IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 23, 2014 Session

DIRECTOR, TVHS, MURFREESBORO CAMPUS v. LAWRENCE HARTMAN

Appeal from the Chancery Court for Rutherford County
No. 13MH3 Robert E. Corlew, III, Chancellor

No. M2013-01141-COA-R3-CV - Filed February 26, 2014

The trial court ordered a sixty-eight year old army veteran to be involuntarily hospitalized because it found that he suffered from a mental illness that rendered him "unable to avoid severe impairment or injury from specific risks." *See* Tenn. Code Ann. § 33-6-501. The only evidence of actual risk, however, was that others might easily be able to take financial advantage of his confusion or his trusting nature. We reverse the trial court and order the defendant's release, because it is not constitutionally or statutorily permissible to deprive an individual of liberty when he poses no danger to others, and when the only danger he poses to himself is danger to his own property or potential for financial loss.

Tenn R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ. joined.

Darren Lee Drake, Murfreesboro, Tennessee, for the appellant, Lawrence Hartman.

Bradley Wayne Flippin, Nashville, Tennessee, for the appellee, Director, TVHS, Murfreesboro Campus.

OPINION

I. BACKGROUND

The following account of the involuntary commitment proceedings that are the subject of this appeal is largely drawn from the Statement of the Evidence of the commitment hearing. The facts themselves are not in dispute, but only the legal conclusions that may be permissibly drawn from those facts. The defendant Lawrence Hartman is a sixty-eight year

old retired Army veteran and a resident of Minnesota. He apparently has few family ties. He has a 100% service-related disability for Post-Traumatic Stress Disorder (PTSD) that is related to his combat service in Vietnam. In January of 2013, he lost his home to foreclosure, but the reasons are unknown.

Mr. Hartman spent a lot of time driving alone in his personal vehicle and visiting army bases around the country. He regularly rented hotel rooms at military bases when he traveled. In March of 2013, he was on the way to Arnold Air Force Base in Tullahoma. He planned to stay there a few days and then to visit other bases in Georgia and Alabama. But, he began to experience severe tooth pain while on the road, and he sought emergency dental treatment at the Alvin C. York Veterans Administration Medical Center in Murfreesboro, Tennessee.

Once inside the center, Mr. Hartman was informed that there was no dental clinic available. It appeared to the employee at the desk that Mr. Hartman was speaking in a confused and incoherent manner. Staff psychiatrist Dr. Elizabeth Hoover was notified. She interviewed Mr. Hartman and concluded that he was suffering from several mental conditions and that his condition warranted holding him for further investigation.

On March 20, 2013, the Director of the Veterans Administration Hospital brought a "Complaint for Judicial Hospitalization" in the Chancery Court of Rutherford County, naming Mr. Hartman as the defendant. The complaint was brought under Tenn. Code Ann. § 33-6-501, which allows an individual to be involuntarily admitted for inpatient treatment if the individual "poses a substantial likelihood of serious harm." As is required by Tenn. Code Ann. § 33-3-602, certificates of need from two physicians were attached to the complaint. The allegations of the complaint were set out on a standard pre-printed form with content that closely mirrors the requirements of the involuntary commitment statutes.

The form contained a set of boxes to be checked to indicate the reason the defendant poses a substantial likelihood of serious harm. The boxes to be checked for attempted suicide, homicide, or other violent behavior and for placing others in reasonable fear of violent behavior and serious physical harm remained unchecked. The one checked box was beside the following language: "the defendant is unable to avoid severe impairment or injury from specific risks as shown by _____." The line following this incomplete sentence was left blank.

