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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1350**

In re the Matter of the Civil Commitment of:
Matthew Lee DeRosia.

**Filed February 24, 2020
Affirmed
Slieter, Judge**

Washington County District Court
File No. 82-PR-09-2776

Matthew Lee DeRosia, St. Peter, Minnesota (*pro se* appellant)

Keith Ellison, Attorney General, Ali P. Afsharjavan, Assistant Attorneys General, St. Paul,
Minnesota (for respondent Commissioner of Human Services)

Peter Orput, Washington County Attorney, James Zuleger, Assistant County Attorney,
Stillwater, Minnesota (for respondent Washington County)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Matthew Lee DeRosia challenges the district court's order authorizing
the administration of neuroleptic medication pursuant to Minn. Stat. § 253B.092, subd. 5
(2018), to address his mental illness. DeRosia, appears *pro se* on appeal,¹ and he asserts

¹ DeRosia did have court-appointed counsel that represented him at the district court. On
appeal, however, he is without counsel.

that: (1) he received ineffective assistance of counsel; and (2) the district court's order is not supported by the record.² We affirm.

FACTS

On July 16, 2009, the district court committed DeRosia as mentally ill and dangerous (MI&D) pursuant to what is now Minn. Stat. §§ 253B.02, subd. 17, 253B.18 (2018). Prior to DeRosia's MI&D commitment proceedings, DeRosia was on provisional discharge from a commitment order when he intentionally drove a vehicle onto a sidewalk and collided with the front entrance to a Planned Parenthood building in Saint Paul, resulting in damage to the building. After first striking the building, DeRosia intentionally struck the building a second time with the vehicle. The district court found DeRosia's act of driving into the Planned Parenthood building constituted an overt dangerous act capable

² DeRosia also argued in his principal brief that the state's use of psychiatry to address his mental condition constitutes a religion and infringes on his free-exercise rights under the First Amendment to the United States Constitution. We carefully reviewed DeRosia's claim and the record before us, and we conclude that the matter is not properly before us. DeRosia's legal claim is not adequately briefed. *In re Civil Commitment of Knopp*, 895 N.W.2d 647, 653 (Minn. App. 2017), *review denied* (Minn. June 20, 2017). DeRosia does not clearly explain his claim and the basis for that claim outside of broad assertions. Moreover, we cannot address the matter as raised on the briefing because it would extend outside our role as an error-correcting body. *In re Civil Commitment of Travis*, 767 N.W.2d 52, 67 (Minn. App. 2009). We therefore decline to address the merits of DeRosia's First Amendment claim.

We do not address the merits of DeRosia's challenge under the Minnesota Constitution because he failed to raise this claim in his principal brief. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Because a claim under the Minnesota Constitution would implicate a different standard than the First Amendment to the United States Constitution, we do not address this newly raised theory. *Id.* Even though DeRosia appears as a *pro se* litigant, he must comply with the same duties as a lawyer. *See Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001); *Heinsch v. Lot 27*, 399 N.W.2d 107, 109 (Minn. App. 1987).

of causing serious physical harm to others. Additionally, the district court found that DeRosia's behavior was such that his mental illness presented a clear danger to the safety of others. DeRosia, through counsel, executed a waiver of a review hearing and stipulated to entry of a final order committing him for an indefinite period. The district court granted DeRosia's waiver. DeRosia has been committed since 2009.

While DeRosia has been subject to his MI&D commitment, the district court has granted approximately seven orders authorizing the administration of neuroleptic medications to address DeRosia's mental illness. On March 14, 2019, a petition for administering neuroleptic medication to address DeRosia's schizoaffective disorder, depressive type, was filed. The petition requested the authority to administer the following medications to DeRosia: Clozaril, Zyprexa, Haldol, and Loxitane. A subsequent request to the district court also sought authorization to administer Seroquel to DeRosia. The district court scheduled a hearing on the petition.

On June 14, 2019, DeRosia appeared at the hearing with his court-appointed counsel. DeRosia's counsel indicated that DeRosia wanted to discharge counsel and represent himself. The district court denied DeRosia's request and accordingly DeRosia was represented by counsel for the proceeding.

