2018 IL App (1st) 170306-U

No. 1-17-0306

Order filed November 28, 2018

Third Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 16867
	)	
OLACHI ETOH,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Circuit court order committing defendant to inpatient therapy was not against manifest weight of evidence.

¶ 2 After a bench trial, defendant Olachi Etoh was found not guilty by reason of insanity of aggravated kidnapping and unlawful restraint. After holding a commitment hearing, the circuit court found that defendant was a danger to herself and "potentially" to others and ordered her committed to the Department of Human Services for inpatient treatment.

¶ 3 On appeal, defendant challenges the court's finding that she was a danger to herself. She also claims that a finding that she is "potentially" a danger to others cannot serve as a basis for commitment pursuant to section 5-2-4 of the Mental Health and Developmental Disabilities Code (Code) (730 ILCS 5/5-2-4 (West 2014)). We affirm.

¶ 4 BACKGROUND

¶ 5 In September 2014, defendant was arrested and charged with aggravated kidnapping and unlawful restraint after she picked up a two-year-old child, who was with his mother, and attempted to walk down a set of escalators at O'Hare Airport. The mother caught defendant, regained control over her son, and then reported the incident to the authorities, who then arrested defendant.

¶ 6 At trial, two forensic psychology experts testified on defendant's behalf. Both experts noted that defendant referenced having past symptoms of psychosis, including auditory hallucinations in the form of hearing voices. At the time of the kidnapping, defendant was manifesting symptoms of psychotic mental illness; she believed she had heard gunshots at the airport and thought she was helping the mother and child. Based on the available information, including mental health treatment the day after defendant was arrested, the experts opined that defendant was legally insane at the time of the alleged offense and lacked substantial capacity to appreciate the criminality of her conduct.

¶ 7 The circuit court accepted the experts' opinions and found defendant not guilty by reason of insanity on both counts. The court ordered defendant to be evaluated by the Department of Human Services.

¶ 8 On November 7, 2016, the court held a commitment hearing pursuant to section 5-2-4(a) of the Code. 730 ILCS 5/5-2-4(a) (West 2014). Dr. Syed Hussain testified that since May 2016, he had been defendant's treating psychiatrist at Elgin Mental Health Center (Elgin). Before treating defendant, Dr. Hussain reviewed (1) notes from defendant's previous treating psychiatrist at Elgin, (2) previous psychiatric and psychological evaluations compiled by defendant's physicians, and (3) police reports from the incident at O'Hare. In addition, Dr. Hussain met with defendant weekly and sometimes several times a week depending on defendant's clinical condition, mental state, need to talk, need for assessment, and other reports from staff members.

¶ 9 Dr. Hussain diagnosed defendant with "bipolar affective disorder with psychotic features," which is currently in "partial remission." This disorder is characterized by two poles of behavior which are exhibited periodically: a manic state, where the mood could be elated, euphoric, or irritable; and a depressive state, where a person exhibits depressive symptoms. Dr. Hussain opined that defendant has a history of exhibiting both poles as well as "really significant and severe psychotic symptoms consisting of delusions and hallucinations."

¶ 10 Dr. Hussain explained that at the time of the offense, defendant had "apparent delusions that someone is going to attack her and she started hearing voices." Defendant told Dr. Hussain that she heard gunshots at the airport and believed that people were in danger. She further thought the mother had given permission "to try and save the child from the incident." Dr. Hussain explained that prior to the kidnapping, defendant had not met with her then-treating psychiatrist, Dr. Greenberg, for a couple months.

¶ 11 At the beginning of her treatment with Dr. Hussain, defendant denied hearing voices or being paranoid. However, Dr. Hussain observed that during their meetings, defendant "was responding to stimuli, whether it's a false belief or the voices themselves, which is indicative of pretty severe psychosis." Defendant later admitted to hearing "some noise" but did not think that it was a hallucination.

¶ 12 Dr. Hussain initially prescribed defendant several medications but had to make changes because they were affecting her heart. Dr. Hussain subsequently prescribed Risperdal for anxiety, agitation, and mood stabilization, but defendant was not receiving an "adequate dose." Defendant "had shown some response" to the Risperdal. He also prescribed Clonazepam to control anxiety, agitation, and ability to sleep.

