STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1430

In re the Matter of the Civil Commitment of:

Wayne Joseph Averett.

Filed February 24, 2020
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-P0-97-060036

Michael C. Hager, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

COCHRAN, Judge

Appellant Wayne Joseph Averett challenges the district court's order authorizing the involuntary administration of neuroleptic medications. Because the district court's findings are supported by the record and satisfy the relevant statutory criteria, we affirm.

FACTS

Appellant Wayne Joseph Averett was civilly committed as mentally ill and dangerous in 1997. Averett was provisionally discharged from the commitment in 2009, but the provisional discharge was revoked shortly thereafter. He remains civilly committed as mentally ill and dangerous.

In June 2019, Averett's physician at the St. Peter Regional Treatment Center filed a petition under Minn. Stat. § 253B.092 (2018) requesting an order authorizing the administration of neuroleptic medications over Averett's refusal. The physician asked the district court to authorize the administration of several neuroleptic medications, including Seroquel.[1] The district court scheduled a hearing to address the petition and appointed a psychologist to conduct an examination for the proceedings.

To support the petition requesting a court order, the state submitted several exhibits. The exhibits described that Averett had suffered a "progressive decompensation" of his mental health over the previous month. The exhibits further described that Averett engaged in very odd behavior and his thought processes had become "increasingly more illogical and disorganized."

Throughout the "progressive decompensation," Averett resisted certain medications—particularly Seroquel—based on his belief that the medications caused a "paradoxical effect," meaning that they caused the symptoms that they were intended to

[1] The physician indicated that only two of the medications would be used at any one time but he requested authorization for five medications so that he could determine a medication regimen that works for Averett.

treat. Averett eventually acquiesced to the medical staff's request that he take Seroquel to stabilize his mental health, but he continued to express his objection that the medications have a "paradoxical effect." Averett also maintained that he was stable.

Averett ultimately assaulted a staff member, causing medical staff to declare a behavioral emergency. During the behavioral emergency, an on-call provider increased Averett's dose of Seroquel. The physician attempted to discuss medication options with Averett, and discuss the administration of Seroquel, but Averett was either unable or unwilling to have a discussion with medical staff about alternative medication options.

When Averett's condition improved and the behavioral emergency was terminated, the physician discontinued the administration of Seroquel based on Averett's objection to the medication. The physician continued to attempt to discuss with Averett the benefits of taking neuroleptic medications and the risks of another deterioration of his mental health without the additional medications. But Averett maintained his position that the medication regimen that he had previously taken (and that he was taking before the progressive decompensation) was sufficient to treat his mental health issues. Consequently, the physician sought a court order to administer the neuroleptic medications that Averett refused.

Both the physician and the court-appointed psychologist opined that Averett was not competent to make a decision regarding the use of neuroleptic medications. The physician cited Averett's inability to engage in discussions about medication, his lack of appreciation for the severity of his symptoms, and his insistence that his prior medication regimen is sufficient—even when confronted with evidence that other medication may be

more effective. The court-appointed psychologist noted a similar basis for her conclusion, and opined that Averett did not understand the consequences of refusing to take neuroleptic medications and that Averett's refusal to take the medications was based on a delusional belief that they cause a "paradoxical effect."

Averett testified at the hearing that Seroquel causes him a "paradoxical effect" and that in 2009 his previous physician had described the "paradoxical effect" to him. He claimed that he did not have any symptoms or problems since 2010. He testified that during the most recent incident, the Seroquel that he took caused his symptoms to worsen, and that the physician administered the medication to him despite knowing that it would cause him to decline. He objected to altering his medication regimen and maintained that his previous medication regimen was effective. He denied assaulting anyone at the hospital.

The physician testified in rebuttal that Averett's medical record was not consistent with the purported "paradoxical effect" and that he was unaware of any "paradoxical effect" of the medications he sought to administer. He also testified that Averett's relapse symptoms emerged before Averett started taking Seroquel.

