

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Civil
Commitment of: O.G.,

Appellant,

v.

Sandra Eskenazi Mental Health
Center,

Appellee.

September 26, 2023

Court of Appeals Case No.
23A-MH-895

Appeal from the Marion Superior
Court

The Honorable David J. Certo,
Judge

The Honorable Melanie L.
Kendrick, Magistrate

Trial Court Cause No.
49D08-2202-MH-6278

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

[1] O.G. appeals the trial court’s March 29, 2023 Order of Review of Regular Commitment. We affirm.

Facts and Procedural History

[2] On February 25, 2022, The Health & Hospital Corporation of Marion County, d/b/a Sandra Eskenazi Mental Health Center (“Eskenazi”), filed an Application for Emergency Detention of Mentally Ill Person alleging that O.G. suffered from a psychiatric disorder and was dangerous to herself because she was delusional, there were concerns for her inability to care for herself, and she was not taking her medication. A Physician’s Emergency Statement filed that same day stated that O.G. had been unable to obtain shelter outside of a hospital, was having delusions of pregnancy, was disorganized, and had not taken her medication for schizophrenia since September 2021.

[3] On March 2, 2022, Dr. Kenneth Smith filed a Physician’s Statement asserting that O.G. suffered from schizoaffective disorder, bipolar type, and had hallucinations, delusions, disorganized thought processing, and rapid and pressured speech. He also asserted that her symptoms prevented reliable judgment and reasoning and prevented her from maintaining shelter.

[4] On March 7, 2022, the court held a hearing.¹ On March 11, 2022, the court entered an Order on Regular Commitment finding that O.G. was: suffering from schizoaffective disorder, bipolar type; gravely disabled as defined in Ind.

¹ The record does not contain a transcript of this hearing.

Code § 12-7-2-96; and in need of custody, care, and treatment at Eskenazi or a state operated facility for a period of time expected to exceed ninety days. It found that placement was suitable for treatment, stabilization, and protection of O.G. while restricting her liberty to the least degree possible. Additionally, it found the treatment plan for O.G. had been fully evaluated, including alternate forms, and was believed to result in benefiting her while outweighing any risk of harm. The court ordered that O.G. be committed until discharged or until the court terminated the commitment.

[5] On June 7, 2022, Eskenazi filed a Petition for Apprehension and Return alleging that O.G. failed to comply with the conditions of commitment, refused scheduled injections, “eloped from appointment,” and was likely gravely disabled. Appellant’s Appendix Volume II at 77. That same day, the court entered an Order for Apprehension and Return finding that O.G. “needs to return to Eskenazi to which the individual [was] committed under I.C. 12-26, or has failed to comply with the requirements for outpatient status in accordance with I.C. 12-26-14-8.” *Id.* at 78 (emphasis omitted).

[6] On June 17, 2022, the court received a thirteen-page handwritten letter from O.G. On June 28, 2022, Eskenazi filed another Petition for Apprehension and Return alleging that O.G. failed to comply with the conditions of her commitment, did not report as scheduled for her injection on June 27, 2022, and was likely gravely disabled. That same day, the court entered an Order for Apprehension and Return.

- [7] On January 11, 2023, Eskenazi filed a Commitment Periodic Report asserting that the commitment should continue and that O.G. was gravely disabled. On January 13, 2023, the court entered an Order Continuing Regular Commitment without Hearing.
- [8] On March 10, 2023, O.G., by counsel, filed a Motion for Review Hearing or Dismissal of Regular Commitment alleging that she was entitled to a review hearing of the regular commitment pursuant to Ind. Code § 12-26-15-3. On March 13, 2023, the court scheduled a review hearing for March 29, 2023. On March 27, 2023, O.G., by counsel, filed an Objection to Court’s Order Setting Video Hearing alleging that in-person evidentiary hearings are vital to involuntary civil commitments. The court sustained O.G.’s objection.
- [9] On March 29, 2023, the court held a hearing at which O.G. appeared in person and with counsel. At the beginning of the hearing, the court asked O.G. how she was, and she stated: “Good morning, I’m blessed,” and “I’m saved by God, yes.” Transcript Volume II at 4. The court stated that the parties were present on a request for an extension of the commitment and explained O.G.’s rights. O.G. stated that she had written “a 16-page appeal against one of the doctor’s appeal.” *Id.* The court stated that she would not be able to read that but her counsel would be able to ask her questions. O.G.’s counsel stated: “We are not here to sue the doctors right now.” *Id.* at 5. O.G. asserted: “I’m not trying to sue the doctor. I want to . . . appeal against the decision.” *Id.* The court reiterated that O.G. was not going to read the 16-page appeal but she would be able to testify.