¶ 13 Throughout the course of treatment, Dr. Hussain did not observe defendant exhibit stability in her symptoms. Instead, he described her symptoms as "waxing and waning." Defendant had not been allowed to go into the community alone or with supervision. Dr. Hussain testified that he did not believe defendant would be able to make her therapy sessions without supervision if she did not receive inpatient treatment.

¶ 14 At the time of the hearing, defendant was in partial remission, meaning that some symptoms of illness were present, and others were not. (In contrast, full remission means there are no symptoms of illness.) Dr. Hussain explained that defendant is "at risk for, you know, harm to others without being in full remission. There's always that risk." Elaborating, Dr. Hussain noted that unsupervised on-grounds or supervised off-grounds passes entail some element of risk, "[e]specially with people who have hypomania, mania, or psychosis," because people with those disorders "can be impulsive" and "can become a high risk of escape or hurting somebody

else." Because defendant had a history of suicide attempts, Dr. Hussain opined that it was in defendant's best interest to ensure that she was is in full remission before giving her additional privileges.

¶ 15 Dr. Hussain's expert opinion was that defendant should remain in inpatient treatment at Elgin because, due to her partial remission, she "could still pose a threat to herself or others if left to her own devices." He explained:

> "Well, any illness that's not fully remitted is not in full control. There's always a risk of the illness, you know, coming back in full form or fashion.
>
> But, at that point, which means that, you know—because given the history she's had the delusions and hallucinations for quite a while, starting in Baltimore, the risk of relapse is extremely high.
>
> And sometimes even with a full remission with medications, they could have what's called breakthrough episodes which means that the severe nature of the illness can break through the barrier of medications.
>
> So, again, partial remission, the risk of a full-blown relapse is extremely high. So that will put them at a high risk of committing another crime or harming themselves or somebody else.
>
> And, you know, [defendant] had also a history of attempted suicide in 2009. So obviously she's had, you know, really, pretty serious symptoms of hurting somebody else or herself, so she would be at risk of a relapse."

¶ 16 On cross-examination, Dr. Hussain testified that defendant was first diagnosed with bipolar disorder in 2009, when she was hospitalized for hearing voices and attempted suicide.

Defendant was released and was treated in the community for mental illness. In 2012, defendant was hospitalized again after she attempted suicide.

¶ 17 Dr. Hussain stated that he was unaware of any evidence that defendant had harmed anyone prior to her arrest at O'Hare. With respect to the incident at O'Hare, defendant did not physically harm or threaten the mother, the child, or any police officers. While at Elgin, defendant had "a couple of incidents of conflict with other patients, but—there was no violence, *per se*; but there were some disagreements and [Elgin staff] had to counsel her as well as the other patient." Dr. Hussain testified that to his knowledge, defendant had not harmed or threatened anyone at Elgin.

¶ 18 Dr. Hussain then testified that he was unable to say whether defendant's condition has gotten better or worse since beginning treatment. He explained: "Well, she is not in full remission. That's what I can say. She is not free of symptoms. You know, because 'worse' could have a lot of meanings now." Dr. Hussain noted that defendant was "very compliant with most" of the various medication recommendations. But, he noted, there were "multiple levels of her acceptance and unacceptance of some of the medications and some of the other treatment options available." Dr. Hussain stated that defendant had "inadequate insight into [her] illness," which he characterized as a risk factor and a basis for continuing treatment.

¶ 19 Dr. Carl Wahlstrom testified as a defense expert in the field of forensic psychiatry. He conducted an evaluation, which included the examination of defendant, a review of hospital records, a meeting with the director of court services, and a meeting with a member of the treatment staff. In total, his evaluation took just over four hours. Dr. Wahlstrom also diagnosed defendant with bipolar disorder with psychotic features, but believes she was in full remission.

¶ 20 Dr. Wahlstrom testified that defendant was hospitalized in 2009 and 2012, but neither hospitalization was due to a risk of harm to others. Leading up to the incident at O'Hare, defendant had "the gradual onset of some hypomania and then later manic symptoms." At O'Hare, defendant was having manic symptoms and was under the belief that a threat was occurring in the airport involving gunshots. Dr. Wahlstrom testified these delusional beliefs leading to defendant's actions were caused by "breakthrough symptoms in the context of actually being compliant by and large with her medication treatment."