The district court issued a written order finding that Averett lacks capacity to give or withhold consent for the use of neuroleptic medication, and concluding that it is appropriate to authorize the use of neuroleptic medications without Averett's consent. Consequently, the district court entered an order authorizing Averett's physician to administer the medications identified in the petition for the duration of Averett's commitment, but no longer than two years without additional review by the court.

This appeal follows.

D E C I S I O N

When reviewing a district court's order to administer neuroleptic medication, "[w]e review the record in the light most favorable to the district court's decision" and "affirm the district court's findings unless they are clearly erroneous." *In re Civil Commitment of Raboin*, 704 N.W.2d 767, 769 (Minn. App. 2005); *see also In re Thulin*, 660 N.W.2d 140, 146 (Minn. App. 2003) (affirming the district court's incapacity determination because the finding of incapacity was not clearly erroneous). "When the findings of fact rest almost entirely on expert testimony, the district court's evaluation of credibility is particularly significant." *In re Civil Commitment of Janckila*, 657 N.W.2d. 899, 904 (Minn. App. 2003).

Averett argues on appeal that the record does not support the district court's determination that he lacks capacity to give or withhold consent for the use of neuroleptic medication. Averett also maintains that the record does not support the district court's determination that the treatment of his mental illness using Seroquel is necessary and reasonable. We address each issue in turn.

I. The record supports the district court's determination that Averett lacks the capacity to decide whether to take neuroleptic medications.

If a person who is civilly committed as mentally ill and dangerous refuses to take neuroleptic medications, the neuroleptic medications may not be administered without a court order, absent an emergency. Minn. Stat. § 253B.092, subd. 8(a). The district court must hold a hearing upon receiving a written request to administer the medication, and at the hearing the district court must decide whether the patient has the capacity to decide

whether to take the medication and whether the administration of the medication is appropriate considering several statutory standards. *Id.*, subd. 8. Our caselaw provides that the petitioner must prove the patient's incapacity to consent to medication by clear and convincing evidence. *See Thulin*, 660 N.W.2d at 145 ("The record provides clear and convincing evidence to support the district court's finding that appellant lacked the capacity to make determinations concerning neuroleptic medications.").[2]

If the district court finds that the patient has the capacity to decide whether to take the medications, "the treating facility may not administer medication without the patient's informed written consent or without the declaration of an emergency. . . ." Minn. Stat. § 253B.092, subd. 8(d). If the district court finds that the patient lacks capacity, it must consider the statutory standards to determine whether it is appropriate to administer the medication without the patient's consent. *Id.*, subd. 8(e).

Averett first argues that the record does not support the district court's finding that he lacked capacity to decide whether to take neuroleptic medications. Minnesota Statutes section 253B.092, subd. 5, guides the district court in determining whether a patient lacks capacity to make a decision regarding neuroleptic medication. "A patient is presumed to have capacity to make decisions regarding the administration of neuroleptic medication." *Id.*, subd. 5(a). In determining capacity, the district court must consider:

[2] Minnesota Statutes section 253B.092, subd. 6(d) provides that the petitioner must prove incapacity only by a preponderance of the evidence. But both parties cite Minnesota appellate precedent that applies the clear-and-convincing standard. Because our caselaw supports the application of the clear-and-convincing standard, and because we ultimately conclude that the evidence in the record supports the district court's decision under this more stringent standard, we need not address this discrepancy.

> (1) whether the person demonstrates an awareness of the nature of the person's situation, including the reasons for hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;
>
> (2) whether the person demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; and
>
> (3) whether the person communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on delusion, even though it may not be in the person's best interests.
>
> Disagreement with the physician's recommendation is not evidence of an unreasonable decision.

Id., subd. 5(b).

Averett argues that the district court's finding of incapacity is erroneous because Averett was able to "repeat the psychiatrist's view of the facts; in other words, [he had] awareness of, not agreement with, the proposed treatment, the expected benefits and possible risks of the treatment." *See In re Lambert*, 437 N.W.2d 106, 108 (Minn. App. 1989), *review denied* (Minn. May 12, 1989). The state notes that awareness is a necessary, but not a sufficient condition to finding capacity. The state argues that the evidence supports the district court's finding of incapacity because Averett demonstrated a lack of understanding of the expected risks, benefits, and alternatives to Seroquel and expressed a delusional reason for refusing the medication—his belief that Seroquel had a "paradoxical effect" on his mental state.

