[Cite as *In re T.B.*, 2011-Ohio-1339.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: T.B.,	:	
	:	No. 11AP-99
	:	(P.C. No. MI-17,218)
(Appellant).	:	
	:	(ACCELERATED CALENDAR)

D E C I S I O N

Rendered on March 22, 2011

Law Office of Brian M. Garvine, LLC, and *Brian M. Garvine,* for appellant.

David A. Belinky, for appellee Community Mental Health and Recovery Board Serving Licking and Knox Counties.

APPEAL from the Franklin County Court of Common Pleas, Probate Division.

BRYANT, P.J.

{¶1} Respondent-appellant, T.B., appeals from a judgment of the Franklin County Court of Common Pleas, Probate Division, that, consistent with the magistrate's December 23, 2010 decision, ordered T.B.'s continued commitment to the Licking and Knox County Alcohol, Drug Addiction and Mental Health Services and granted the application of petitioner-appellee, Community Mental Health and Recovery Board Serving Licking and Knox Counties, to authorize administration of forced psychotropic medications. Because clear and convincing evidence supports the probate court's

judgment ordering continued commitment and authorizing forced psychotropic medications, we affirm.

I. Facts and Procedural History

{¶2} On December 20, 2009, respondent was charged with violating a protection order concerning a local judge. Respondent appeared before a judge of the Franklin County Municipal Court who found respondent incompetent to stand trial with no substantial probability he could be restored to competency within the applicable time frame required by law. Accordingly, the municipal court filed an affidavit with the probate court for civil commitment. Following a hearing before a magistrate of the probate court, the probate court filed an entry on May 12, 2010 overruling respondent's objections and approving court-ordered 90-day hospitalization pursuant to R.C. 5122.01(B) and forced psychotropic medications to treat respondent. Petitioner filed a notice of appeal, and this court affirmed. *Licking & Knox Community Mental Health & Recovery Bd. v. T.B.*, 10th Dist. No. 10AP-454, 2010-Ohio-3487 ("*In re T.B. III*").

{¶3} On July 2, 2010, petitioner initiated the present proceedings seeking continued commitment and forced medication in anticipation of the 90-day commitment period's expiration. After several continuances, during which respondent remained hospitalized, the magistrate conducted a hearing on December 23, 2010. Petitioner called Dr. William Bates, a psychiatrist, to testify to the need for respondent's continued commitment; respondent presented no evidence on his behalf. At the conclusion of the hearing, the magistrate decided the court should enter a judgment of continued commitment for a period not to exceed two years at Twin Valley Behavioral Healthcare ("TVBH").

{¶4} At the same hearing, the magistrate took evidence on petitioner's application to authorize administration of involuntary psychotropic medications. Petitioner presented the testimony of Dr. Bates and Dr. Giri Singh, respondent's treating physician. Respondent presented no medical or psychiatric testimony but testified on his own behalf. At the conclusion of the hearing, the magistrate decided the court should grant petitioner's application to forcibly medicate respondent.

{¶5} Following respondent's objections to the magistrate's decision, the probate court on January 26, 2011 ordered commitment and forced medication in accord with the magistrate's decision.

II. Assignments of Error

{¶6} Respondent appeals, assigning the following errors:

> I. THE PROBATE COURT'S DECISION FINDING APPELLANT TO BE A MENTALLY ILL PERSON SUBJECT TO HOSPITALIZATION BY COURT ORDER WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.
>
> II. THE PROBATE COURT'S DECISION TO FORCIBLY MEDICATE APPELLANT WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

III. First Assignment of Error – Continued Commitment

{¶7} Respondent's first assignment of error contends the order of continued commitment lacks the support of clear and convincing evidence. Stated another way, respondent alleges the continued commitment order is against the manifest weight of the evidence. Judgments supported by some competent, credible evidence addressing all the essential elements of the case will not be reversed on appeal as against the manifest

weight of the evidence. See *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279.

{¶8} "R.C. Chapter 5122 sets forth specific procedures to be followed when a person is committed to a mental hospital, whether voluntarily or involuntarily. When commitment is against a person's will, it is particularly important that the statutory scheme be followed, so that the patient's due-process rights receive adequate protection." *In re Miller* (1992), 63 Ohio St.3d 99, 101. "[T]he individual's right against involuntary confinement depriving him or her of liberty must be balanced against the state's interest in committing those who are mentally ill and who pose a continuing risk to society or to themselves." *In re T.B.*, 10th Dist No. 06AP-477, 2006-Ohio-3452, ¶5 ("*In re T.B. I*"), citing *In re Miller*. Although confining mentally ill persons adjudged to be a risk to themselves or society both protects society and provides treatment in the hope of alleviating the mental illness, the state nonetheless must meet a heavy burden to show that the individual in fact suffers from a mental illness and must be confined in order to treat the mental illness. *In re T.B. I* at ¶6, citing *State v. Welch* (1997), 125 Ohio App.3d 49, 52.