The hearing on the Complaint was conducted on April 9, 2013. Mr. Hartman was represented by a court-appointed attorney. *See* Tenn. Code Ann. § 33-3-608. Dr. Hoover and Mr. Hartman both testified. Dr. Hoover testified that Mr. Hartman suffered from PTSD, dementia, and psychosis and that he displayed symptoms of confusion and paranoia. She

further testified that he will not take medications if he is not in a controlled environment and that he lacked the capacity to care for himself. She acknowledged, however, that he showers, cleans up after himself, grooms himself, and goes about his daily activities without assistance. She further testified that he has not threatened or attempted suicide or homicide or other violent behavior, but she stated that he nonetheless lacked the capacity to care for himself in that he was unable to avoid severe injuries resulting from specific risks.

Asked to describe those injuries and risks, Dr. Hoover stated that Mr. Hartman was easily confused by the actions of other people and was extremely vulnerable to financial injury as a result of fraudulent actions by others. She knew that he had recently lost his home due to foreclosure, and she testified that he had recently provided his banking information to another patient in the psychiatric ward. She noted that there were no family members or friends to care for Mr. Hartman, and she stated that there was no less drastic alternative than to have him involuntarily hospitalized.

When Mr. Hartman took the stand, he showed himself to be oriented as to time and place. The court found, however, that "he testified in a somewhat rambling and incoherent manner." He testified that he had been involuntarily hospitalized once over twenty years ago during a dispute with his wife, but that he did not need or want to be hospitalized at the present time. He admitted that he suffered from PTSD, but stated that Dr. Hoover was lying about his diagnosis of dementia and paranoia.

Mr. Hartman testified that he sits in a chair at the hospital most of the day and thinks about both the past and the future. He acknowledged that he did not take the Zoloft that was prescribed for him because it made him feel aggressive, as if he wanted to hit someone, but he stated that he had never struck anyone as a result of his medication.

He also testified that he was aware of his finances, and he identified the name and location of his Minnesota bank, and the amounts of the monthly checks for his service-connected disability and social security that are directly deposited into his account. He stated that he pays monthly bills on his credit cards, his vehicle payment, and a storage unit in Minnesota that he rents. He also testified that he owns five acres of land in Wautosa, Wisconsin.

After testimony and oral argument, the trial court entered an order summarizing the evidence it heard and setting out its findings. The court found that Mr. Harman was subject to involuntary care and treatment under Tenn. Code Ann. § 33-6-501 "on the basis of clear, unequivocal and convincing evidence." Among other things, the court noted that Mr. Hartman testified that the situation has been emotionally overwhelming for him and it declared that "he cannot live currently in a less drastic setting." The court accordingly

directed that Mr. Hartman be admitted to the psychiatric ward at the Alvin C. York VA Medical Center. This appeal followed.

II. ANALYSIS

Involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of that individual's constitutional right to liberty. *Specht v. Patterson*, 386 U.S. 605, 608 (1967); *State v. Phillips*, 968 S.W.2d 874, 879 (Tenn. Crim. App. 1996); *Vickroy v. Pathways, Inc.*, W2003-02620-COA-R3-CV, 2004 WL 3048972 (Tenn. Ct. App. Dec. 30, 2004) (no Tenn. R. App. P. 11 application filed). The courts may not, therefore, order involuntary commitment without according the individual all the due process rights that apply when his constitutional rights are threatened, including the requirement that the necessity of confinement be proved by clear and convincing evidence. *State v. Groves*, 735 S.W.2d 843, 846 (Tenn. Crim. App. 1987).

The United States Supreme Court has explained the circumstances that can justify such confinement.

> A finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that that term can be given a reasonably precise content and that the 'mentally ill' can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.

O'Connor v. Donaldson, 422 U.S. 563, 575 (1975).

Conversely, the State may commit an individual to a mental hospital if his potential for doing harm, to himself or to others, is great enough to justify such a massive curtailment of liberty. *Suzuki v. Yuen*, 617 F.2d 173, 176 (9th Cir. 1980) (citing *Humphrey v. Cady*, 405 U.S. 504, 509 (1972)); *see also, Addington v. Texas,* 441 U.S. 418 (1979). Before ordering involuntary hospitalization, the State must accord the individual involved the constitutional protection of procedural due process. *State v. Phillips*, 968 S.W.2d at 879.