We conclude that the district court's capacity determination is amply supported by the evidence in the record. We agree with the state that Averett's mere awareness of the proposed treatment is not sufficient, alone, to overcome the overwhelming evidence

introduced by the state that Averett lacked capacity. The district court's findings that Averett "does not have the ability to understand and use information about his mental illness, its symptoms, and treatment," that Averett erroneously believes that his prior medication regimen is the only regimen that is effective, and that Averett "does not have sufficient insight to understand the consequences of not taking the prescribed medications," are all soundly supported by evidence in the record and support the district court's finding that Averett lacks capacity to decide whether to take the proposed medications—including Seroquel. Moreover, Averett's own testimony is consistent with the court-appointed psychologist's and the physician's indication that Averett's refusal to take certain medication is based on his delusional belief that the medication causes a "paradoxical effect."

Because the record amply supports the district court's findings regarding Averett's lack of capacity, and because the district court properly considered the relevant factors in determining capacity, we conclude that the district court's capacity determination was not erroneous.

II. The district court did not err by determining that the administration of Seroquel was appropriate despite the absence of Averett's consent.

Averett next makes a brief argument that the district court erred by authorizing the administration of Seroquel because the use of the medication was not "sufficiently necessary and reasonable," and that there is "no basis to order his compliance with medication when he has been stabilized and faithfully compliant for decades with proposed

medical regimes." We are not persuaded that the district court erred in determining that administration of Seroquel was appropriate.

If the district court determines that the patient lacks capacity to make decisions regarding the administration of the neuroleptic medication, it must consider the factors listed in Minn. Stat. § 253B.092, subd. 7(b)-(c), to determine whether to enter an order authorizing the administration of the medication. Minn. Stat. § 253B.092, subd. 7(a). Those standards are:

> (b) If the person clearly stated what the person would choose to do in this situation when the person had the capacity to make a reasoned decision, the person's wishes must be followed. . . .
>
> (c) If evidence of the person's wishes regarding the administration of neuroleptic medications is conflicting or lacking, the decision must be based on what a reasonable person would do, taking into consideration:
> (1) the person's family, community, moral, 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., subd. 7(b)-(c).

There was no evidence introduced to support that Averett expressed a choice regarding these neuroleptic medications at a time when he had the capacity to make a reasoned choice. There was also no evidence of Averett's family, community, moral, religious, or social values. Thus, the district court based its conclusion on whether a reasonable person would take the medication considering the risks and benefits of the

medication and the past efficacy of neuroleptic medications to treat Averett. The district court found that the use of neuroleptic medications is widely accepted by the medical community. It considered the purpose of the medications and their various side effects, including adverse side effects that Averett had experienced when taking neuroleptic medications in the past. The district court also considered the alternative proposal put forth by Averett—not altering Averett's medication regimen—but found that Averett had decompensated in the past without additional neuroleptic medication and that Averett would benefit from the use of the medications. Ultimately, the district court concluded that "[t]he benefits to [Averett] from the use of neuroleptic medication to treat his mental illness outweigh the risks from that treatment and justify the intrusion into his privacy as needed to effect the medication therapy without his informed consent."

The district court's findings related to the statutory factors are supported by the medical records, the testimony of the physician, and the court-appointed psychologist's report and are not clearly erroneous. The district court appropriately applied the statutory factors in determining that it was appropriate to authorize the administration of the neuroleptic medications under Minn. Stat. § 253B.092, including Seroquel.

Because the record amply supports the district court's findings regarding Averett's lack of capacity and the appropriateness of administering neuroleptic medications in the absence of consent, and because the district court appropriately considered the relevant factors enumerated in Minn. Stat. § 253B.092 in arriving at both findings, we discern no basis to reverse the district court's order.

Affirmed.