[10] Elizabeth Brown, O.G.'s clinician at Eskenazi, testified that she started working with O.G. in August 2021 after she had been released from the hospital's mental health recovery center and was "asking to work with [them] as to outpatient services." *Id.* at 6. She indicated she currently saw O.G. for therapy weekly and had recently seen her on March 27th.

[11] According to her testimony, O.G. missed three appointments that month including an appointment with her on March 20th, an appointment with Dr. Hua Luo which was rescheduled, and a "care coordinator appointment earlier within the month." *Id.* at 7. O.G. missed appointments in prior months "every now and then." *Id.* O.G., who had been diagnosed with schizoaffective disorder, stated to Brown that she does not believe she has schizoaffective disorder and had told her that she is working with Brown "for grief." *Id.* at 8. During her time treating O.G., O.G. was admitted into inpatient treatment from February 25, 2022, to May 17, 2022. When asked about the circumstances which had led to O.G.'s admission in February, Brown answered: "I believe she was homeless and her sisters were worried about her. We did an ED because we were worried that she was gravely disabled." *Id.* After she was discharged from the hospital, O.G. expressed a delusion that she was pregnant.² Brown asserted "[t]hat was also kind of the reason why she ended up in the hospital," O.G. "believed that she was pregnant with twins,

² Brown testified that O.G. "had a few different pregnancy tests at a few different hospitals," including Eskenazi, "and they all came back negative." Transcript Volume II at 11.

which is why she couldn't take the medications," "[a]nd then she ended up in the hospital due to just not making some safe choices for herself." *Id.* at 9.

When asked to elaborate on O.G.'s unsafe choices, Brown answered:

She is – can be easily exploited. She is very friendly. [O.G.] is one of the friendliest clients that I have. But sometimes, she will, like, try to help people and end up in certain situations that cause her danger, especially when it comes to men and her quickness to forming relationships with people. Sometimes they will exploit her for money, or have her buy things. They're not always the nicest. She also has a hard time when she is not on her medications. She becomes very argumentative, and it makes it hard for her to stay in one place. And she will normally become disruptive and asked to leave. So some of those are the reasons why we were worried about her.

Id. Eskenazi's counsel asked if O.G. had ever entered a vehicle on a first encounter with a man and if that was a safety concern, and Brown indicated that O.G. had told her about a person she had just met and she was going someplace with them. Brown testified that O.G. had stated to her that she "would like to get off of her commitment so that she does not have to take her medication." *Id.* at 12. When asked to describe O.G.'s behavior when she was not on medication, Brown testified that "things were pretty difficult at the boarding home" and O.G. argued with the house manager, left "quite often," failed to make curfew at times, and was "locked out because [she] didn't make it home in time because either the bus system . . . would stop running or . . . [she] was just out too late." *Id.* at 13-14. She testified that O.G. had trouble maintaining housing when she was not taking her medication and became

homeless at one point. She also testified that O.G. is at risk of being exploited due to her mental illness.

