MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

M.M.,
Appellant-Respondent,

v.

Logansport State Hospital,
Appellee-Petitioner.

January 12, 2022

Court of Appeals Case No. 21A-MH-1530

Appeal from the Cass Superior Court

The Honorable James K. Muehlhausen, Judge

Trial Court Cause No. 09D01-2004-MH-60

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, M.M., appeals the trial court's Order continuing his involuntary regular commitment at Appellee-Petitioner's facility, Logansport State Hospital (LSH).

[2] We affirm.

ISSUE

[3] M.M. presents one issue on appeal, which we restate as: Whether LSH established by clear and convincing evidence that M.M. is dangerous to himself and others or that he was gravely disabled.

FACTS AND PROCEDURAL HISTORY

[4] On April 23, 2003, following a juvenile delinquency adjudication the year prior, the Plainfield Juvenile Correctional Facility filed a petition for involuntary commitment after M.M. turned eighteen years old. On April 30, 2003, the trial court entered an order of regular commitment and designated LSH as an appropriate facility for M.M.'s placement. M.M. was admitted to LSH with a diagnosis of schizophrenia, paranoid type, and has remained at LSH ever since.

[5] On April 29, 2020, seventeen years after his initial involuntary commitment, M.M. filed a motion for the trial court to review his involuntary commitment. On June 2, 2021, the trial court conducted a hearing on M.M.'s request. The hearing was held concurrently with the annual hearing that our legislature requires of all regular involuntary commitments. *See* Ind. Code § 12-26-15-1.

[6] Dr. Danny Meadows (Dr. Meadows), M.M.'s previous attending psychiatrist, testified to M.M.'s diagnosis of borderline personality disorder and paraphilic disorder, which can include exhibitionism, frotteurism,[1] and pedophilic tendencies. While in the Isaac Ray unit of LSH, M.M. "had a lot of difficulty with sexual [sic] acting out with piers [sic]." (Transcript p. 19). He also acted out "toward himself" with "self-mutilation behaviors." (Tr. p. 19). Dr. Meadows prescribed Clozaril, an anti-psychotic drug that enabled M.M. to be transferred to the Larson treatment center (Larson) at LSH. Although M.M. benefited from the Clozaril, Dr. Meadows advised that M.M. faced "different challenges that he's having being on the sexual responsibility unit" at Larson, as well as challenges from "his history where when he gets stressed or he has issues that are coming up with him, he can start to sexually act out but also what we see is he'll act out on himself." (Tr. p. 20). As Dr. Meadows explained:

> I think probably the biggest issue I've had with him has just been these repeated acts of inserting item[s] into his penis. These have been, these have been the biggest things because he has had some medical related complications from that and he knows he shouldn't do that but I think it just a tendency, I don't know where the origin of that is. I've got theories about it but I'm not going go into that here but he does seem to reflect on that part of his anatomy when he's very, very upset and angry.

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[1] Frotteurism is the practice of achieving sexual stimulation or organism by touching and rubbing against a person without the person's consent and usually in a public place. *See* Frotteurism Definition & Meaning - Merriam-Webster (last visited Dec. 28, 2021).

(Tr. p. 31). Dr. Meadows elaborated that during the week before the hearing, M.M. had inserted a flex pen into his penis, requiring medical treatment. The urologist at the hospital "would at times become extremely angry with [LSH] because [M.M.] was being brought up repeated times for this type of behavior." (Tr. p. 36). Dr. Meadows stated that, even though M.M. would talk to LSH's staff about his suicidal thoughts, "many times when [M.M.] becomes overwhelmed [] he may not have the intent of having significant damage to himself but unfortunately some of his actions have had that happen in the past." (Tr. p. 22). Dr. Meadows was concerned that M.M. would "be at very high risk" if released into the community because of the lack of appropriate programming to support M.M. (Tr. p. 23).

[7] Dr. Meadows testified that he believed M.M. to be a danger to others because "if he's not in a supervised setting or an adequate setting that he still poses a risk to other folks." (Tr. p. 20). He explained that M.M. "still has a lot of fantasies, a lot of sexual related deviancy that we believed that in an unsupervised setting without proper programming can ... put him at risk for relapsing and offending against other individuals in the community." (Tr. p. 27). M.M.'s records at LSH from May 26, 2020, through May 21, 2021, reflect that M.M. was reported for 17 incidents of physical aggression, 13 incidents of deviant sexual behavior, 8 incidents of bullying/teasing/provoking, 16 incidents of coercion, 102 incidents of manipulation or lying, 39 incidents of boundary violations, and 27 incidents of making threats.

