required. *Id.* at 23; *see In re Mental Commitment of M.P.*, 510 N.E.2d 645, 647 (Ind. 1987). T.D. contends state hospitalization is only appropriate for the most seriously ill and she is not among them. Even if state hospitalization were appropriate, however, T.D. further notes Dr. Smith's acknowledgement that Eskenazi still could proceed with its planned state hospitalization of T.D. with only a temporary commitment in lieu of the more restrictive regular commitment. *See* Tr. Vol. II, p. 16.

[13] But T.D. omits much of Dr. Smith's testimony and fails to take into account the surrounding circumstances. T.D. was hospitalized five times in the five months preceding the trial court's judgment. In fact, she had been in the hospital more often than not since August 2020. Even on the day of the hearing, T.D. was experiencing "some pretty considerable symptoms," including hallucinations and paranoia. *Id.* at 13.

[14] When she was not hospitalized recently, she did not live independently. Instead, T.D. lived in a boarding home, and Eskenazi's intensive outpatient team helped her with her basic needs. *Id.* at 12, 25. The team had difficulty doing that for any prolonged period because T.D.'s symptoms outside the hospital would escalate and necessitate a new hospitalization. *Id.* at 12. T.D. had little additional support outside the hospital. *Id.*

[15] It is true that T.D. did not have "any major behavioral disturbances" during her most recent hospitalization. *Id.* at 11. About once or twice weekly, though, she experienced enhanced symptoms requiring her to take additional medication. *Id.* at 11. Although Dr. Smith attributed T.D.'s recent improvement to inpatient treatment and consistent medication, he questioned T.D.'s ability to take medication consistently when not "in a structured environment like the hospital." *Id.* at 13-14, 16, 22. That was why he found it "difficult to say" whether he thought she would take her medications as prescribed without a commitment order. *Id.* at 14.

[16] T.D. has a history of not taking her meds because she struggles with "thought processing" after hospital releases and obsesses over possible side effects. *Id.* at 14, 20-21. In an effort to stabilize her moods—a task which had proven difficult during her treatment—T.D. recently had been prescribed a new medication requiring close supervision over a period of months. *Id.* at 13, 19. Thus, the need for T.D.'s compliance was even more essential.

[17] Although T.D. showed some insight into her illness, TD attributed her improvement not to medications but to "praying and resting." *Id.* at 26. She testified, "I like to work a lot so rest is very important. As long as I get rest, I will be okay. I just need rest." *Id.*

[18] Given this evidence, Eskenazi proved by clear and convincing evidence that T.D. is gravely disabled. The evidence establishes that, as a result of her mental illness, T.D. has a substantial impairment or an obvious deterioration of her judgment, reasoning, or behavior that renders her unable to function independently. *See* I.C. § 12-7-2-96(2). She has been unable to sustain herself outside a hospital setting for many months, including at the time of the hearing, even with intensive assistance. Even while hospitalized, she exhibited symptoms—such as hallucinations and paranoia on the day of the hearing—that reflect her substantial impairment. Among other things, her view that rest was the effective treatment for her condition, her obsession with medicinal side effects, and her refusal to take medications on that basis demonstrate her deteriorated judgment, reasoning, and behavior.

[19] Although a regular commitment may not be based solely on either medical non-compliance, *Golub v. Giles*, 814 N.E.2d 1034, 1039 (Ind. Ct. App. 2014)*, trans. denied*, or a few isolated instances of unusual conduct, *see Addington v. Texas*, 441 U.S. 418, 427 (1979), the trial court had far more evidence on which to rest its findings of grave disability and T.D.'s need for a regular commitment.

[20] As the trial court's judgment is supported by clear and convincing evidence, we affirm.

Mathias, J., and Tavitas, J., concur.