

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0940**

In the Matter of the Civil Commitment of: Nicholas Scott Thompson.

**Filed December 13, 2021
Affirmed
Cleary, Judge***

Jackson County District Court
File No. 32-PR-20-17

Victoria M. Herr, Herr Law Office, L.L.C., Plymouth, Minnesota (for appellant Nicholas Scott Thompson)

Keith Ellison, Attorney General, Drew D. Bredeson, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of the Minnesota Department of Human Services)

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Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Cleary, Judge.

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this appeal from a district court order authorizing the involuntary administration of neuroleptic medication, appellant argues that the record does not support the finding that the administration of neuroleptic medication is reasonable and necessary. Appellant also

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

argues that the district court failed to identify the evidentiary burden it applied when making the determination. We affirm.

FACTS

In 2019, appellant Nicholas Scott Thompson was found incompetent to stand trial on his second-degree murder charge for the alleged strangulation of his mother. In a series of subsequent proceedings between March 2019 and January 2021, appellant was civilly committed as mentally ill, recommitted as mentally ill, and committed as what was then known as mentally ill and dangerous to the public.¹² During that time, the district court also authorized medical staff to administer neuroleptic medication to appellant.³

On April 22, 2021, Tara Lassen, the certified nurse practitioner on appellant's treatment team at the St. Peter Regional Treatment Center, petitioned the district court under Minn. Stat. § 253B.092 (2020) for an order authorizing the administration of neuroleptic medication despite appellant's refusal. The district court held an evidentiary hearing on that petition. Relevant to this appeal, the district court heard testimony from two experts, Lassen and Dr. Tyler Dority, a psychologist appointed by the district court to

¹ This court affirmed appellant's April 2020 commitment as a mentally ill person. *In re Civil Commitment of Thompson*, No. A20-0805, 2020 WL 6554676, at *3 (Minn. App. Nov. 9, 2020).

² In 2020, the legislature substituted the terms "Person who poses a risk of harm due to mental illness" and "Person who has a mental illness and is dangerous to the public" for the existing terms "Person who is mentally ill" and "Person who is mentally ill and dangerous to the public." The 2020 amendment left the former definitions substantially in place. *See* 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 6, §§ 7, at 1020; 9, at 1021.

³ This court also affirmed a July 2020 order authorizing the involuntary administration of neuroleptic medication. *In re Civil Commitment of Thompson*, No. A20-1246, 2021 WL 955955 (Minn. App. March 15, 2021).

conduct an examination for the proceedings. Both experts testified about appellant's capacity to make decisions on his treatment and came to different conclusions. Lassen testified that appellant lacked decision-making capacity and that the administration of neuroleptic medication was reasonable and necessary. Dr. Dority testified that appellant could make decisions on the administration of neuroleptic medication.

The district court authorized the involuntary administration of neuroleptic medication after it determined that appellant lacked the decision-making capacity to make an informed decision as to the administration of neuroleptic medication and that the administration was reasonable and necessary. Appellant appeals.

DECISION

When reviewing a district court's order authorizing the involuntary administration of neuroleptic medication, this court reviews the district court's findings for clear error and views the record in the light most favorable to those findings. *In re Civil Commitment of Breault*, 942 N.W.2d 368, 378 (Minn. App. 2020). "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).

To begin, appellant argues that the district court's findings on his decision-making capacity were insufficient because the district court failed to identify the evidentiary burden it applied. *See In re Civil Commitment of Spicer*, 853 N.W.2d 803, 810 (Minn. App. 2014) (holding that district courts must make "sufficiently particular findings of fact on the key issues"). But contrary to appellant's argument, the district court did identify the evidentiary

burden applied: “Upon all the files, records and proceeding herein, and *by clear and convincing evidence* the [c]ourt makes the following [f]indings of [f]act.” (Emphasis added.) We therefore discern no prejudicial error.

Appellant also argues that the record does not support the finding that the administration of neuroleptic medication was reasonable and necessary.⁴

Neuroleptic medication may be administered to patients who are civilly committed. Minn. Stat. § 253B.092, subd. 1. When a patient refuses to consent to treatment with neuroleptic medication, then the treatment facility may administer neuroleptic medication to the patient involuntarily only by a court order. *Id.*, subd. 8(a). The district court may authorize the treatment facility to involuntarily administer neuroleptic medication to the patient if the court finds both that the patient lacks capacity to decide whether to take neuroleptic medication and that administration of neuroleptic medication is reasonable and necessary. *Id.*, subd. 8(e).

