

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

In Re: T.M.

OPINION AND JUDGMENT ENTRY
Case No. 24 MA 0072

Civil Appeal from the
Court of Common Pleas, Probate Division, of Mahoning County, Ohio
Case No. 2024 MI 00036

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Samuel G. Amendolara, for Appellee

Atty. Rhonda G. Santha, for Appellant

Dated: February 4, 2025

WAITE, J.

{¶1} Appellant T.M. appeals a judgment entry of the Mahoning Court Probate Court finding that she is mentally ill subject to court order. Appellant first challenges the affidavit filed in support of the initial commitment proceedings. Appellant claims that the affidavit did not support a finding of probable cause. On the contrary, the affidavit contained allegations that Appellant was suffering from paranoid delusions, had made threats of violence, and was unable to care for her daughter. Appellant's second argument is that there was insufficient evidence supporting the court's order of commitment. There were multiple hearings in this case in which evidence was submitted showing that Appellant was psychotic, suffered from multiple delusions and paranoia, and made death threats against many people. As the evidence strongly supports the trial court's conclusions, Appellant's assignment of error is overruled, and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} This case arises from Appellant's involuntary civil commitment proceedings. Prior to her involuntary commitment, Appellant was engaged in divorce proceedings with Jeff M., and the parties have a minor child who is impacted by the divorce. During the marriage Appellant was diagnosed with bipolar disorder. On March 27, 2024 an affidavit was filed by a representative of the Mahoning County Mental Health and Recovery Board ("MCMHRB") alleging that Appellant was mentally ill and subject to court-ordered hospitalization. The affidavit was supported by reports of her deteriorating mental condition including paranoia, hallucinations, and an overwhelming fear that individuals were conspiring against her.

{¶3} An initial hearing took place on April 4, 2024 in the probate court. Appellant was represented by counsel at this hearing. The court found by clear and convincing evidence that Appellant was a mentally ill person subject to court order. On April 5, 2024, she was ordered by the probate court to be committed to the Mahoning County Mental Health and Recovery Board for 90 days, with placement at St. Elizabeth Hospital. Appellant did not appeal this final order, nor was any question raised on her behalf about whether there was probable cause to support the commitment proceedings.

{¶4} Appellant later filed a motion seeking an independent expert evaluation. Appellant, however, refused to cooperate with the appointed expert. On June 14, 2024, the court undertook a de novo hearing to reconsider the initial commitment order. Dr. Muhammad Momen testified that Appellant's mental state had worsened from the initial commitment. She was being seen every day by medical personnel. Appellant was more agitated, more angry, and more uncooperative than when she first began treatment, and had stopped participating in therapy groups or any other activity. She had begun having olfactory hallucinations, believing she was smelling a skunk or poisonous gas. She was also responding to auditory and visual hallucinations. She was observed talking to herself. She believed there were people all around her, sent by her husband, trying to hurt her. She did not want to speak with her doctor, but constantly reported imaginary symptoms for non-existent illnesses. She was observed constantly writing pages and pages of incomprehensible material, which the doctor called hypergraphia. She threatened to kill people in the court. At one point, she barricaded herself in her home with her daughter and two guns. Dr. Momen diagnosed Appellant as being psychotic.

{¶15} Another hearing took place on June 28, 2024 on a motion for forced medication. Dr. Muhammad Momen again testified. He reported that Appellant's condition had continued to deteriorate since the previous hearing. He testified about other, new, symptoms that had arisen since the previous hearing on June 14. Appellant was now making incomprehensible rambling statements. She would only give disjointed answers to questions. She believed her daughter was being abused or neglected by her husband. Dr. Momen testified that Appellant continued to have olfactory, auditory, and visual hallucinations.

{¶16} Dr. Momen testified that on June 25, 2024 Appellant threatened to hurt him. (6/28/24 Tr., p. 16). She also threatened to hurt her husband, her attorney, and the assistant prosecutor. (6/28/2024 Tr., p. 16). Dr. Momen described Appellant as paranoid, psychotic, and "very significantly mentally ill." (6/28/24 Tr., p. 21). He concluded that Appellant needed more observation, a structured environment, and continued treatment before she could return to independent living. (6/28/24 Tr., p. 22). He also concluded that she presented the possibility of harm to herself and others, and had the potential to commit murder-suicide. (6/28/24 Tr., p. 22.)

