

DA 21-0476

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 49

IN THE MATTER OF:

G.M.,

Respondent and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DI 16-013-B
Honorable Rienne H. McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Kristen L. Peterson, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Roy Brown, Assistant
Attorney General, Helena, Montana

Audrey S. Cromwell, Gallatin County Attorney, Bradley Bowen, Deputy
County Attorney, Bozeman, Montana

Submitted on Briefs: February 22, 2023

Decided: March 12, 2024

Filed:


Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 G.M. appeals the judgment of the Montana Eighteenth Judicial District Court, Gallatin County, committing her to the custody and care of the Montana State Hospital (MSH) for involuntary mental health treatment pursuant to Title 53, chapter 21, part 1, MCA. We address the following restated issue:

Whether the District Court erroneously found that G.M. was unable to adequately care for her own basic needs and safety based on hearsay statements of her husband through the testimony of the court-appointed professional person?

We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶2 In July 2021, the State filed a petition pursuant to §§ 53-21-121(1) and -122, MCA, for involuntary mental health commitment and treatment of then 66-year-old G.M. The petition alleged that she was suffering from a diagnosed psychotic mental disorder and thus required involuntary commitment and treatment under § 53-21-126(1)(a), MCA (substantial inability to provide for own basic needs and safety). The petition was supported by a Bozeman Deaconess Hospital emergency room intake evaluation report made by a board-certified psychiatric mental health nurse practitioner which stated that G.M. reported, *inter alia*, that she had been “shot” in her back and head by some type of air-compression gun set up in her vehicle and home for remote operation by unidentified “Ukrainian men.” Upon examination and statements made by G.M.’s husband regarding his observations of her recent behavior, the mental health nurse practitioner diagnosed G.M. as suffering from Unspecified Psychotic Disorder and recommended immediate

placement at the West House emergency facility in Bozeman due to her substantial inability to meet her basic needs and safety. Following preliminary proceedings under §§ 53-21-122 through -125, MCA, (appointment of counsel, initial appearance, constitutional and statutory rights advisory, probable cause finding, temporary protective custody pending adjudicatory hearing/trial, and court-appointed “professional person” evaluation and report), the matter came on for adjudicatory hearing pursuant to § 53-21-126, MCA.

¶3 The only witness presented by the State was Holly Priscu, licensed clinical professional counselor (LCPC MHPP) and court-appointed “professional person” as defined by § 53-21-102(16), MCA. In accordance with her evaluation report, Priscu testified that she diagnosed G.M. as suffering from Delusional Disorder and Unspecified Schizophrenia Spectrum and Other Psychotic Disorder. Based on her review of the prior evaluation report of the hospital mental health nurse practitioner, clinical progress notes made by the West House medical staff during G.M.’s three-day prehearing commitment, statements made by G.M.’s husband regarding his observations of her behavior and condition, and her own interview and observations of G.M. upon court-ordered evaluation, Priscu ultimately testified that G.M. required an involuntary MSH commitment for mental health treatment, with authorization for involuntary medication administration, due to her inability to adequately provide for her own basic needs and safety because of her untreated delusional schizophrenic mental disorder and condition.

¶4 In support of her opinion that G.M. suffered from the diagnosed schizophrenic and delusional disorder, Priscu referred, *inter alia*, to:

- (1) her clinical observations of G.M.'s paranoid delusions regarding Ukrainian men who she believed had: (A) been stalking and injuring her since 2013; (B) created false documents resulting in her prior MSH commitments for involuntary mental health treatment;¹ and (C) recently applied poison to items in her home and shot her in the head and back with an air-gun;
- (2) GM's statement to Priscu that she changed her home locks and sought law enforcement aid to protect herself from the Ukrainians;
- (3) G.M.'s husband's statements confirming that G.M. had been contacting law enforcement daily to protect her from the Ukrainians, but that their home security cameras had not captured anyone entering or attempting to enter their home;
- (4) her clinical observation that G.M. presented remotely from the West House facility for evaluation wearing an eye patch and wrist and knee braces,² but that West House medical progress notes indicated no apparent physical injury;
- (5) statements made by G.M.'s husband and notations in her West House progress notes that G.M. appeared to be responding to internal stimuli when observed speaking out loud while alone;
- (6) West House progress notes stating that G.M. reported to staff she was hit in the head while sleeping, and again in the facility common area, but that staff observed no injury and that G.M. was alone at the times of the alleged assaults; and
- (7) the statement of her husband that G.M. had jumped out of a moving car while enroute to a prior mental health treatment appointment.

