

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1437**

In the Matter of the Civil Commitment of:
Matthew Shawn Froehlich.

**Filed May 10, 2021
Affirmed
Bjorkman, Judge**

Clearwater County District Court
File No. 15-PR-20-317

Tanner Holten, Reynolds, Harbott, Knutson & Larson, P.L.L.P., Crookston, Minnesota (for appellant Matthew Froehlich)

Keith Ellison, Attorney General, Brandon Boese, Assistant Attorney General, St. Paul, Minnesota (for respondent Haron Manwa, on behalf of the Minnesota Department of Human Services)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

SYLLABUS

The requirement in Minn. Stat. § 253B.092, subd. 6(d) (2020), that a party seeking court authorization to administer neuroleptic medication to a patient subject to civil commitment must prove the patient's incapacity by a preponderance of the evidence does not violate the patient's right to privacy under the Minnesota Constitution.

OPINION

BJORKMAN, Judge

Appellant challenges the district court's order authorizing the involuntary administration of neuroleptic medication, arguing that (1) the preponderance-of-the-

evidence standard established in Minn. Stat. § 253B.092, subd. 6(d), for a determination of incapacity violates his right to privacy under the Minnesota Constitution, and (2) the record does not support the court's decision because his mental-health advance directive states that he does not consent to neuroleptics. Because we discern no error in the district court's legal analysis and the record supports its factual findings, we affirm.

FACTS

Appellant Matthew Froehlich is a 41-year-old man with schizophrenia spectrum disorder and bipolar disorder. He has been civilly committed numerous times because of his mental illness. His current civil commitment began September 9, 2020. Treatment providers sought to administer neuroleptic medication, but Froehlich refused, denying any mental illness. Because they believed Froehlich's behavior posed a risk of harm to himself and others, treatment providers administered the injectable neuroleptic Haldol to Froehlich on an emergency basis. And on September 14, respondent Haron Manwa, a psychiatric nurse practitioner, filed a petition on behalf of the Minnesota Department of Human Services, seeking court authorization to involuntarily administer neuroleptic medication to Froehlich.

The district court appointed two examiners to assess Froehlich's capacity to make decisions regarding the use of neuroleptic medications and the appropriateness of the proposed medications. Each examiner spoke with Froehlich and reviewed his medical history, including his past civil commitments. At a hearing, both examiners and Manwa opined that Froehlich lacks capacity to make decisions regarding the administration of neuroleptic medication. Manwa also testified that he proposes to continue treating

Froehlich with Haldol until he stabilizes, and then transition to Latuda, which Froehlich has responded to well in the past but requires his compliance because it can only be administered orally. The examiners agreed that the proposed medications are part of standard treatment for Froehlich's condition.

To counter this evidence, Froehlich presented his April 2012 mental-health advance directive, in which he states, among other things, that in the event of incapacity, he “do[es] not consent to any psychotropic medication.”¹ And Froehlich's mother testified. She explained that she assisted Froehlich in completing the advance directive and believed that, at that time, he had capacity to make decisions about his use of neuroleptic medications. She stated that Froehlich wanted to avoid using neuroleptic medication because of “adverse reactions.” But she acknowledged that Froehlich had been taking Latuda until a disruption with his prescription led him to halve his dosage and then discontinue the medication in August 2020, precipitating his decompensation and this commitment. She also agreed that Froehlich “needs to use some neuroleptics to get better.”

The district court determined by a preponderance of the evidence that Froehlich currently lacks capacity to decide for himself whether to consent to neuroleptic medication and did not clearly state a reasoned opposition to neuroleptics. The court also determined

¹ The terms “neuroleptic” and “psychotropic” “are used interchangeably to describe a class of drugs that result in sedation of the nervous system.” *In re Civil Commitment of Breault*, 942 N.W.2d 368, 371 n.2 (Minn. App. 2020) (citing *Jarvis v. Levine*, 418 N.W.2d 139, 140 n.1 (Minn. 1988)). Because the statutory provisions relevant to this appeal use the term “neuroleptic” to refer to this class of medications, we use that term in this opinion. See Minn. Stat. § 253B.092 (2020).

that the treatment is reasonable and necessary, and authorized the involuntary administration of Haldol and Latuda. Froehlich appeals.