{¶17} It was Dr. Momen's opinion that the concerns he had for Appellant's health and safety, and for getting her back to a normal life, would be alleviated with continued treatment. (6/28/24 Tr., p. 24).

{¶18} On June 28, 2024, the court issued its "judgment entry and orders upon motion to transfer patient." The court found once again that Appellant was mentally ill and subject to court order. The court transferred Appellant to a long-term care facility,

Heartland Behavioral Healthcare. The court held that treatment was medically necessary and in Appellant's best interest.

{¶9} This timely appeal of the June 28, 2024 judgment entry was filed on July 9, 2024.

ASSIGNMENT OF ERROR

THE MAHONING COUNTY PROBATE COURT VIOLATED R.C. 5122.15(B)(4) IN FAILING TO FIND "CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT IS A MENTALLY ILL PERSON SUBJECT TO HOSPITALIZATION BY COURT ORDER . . ." . . . "DEFINED IN RC 5122.01(B) AS 'A MENTALLY ILL PERSON WHO, BECAUSE OF HIS ILLNESS (4) (W)OULD BENEFIT FROM TREATMENT IN A HOSPITAL FOR HIS MENTAL ILLNESS AND IS IN NEED OF SUCH TREATMENT AS MANIFESTED BY BEHAVIOR THAT CREATES A GRAVE AND IMMINENT RISK TO SUBSTANTIAL RIGHTS OF OTHERS OR HIMSELF.' "

{¶10} Appellant raises two arguments under this assignment of error.

1. The affidavit of mental illness.

{¶11} Appellant argues that the affidavit of mental illness submitted by MCMHRB to the Mahoning County Probate Court pursuant to R.C. 5122.01(B)(4) was insufficient. Other than alleging the affidavit lacked probable cause, and the citation to a single case, *In re Mental Illness of Boggs*, 50 Ohio St.3d 217 (1980), Appellant provides no argument to support this issue.

{¶12} Appellee responds that the affidavit did contain clear and convincing evidence to support probable cause to temporarily detain Appellant until an evaluation could take place and a full hearing on commitment could be held.

{¶13} The process to obtain a court order for a person with mental illness under R.C. 5122.11 et seq. involves filing an affidavit with the probate court. R.C. 5122.11. The affidavit must allege that the person is subject to a court order due to a mental illness under one of the categories listed in R.C. 5122.01(B). The affidavit in this case involved category (B)(4): "Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person."

{¶14} If the judge or magistrate reviewing the affidavit determines there is probable cause that the person "is a person with a mental illness subject to court order," the court may issue a temporary order of detention until a full hearing takes place. R.C. 5122.11. Probable cause in this situation is determined using a "more likely than not" standard. *In re Boggs*, 50 Ohio St.3d 217, 220 (1990).

{¶15} We first recognize that Appellant had a prior opportunity to challenge the adequacy of the affidavit supporting involuntary commitment, but failed to do so. The initial commitment order of April 5, 2024 was a final, appealable order. "Failure to timely raise errors that may be raised on appeal constitutes a waiver of the right to challenge those errors." *Ziegler v. Ziegler*, 2003-Ohio-2553, ¶ 46 (7th Dist.).

{¶16} Even if Appellant's issue regarding the affidavit had not been waived, the affidavit in this case included documentation of her illness, showing that Appellant was suffering from paranoid delusions, had made threats of violence, and was unable to care

for her daughter. Appellant contends that delusional behavior, by itself, is insufficient to support probable cause, citing *Boggs*. In *Boggs*, though, the affidavit failed to provide any concrete instances of behavior to show there was a grave and imminent risk of harm. The affidavit in *Boggs* mentioned religious preoccupation and a history of failure to take prescribed medicines. In this case, however, the affidavit was supported by evidence of threats of violence, paranoid delusions, and incidents involving danger to Appellant and her child.

{¶17} Appellant has waived this issue by failing to timely appeal. Even so, since Appellant does not specify what aspects of the affidavit she contends are deficient, and because the circumstances in *Boggs* were vastly different, her argument has no merit.