¶ 21 Dr. Wahlstrom testified that defendant's symptoms went into remission when she was treated at the jail, and her condition has dramatically improved since the incident at O'Hare. He stated that she has responded well to medications received at Elgin, but she did not tolerate certain medications, which caused low sodium levels in her body. Dr. Wahlstrom testified that defendant "now more than ever understands the importance of continuing with medications and psychiatric and psychological treatment. She also understands that breakthrough symptoms can occur and that there has to be a mechanism in place" to notify clinicians in order to take appropriate action.

¶ 22 Dr. Wahlstrom opined that defendant could be safely released into the community as long as certain considerations were taken. He agreed with a report prepared by DHS a year prior to the hearing that defendant had "a low risk of harm to herself or others." Dr. Wahlstrom does not think defendant was expected to inflict serious physical harm on herself or others.

¶ 23 On cross-examination, Dr. Wahlstrom admitted that he met with defendant only once in person and had also spoken with her on the phone. Of the four hours Dr. Wahlstrom spent evaluating defendant, about two and a half hours were spent talking to her. Dr. Wahlstrom

acknowledged that he learned that defendant had stopped attending her out-patient psychiatry sessions in July 2014. Dr. Wahlstrom stated that defendant needed a structured setting to live in and "that she should have close monitoring for medication compliance."

¶ 24 Following cross-examination, the court asked:

> "THE COURT: With regard to [defendant's] chances of doing harm to herself, do these prior suicide attempts—do you find them troublesome?
>
> [DR. WAHLSTROM]: She did have one prior attempt, and I do find it troublesome; and I think that would be part of the ongoing monitoring.
>
> Since that time, she hasn't had any thoughts of—or plans to harm herself; but I think that it is part of the bipolar illness, that you can cycle into depression. And it should be part of the ongoing treatment, to observe that.
>
> THE COURT: Okay. And you think that's all—I believe you said your opinion was that it was at a low risk to occur again, that she would attempt to take her own life?
>
> [DR. WAHLSTROM]: I think that, given appropriate monitoring, it's a low risk. And could it happen? It could if she became depressed, she could get suicidal again. And then whoever is monitoring her should take the appropriate action of hospitalizing her if that were, you know, thought to be a serious risk.
>
> So, you know, it could occur.
>
> THE COURT: But, I mean, when you say monitoring her, if she were to go home or to go to a home with her mother, I mean, they're not—these people won't be able to watch her 24 hours a day?

> [DR. WAHLSTROM]: No. And, you know, my outpatients aren't monitored either. And, you know, it's always—it's always somewhat of a concern, are you doing the right thing, or—but you try to encourage patients to reach out and the people that are working with her. So a therapist should reach out to the psychiatrist or parents if they're noticing a change, reaching out or [*sic*] the patients themselves.
>
> And I think she's good with reporting symptoms, you know, better than ever. And I think it reduces the risk. It can never eliminate it completely."

¶ 25 After that colloquy, the court stated:

> "I'm trying to reconcile it so I'm going to ask you—since this incident has occurred, every doctor that has treated her has indicated that she needs to continue this treatment in an inpatient setting? So how do you reconcile that with your opinion? I mean, these are doctors that see her, at a minimum, on a weekly basis."

In response, Dr. Wahlstrom characterized defendant as "someone that, in a confused state, did something that was *** a very serious concern but it wasn't really an attempt to *** harm anyone." He stated that the other doctors were "being very cautious." He noted, however, that "the data shows that [defendant] has passed a bar where she is understanding of her illness and at a certainly very low risk of harm to herself or anyone else."

¶ 26 After the conclusion of evidence, the court stated that it would take the matter under advisement so it could review the relevant statute, order a transcript, and review the expert testimony. On January 5, 2017, the circuit court entered a written order committing defendant to the Department of Human Services for inpatient treatment. The court found, with respect to Dr.