¹ G.M. was twice previously committed to MSH for involuntary mental health treatment—on bench trial in 2016 and jury trial in 2018. Upon the 2018 commitment, G.M. appealed and we affirmed. *In re G.M.*, 2019 MT 45N, 395 Mont. 522, 436 P.3d 639.

² Priscu noted in her report that G.M. stated she wore the eyepatch because she was blind in one eye after the Ukrainians shot her. G.M. similarly testified at hearing. Priscu testified that G.M. produced a photograph during her examination which appeared to show "some marks" on her body, but it was unclear when the photo "had been taken or what it was about."

G.M.’s counsel repeatedly objected to Priscu’s testimony regarding out of court statements made by G.M.’s husband as inadmissible hearsay, but the District Court overruled them on the stated ground that they were definitional non-hearsay.³

¶5 In support of her related opinion that G.M. was unable to adequately provide for her own basic needs and safety due to her diagnosed mental disorder, Priscu distinctly referred, *inter alia*, to:

- (1) how G.M.’s diagnosed mental disorder manifests through various symptoms including delusional statements and behaviors, tangential and disorganized thought processes, paranoid and illogical thought content, poor judgment, and lack of understanding and insight regarding her present mental health condition;
- (2) the fact that G.M. was largely dependent on her husband to assist her in getting around their home and accomplishing daily activities including, *inter alia*, assigned physical therapy regarding an unrelated health condition and transportation for various medical appointments and treatments;
- (3) her observation and assessment that G.M.’s “extreme delusions” were causing her to become “increasing[ly] agitat[ed]” with her husband upon whom she relied for essential care and assistance; and
- (4) G.M.’s statements to Priscu that she denied any history of mental illness and was vehemently unwilling to take prescribed medication due to her stated fear that antipsychotic drugs would kill her.

Under those circumstances, Priscu opined that G.M.’s ongoing refusal to take prescribed antipsychotic medications was causing progressively more severe delusions and deterioration of her mental health.

³ The record does not indicate why the State did not call G.M.’s husband to testify directly in support of the petition.

¶6 G.M. testified on her own behalf at the close of the State’s evidence. Consistent with Priscu’s testimony, G.M. denied having a mental disorder or requiring treatment. Despite her noted professional background as a retired university physics professor, G.M. repeatedly stated that she did not understand what was happening or why she had been evaluated by mental health professionals because she required medical treatment only for unspecified physical conditions. Contrary to Priscu’s testimony, G.M. testified that she was solely responsible for managing the household finances for her and her husband, “mostly” responsible for the care of their chickens, and “equally” responsible for buying and preparing food and housekeeping. She did acknowledge, however, that her husband “may be involved a bit more” since she became “physically injured”; he was “the best help for [her] at home”; and she “would not be able to manage” without him.

¶7 At the close of evidence, which included further testimony from Priscu regarding her recommended disposition of G.M. under § 53-21-127, MCA, the District Court issued oral findings of fact, conclusions of law, and judgment committing G.M. to MSH for involuntary mental health treatment pursuant to §§ 53-21-126, -127(3)(a), and (4)-(8), MCA. The court subsequently issued more formal written findings of fact, conclusions of law, and judgment of commitment including, *inter alia*, authorization of involuntary medication as necessary in accordance with § 53-21-127(3)(a) and (4)-(8), MCA. G.M. timely appeals.

STANDARD OF REVIEW

¶8 We review involuntary mental health commitments for compliance with the requirements of §§ 53-21-126 and -127, MCA. *In re D.L.B.*, 2017 MT 106, ¶ 7, 387 Mont. 323, 394 P.3d 169. Whether an involuntary commitment satisfies the requirements of §§ 53-21-126 and -127, MCA, is a conclusion of law based on application of the pertinent statutory criteria to the pertinent trial court findings of fact. *In re D.L.B.*, ¶ 7. We review lower court conclusions and applications of law de novo for correctness, and findings of fact only for clear error in the light most favorable to the prevailing party. *In re D.L.B.*, ¶ 7; *In re D.K.D.*, 2011 MT 74, ¶ 12, 360 Mont. 76, 250 P.3d 856; *In re C.R.C.*, 2004 MT 389, ¶ 11, 325 Mont. 133, 104 P.3d 1065. “A finding of fact is clearly erroneous only if not supported by substantial credible evidence, the district court misapprehended the effect of the evidence, or we have a definite and firm conviction upon review of the record that the court otherwise erred.” *In re C.K.*, 2017 MT 69, ¶ 10, 387 Mont. 127, 391 P.3d 735.