In Tennessee, the governing law on involuntary commitment is found at Tenn. Code Ann. § 33-6-401 *et seq* (emergency detention) and Tenn. Code Ann. § 33-6-501 *et seq* (non emergency involuntary admission to inpatient treatment). Both sections permit involuntary commitment only if the defendant suffers from mental illness and if his condition poses "a substantial likelihood of serious harm."

Tenn. Code Ann. § 33-6-501 defines "a substantial likelihood of serious harm" as follows:

> IF AND ONLY IF
> (1) (A) a person has threatened or attempted suicide or to inflict serious bodily harm on the person, OR
> (B) the person has threatened or attempted homicide or other violent behavior, OR
> (C) the person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR
> (D) the person is unable to avoid severe impairment or injury from specific risks, AND
> (2) there is a substantial likelihood that the harm will occur unless the person is placed under involuntary treatment,
> THEN
> (3) the person poses a "substantial likelihood of serious harm" for purposes of this title.

There is no dispute that Mr. Hartman suffers from mental illness. The only question is if that illness presents "a substantial likelihood of serious harm." Dr. Hoover testified that Mr. Hartman has not threatened or attempted suicide or homicide or any other violent behavior, and there is no evidence to suggest otherwise. But she stated nonetheless, using the language of the statute, that he was unable to avoid severe injuries resulting from "specific risks." Asked what those risks were, she testified only that Mr. Hartman might suffer financial injury because of the actions of others. The questions in this appeal center on the whether the possibility of such injury to property falls within the statutory category of "specific risks" which can justify an order of involuntary hospitalization in Tennessee. We believe that it does not.

Statutory construction is a question of law that is reviewed *de novo* without any presumption that the trial court's legal determinations were correct. *Gleaves v. Checker Cab Transit Corp*., 15 S.W.3d 799, 802 (Tenn. 2000); *Myint v. Allstate Ins. Co.,* 970 S.W.2d 920, 924 (Tenn. 1998). The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *In re Angela E*., 303 S.W.3d 240, 246 (Tenn. 2010); *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004); *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000). The court must ascertain the legislative intent without unduly restricting or expanding the statute's coverage beyond its intended scope. *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993). *See also Gleaves*, 15 S.W.3d at 802; *Worley v. Weigels, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996).

When a statute is clear, we simply apply its plain meaning without further complicating the task. *Eastman Chemical Co. v. Johnson,* 151 S.W.3d 503, 507 (Tenn. 2004). When a statute is ambiguous, however, we may refer to the broader statutory scheme, the history of the legislation, or other sources to discern its meaning. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008). Courts must presume that a legislative body was aware of its prior enactments and knew the state of the law at the time it passed the legislation. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). A fundamental rule of statutory construction is that the Court has "an obligation to interpret statutes in a way that preserves their constitutionality." *Keen v. State,* 398 S.W.3d 594, 615 (Tenn. 2012) (quoting *Jackson v. Smith*, 387 S.W.3d 486, 495 (Tenn. 2012)).

The use of the term "specific risks" in Tenn. Code Ann. § 33-6-501 without further elaboration as to the nature of those risks is necessarily ambiguous, for it is a "catch-all" provision, designed to apply to those situations that do not fit neatly into the categories of suicide, homicide, violence or threat, but which nonetheless present other dangers which are of sufficient magnitude to justify confining an individual against his will.

Mr. Hartman notes that only three states specifically allow for property damage to even be a consideration in involuntary hospitalization. For example, *Suzuki v. Yuen*, 617 F.2d 173, was a class action in which the court was asked to rule on the constitutionality of a Hawaii statute that allowed the state to order the commitment of mentally ill persons deemed to be dangerous to property. The statute defined the term 'dangerous to property' as "inflicting, attempting or threatening imminently to inflict damage to any property in a manner which constitutes a crime, as evidenced by a recent act, attempt or threat."