Wahlstrom, that "he only spent two and a half hours with [defendant], actual time with her, and approximately four and a half hours in total *** in reaching his opinion." The court further stated:

> "I have also considered [defendant's] psychiatric background and the facts that led to my finding her not guilty by reason of insanity.
>
> At this point *** I am truly concerned about her prior suicide attempt and I am also concerned that when she was being treated by a psychiatrist in an uncontrolled environment she was either noncompliant with her medication or over compliant because I can't tell from the testimony regarding those medications. Leading up to the incident that brought her before this court, she hadn't seen Dr. Greenberg for several months before this occurred.
>
> After considering all of these factors and all the things I have just stated, the court finds that the evidence presented at this point in time to this court is clear and convincing that [defendant] is a danger to herself and potentially a danger to others ***."

¶ 27 The court set the date ending the maximum period of involuntary confinement, also known as the *Thiem* date, as December 1, 2039. See also *People v. Thiem*, 82 Ill. App. 3d 956, 962 (1980). This appeal followed.

¶ 28 ANALYSIS

¶ 29 On appeal, defendant argues that the circuit court's finding that she was a danger to herself is against the manifest weight of the evidence. Defendant further argues that the court's

finding that she is "potentially a danger to others" is a statutorily insufficient basis to order commitment pursuant to section 5-2-4 of the Code. 730 ILCS 5/5-2-4 (West 2014).

¶ 30 Section 5-2-4 provides that, following an acquittal by reason of insanity, "the defendant shall be ordered to the Department of Human Services for an evaluation as to whether he is in need of mental health services." 730 ILCS 5/5-2-4(a) (West 2014). The court must then hold a hearing pursuant to the Mental Health and Development Disabilities Code (405 ILCS 5/1-100 et seq. (West 2014)) to determine whether the defendant is "(a) in need of mental health services on an inpatient basis; (b) in need of mental health services on an outpatient basis; [or] (c) a person not in need of mental health services." 730 ILCS 5/5-2-4(a) (West 2014).

¶ 31 To commit a defendant for mental health services on an inpatient basis, the court must find by clear and convincing evidence that the defendant is someone who "is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care." 730 ILCS 5/5-2-4(a-1)(B) (West 2014); see 405 ILCS 5/3-808 (West 2014); *People v. Johnson*, 2012 IL App (5th) 070573, ¶ 7. "Relevant factors in determining a person's dangerousness include evidence of (1) prior hospitalization with the underlying facts of that hospitalization and (2) defendant not taking his medication in the past and still not perceiving the value of continued medical treatment." *People v. Robin*, 312 Ill. App. 3d 710, 717-18 (2000).

¶ 32 We will not reverse the circuit court's finding unless it is against the manifest weight of the evidence. *Id.* at 715. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not

based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008); accord *People v. Bailey*, 2016 IL App (3d) 150115, ¶ 22.

¶ 33 Defendant first argues the finding that she was a danger to herself was against the manifest weight of the evidence. We cannot agree. In this case, the evidence showed that defendant attempted suicide in 2009 and 2012. The circuit court heard expert testimony from Dr. Hussain, who testified that that he met with defendant at least once per week and diagnosed defendant with bipolar affective disorder with psychotic features. Dr. Hussain explained, among other things, that defendant: (1) "had really significant and severe psychotic symptoms consisting of delusions and hallucinations;" (2) that even though some of her symptoms were in remission, others were not; (3) defendant's symptoms were "waxing and waning" (bad), rather than stable (good). In addition, Dr. Hussain noted that defendant would have difficulty attending her therapy sessions without supervision if she was not committed on an in-patient basis.

¶ 34 That last fact is notable, in our view, because the attempted abduction at the center of this case occurred roughly two months after defendant voluntarily stopped attending her psychiatry sessions. Moreover, Dr. Hussain's bottom line expert opinion was that defendant should remain in inpatient treatment because, due to her partial remission, she "could still pose a threat to herself or others if left to her own devices." Based on Dr. Hussain's testimony and defendant's prior history of suicide attempts, the circuit court's finding that defendant was a danger to herself was supported by the record and is not against the manifest weight of the evidence. See *People v. Youngerman*, 361 Ill. App. 3d 888, 897 (2005).