ISSUES

- I. Does the requirement in Minn. Stat. § 253B.092, subd. 6(d), that the petitioner prove the patient's incapacity by a preponderance of the evidence infringe on the patient's constitutional right to privacy?
- II. Does the record support the decision to authorize neuroleptic medication?

ANALYSIS

Doctors often prescribe neuroleptic medication to treat patients who are civilly committed because of mental illness. *Breault*, 942 N.W.2d at 373. Such medication can improve cognitive function and reduce psychotic symptoms but may also “have serious negative side effects.” *Id.*; see *Jarvis*, 418 N.W.2d at 145-46 (concluding that neuroleptic medication constitutes “intrusive” treatment). The Minnesota Constitution affords each individual, including civilly committed patients, a right to privacy that includes the right of “a competent person” to refuse such intrusive medical treatment. *Jarvis*, 418 N.W.2d at 148. And the legislature established safeguards in Minn. Stat. § 253B.092 to protect this right.

Principal among these safeguards is a “rebuttable presumption that a patient has the capacity to make decisions regarding administration of neuroleptic medication.” Minn. Stat. § 253B.092, subd. 5(a). Absent an emergency, if a patient refuses consent, the medication “may not be administered without a court order.” *Id.*, subd. 8(a); see *id.*, subd. 3 (providing for short-term involuntary treatment with neuroleptics). A patient's treatment provider may petition for court authorization to administer neuroleptics despite the

patient's refusal. *See id.*, subd. 8(a). A court "may" grant the petition if it finds that (1) the patient lacks capacity and (2) analysis of statutory factors shows that a reasonable person would choose to permit the administration of neuroleptic medication under the circumstances. *Id.*, subd. 8(c), (d); *see id.*, subd. 7 (articulating factors district courts consider when determining whether it is appropriate to authorize administration of neuroleptic medication to a patient who lacks capacity).

I. The requirement in Minn. Stat. § 253B.092, subd. 6(d), that the petitioner prove incapacity by a preponderance of the evidence does not violate a patient's right to privacy.

The constitutionality of a statute is a question of law that we review de novo. *In re Kindschy*, 634 N.W.2d 723, 729 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001). We presume that statutes are constitutional, and the party challenging the constitutionality of the statute "has the onus of establishing beyond a reasonable doubt that the statute violates a claimed right." *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989).

Under Minn. Stat. § 253B.092, subd. 6(d), the petitioner "has the burden of proving incapacity by a preponderance of the evidence." Froehlich argues that the statute is unconstitutional because a clear-and-convincing-evidence standard is necessary to protect the constitutional right to privacy recognized in *Jarvis*. We disagree.

The origin of the clear-and-convincing-evidence standard that Froehlich urges is *In re Peterson*, in which we considered the neuroleptic-medication statute that the legislature passed in response to *Jarvis*.² 446 N.W.2d 669, 671-72 (Minn. App. 1989), *review denied*

² *Jarvis* mandated court authorization for involuntary administration of neuroleptic medication, 418 N.W.2d at 148, and *Schmidt* rejected a constitutional challenge to the new

(Minn. Dec. 1, 1989). That statute (the precursor to what is now Minn. Stat. § 253B.092) did not prescribe a standard of proof for a petitioner seeking court authorization to administer neuroleptic medication. *Id.* at 672. We generally regard such an omission as a signal that the legislature intended the preponderance-of-the-evidence standard to apply. *C.O. v. Doe*, 757 N.W.2d 343, 353 (Minn. 2008). But mindful that the legislature required clear and convincing evidence for initial commitment decisions, we concluded that “the legislature intended that persons seeking to administer neuroleptic medications must prove by *clear and convincing evidence* that such medication is necessary.” *Peterson*, 446 N.W.2d at 672. We observed that this higher standard of proof reflects “the gravity of such intrusive treatment and the necessity for extensive safeguards” recognized in *Jarvis*. *Id.* We did not address whether the clear-and-convincing-evidence standard also applies to the question of a patient’s capacity to decide whether to take neuroleptic medication. *See id.*

