[Cite as *State v. Lantz*, 2011-Ohio-5436.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-P-0093**
- vs -	:	
DANNY J. LANTZ,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2009 CR 0498.

Judgment: Reversed and remanded.

Victor V. Vigluicci, Portage County Prosecutor, and *Theresa M. Scahill*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Leonard J. Breiding, II, 4825 Almond Way, Ravenna, OH 44266 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} This appeal is from a final judgment of the Portage County Court of Common Pleas. Appellant, Danny J. Lantz, contests the trial court's decision to allow his treating physician to administer antipsychotic medication as part of his basic treatment in a mental health facility. Essentially, he maintains that the testimony of the treating physician was not sufficient to satisfy the standard for requiring him to take the new medication against his will.

{¶2} In August 2009, the Portage County Grand Jury indicted appellant on two counts of felonious assault, second-degree felonies under R.C. 2903.11(A)(2). Almost immediately after appellant's arraignment, his counsel moved the trial court to order an evaluation of his sanity at the time the two offenses allegedly took place. Following the completion of the first psychological evaluation, the trial court conducted a hearing and found that appellant was competent to stand trial. Nevertheless, the court still ordered that a second evaluation be performed. Furthermore, appellant's counsel filed a written plea of not guilty by reason of insanity.

{¶3} Prior to the scheduled date for his trial in late December 2009, appellant executed a written waiver of his constitutional right to a jury trial. At the beginning of the ensuing bench trial, the state and appellant submitted into evidence certain stipulations of fact and a copy of a psychological report. Upon approving the stipulations and fully reviewing the report, the trial court found appellant not guilty by reason of insanity as to both counts of the indictment.

{¶4} The trial court then proceeded to hold a hearing, under R.C. 2945.40, to determine whether appellant should be subject to hospitalization or institutionalization. After further consideration of the psychological report, the court found "to a reasonable degree of scientific certainty" that appellant had a severe mental disease. Accordingly, the trial court ordered that appellant would be hospitalized in the Heartland Behavioral Healthcare Center for the maximum sentence allowable or until his sanity is restored.

{¶5} During the initial eight months of appellant's hospitalization, the trial court reviewed his status on two occasions. Following the first status hearing, the trial court found that appellant's continuing commitment was still necessary, and that his disease

should be treated as recommended by the mental health facility. After the second such hearing, the court ordered that appellant was entitled to a higher degree of privileges at the facility.

{¶6} Approximately 50 days after appellant had been granted more privileges, the mental health facility, i.e., Heartland Behavioral Healthcare Center, moved the trial court to approve a new course of treatment for appellant. Specifically, the facility sought to administer antipsychotic medication to treat appellant's schizoaffective disorder. The motion stated that the new medication had been recommended by Dr. Vinod Sharma, appellant's treating physician, and that appellant was unable to give an intelligent and knowing consent to the proposed treatment.

{¶7} The trial court held an abbreviated hearing on the motion, during which Dr. Sharma was the sole witness. As part of his testimony, the doctor indicated that, even though appellant was presently taking one antipsychotic medication, it was not sufficient to fully stabilize his condition. According to the doctor, appellant still tended to exhibit paranoid ideas, religious preoccupation, anger, and irritability; thus, additional treatment was necessary to improve his insight and judgment. Besides the antipsychotic drugs, Dr. Sharma testified that appellant needed other new medication to stabilize his moods.

{¶8} In its final judgment of November 23, 2010, the trial court basically granted the facility's motion for approval of the new course of treatment. As the grounds for its determination, the trial court stated:

{¶9} "The court, upon hearing the testimony of Vinod Sharma, M.D., finds that the course of treatment in administering the anti-psychotic medications and mood stabilizing drugs is appropriate to treat the defendant to help to restore him to sanity.

The court would find that it specifically is appropriate to give the defendant mood stabilizing medications and at the present time anti-psychotic medications appearing to be working."

{¶10} In challenging the merits of the trial court's decision, appellant has raised the following as error:

{¶11} "The trial court's forced medication order was against the manifest weight of the evidence."

{¶12} Under this sole assignment, appellant essentially argues that the evidence presented by the state and the mental health facility failed to satisfy the legal standards for requiring an involuntarily committed mentally ill patient to accept the administering of antipsychotic medications. First, he submits that it was never demonstrated that he did not have the capacity to give or withhold his consent to the new treatment. Second, he maintains that his consent to the antipsychotic medications were necessary because it was never shown that he posed an imminent threat of danger to either himself or other persons. In light of these points, appellant contends that the trial court's ruling was not supported by the evidence.

{¶13} Given the exact nature of the issues asserted by appellant, a full review of the transcript of the oral hearing on the mental health facility's motion would normally be warranted. However, after considering the extent of the factual findings set forth by the trial court in its written judgment, this court concludes that a "manifest weight" analysis cannot be conducted in the context of the instant appeal. Specifically, the substance of the trial court's ruling on the request to administer additional antipsychotic medications cannot be addressed at this time because the court did not make the necessary findings

on the legal points which are dispositive in a "forced medication" dispute.