¶ 35 Defendant argues that Dr. Hussain did not explicitly opine that she was reasonably expected to inflict serious harm on herself and that he merely found she "could still pose a threat

to herself or others if left to her own devices." Defendant asserts that the question at the commitment hearing was not whether defendant would be "left to her own devices," but whether she should receive mental health services on an inpatient or outpatient basis. According to defendant, because either inpatient or outpatient mental health services require supervision, she would not be "left to her own devices" and thus, Hussain's opinion does not provide guidance.

¶ 36 To support this contention, defendant points to the testimony of her expert, Dr. Wahlstrom. But the circuit court put little weight on Dr. Wahlstrom's testimony because he spent very little time personally observing defendant, and we have no license to upset that determination. *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007) ("The credibility and weight to be given psychiatric testimony are matters for the trier of fact, who is not obligated to accept the opinions of defendant's expert witnesses over those opinions presented by the State.").

¶ 37 We further disagree with defendant's characterization of Dr. Hussain's testimony. Dr. Hussain opined that defendant was in need of mental health treatment on an inpatient basis because her illness was only in partial remission and she posed a danger to herself. On this, Dr. Hussain said:

> "So, again, partial remission, the risk of a full-blown relapse is extremely high. So that will put them at a high risk of committing another crime or harming themselves or somebody else.
>
> And, you know, [defendant] had also a history of attempted suicide in 2009. So obviously she's had, you know, really, pretty serious symptoms of hurting somebody else or herself, so she would be at risk of a relapse."

Dr. Hussain's opinion was based on defendant's prior history of suicide and the fact that her illness was in partial rather than full remission. See *In re Todd K.*, 371 Ill. App. 3d 539, 543 (2007) ("A treating psychiatrist's opinion of potential dangerousness need not be derived from firsthand observations of violence and may be based on knowledge of incidents derived from medical history records."). We cannot reasonably read the qualifying phrase "if left to her own devices" to only mean that defendant poses a risk if she has no supervision. In context, it is clear that Dr. Hussain was discussing inpatient care versus other options.

¶ 38 Next, defendant contends that the circuit court's finding that she was "potentially a danger to others" was legally insufficient to support her commitment on an inpatient basis. Specifically, she argues that the statue requires a finding that she is "reasonably expected" to inflict harm on another. See 730 ILCS 5/5-2-4(a-1)(B) (West 2014). We review *de novo* the legal question of whether the circuit court's order complied with the statutory requirements of the Code. *In re Jonathan P.*, 378 Ill. App. 3d 654, 656 (2008).

¶ 39 To resolve this issue, we must interpret section 5-2-4. "The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature." *In re Detention of Powell*, 217 Ill. 2d 123, 135 (2005). "In determining the intent of the legislature, we begin with the language of the statute, the most reliable indicator of the legislature's objectives in enacting a particular law. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000). "Where the language of a statute is clear and unambiguous, courts may not resort to aids of statutory construction." *Powell*, 217 Ill. 2d at 135.

¶ 40 Section 5-2-4 of the Code requires a finding that the defendant "is reasonably expected to inflict serious physical harm upon himself *or* another and who would benefit from inpatient care

or is in need of inpatient care." (Emphasis added.) 730 ILCS 5/5-2-4(a-1)(B) (West 2014). Here, the use of the word "or" clearly evinces a legislative intent to create separate and distinct bases upon which the State may rely in seeking to have a person involuntarily committed for in-patient therapy. See *People v. Frieberg*, 147 Ill. 2d 326, 349 (1992) (explaining that the use of the word "or" to link two elements in a statute "is more properly construed in the disjunctive, rather than the conjunctive sense" and, "in its ordinary sense, *** marks an alternative indicating the various members of the sentence which it connects are to be taken separately").

¶ 41 Because section 5-2-4 must be read disjunctively, and because we have already determined that the court's finding that defendant is reasonably expected to inflict serious physical harm upon herself was not against the manifest weight of the evidence, we need not resolve whether the trial court's finding that she was "potentially a danger to others" was a statutorily sufficient basis for the court to ground its commitment order.

¶ 42 CONCLUSION

¶ 43 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.