{¶9} "Under Ohio law there is a three-part test for an involuntary commitment. Each part of this test must be established by clear and convincing evidence. The first two parts of the test are found in R.C. 5122.01(A)." *In re T.B. I* at ¶7. Initially, "there must be a substantial disorder of thought, mood, perception, orientation, or memory." Id. Secondly, "the substantial disorder of thought, mood, perception, orientation, or memory must grossly impair judgment, behavior, capacity to recognize reality, or the ability to meet the ordinary demands of life. The third part of the test requires that the mentally ill person be

hospitalized for one of the reasons set forth in R.C. 5122.01(B)." (Citations omitted.) Id. at ¶7-8. See also *In re J.F.*, 10th Dist. No. 06AP-1225, 2007-Ohio-2360, ¶24. The standard for a continued involuntary commitment does not materially differ from that applied to an initial involuntary commitment. Cf. *In re T.B.,* 10th Dist. No. 06AP-769, 2006-Ohio-4789, ("*T.B. II*") (involving continued commitment) and *In re J.F.* (addressing continued commitment) with *In re D.F.*, 10th Dist. No. 08AP-252, 2008-Ohio-2294 (resolving an initial involuntary commitment).

{¶10} As a threshold matter, petitioner must establish respondent suffers from a substantial disorder of thought, mood, perception, orientation, or memory. Both parties stipulating to Dr. Bates' qualifications as an expert, Dr. Bates testified respondent suffers from a delusional disorder that is primarily a disorder of thought. According to Dr. Bates, respondent "has fixed false beliefs of a persecutory and actually of an amorous nature." (Continued Commitment Hearing Tr. 11.) Dr. Bates explained respondent has made no improvement "whatsoever" in his psychiatric condition since the probate court initially ordered respondent's hospitalization when he was found incompetent to stand trial on the charge of violating a protection order in December 2009. (CC Tr. 14.) Dr. Bates added that respondent is "in the exact same mental state that he was when he came in." (CC Tr. 23.) Dr. Bates' testimony meets the first prong of the three-part test in defining the substantial mental illness from which respondent suffers.

{¶11} The second prong of the test requires that the substantial disorder grossly impairs respondent's judgment, behavior, capacity to recognize reality, or the ability to meet the ordinary demands of life. Dr. Bates testified respondent's delusional disorder grossly impairs respondent's judgment and behavior and affects respondent's capacity to

recognize reality and meet the ordinary demands of his life. (CC Tr. 11.) Although Dr. Bates did not elaborate, his testimony nonetheless supports the probate court's determination consistent with his testimony and satisfies the second prong of the test. Indeed, respondent for the most part does not dispute the probate court's findings with respect to the first two prongs of the three-pronged test. Respondent, however, argues petitioner failed to present clear and convincing evidence to satisfy the third prong of the test.

{¶12} The third prong requires clear and convincing evidence under R.C. 5122.01(B)(1), (2), (3), or (4). Pursuant to R.C. 5122.01(B), a mentally ill person subject to hospitalization is one who (1) "[r]epresents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm"; (2) "[r]epresents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness"; (3) "[r]epresents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence" he or she "is unable to provide for and is not providing" for his or her "basic physical needs because" of his or her "mental illness and that appropriate provision for those needs cannot be made immediately available in the community"; or (4) "[w]ould benefit from treatment in a hospital" for his or her "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." R.C. 5122.01(B)(1)-(4).

{¶13} The Supreme Court of Ohio established a totality of the circumstances test to determine whether a person is subject to hospitalization under R.C. 5122.01(B). *In re Burton* (1984), 11 Ohio St.3d 147, 149. The factors the probate court is to consider include, but are not limited to: (a) "whether, in the court's view, the individual currently represents a substantial risk of physical harm to himself or other members of society"; (b) "psychiatric and medical testimony as to the present mental and physical condition of the alleged incompetent"; (c) "whether the person has insight into his condition so that he will continue treatment as prescribed or seek professional assistance if needed"; (d) "the grounds upon which the state relies for the proposed commitment"; (e) "any past history which is relevant to establish the individual's degree of conformity to laws, rules, regulations, and values of society"; and (f) "if there is evidence that the person's mental illness is in a state of remission, the court must also consider the medically-suggested cause and degree of the remission and the probability that the individual will continue treatment to maintain the remissive state of his illness should he be released from commitment." *In re T.B. I* at ¶9, citing *In re Burton* at 149-50.