Since *Peterson*, the legislature has substantially amended and clarified the law regarding the administration of neuroleptic medication. *See Breault*, 942 N.W.2d at 375 (summarizing statutory changes, including 1997 enactment of Minn. Stat. § 253B.092). In doing so, it did not prescribe a different standard for proving the necessity of neuroleptic medication, effectively adopting the clear-and-convincing-evidence standard. *See In re Civil Commitment of Ince*, 847 N.W.2d 13, 21 (Minn. 2014) (stating that judicial construction of a statute becomes “part of the statute as though written therein” (quotation

statute, reasoning that it comported with *Jarvis*’s mandate, 443 N.W.2d at 827-28. But neither case prescribed a standard of proof for a court to apply in determining whether to authorize involuntary treatment with neuroleptic medication.

omitted)); *Breault*, 942 N.W.2d at 378 & n.11 (reciting the *Peterson* standard and noting the legislature has not prescribed a different standard). But for proving incapacity, the legislature expressly prescribed the lower preponderance-of-the-evidence standard. Minn. Stat. § 253B.092, subd. 6(d).³

In urging us to strike down this preponderance standard, Froehlich characterizes the issue of incapacity as merely a subset—like medical necessity—of the broader question of involuntary administration of neuroleptic medication. But they are distinct issues, with distinct consequences. See *Jarvis*, 418 N.W.2d at 148 n.7 (distinguishing between a patient’s “incompetence” and whether to forcibly administer neuroleptics). Only the medical-necessity step of the statutory process affects a patient’s ability to control “the integrity of [his] own body.” See *id.* at 148. Froehlich has not persuaded us that applying the lower standard of proof on the issue of incapacity infringes on his right to privacy.

“[A] preponderance-of-the-evidence standard signals that the parties should ‘share the risk of error in roughly equal fashion.’” *C.O.*, 757 N.W.2d at 353 (quoting *Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804, 1808 (1979)). This is not appropriate when the consequences of an erroneous decision are grave and imminent, such as with the

³ In *In re Thulin*, we affirmed a district court’s finding of incapacity, stating that the finding was supported by “clear and convincing evidence.” 660 N.W.2d 140, 145 (Minn. App. 2003). Numerous nonprecedential decisions have cited *Thulin* as authority for the proposition that the standard of proof for determining the capacity question is, in fact, clear and convincing evidence. The legislature plainly prescribed otherwise in Minn. Stat. § 253B.092, subd. 6(d). This court’s dictum in *Thulin*—where the issue of standard of proof for a finding of incapacity was neither raised by the parties nor addressed by the court—cannot override the plain language of the statute. See *Buck Blacktop, Inc. v. Gary Contracting & Trucking Co.*, 929 N.W.2d 12, 17 n.1 (Minn. App. 2019) (stating that a prior opinion was “not precedential” on an issue that the parties did not appear to have raised).

involuntary administration of neuroleptic medications. *Peterson*, 446 N.W.2d at 672; accord *Addington*, 441 U.S. at 427, 99 S. Ct. at 1810 (“The individual should not be asked to share equally with society the risk of error [in a civil-commitment proceeding] when the possible injury to the individual is significantly greater than any possible harm to the state.”). But it is appropriate when the consequences of an erroneous decision are minimal. That is the case when the decision is temporary. See *Uckun v. Minn. State Bd. of Med. Practice*, 733 N.W.2d 778, 784 (Minn. App. 2007) (concluding that preponderance standard is appropriate for temporary suspension of medical license because the decision can be reversed after a hearing, lessening the seriousness of consequences to the licensee). The consequences of error are also relatively minimal when the decision is a preliminary one—like the defendant’s competency in a criminal case. If that issue is disputed, the state must first prove that the defendant is competent to stand trial. *State v. Curtis*, 921 N.W.2d 342, 348 (Minn. 2018). If it succeeds, the defendant suffers no consequence unless the state can also prove his guilt beyond a reasonable doubt. The standard of proof for the preliminary question of competency is correspondingly low—a “fair preponderance of the evidence.” *Id.* at 347 (quotation omitted).