The district court heard testimony from a psychiatric mental-health nurse practitioner, the court-appointed examiner, and DeRosia. The district court found that DeRosia suffers from a major mental illness based on his diagnosis for schizoaffective disorder, which "primarily manifests itself through agitation, feeling of persecution, and grandiose thoughts." The district court also found that DeRosia does not acknowledge his

mental illness and the consequences of DeRosia not taking this medication includes “[DeRosia] continuing to have limited awareness of his condition, continued agitation, and the inability to meaningfully participate in his treatment.” The district court further noted a concern that “[t]hroughout [DeRosia’s] placement, he has refused to take the neuroleptic medication prescribed to him, and he is only medication compliant due to court orders or emergency situations. Absent a court order, [DeRosia] would stop taking the neuroleptic medication prescribed to him.”

In reaching its conclusion on the request to administer neuroleptic medication, the district court credited the testimony of the two experts who testified and opined that DeRosia lacks the capacity to consent or refuse the administration of neuroleptic medication because he does not understand his mental illness, its symptoms, treatment options, or the need for the medication. The district court explained that both experts opined that “[DeRosia] lacks the capacity to give informed consent or refusal to the administration of neuroleptic medication in that he does not have the ability to understand and use information about his mental illness, its symptoms, and treatment, or to determine whether neuroleptic medication is reasonable and necessary.”

DeRosia appeals.

D E C I S I O N

I. The district court did not abuse its discretion by denying DeRosia’s request to discharge counsel.

DeRosia claims the district court erred by denying his request to discharge court-appointed counsel so that he may represent himself. This claim requires us to construe the

language of both procedural rules and statutes regarding the right to counsel in civil commitments. Construction of rules and statutes are questions that we address *de novo*. See *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016) (holding that interpreting rules “is a question of law that [appellate courts] review de novo”); *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016) (holding that interpreting statutes “is a question of law that [appellate courts] review de novo”).

“The object of statutory construction is to ascertain and effectuate the legislature’s intent.” *In re Welfare of Hofmaster*, 434 N.W.2d 279, 281 (Minn. App. 1989); see also Minn. Stat. § 645.16 (2018). If the meaning of the statute or rule is unambiguous, we interpret the text according to its plain meaning. *Brua v. Minn. Joint Underwriting Ass’n*, 778 N.W.2d 294, 300 (Minn. 2010); see also *Sela Inv. Ltd., LLP v. H.E.*, 909 N.W.2d 344, 347 (Minn. App. 2018).

The rules involved in civil-commitment proceedings reflect that under the Minnesota Commitment and Treatment Act (MCTA), Minn. Stat. §§ 253B.01-.24 (2018), “[a]n attorney *shall* represent the respondent until the court dismissed the petition or the respondent is discharged from commitment, and the conclusion of any related appeal.” Minn. Spec. R. Commit. & Treat. Act 9(a) (emphasis added); see also Minn. Stat. § 253B.07, subd. 2c (“The court shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel.”). The intention of rule 9 is to “ensure that committed individuals are continuously represented by counsel during commitment proceedings and during all times the individual is under commitment.” Minn. Spec. R. Commit. & Treat. Act 9 2016 advisory comm. cmt. *But see Commandeur LLC v.*

Howard Harty, Inc., 724 N.W.2d 508, 511 (Minn. 2006) (“[A]dvisory committee comments are included for convenience and are not binding on the court.”) (quotation omitted). A proposed patient or patient is permitted to “employ private counsel at [their own] expense.” Minn. Spec. R. Commit. & Treat. Act 9(b). “If private counsel is employed, the court shall discharge the appointed counsel.” *Id.*

Both the applicable procedural rules and statutory scheme apply the mandatory word *shall* to the appointment of counsel. Minn. Spec. R. Commit. & Treat. Act 9(a) (“An attorney *shall* represent the respondent”) (emphasis added); Minn. Stat. § 253B.07, subd. 2c (“The court *shall* appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor other provide counsel.”) (emphasis added). The meaning of “shall” reflects a mandatory requirement that counsel be appointed for the committed person. *See* Minn. Stat. § 645.44, subd. 16 (2018). Because the plain language of both the procedural rule and statute mandate that counsel be appointed to represent a proposed patient or patient throughout the commitment process, the district court’s denial of DeRosia’s request to proceed *pro se* was mandated and, therefore, proper.