{¶14} Dr. Bates' above-noted testimony addressed some of the factors the Supreme Court delineated in *Burton*. Additionally, Dr. Bates testified the circumstances of respondent's initial commitment after he was charged with violating a protection order that forbade respondent from making contact with a local judge is "a pattern that he's repeated over and over in the past. It's part of his delusional disorder. He just violates protection orders." (CC Tr. 10.) Dr. Bates also stated respondent "passively * * * represents a danger to himself," that he is "a danger to others," and he has "made threats to the Judge in the past and caused her great mental distress." (CC Tr. 12.)

{¶15} In clarifying the nature of respondent's delusional disorder, Dr. Bates testified respondent's disease "is a chronic one" for which respondent has expressed symptoms for at least ten years. (CC Tr. 13.) Dr. Bates explained that when respondent does not take medication, respondent's delusional disorder "comes back very strongly." (CC Tr. 13.) Noting respondent has refused any treatment since his commitment following the December 2009 charge in the municipal court, Dr. Bates stated respondent "is essentially the same as he was back when he violated the protection order." (CC Tr. 13.) Familiar with respondent's history, Dr. Bates testified that whenever respondent is released from hospitalization, "he stops taking his medication and we see this repeat behavior." (CC Tr. 14.) Dr. Bates opined inpatient hospitalization is the least restrictive and "the setting to provide appropriate treatment at this point" because respondent has refused the recommended treatment as an outpatient and even continues to refuse medication during his commitment. (CC Tr. 15.) The probate court appropriately found the evidence satisfied R.C. 5122.01(B)(2), (3), and (4).

{¶16} Respondent argues petitioner failed to meet its burden to demonstrate respondent made any recent threats that place another in reasonable fear of violent behavior and serious physical harm under R.C. 5122.01(B)(2). To the contrary, respondent argues, petitioner presented no evidence of any "recent" threats at all. The hearing, however, was a continued commitment hearing, and Dr. Bates testified not only that respondent's condition continued from his previous commitment but that his conduct in violating the protection order caused the judge to be fearful. When asked on cross-examination how respondent could be considered presently dangerous, Dr. Bates responded, "Well, he's dangerous presently because he's in the exact same mental state

that he was when he came in in which he violated an order." (CC Tr. 23.) Indeed, throughout his testimony, Dr. Bates indicated respondent's condition had not changed and respondent was the same as when he began his hospitalization following the municipal court proceedings. Dr. Bates further explained the lack of recent threats was due to the controlled nature of respondent's hospitalization, pointing out TVBH, as part of respondent's care, does not allow respondent to have contact with the judge, even by mail.

{¶17} Under the totality of the circumstances, Dr. Bates' testimony presents clear and convincing evidence to support the trial court's finding that respondent is a mentally ill person who, because of his illness, represents a substantial risk of physical harm to others under R.C. 5122.01(B)(2). Even though respondent had not performed any additional acts since he last violated the protection order that led to his commitment, Dr. Bates testified to the continuing nature of respondent's illness and stated respondent's mental state had not changed since he began his hospitalization. Additionally, Dr. Bates suggested respondent had not perpetrated any additional acts to place the judge in fear for her safety due to TVBH's policy not to allow respondent to contact the judge, by mail or otherwise, rather than to any improvement in respondent's condition or his delusions. The circumstances regarding the protection order and subsequent commitment, coupled with respondent's refusal to accept treatment and his unchanging condition, are sufficient to show either "recent threats" or "other evidence of present dangerousness." See *In re T.B. II* at ¶15-16 (examining respondent's delusional disorder as a continuation of his past behavior and explaining respondent's need for continuing treatment as his condition had not changed since he began hospitalization).

{¶18} Even if the probate court lacked clear and convincing evidence to satisfy R.C. 5122.01(B)(2), clear and convincing evidence supports a finding under R.C. 5122.01(B)(4) that, without the hospital treatment, respondent creates a grave and imminent risk to the substantial rights of others. Dr. Bates specifically testified respondent's behavior substantially interferes with the judge's rights and respondent's condition has not changed in this regard since the previous commitment proceedings. (CC Tr. 23-24.) Dr. Bates further testified that respondent would greatly benefit from inpatient treatment as the only way to provide him with the medication he needs to improve his condition.