2. Weight of the evidence supporting court ordered commitment.

{¶18} In her second argument Appellant challenges the final judgment of the court, based on the evidence offered at multiple hearings, that she presented a grave and imminent risk to substantial rights of others or to herself. She again cites the *Boggs* case, but the sole issue in that case was in regard to the content necessary in the initial affidavit to support probable cause. Appellant also cites *In re Mental Illness of Thomas*, 108 Ohio App.3d 697 (9th Dist. 1996), which held that the manifest weight of the evidence in the matter did not support court-ordered commitment. *Thomas* does set forth some basic principles when reviewing the weight of the evidence in these type of cases. First, the evidence supporting the court's findings must be clear and convincing, pursuant to R.C. 5122.15(C). *Id.* at 700. Second, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Id.* Third, "the appellate court must be ever mindful of its responsibility to refrain

from substituting its judgment for that of the trial court where there exists competent, credible evidence supporting the lower court's determination." *Id.* Fourth, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Id.*, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶19} In *Thomas*, the doctors that examined Ms. Thomas had limited direct knowledge of her condition and behavior. They primarily relied on information from her husband and her son. The commitment proceeding arose in the context of a contentious divorce. There was no evidence that Ms. Thomas threatened anyone. One doctor had not witnessed any paranoid behavior. Ms. Thomas did not seem fearful toward anyone except for her husband. One of the doctors stated that her condition was not substantial, that her judgment was not impaired except as it related to her husband, and that she could meet the ordinary demands of her life.

{¶20} The evidence in this case is in sharp contrast to *Thomas*. Appellant was under the constant care of her doctor and other hospital staff, who had a great deal of personal interaction with her. She made death threats against numerous people, including her own doctor. She suffered from three different types of delusions, and the delusions were substantial. Appellant had barricaded herself in a room with firearms. Appellant believed everyone was conspiring against her. She refused to cooperate with her doctor, with the hospital staff, and with the expert assigned to perform an independent review of her condition. Dr. Momen was unequivocal in his conclusion that Appellant was paranoid, psychotic, and very significantly mentally ill.

{¶21} Appellant's bizarre behavior also encompassed her interactions with her daughter. Appellant was constantly in fear that her daughter was ill, and her husband Jeff M. testified that she took the girl for medical treatment "a million times" without a substantial basis for doing so. (6/12/24 Tr., p. 20). Appellant forced the child to withdraw from all family contact and completely isolated her. He testified that Appellant barricaded the doors to her house, and would walk around the house at night with a flashlight peering out of the windows. She was terrified that there were natural gas and carbon dioxide leaks in her house, even though there were alarms in the house to protect her from such leaks, and even after the house was examined multiple times for leaks and none were found. She would lock herself and her daughter in the bedroom and push a large dresser against the door because she was afraid someone would break in. She was afraid someone would come in through the attic, even though there was no outside access to the attic. Jeff M. also testified that he did not feel it was safe to leave Appellant alone with their daughter.

{¶22} Finally, there was substantial evidence that Appellant expressed thoughts of harming others. She threatened to kill people in court. She also threatened to hurt or even kill her doctor, her husband, her attorney, and the assistant prosecutor. It was clear that she was ready and willing to hurt herself and her daughter.

{¶23} The evidence in this case overwhelmingly supports the trial court's determination that Appellant was mentally ill and subject to court order. Appellant's second argument is also not persuasive.

{¶24} As we can find no merit in Appellant's assignment of error, it is overruled and the judgment of the trial court is affirmed.

Conclusion

{¶25} Appellant contends that the affidavit filed in support of the initial commitment proceedings did not support probable cause for commitment, and believes the weight of the evidence does not support the conclusion that she is mentally ill subject to court order. Our review of the record reveals Appellant waived any challenge to the affidavit, here. Regardless, the affidavit contained information showing that Appellant was suffering from paranoid delusions, had made threats of violence, and was unable to care for her daughter, supported by concrete instances of such behavior. The affidavit contains more than a preponderance of the evidence to support probable cause for commitment. The evidence submitted at the commitment hearings shows Appellant was psychotic, suffered from multiple delusions and paranoia, and made death threats against many people. There was evidence that Appellant was a danger to, at least, herself and her daughter. The evidence overwhelmingly supports the trial court's conclusion that Appellant is mentally ill subject to court order. Appellant's assignment of error is overruled, and the judgment of the trial court is hereby affirmed.

Robb, P.J. concurs.

Hanni, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Probate Division, of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.