II. DeRosia failed to show that his counsel provided ineffective assistance.

DeRosia also contends that his court-appointed counsel did not believe him and refused to properly defend him at the hearing. We construe this as an ineffective-assistance-of-counsel claim. In commitment matters, ineffective-assistance-of-counsel claims are examined in the same manner as criminal cases. *See In re Civil Commitment of Johnson*, 931 N.W.2d 649, 657 (Minn. App. 2019) (“This court analyzes ineffective-assistance-of-counsel claims in civil-commitment cases under the *Strickland* standard that

applies in criminal cases.”), *review denied* (Minn. Sept. 17, 2019). To establish ineffective assistance of counsel in a criminal case, an appellant bears the burden to show that counsel’s representation “fell below an objective standard of reasonableness,” and that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068 (1984). We review ineffective-assistance-of-counsel claims *de novo*. *Johnson*, 931 N.W.2d at 657.

Counsel appointed to represent a patient in a civil-commitment proceeding bears the ethical obligation “to ensure that arguments, positions, and pleadings are meritorious with the responsibility to be a vigorous advocate for the individual.” Minn. Spec. R. Commit. & Treat. Act 9 2016 advisory comm. cmt. An attorney in civil-commitment proceedings shall:

- (1) consult with the person prior to any hearing;
- (2) be given adequate time and access to records to prepare for all hearings;
- (3) continue to represent the person throughout any proceedings under this chapter unless released as counsel by the court; and
- (4) be a vigorous advocate on behalf of the person.

Minn. Stat. § 253B.07, subd. 2c. But counsel “is not required to file an appeal, commence any proceeding, or advance a position asserted in a filing made by the respondent under Minn. Stat. § 253B or Minn. Stat. § 253D if, in the opinion of counsel, there is an insufficient basis for proceeding.” Minn. Spec. R. Commit. & Treat. Act 9(d).

DeRosia fails to identify any instance of his court-appointed counsel acting unreasonably. Instead, DeRosia cites to his belief that counsel disbelieved him and did not

defend him in a manner that he believed was sufficient. “General assertions of error without evidentiary support are inadequate to establish ineffective assistance of counsel.” *Johnson*, 931 N.W.2d at 657. Also “a reviewing court generally ‘will not review attacks on counsel’s trial strategy.’” *Id.* (quoting *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004)). Because DeRosia does not cite to any instance of improper performance by his court-appointed counsel and counsel is permitted to decline to raise meritless claims, DeRosia fails to meet his burden on his ineffective-assistance-of-counsel claim. *See id.* at 658-59.

III. The district court did not err by authorizing the involuntary administration of neuroleptic medication.

DeRosia challenges the district court’s order permitting the involuntary administration of neuroleptic medication. DeRosia asserts that the evidence does not support the district court’s order because: (1) there is no proof he is suffering a mental illness; and (2) he experiences negative side effects from psychiatric medication.

The administration of neuroleptic medications to persons subject to civil commitments is governed by Minn. Stat. § 253B.092. Neuroleptic medication may be provided to persons that are subject to a MI&D commitment. Minn. Stat. § 253B.092, subd. 1. The statutory authority to administer neuroleptic medication in a nonconsensual, nonemergency administration is based on caselaw addressing the invasion-of-privacy. *See, e.g., In re Schmidt*, 443 N.W.2d 824, 827 (Minn. 1989); *Jarvis v. Levine*, 418 N.W.2d 139, 144 (Minn. 1988).

If a patient refuses neuroleptic medication, court approval is necessary to administer the medication. *In re Thulin*, 660 N.W.2d 140, 145 (Minn. App. 2003); *see also* Minn. Stat. § 253B.092, subd. 8(a). “A patient is presumed to have capacity to make decisions regarding administration of neuroleptic medication.” Minn. Stat. § 253B.092, subd. 5(a). A district court may determine, however, that a person lacks capacity regarding the administration of neuroleptic medication by addressing three statutory factors. *Id.*, subd. 5(b)(1)-(3). If a patient lacks capacity in this regard, then a district court must address whether “a reasonable person would” agree to take the medication. *Id.*, subd. 7(c). The reasonable-person standard in this context requires consideration of: “(1) the person’s family, community, morals, religious, and social values; (2) the medical risks, benefits, and alternatives to the proposed treatment; (3) past efficacy and any extenuating circumstances of past use of neuroleptic medications; and (4) any other relevant factors.” *Id.*, subds. 7(c)(1)-(4), 8(e).