{¶19} Because clear and convincing competent, credible evidence supports the probate court's determination that respondent continue to be involuntarily hospitalized, we overrule respondent's first assignment of error.

IV. Second Assignment of Error – Forced Medication

{¶20} In his second assignment of error, respondent contends the probate court's decision to forcibly medicate respondent lacks the support of clear and convincing evidence. Again, respondent challenges the manifest weight of the evidence, and the standard of review is the same as above.

{¶21} In *Steele v. Hamilton Cty. Community Mental Health Bd.*, 90 Ohio St.3d 176, 2000-Ohio-47, the Ohio Supreme Court stated 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." Id. at 187-88.

{¶22} During the forced medication hearing, Dr. Singh, the attending psychiatrist at TVBH and respondent's treating physician, testified respondent suffers from a delusional disorder requiring medication management and "there's an imminent and immediate need to medicate [respondent] to reduce his delusions and clear his mental state." (Forced Medication Hearing Tr. 6-7.) Dr. Singh testified respondent, throughout the course of his treatment, repeatedly denied the existence of his mental illness. According to Dr. Singh, respondent's delusions have increased in severity over the past six months to the point that just prior to the hearing respondent became so agitated and out of control that he "posed imminent danger" and required emergency forced medication. (FM Tr. 8.)

{¶23} Dr. Singh opined that, as a result of respondent's condition, respondent "lacks the insight into his illness right now" and he does not have "capacity to make decisions regarding his medication." (FM Tr. 9.) Dr. Singh noted respondent would not participate in a discussion on concerns about the medication and possible side effects, and respondent "fails to understand the main reason for all this behavior is his own mental illness. Therefore, he fails to understand that he is mentally ill and doesn't understand that in the past whenever he took the medication these behaviors subsided." (FM Tr. 17.) Dr. Singh testified respondent's failure to see the connection between his behavior and the medication "indicates that [respondent is] lacking the capacity." (FM Tr. 18.)

{¶24} In addition, Dr. Singh testified the only way respondent may be discharged from a hospital setting is to "control his delusions with medication." (FM Tr. 11.) In

reviewing the list of proposed medications, Dr. Singh explained some medications are available in pill form but, if respondent refuses to take medication by mouth, the list also includes options of medications in an injectable form, providing doctors flexibility in respondent's treatment. Dr. Singh stated respondent's "prognosis is really bleak without medication" and "[t]he benefits outweigh the risks" of the medication. (FM Tr. 11.)

{¶25} Dr. Singh lastly testified no less restrictive treatment alternative for respondent exists at this time. Dr. Singh explained respondent's illness "has its own natural course with flexible ups and downs" where "the delusions temporarily subside." (FM Tr. 12.) This "natural cycle of the illness" produces the undesirable consequence of reinforcing respondent's belief "of not being ill and not needing medication." (FM Tr. 12-13.) According to Dr. Singh, the medication is the only way to effectively treat respondent's delusional disorder. (FM Tr. 16.)

{¶26} Dr. Bates also testified in the forced medication hearing, agreeing with Dr. Singh's reasons for and the nature of the proposed treatment. Dr. Bates agreed respondent lacks the capacity to give or withhold informed consent, in part because respondent does not believe he has a mental illness. As a result, respondent "doesn't accept a number of relevant facts and, therefore, you can't get to a reasonable conclusion" in trying to explain to respondent the need for medication. (FM Tr. 21.) Dr. Bates stated he has "[n]o doubt" that "[t]he benefits far outweigh the risks" of the proposed medications. Further, Dr. Bates stated not only was the proposed medication the least restrictive treatment alternative for respondent at this time but respondent's delusions will not improve without the medication.

{¶27} Taken together, the doctors' testimony addresses the three points in *Steele* and provides clear and convincing evidence as to all three requirements for forced medication, as it demonstrates respondent's denial precludes his being able to give informed consent, he cannot improve or even be released from the hospital without first taking the medication, and no less intrusive treatment is available. Accordingly, the order for forced medication has the support of clear and convincing competent, credible evidence, and we overrule respondent's second assignment of error.

V. Disposition

{¶28} Having determined that neither the continued commitment order nor the forced medication order is against the manifest weight of the evidence, we overrule respondent's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Probate Division.

Judgment affirmed.

SADLER and TYACK, JJ., concur.

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