The court noted that in commitment proceedings, the law had to balance the constitutional right of an individual to be free from "such a massive curtailment of liberty," with the danger to the State from allowing the individual to remain unconfined. The court declared that it did not have to decide whether a State may ever commit a person who is dangerous to property alone, because it held that the statutory provision under challenge was too broad and thus unconstitutional, because it "would allow commitment for danger to any property regardless of value or significance," whether or not that danger outweighed the defendant's liberty interest. *Suzuki v. Yuen*, 617 F.2d at 176.

The North Dakota Supreme Court has been called upon several times to apply that State's involuntary hospitalization statute, which defines a "person requiring treatment" as one "who is mentally ill, an alcoholic, or drug addict, and there is a reasonable expectation that if the person is not hospitalized there exists a serious risk of harm to himself, others, **or property**." See, *In Interest of Nyflot*, 340 N.W.2d 178, 183 (N.D. 1983)(quoting § 25–03.1–02(11) N.D.C.C)(emphasis added).

The *Nyflot* case involved a woman who was determined to present a serious risk of harm in part because she started two separate fires in the women's bathroom at the dormitory in the State Hospital. The court upheld her involuntary hospitalization, even though she testified that she did not intend to harm anyone, including herself, and that she felt that there was no likelihood of such harm under the circumstances. The court noted that "her subjective intentions and assessment of the likelihood of harm, however, do not alter the fact that she was willing to start fires to attract attention to herself." *In the Interest of Nyflot*, 340 N.W.2d at 184.

But the court distinguished *Nyflot* when it reached the opposite conclusion in a more recent case that closely resembles the one before us. It was undisputed in the case of *In re H.G.,* 632 N.W.2d 458, 462 (N.D. 2001), that the defendant businesswoman suffered from bipolar disorder. She argued, however, that she was not a "person requiring treatment" under § 25–03.1–02(11) N.D.C.C, and therefore that the trial court erred in ordering that she be involuntarily hospitalized and treated. The proof at trial showed that she had engaged in some bizarre behavior, like dancing on her lawn in the middle of the night, but the trial court was more concerned about her business practices, like writing a $1,000 check in anticipation of a check coming in.

The trial court concluded that there was a serious risk that H.G.'s mental condition would endanger her property. That court relied on N.D.C.C. § 25-03.1-02(11)(d), which reads, "a serious risk of harm exists when there is a substantial likelihood of a substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors."

However, the North Dakota Supreme Court reversed, holding that "lack of prudence in business affairs is not the type of dangerousness to property envisioned by the statute as a basis for involuntary commitment," *In re H.G.*, 632 N.W.2d at 462, and that "[b]efore a person is deprived of their liberty through involuntary commitment proceedings, the danger to property a respondent potentially presents should more closely resemble the fires in *Nyflot* than the business practices of H.G." *Ibid*. at 463.

Tennessee's involuntary commitment statute does not include risk of damage to property as a ground for such commitment.[1] In the absence of such a specific inclusion, we decline to hold that an individual's potential financial irresponsibility is the type of serious harm envisioned in the statute.

---

[1]Tennessee law provides for other procedures to protect the property of an incompetent individual, such as the statutes on conservatorships.

Even if harm to property could be read into the statute, which we do not think it can, we would still conclude that the risk identified herein does not meet the requirements for involuntary commitment. If we apply the logic of *In re H.G.* to the present case, even if Tenn. Code Ann. § 33-6-501 were to specifically to include damage to property in its definition of "a substantial likelihood of serious harm," the possibility that others would take advantage of Mr. Hartman's condition to cheat him out of his property would not constitute a sufficient basis to confine him against his will, in violation of his constitutional rights.

Accordingly, we reverse the trial court's order and order that Mr. Hartman be released from confinement.

III.

The order of the trial court is reversed. We remand this case to the Chancery Court of Rutherford County for any further proceedings necessary. Tax the costs on appeal to the appellee.

_____
PATRICIA J. COTTRELL, JUDGE