DISCUSSION

¶9 *Whether the District Court erroneously found that G.M. was unable to adequately care for her own basic needs and safety based on hearsay statements of her husband through the testimony of the court-appointed professional person?*

¶10 Involuntary mental health commitment proceedings are civil matters which implicate fundamental liberty interests in a manner similar to criminal proceedings. *In re T.J.D.*, 2002 MT 24, ¶ 20, 308 Mont. 222, 41 P.3d 323. To safeguard against the “calamitous effect” of an erroneous deprivation of liberty and damage to the respondent’s personal reputation, courts must strictly adhere to all procedural and substantive

requirements and standards of proof specified by §§ 53-21-126 and -127, MCA. *In re B.D.*, 2015 MT 339, ¶ 7, 381 Mont. 505, 362 P.3d 636 (citation omitted). In accordance with its particular petition allegations here, the State thus had the burden of proving that G.M. both suffered from a mental disorder, as defined by § 53-21-102(9), MCA, and was “substantially unable to provide for [her] own basic needs of food, clothing, shelter, health, or safety” due to the subject mental disorder. *See* § 53-21-126(1) and (4), MCA (2021).

¶11 Subject to generally applicable rules of evidence as pertinent in each case, the professional person appointed pursuant to §§ 53-21-122(2) and -123, MCA (2021), “may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment,” but such “testimony is insufficient unless accompanied by evidence *from the professional person* or others,” as pertinent here, that “because of a mental disorder” the respondent “is substantially unable to provide for [his or her] own basic needs of food, clothing, shelter, health, or safety.” Section 53-21-126(4)(a), MCA (2021) (emphasis added).⁴ The State has the burden of proving: (1) the existence and nature of the alleged mental disorder to a reasonable degree of medical certainty; (2) all pertinent “physical facts” beyond a reasonable doubt; and (3) all other matters by clear and convincing evidence. Section 53-21-126(1)-(2), MCA (2021). Here, the State thus had the burden of proving by “clear and convincing evidence” that, due to her diagnosed

⁴ Compare § 53-21-126(4)(d), MCA (requiring proof of predictable deterioration of untreated mental disorder rendering respondent “unable to provide for [his or her] own basic needs of food, clothing, shelter, health, or safety”).

schizophrenic and delusional mental disorder, G.M. was “substantially unable to provide for [her] own basic needs of food, clothing, shelter, health, or safety.” *See* § 53-21-126(2) and (4)(a), MCA (2021).

¶12 G.M. asserts that the District Court’s finding under § 53-21-126(4)(a), MCA, was clearly erroneous because it was based solely on the inadmissible hearsay statements of her husband presented through the hearing testimony of Priscu, the court-appointed professional person. However, as manifest in the foregoing statement of the procedural background based on the hearing record viewed in the light most favorable to the State as the prevailing party, Priscu’s opinion testimony, and the District Court’s resulting finding under § 53-21-126(4)(a), MCA, was based on multiple referenced sources including: (1) out-of-court statements made by G.M.’s husband regarding his observation of her delusional and disorganized thinking, and corresponding behavior; (2) the report of the examining hospital mental health nurse practitioner regarding his observations and assessment of G.M. on pre-petition presentation for evaluation at the hospital; (3) medical staff progress notes regarding observations of G.M.’s prehearing behavior and condition at the West House facility; and (4) Priscu’s own clinical interview, observation, and professional assessment of G.M. prior to hearing.