{¶14} As a general proposition, a person who has been declared mentally ill still has a "significant liberty interest" in not being physically forced to take any antipsychotic drugs. See *Steele v. Hamilton Cty. Community Mental Health Bd.* (2000), 90 Ohio St.3d 176, 181, citing *Washington v. Harper* (1990), 494 U.S. 210. Nevertheless, this "right" to refuse medication is not considered absolute, and can be deemed outweighed under certain circumstances by a compelling governmental interest. Id., citing *Cruzan v. Dir., Mo. Dept. of Health* (1990), 497 U.S. 261. One such compelling governmental interest is the protection of a citizen who is not able to properly provide for himself; i.e., a state's "parens patriae" power. In considering the specific issue of when a mentally ill person can be required to take antipsychotic drugs against his will, the Supreme Court of Ohio has stated the following standard:

{¶15} "Accordingly, we hold that a court may issue an order permitting hospital employees to administer antipsychotic drugs against the wishes of an involuntarily committed mentally ill person if it finds, by clear and convincing evidence, that (1) the patient does not have the capacity to give or withhold informed consent regarding his/her treatment, (2) it is in the patient's best interest to take the medication, *i.e.*, the benefits of the medication outweigh the side effects, and (3) no less intrusive treatment will be as effective in treating the mental illness." *Steele*, 90 Ohio St.3d at 187-188.

{¶16} The *Steele* case involved a mentally ill individual whose detainment in a mental health facility was pursuant to an order in a civil commitment proceeding. In the instant matter, the commitment order was made in a criminal action after appellant was found not guilty by reason of insanity. Notwithstanding the differences between the two

types of proceedings, the majority of Ohio appellate courts have followed the foregoing standard in *Steele* when a motion to administer antipsychotic drugs is raised in regard to a criminal defendant who was committed to the facility after being found not guilty by reason of insanity. See *State v. Doran*, 2d Dist. No. 22290, 2008-Ohio-416; *State v. Rowe*, 3rd Dist. Nos. 14-05-31 & 14-05-46, 2006-Ohio-1883. In the *Rowe* opinion, the appellate court rejected the contention that forced medication could be ordered simply because the criminal defendant had been found to be mentally ill. Id. at ¶43-44.

{¶17} Given that a finding of not guilty by reason of insanity has the legal effect of relieving a defendant of all criminal responsibility for his acts, it follows that there is no pressing reason why his "return" to sanity should happen as soon as possible. To this extent, this situation is completely different than when the accused has been found to be incompetent and is still awaiting his actual trial. Under the "not guilty" instance, logic dictates that the defendant cannot be required to take antipsychotic drugs against his will when he is capable of making an informed decision on the matter.

{¶18} In the present case, the mental health facility's motion for approval of the new antipsychotic treatment expressly asserted that appellant did not have the ability to receive the necessary information upon which to make an informed decision regarding whether to consent. Therefore, this court concludes that the *Steele* standard for the use of the state's "parens patriae" power had to be satisfied before appellant could be forced to accept the proposed treatment.

{¶19} In its written judgment granting the motion for approval, the trial court only found that the administering of additional antipsychotic medications was "appropriate" because it would help to restore appellant's sanity. Despite the fact that the trial court

asked Dr. Sharma a specific question regarding appellant's ability to give or withhold his consent, the court never made a finding on that particular point. Moreover, no findings were made as to whether the proposed treatment was in appellant's best interests or whether a less intrusive treatment was possible. Hence, the trial court did not make the required factual findings under the governing *Steele* standard.

{¶20} In applying the *Steele* decision in the context of a post-judgment motion after a defendant has been found not guilty by reason of insanity, the Third Appellate District has expressly held that the failure to make the necessary findings to invoke the state's "parens patriae" power is a valid reason to reverse the trial court's determination and remand the matter for further proceedings. *Rowe*, 2006-Ohio-1883, at ¶44. Under the facts of the instant case, the need for proper findings is even more critical, given that it is evident from the appealed judgment that the trial court did not apply the appropriate standard.

{¶21} As an aside, this court would further note that, as part of his testimony, Dr. Sharma indicated that the additional antipsychotic medication was needed to protect the facility's staff from possible physical attacks by appellant. In *Steele*, 90 Ohio St.3d at 183, the Ohio Supreme Court stated that there was a second compelling governmental interest which can be invoked to justify the use of antipsychotic drugs; i.e., a state's police power. However, the *Steele* court emphasized that this separate authority could only be used in limited situations:

{¶22} "The state's right to invoke its police power in these cases turns upon the determination that an emergency exists in which a failure to medicate a mentally ill person with antipsychotic drugs would result in a substantial likelihood of physical harm

to that person or others. Because this power arises only when there is an imminent threat of harm, the decision whether to medicate the patient must be made promptly in order to respond before any injury occurs. For this reason, there is no time for a judicial hearing and medical personnel must make the determination whether the patient is an imminent danger to himself/herself or others.

{¶23} "The requirement that medical personnel determine that there is an *imminent* danger of harm cannot be overemphasized. The police power may not be asserted broadly to justify keeping patients on antipsychotic drugs to keep them docile and thereby avoid potential violence. Moreover, this governmental interest justifies forced medication only as long as the emergency persists. Furthermore, the medication must be medically appropriate for the individual and it must be the least intrusive means of accomplishing the state's interest, i.e., preventing harm." (Emphasis sic.) Id. at 184.

{¶24} In the present case, the mental health facility did not seek to employ the additional antipsychotic medications as a means of temporarily pacifying appellant to avoid a present threat of harm. Instead, the facility intended to use the medications as a continuing course of treatment. Thus, the facility could not invoke the state's police power as a justification for its motion for approval.

{¶25} To the extent that the trial court failed to make adequate factual findings under the controlling standard, appellant's sole assignment of error has merit. The trial court's final judgment is reversed, and the action is remanded for further proceedings consistent with this opinion. Specifically, the trial court shall enter a new final judgment in which it issues findings of fact on the three-prong standard for the administration of antipsychotic medication under the state's "parens patriae" power, and then render a

new final determination on the mental health facility's motion for approval.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.