[8] Dr. John Stewart (Dr. Stewart), M.M.'s attending psychiatrist since October 2020, testified that M.M.'s primary problem is schizophrenic paranoid type, which was treated with Clozaril, his secondary problem was his sexual acting out, and his third problem was his limited intellect. Dr. Stewart believed M.M. to be a danger to himself because of "his despair or lack of understanding or lack of ability to cope with his current situation." (Tr. p. 40). Dr. Stewart explained that M.M. had confided in him on April 1, 2021, that he planned to kill himself sometime before the next court hearing. As a result, M.M. was placed on suicide watch.

[9] Dr. Stewart explained that M.M. had been at LSH for the past 18 years and had been institutionalized since the age of 13 or 14. He stated that M.M. has "not provided for himself for at least 22 years," and he has to be reminded to take care of his daily hygiene and bedwetting problems. (Tr. p. 43). Dr. Stewart advised that "if [M.M.] was discharged to his own devices he would have an extreme difficulty of time if he were not in a supervised group home setting[,]" and he recommended a continuation of M.M.'s regular commitment. (Tr. p. 43).

[10] Dr. Maria Becker (Dr. Becker), a psychologist and sex offense treatment specialist at LSH, met M.M. when M.M. started the facility's sexual responsibility program. She opined that M.M. "poses a risk of decompensation and recidivism if he were to be released prematurely to the community without sufficient support supplies." (Tr. p. 56). Dr. Becker noted that "beginning at age 13 on three occasions during the time that [M.M.] had about 7 child

victims, [he] had afterward engaged in some self-harm behaviors and then also in [his] 20's [he] had engaged in some self-harm behaviors following deviant sexual behavior." (Tr. p. 50).

[11] Elizabeth Mills (Mills), M.M.'s social worker at LSH, testified that she met with M.M. every 90 days to discuss possible programming after discharge from LSH. She advised the trial court that M.M. was not a candidate for group home placement as M.M. "has to be able to demonstrate to manage his deviant sexual behavior, [his] sexual urges, his self-injurious behavior, as well as abilities to manage other areas of life, showering, bathing, getting to and from appointments." (Tr. p. 63).

[12] On June 3, 2021, at the close of the evidence, the trial court entered an Order, continuing M.M.'s regular commitment, finding M.M. to be mentally ill, to be a danger to himself and to others, and to be gravely disabled. The Order found placement at LSH to be the least restrictive environment suitable for M.M.'s treatment.

[13] M.M. now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[14] "[T]he purpose of civil commitment proceedings is dual: to protect the public and to ensure the rights of the person whose liberty is at stake." *In re Commitment of Roberts*, 723 N.E.2d 474, 476 (Ind. Ct. App. 2000). The liberty interest at stake in a civil commitment proceeding goes beyond a loss of one's physical freedom, and given the serious stigma and adverse social consequences

that accompany such physical confinement, a proceeding for an involuntary civil commitment is subject to due process requirements. *See Addington v. Texas*, 441 U.S. 418, 425–26, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979). To satisfy the requirements of due process, the facts justifying an involuntary commitment must be shown "by clear and convincing evidence ... [which] not only communicates the relative importance our legal system attaches to a decision ordering an involuntary commitment, but ... also has the function of reducing the chance of inappropriate commitments." *Commitment of J.B. v. Midtown Mental Health Ctr.*, 581 N.E.2d 448, 450 (Ind. Ct. App. 1991) (citations omitted), *trans. denied*. In reviewing the sufficiency of the evidence supporting a determination made under the statutory requirement of clear and convincing evidence, an appellate court will affirm if, "considering only the probative evidence and the reasonable inferences supporting it, without weighing evidence or assessing witness credibility, a reasonable trier of fact could find [the necessary elements] proven by clear and convincing evidence." *Civil Commitment of T.K. v. Dept. of Veteran Affairs*, 27 N.E.3d 271, 273-74 (Ind. 2015).

[15] Indiana law provides that the trial court shall hold a hearing to determine whether an individual is mentally ill and either dangerous or gravely disabled, and whether there is a need for continuing involuntary detention. I.C. § 12-26-5-7(1). Involuntary regular commitment applies to an individual who is (1)

alleged to be mentally ill and either dangerous or gravely disabled;[2] and (2) whose commitment is reasonably expected to require custody, care, or treatment in a facility for more than ninety days. I.C. § 12-26-7-1. If an individual is found to be mentally ill and either dangerous or gravely disabled, the trial court may order involuntary regular commitment for the individual's custody, care, treatment, or continued custody, care or treatment in an appropriate facility. I.C. § 12-26-7-5.

[16] On appeal, M.M. does not challenge the finding of his mental illness or the appropriateness of his placement, but he contends that neither of the necessary alternative elements, "dangerous" or "gravely disabled," were proven by clear and convincing evidence. *See* I.C. § 12-26-7-1. "Dangerous" is statutorily defined as "a condition in which an individual as a result of mental illness, presents a substantial risk that the individual will harm the individual or others." I.C. § 12-7-2-53. "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] The statute is written in the disjunctive and LSH only has to establish that M.M. was either dangerous or gravely disabled. *See M.Z. v. Clarian Health Partners*, 829 N.E.2d 634, 637 (Ind. Ct. App. 2005), *trans. denied*.