¶13 Contrary to G.M.’s apparent assertion, the State may prove the substantive requirement of § 53-21-126(1)(a), MCA (respondent is “substantially unable to provide for [his or her] own basic needs of food, clothing, shelter, health, or safety” “because of a mental disorder”), based solely on the testimony of the court-appointed professional person

provided, of course, that the professional person's testimony is admissible under the pertinent rules of evidence. *See* § 53-21-126(4)(a), MCA ("professional person may testify" to "ultimate issue" of whether respondent suffers from mental disorder "and requires commitment" based on "evidence from the professional person *or* others"—emphasis added); M. R. Evid. 101(a) ("[t]hese rules [generally] govern all proceedings in all [Montana] courts"). By definition, hearsay "is a statement[] other than one made by the declarant while testifying" in a judicial proceeding and which is "offered in evidence *to prove the truth of the matter asserted.*" M. R. Evid. 801(c) (emphasis added). Hearsay is generally not admissible "except as otherwise provided by statute" or the Montana Rules of Evidence. M. R. Evid. 802. However, evidence not admissible for one purpose may be admissible for another. M. R. Evid. 105. Consequently, except as otherwise provided by M. R. Evid. 403 or other applicable rule of evidence, a declarant's out of court statement offered for some relevant purpose other than to prove the truth of the matter asserted is, by definition, not hearsay and thus admissible as definitional non-hearsay. *See* M. R. Evid. 401-02, 801(c), and 802.

¶14 In the context of § 53-21-126, MCA, the court-appointed professional person is unquestionably an expert witness authorized to render opinion testimony as relevant within the scope of the expert's field of expertise. *See* §§ 53-21-102(16), -122(2), and -123, MCA; M. R. Evid. 702. "If of a type reasonably relied upon by experts in" the field at issue, an expert may base his or her opinion or inference on otherwise inadmissible evidence or facts not in evidence. M. R. Evid. 703. In providing otherwise relevant and admissible opinion

testimony, an expert may thus “refer to otherwise inadmissible hearsay,” not “as substantive proof of the facts asserted therein,” but for the “limited purpose” of aiding the factfinder in assessing the relative credibility, veracity, and probative value of the expert’s opinion by explaining the underlying rationale or basis of the opinion. *In re C.K.*, ¶¶ 18-21. While “Rule 703 does not allow an expert to serve as a conduit” for admission and factfinder consideration of “otherwise inadmissible” hearsay “as substantive evidence” of the truth of the matter asserted, the critical safeguard that protects against such improper or unfair use or effect is, upon objection, careful court assessment of the actual probative value of the subject evidence for the offered purpose under Rules 401-02, balanced against the risk of unfair prejudice, confusion, or delay under Rule 403. *See* M. R. Evid. 401-03; *In re C.K.*, ¶¶ 21-29.

¶15 Here, G.M. does not dispute that the testifying court-appointed professional person was a qualified Rule 702 expert, or that any of the multiple referenced sources of information upon which she based her opinion testimony under § 53-21-126(1)(a) and (4)(a), MCA, were not “of a type reasonably relied upon” by mental health professionals in rendering opinions within the scope of §§ 53-21-102(16), -122, -123(1)(a), and (4)(a), MCA. Nor did she make any objection, much less a showing or compelling argument, that the risk of any Rule 403 consideration substantially outweighed the probative value of the husband’s statements under Rule 703. Under these circumstances, the court-appointed professional person’s testimony regarding statements made by G.M.’s husband regarding his observations of G.M.’s behavior and condition were admissible under M. R. Evid. 703

to explain the underlying rationale and basis for her expert opinion under § 53-21-126(1)(a) and (4)(a), MCA.

¶16 Moreover, the District Court's finding under § 53-21-126(1)(a) and (4)(a), MCA, was independently supported by the Priscu testimony summarized in ¶ 5, *supra*, regarding her personal observations upon examination of G.M. in conjunction with her descriptive opinion as to the adverse effects of the nature and manifestations of G.M.'s delusional schizophrenic mental disorder on her ability to care for her own needs and safety. We thus hold that the District Court's findings under § 53-21-126(1)(a) and (4)(a), MCA, were supported by substantial admissible evidence and thus not clearly erroneous.

CONCLUSION

¶17 Viewing the evidentiary record in the light most favorable to the prevailing party, the District Court's finding of fact under § 53-21-126(1)(a) and (4)(a), MCA, was supported by substantial admissible evidence and was thus not clearly erroneous. The District Court's judgment of commitment of G.M. to MSH for involuntary mental health treatment pursuant to §§ 53-21-126(1)(a), (4)(a), and -127, MCA, is hereby AFFIRMED.

/S/ DIRK M. SANDEFUR

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JIM RICE