The district court explained in its analysis on the request to administer neuroleptic medications to DeRosia that it was applying *Price v. Sheppard*, 239 N.W.2d 905 (Minn. 1976). Since *Price*, however, the legislature amended the MCTA “to include a judicial procedure for authorizing the administration of neuroleptic medication to unconsenting patients.” *In re Civil Commitment of Raboin*, 704 N.W.2d 767, 770 (Minn. App. 2005). The factors identified in *Price* do not entirely encapsulate the factors that the legislature adopted in the MCTA. *Compare Price*, 239 N.W.2d at 913, with Minn. Stat. § 253B.092, subd. 7(c)(1)-(4). Although the district court identified and applied *Price*, the district

court's analysis and findings cover the statutory factors in section 253B.092, subdivision 7(c)(1)-(4).

A. The person's family, community, morals, religious, and social values

Initially, DeRosia contends throughout his briefs to this court that psychiatry is a “pseudo-science” that does not have tests sufficient to determine whether someone is mentally ill. DeRosia has been subject to an ongoing MI&D commitment since 2009. At the hearing on the administration of neuroleptic medication, the district court heard testimony that DeRosia is diagnosed with schizoaffective disorder. The district court found that DeRosia has a major mental illness in this regard consistent with the findings in the 2009 order committing him as MI&D. The district court received testimony that it found credible from experts about DeRosia's psychological condition. *See In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) (recognizing deference appellate courts give to district court judges evaluating credibility especially where findings are based on expert testimony).

Next, a district court must address the patient's values when determining whether to authorize use of medication against the patient's will. DeRosia asserts religious claims that he is not allowed to “harm or kill himself” and that Clozaril, one of the drugs that the petitioner requested authority to administer to DeRosia, is harmful to his body. DeRosia, however, acknowledges in his briefs to this court that his religious beliefs allow him to use medicine but he “[d]oes not and will never classify psychotropic drugs as medicine that is good for people.” The district court found that “[t]here is no indication of any community, social, religious, or moral values held by [DeRosia] that would prevent him from taking

neuroleptic medication.” The district court did not clearly err in making this finding because DeRosia admits his religion allows for the use of modern medicine and it is his own personal belief or interpretation that psychotropic drugs do not qualify as medicine.

B. The medical risks, benefits, and alternatives to the proposed treatment

The district court must also consider risks, benefits, and alternatives to the neuroleptic medication. The district court noted that the neuroleptic medications at issue in this case were not experimental nor prescribed as part of a research project. In addressing the side effects to the medication at issue, the district court recognized the record contained a detailed explanation of the side effects and that the benefits to the medication outweigh the risk and invasiveness of the treatment regimen. Many of DeRosia’s allegations made on appeal relate to broad assertions about psychotropic drugs causing him pain. DeRosia’s only specific assertion of medication that he experiences negative side effects relevant to this proceeding is Clozaril. DeRosia contends that he suffers from dizziness, shortness of breath, chest pains, and nausea while taking Clozaril. The district court’s order expressly denied the petitioner’s request to administer Clozaril. Additionally, the district court noted that the environment where the neuroleptic medication would be administered would allow for adjusting medication for side effects, if they do arise. Accordingly, the district court made sufficient findings in addressing the risks, benefits, and alternatives to the treatment regimen at issue.

C. Past efficacy and any extenuating circumstances of past use of neuroleptic medications

The district court must consider the circumstances around prior administration of neuroleptic medication for the patient. The district court found that DeRosia has not been compliant with neuroleptic medication in the past “and he is only medication compliant due to court orders or emergency situations.” Although DeRosia is not compliant, the district court acknowledged that the medication being requested for administration contrary to DeRosia’s wishes are accepted in this state as a basis to treat DeRosia’s mental illness.

D. Any other relevant factors

Finally, the district court needs to consider any other relevant factors. One factor noted by the district court is that without treatment through neuroleptic medication that DeRosia’s condition will deteriorate. And the district court found that treatment in this manner “would render further custody, institutionalization, or other services to [DeRosia] unnecessary.” Because DeRosia is subject to an indefinite MI&D commitment due to his mental illness, the district court’s recognition of addressing the underlying mental illness appears to be a significant factor in support of the administration of neuroleptic medication.

Based on the district court findings, we conclude that the district court properly balanced the statutory factors necessary to address the administration of neuroleptic medication.

Affirmed.