> (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.

I.C. § 12-7-2-96.

[17] During the hearing, evidence was presented by Dr. Meadows that M.M. acted out "toward himself" with "some self-mutilating behaviors." (Tr. p. 20). M.M. faces challenges from "his history where when he gets stressed or he has issues that are coming up with him, he can start to sexually act out but also what we see is he'll act out on himself." (Tr. p. 20). A week prior to the hearing, M.M. inserted a flex pen into his penis, which required medical attention to be removed. Dr. Stewart opined that M.M. is a danger to himself as his behavior is rooted into "his despair or lack of understanding or lack of ability to cope with his current situation." (Tr. p. 40). Dr. Becker testified that there were six occasions when M.M. responded to deviant sexual behavior with self-harm. She elaborated that M.M.'s "deviant sexual behavior[] is long standing so I would say that he is a danger to others." (Tr. p. 49). Although M.M. is enrolled in the sexual responsibility program at LSH, Dr. Becker noted that even though M.M. "has improved, his attendance to group in the last six months he's missed 225 groups. But prior to that in first six months he missed 336 groups." (Tr. p. 52).

[18] Dr. Meadows also testified as to his opinion that M.M. poses a danger to others because "if he's not in a supervised setting or an adequate setting that he still poses a risk to other folks." (Tr. p. 20). He clarified that M.M. "still has a lot of

fantasies, a lot of sexual related deviancy that we believe that in an unsupervised setting without proper programming can … put him at risk of relapsing and offending against other individuals in the community." (Tr. p. 27). LSH's records from May 26, 2020, through May 25, 2021 reflect that M.M. was involved in 17 incidents of physical aggression, 13 incidents of deviant sexual behavior, 8 incidents of bullying/teasing/provoking, 16 incidents of coercion, 102 incidents of manipulation or lying, 39 incidents of boundary violations, and 27 incidents of making threats.

[19] Although M.M. benefitted from the Clozaril, which was prescribed to manage his diagnosis, Dr. Meadows testified that if M.M. was released there was "no pharmacy in order to be in charge of that medication." (Tr. p. 34). He clarified that Clozaril is "tightly regulated and the doctors have to have somewhere to be able to send that medication." (Tr. p. 34). Dr. Meadows was concerned that "even though it's been a really long time investment for [M.M.] all that could be potentially dismantled if he was not able to get the Clozaril." (Tr. p. 34). Several doctors and Mills testified that if released, M.M. would not be a candidate for group home placement as M.M. "has to be able to demonstrate to manage his deviant sexual behavior, [his] sexual urges, his self-injurious behavior, as well as abilities to manage other areas of life, showering, bathing, getting to and from appointments." (Tr. p. 63). Furthermore, "[a] lot of placements just don't have a lot of [] the intensive programming that [LSH] would like to see." (Tr. p. 21). Accordingly, M.M. is faced with "pretty much an independent setting" without any family involvement as M.M.'s mother

"cannot take him in due to her housing, due to her ability to care for him and due to his history." (Tr. pp. 21, 63). Dr. Meadows concluded that M.M. will then be at a "very high risk" because there is just not enough programming in the community to support M.M.'s needs. (Tr. p. 21).

[20] M.M. relies on *In re Commitment of J.B. v. Midtown Mental Health Center.,* 581 N.E. 2d 448, 452 (Ind. Ct. App. 1991), for the proposition that mere erratic behavior and just two incidences of risky behavior do not support a finding that an individual is dangerous. The present case is distinguishable from the erratic behavior displayed in *Commitment of J.B.* Not only was evidence presented of incidences where M.M. harmed himself when faced with stressful situations, several doctors testified that M.M. remains a danger to others as he still has fantasies and sexual deviancy without any ability to control them.

[21] In light of the clear and convincing evidence of M.M.'s self-harming behavior and his continuing deviant sexual behavior, as well as the lack of an appropriate placement and programming if released, we agree with the trial court's conclusion that there is a substantial risk that M.M. will harm himself or others.[3] *See* I.C. § 12-7-2-53. Accordingly, there is sufficient evidence to continue M.M.'s regular commitment at LSH.

[3] Because the statute is written in the disjunctive and we affirm the trial court based on the finding of dangerousness, we will not discuss the alternate prong of gravely disabled. *See* I.C. § 12-26-7-1.

CONCLUSION

[22] Based on the foregoing, we hold that the trial court properly continued M.M.'s involuntary regular commitment at LSH based on the finding that he is dangerous to himself and others.

[23] Affirmed.

[24] Robb, J. and Molter, J. concur