Likewise, the decision whether a civilly committed patient lacks capacity to make decisions about the use of neuroleptic medication is preliminary. As the supreme court explained in *Jarvis*, “a finding of legal incompetence is a prerequisite to involuntary medication with neuroleptics” but “a mere finding of incompetence is insufficient to warrant forcible medication.” 418 N.W.2d at 148 n.7. Rather, a district court “must still

... determine the necessity and reasonableness of the treatment.” *Id.* The legislature incorporated the supreme court’s guidance when enacting Minn. Stat. § 253B.092.

Under section 253B.092, if the petitioner fails to prove that the patient lacks the capacity to make a reasoned decision to refuse neuroleptic medication, or if the patient clearly stated a reasoned decision when he had capacity to do so, the patient’s decision controls. Minn. Stat. § 253B.092, subds. 4, 7(b), 8(d). If the petitioner succeeds in proving incapacity, the patient suffers no consequence unless the petitioner also proves by clear and convincing evidence that a reasonable person in the patient’s position would accept neuroleptic medication. *Id.*, subds. 7(c), 8(e); *Breault*, 942 N.W.2d at 378. And proof of reasonableness depends on numerous factors, including “(1) the patient’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.” Minn. Stat. § 253B.092, subd. 7(c). This statutory framework and the heightened evidentiary standard that must be met before neuroleptic medications may actually be administered minimize the consequences of any error in determining the preliminary question of capacity.⁴ Accordingly, we conclude that Froehlich has not demonstrated that the preponderance standard in Minn. Stat. § 253B.092, subd. 6(d), infringes on a patient’s constitutional right to privacy.

⁴ Further, the patient suffers no collateral prejudice from an erroneous finding that he lacks capacity to make a reasoned decision regarding neuroleptic medication because that finding “must not be construed to determine the patient’s competence for any other purpose.” Minn. Stat. § 253B.092, subd. 8(f).

II. The record supports the district court's decision to authorize involuntary administration of neuroleptic medication.

Froehlich does not challenge the district court's determination that administration of neuroleptic medications was reasonable and necessary under the circumstances. Rather, he argues that the district court clearly erred by finding he lacks capacity to make decisions regarding neuroleptic medication and by failing to honor his advance directive. We review the record in the light most favorable to the district court's decision. *Breault*, 942 N.W.2d at 378. And we will not disturb the court's factual findings unless they are clearly erroneous. *In re Civil Commitment of Raboin*, 704 N.W.2d 767, 769 (Minn. App. 2005).

A. Froehlich lacks capacity.

A patient has the capacity to decide whether he consents to the administration of neuroleptics if he:

(1) has an awareness of the nature of [his] situation, including the reasons for hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;

(2) has an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; *and*

(3) communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on a symptom of [his] mental illness, even though it may not be in [his] best interests.

Minn. Stat. § 253B.092, subd. 5(b) (emphasis added). The patient is presumed to meet these criteria, and mere disagreement with a treatment provider's recommendation "is not evidence of an unreasonable decision." *Id.*, subd. 5(a), (c). But because the statute requires a patient to meet all three criteria, a petitioner can rebut the presumption by disproving any

one of them. *Id.*, subd. 5(b); see *Peterson*, 446 N.W.2d at 673 (“Those advocating the use of involuntary neuroleptics need not disprove all three in order to prevail.”).

Froehlich asserted at oral argument in this court, but not in his appellate brief, that the record does not support the district court’s finding that he lacks capacity. We generally will not address an argument raised for the first time at oral argument. *In re Stoneburner*, 882 N.W.2d 200, 203 n.3 (Minn. 2016). But in light of Froehlich’s argument regarding the standard of proof on this issue, we review the incapacity finding in the interests of justice. See Minn. R. Civ. App. P. 103.04 (stating that an appellate court “may review any other matter as the interest of justice may require”).

Both court-appointed examiners and Manwa uniformly testified that Froehlich lacks awareness of his situation, refusing neuroleptics because he denies any mental illness and believes the treatment providers want to experiment on him. They also testified that Froehlich’s delusion “can’t be disrupted by reasoned data.” For example, one of the examiners noted that, by the time of the hearing, Froehlich had been under commitment for several weeks, but “there’s no reasoned kind of analysis on his part which should say why am I here, what do I do to get out of here, what will help me.” No record evidence indicates otherwise. A patient who denies that he has a mental illness “in the face of good evidence to the contrary lack[s] the capacity to decide rationally about medication.” *Peterson*, 446 N.W.2d at 673 (quotation omitted). On this record, we discern no clear error in the district court’s finding that Froehlich lacks the capacity to decide whether to consent to treatment with neuroleptic medication.