The county has the burden of proving incapacity by a preponderance of the evidence. *Id.*, subd. 6(d); *see In re Civil Commitment of Froehlich*, 961 N.W.2d 248, 252-53 n.3 (Minn. App. 2021) (analyzing propriety of preponderance of evidence standard for question of capacity). “There 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). In determining capacity, the district court must consider:

⁴ In *Jarvis v. Levine*, 418 N.W.2d 139, 148-49 (Minn. 1988), the Minnesota Supreme Court held that involuntary administration of neuroleptic medication must be preauthorized by a court order. Minn. Stat. § 253B.092, subd. 8(e), now provides the procedure and authority for involuntary administration of neuroleptic medication.

(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.

Id., subd. 5(b). Disagreement with the physician's recommendation is not evidence of an unreasonable decision. *Id.*, subd. 5(c). But this court has determined that a patient cannot decide rationally about neuroleptic medication when he denies that he has a mental disorder despite good evidence to the contrary. *In re Peterson*, 446 N.W.2d 669, 673 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989).

If a patient lacks capacity in this regard, then a district court must determine whether "a reasonable person would" agree to take the medication. Minn. Stat. § 253B.092, subd. 7(c). This reasonable-person standard requires the district court to consider: "(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). Ultimately, a person "seeking to administer neuroleptic medications must prove by clear and convincing evidence that such medication is necessary." *Breault*, 942 N.W.2d at 378 (quotation omitted).

Here, the district court first determined that appellant lacked decision-making capacity as to the administration of neuroleptic medication. The district court then determined that the administration of neuroleptic medication was reasonable and necessary. In doing so, it found that appellant did not believe he had a mental illness despite evidence to the contrary. The district court considered that appellant's inability to "recognize the severity of his condition" clouded his understanding of and ability to weigh the risks and benefits associated with neuroleptic medication and that ultimately his conclusion about treatment would "not be a reasoned one." It also found that in appellant's case, neuroleptic medication was not experimental, that there was no available alternative treatment, and that while administration of neuroleptic medication had not shown a significant change to appellant's condition, there was "some minimal progress." The district court also considered the possible side effects of neuroleptic medication and found that such risks were mitigated by the fact that appellant was "formally evaluated for side effects" regularly and "also constantly monitored by medical professionals" as a result of his civil commitment.

Appellant argues that the record does not support the district court's determination. He argues that the district court erred by finding that the benefits outweighed the risks associated with neuroleptic medication and that there were no available alternative treatments. Appellant offers Dr. Dority's testimony as contrary evidence.

Dr. Dority testified that appellant possessed decision-making capacity as to the administration of neuroleptic medication. He also testified that appellant's condition had not changed with neuroleptic treatment, and that although appellant denied his mental

illness diagnosis, he was able to consider the possible consequences should he refuse medication. Dr. Dority's testimony was, however, limited given that he had not evaluated appellant's diagnosis, nor did he have a history of observing or treating appellant. The district court's conclusion is supported by Lassen's testimony. As to Dr. Dority's opposing opinion, we defer to the district court's credibility determinations. *See In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995) ("Where the findings of fact rest almost entirely on expert testimony, the trial court's evaluation of credibility is of particular significance."); *In re Civil Commitment of Duvall*, 916 N.W.2d 887, 895 (Minn. App. 2018) (citing this aspect of *Knops*), *rev. denied* (Minn. Sept. 18, 2018).

Lassen testified that appellant suffered from persecutory delusions but did not believe he had a mental illness or that he required treatment. Instead, appellant believed he was being hospitalized because others, including police, treatment staff, and the courts, were conspiring against him. It was therefore her opinion that appellant could not properly weigh the risks and benefits of neuroleptic medication.

Lassen also testified that neuroleptic medication was currently the best treatment for delusional disorder and that other treatments, such as behavioral or talk therapy, were typically ineffective for the treatment of delusional disorder. She provided testimony about potential side effects and testified that although there were risks associated with neuroleptic medication, medical staff monitored appellant, regularly tested appellant, and could address any potential concerns by lowering appellant's dose or switching to another neuroleptic medication. Finally, Lassen testified that while appellant had listed the potential side effects of neuroleptic medication to medical staff, he had not reported

experiencing any of those side effects nor had medical staff observed any side effects in appellant.

In sum, the record supports the district court's findings as to appellant's capacity to make treatment decisions and the appropriateness of administering neuroleptic medications without consent. Because the record supports the district court's findings and those findings were sufficiently detailed, we conclude that the district court did not err by determining that appellant lacked decision-making capacity and that the administration of neuroleptic medication was reasonable and necessary.

Affirmed.