[12] Dr. Luo, a psychiatrist at Eskenazi, testified that he had a video session with O.G. on March 27th, had seen her typically every two or three months, and had diagnosed O.G. with schizoaffective disorder, bipolar type. He testified that O.G. does not have any insight into her illness and on March 27th had denied that she had a mental illness. He stated that, without medication, O.G. “would usually be more . . . delusional, more argumentative, and hostile,” her thought process “would be typically more disorganized,” “[h]er speech would be loud, pressured,” and she “would have difficulty interacting with other people, the care team, in general.” *Id.* at 23. When asked if he thought O.G. would be able to function independently and “take care of herself” if she was not on medication, he answered: “I don’t think so without medications.” *Id.* He indicated that O.G. was on “an antipsychotic called Prolixin decanoate” which she was receiving once a month and that the injection was “supposed to be every other week . . . but [O.G.] refused that.” *Id.* When asked if “ideally, she would get it every two weeks instead,” he answered affirmatively. *Id.* He testified that O.G. mentioned plans for moving out of her boarding house and into a condominium by herself “somewhere in the north.” *Id.* at 24. When asked if O.G. told him that she had money to pay for the condominium, he answered: “She says she has a lot of money from lawsuits. And one of the lawsuits would be against me for \$3 million.” *Id.* He also stated that O.G. “made it very clear she would not take medication or injection without

commitment.” *Id.* at 25. When asked if he believed O.G. could be a danger to herself as a result of her schizoaffective disorder, he answered: “She could potentially be a danger to herself without treatment due to grave disability.” *Id.* Eskenazi’s counsel asked if O.G. would be able to provide for basic human needs if she was not on medication. He answered: “She probably would not.” *Id.*

[13] Dr. Luo answered affirmatively when asked if O.G. had substantial impairment to her judgment or reasoning because of mental disability. When asked to describe what past behavior suggested impairment, he answered: “In the past, she has repeatedly called 9-1-1 nonstop according to the chart, because of her delusions and paranoia.” *Id.* at 25-26. O.G.’s counsel objected “as it pertains to grave disability or dangerousness” and “[t]he doctor indicated it came from a chart, which would be hearsay.” *Id.* at 26. After some discussion, the court stated: “So we are already past diagnosis and treatment though, so let’s move on.” *Id.*

[14] Dr. Luo indicated O.G. could be taken advantage of if she is unmedicated and his recommendation was that she continue on Prolixin if she remained on commitment. The court asked: “Doctor, I just want to clarify. Do you still believe that she is gravely disabled today?” *Id.* at 27. Dr. Luo answered affirmatively. He also indicated that was due to a substantial impairment in her judgment that was affecting her ability to function.

[15] O.G. testified that she was very independent and thought she was pregnant at one time. She stated she would not continue to take her medications if the trial court did not continue her commitment. She asserted that she was not schizoaffective. She testified that she does “have a disability that when someone passes away, [she] get[s] depressed and need[s] to be hospitalized.” *Id.* at 32. She testified that she was not a danger to herself or others and was not delusional. She testified that she would continue to meet with Brown if the court did not continue her commitment. She disagreed with Brown’s assertion that she was easily exploited by men, stated that she was not exploited by men at all, and asserted that “[t]hey respect [her] as a sister in Christ.” *Id.* at 35. She testified that she was staying at the homeless shelter for women and children at one point, “[i]t was excellent” until her fiancé started visiting her, “girls started getting jealous” of her, and “[t]hey told a lie on [her] and they told [her] to leave.” *Id.* at 36. She stated she “had to leave at the wintertime,” “[i]t was cold outside, freezing,” and she “went to a hotel because the girls told a lie on me.” *Id.* She also testified: “I pray over the injection, and so to not affect my body at all. I say don’t – I say God, do you protect me. And I say it. I say protect me, and the shot don’t affect me at all.” *Id.* at 38. When asked why she believed Dr. Luo was having her receive injections, she answered: “I think he’s abusing me. Because he’s getting away – abusing me because he’s – he’s abusing me. He thinks I need these medications. Ask Dr. Luo to explain what schizoaffective means in his own words what does it mean. What does schizoaffective mean?” *Id.* at 38-39.