B. Froehlich did not clearly state, at a time of capacity, that he would refuse neuroleptic medication.

If the district court finds that a patient lacks capacity, it must next consider whether the patient “clearly stated what [he] would choose to do in this situation when [he] had the capacity to make a reasoned decision.” Minn. Stat. § 253B.092, subd. 7(b). “Evidence of the patient’s wishes may include written instruments,” such as a health-care power of attorney or advance directive. *Id.* A clear statement of the patient’s wishes “must be followed.” *Id.*; see *Greene v. Comm’r of Minn. Dep’t of Human Servs.*, 755 N.W.2d 713, 721 (Minn. 2008) (noting that “must” is mandatory). But if evidence of the patient’s wishes is “conflicting or lacking,” the court must determine “what a reasonable person would do.” Minn. Stat. § 253B.092, subd. 7(c).

Froehlich challenges the district court’s finding that he did not clearly state his wishes. He contends his 2012 advance directive “clearly described” his intent to refuse neuroleptic medication.⁵ We disagree. Our careful review of Froehlich’s advance directive reveals numerous inconsistencies regarding his wishes on the subject of neuroleptic medication. The document states, “If I am not competent to consent to my own treatment or to refuse medications or other treatment options relating to my mental health treatment, I have initialed *one* of the following, which represents my wishes.” (Emphasis added.) But Froehlich did not select just one; he selected *five* of the six options that followed. He checked a box next to the following statement:

⁵ He also asserts that he had capacity to make decisions regarding neuroleptic medication when he executed the advance directive. The district court did not expressly find otherwise, and we assume as much for the purposes of our analysis.

I specifically do not consent to any psychotropic medication due to my understanding of the possible positive and negative results of using such medication. I am choosing an alternative form of treatment from psychotropic drugs based on the long term studies highlighting greater recovery without such use, and the studies highlighting probabl[e] negative medical effects of using such medications. I understand that psychotropic drugs may very well reduce the symptoms (e.g. thoughts, feelings and behaviors) that are unwanted, but that I also understand there are other psychosocial means to reducing these symptoms as well, some of which may take a bit longer to realize, but also realize that will result in greater long term benefit.

But he also checked the box next to a statement that suggests he is willing to accept some medications: “I consent to the medications agreed to by my mental health care surrogate [his mother], after consulting with my treating physician and any other individuals my surrogate may think appropriate.” And on the following page, he stated that if, “during a stay in a psychiatric facility,” his behavior requires “emergency intervention,” he does not want counseling, seclusion, music therapy, or physical restraint (the boxes for which are unchecked), but prefers “medication such as Trilaton or Haldol at low dose to be used temporarily or Valium to calm.” In short, Froehlich’s advance directive contains conflicting, not clear, statements about whether and under what circumstances he would take neuroleptic medication.

Moreover, Froehlich’s advance directive is only part of the evidence indicative of his wishes regarding neuroleptic medication. See Minn. Stat. § 253B.092, subd. 7(b) (providing that “[e]vidence of the patient’s wishes may include written instruments”). And the other evidence of Froehlich’s wishes is similarly conflicting. All four witnesses discussed Froehlich’s pattern of using and quitting such medication and his statements

refusing to take it. Froehlich's mother described concerns that she and Froehlich share about negative side effects, but she also candidly acknowledged Froehlich needs these medications in order to function. And it is undisputed that Froehlich has independently taken neuroleptic medication since signing his 2012 advance directive—as recently as August 2020. On this record, we discern no clear error in the district court's determination that Froehlich did not clearly state, at a time when he had capacity, that he did not wish to be treated with neuroleptic medication.

DECISION

We conclude that the requirement in Minn. Stat. § 253B.092, subd. 6(d), that the petitioner prove the patient's incapacity by a preponderance of the evidence does not infringe on the patient's constitutional right to privacy. The district court correctly applied that standard, and the record supports its findings that Froehlich lacks capacity and did not clearly state at a time of capacity that he opposes neuroleptic medication.

Affirmed.