[16] That same day, the court entered an Order of Review of Regular Commitment finding that: O.G. was suffering from schizoaffective disorder bipolar type, which was a mental illness as defined in Ind. Code § 12-7-2-130; O.G. was gravely disabled as defined in Ind. Code § 12-7-2-96; she was in need of custody, care, and treatment at Eskenazi for a period of time expected to exceed ninety days; placement was determined to be suitable for treatment, stabilization, and protection while restricting her liberty to the least degree possible; and the treatment plan had been fully evaluated, including alternate forms, and was believed to result in benefitting O.G. while outweighing any risk of harm.

Discussion

[17] O.G. argues there was not clear and convincing evidence that she was gravely disabled at the time of the review hearing. She asserts she received a monthly disability income, lived in a boarding home where meals were provided, was appropriately groomed during her last doctor visit, was able to arrange transportation, and was able to provide for her essential human needs and function independently. She contends: “Speculation she would have difficulty if she unmedicated in the future fall short of establishing she was unable to meet her essential needs at the time of the hearing.” Appellant’s Brief at 20-21. She also contends Eskenazi did not present clear and convincing evidence that she was in danger of coming to harm at the time of the hearing because of an obvious deterioration of her judgment, reasoning, or behavior that resulted in the inability to function independently.

[18] “To obtain an involuntary regular commitment of an individual, a ‘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.’” *Civ. Commitment of T.K. v. Dep’t of Veterans Affs.*, 27 N.E.3d 271, 273 (Ind. 2015) (footnote omitted and quoting Ind. Code § 12-26-2-5(e)).³ At the time of the hearing and the trial court’s March 29, 2023 order, Ind. Code § 12-7-2-130 defined “[m]ental illness” for purposes of Ind. Code Article 12-26 as “a psychiatric disorder that . . . substantially disturbs an individual’s thinking, feeling, or behavior; and . . . impairs the individual’s ability to function.”⁴ Ind. Code § 12-7-2-96 defines “[g]ravely disabled” 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

³ In *T.K.*, the Court noted:

In Indiana, an adult person 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.

27 N.E.3d at 273 n.1.

⁴ The statute was amended by Pub. L. No. 205-2023, § 3 (eff. July 1, 2023), and now provides in part that “[m]ental illness” or “mentally ill” means, for purposes of Ind. Code Article 12-26, “a psychiatric disorder that . . . substantially disturbs an individual’s thinking, feeling, or behavior; and . . . impairs the individual’s ability to function.”

that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently.”

[19] “[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.” *T.K.*, 27 N.E.3d at 273 (quoting *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.” *Id.* “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.” *Id.* (quoting *Commitment of J.B. v. Midtown Mental Health Ctr.*, 581 N.E.2d 448, 450 (Ind. Ct. App. 1991) (citations omitted), *trans. denied*).

[20] 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. *Id.*

[21] The record reveals that Brown, O.G.'s clinician, testified at the March 29, 2023 hearing that O.G. had missed three appointments that month including an appointment with Dr. Luo. She discussed O.G.'s homelessness, her trouble maintaining housing and being locked out of the boarding house when she was not on medication, and her delusion that she was pregnant. She stated that O.G. can be easily exploited due to her mental illness and that she "end[s] up in certain situations that cause her danger." Transcript Volume II at 9. Dr. Luo testified that O.G. had been diagnosed with schizoaffective disorder, bipolar type, she did not have any insight into her illness, she suffered from delusions and paranoia, she denied having a mental illness, and he did not think O.G. would be able to function independently and take care of herself without medications. He testified that O.G. "could potentially be a danger to herself without treatment due to grave disability." *Id.* at 25. He also testified that he believed O.G. was gravely disabled at the time of the hearing due to a substantial impairment in her judgment that was affecting her ability to function. The trial court was able to hear and consider O.G.'s testimony, including her statements that she was not schizoaffective and she would not continue to take her medications if the trial court did not continue her commitment. Based upon the testimony as set forth above and in the record, we conclude that clear and convincing evidence supports the trial court's conclusion that O.G. was gravely disabled for purposes of her commitment.

[22] For the foregoing reasons, we affirm the trial court's order.

[23] Affirmed.

Vaidik, J., and Bradford, J., concur.