IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0440

IN THE MATTER OF:

M.D.,

Respondent and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Sixth Judicial District Court,
Park County, the Honorable Brenda R. Gilbert, Presiding

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STATEMENT OF THE ISSUE

In order for a district court to authorize involuntary medication, it must find that it is necessary at the time of the commitment hearing. Here, M.D. was medication compliant at the time of the hearing, the professional person did not indicate that M.D. had ever refused medication while at the Montana State Hospital, and the district court expressed the belief that M.D. would remain medication compliant. Did the district court err when it authorized the Montana State Hospital to involuntarily medicate M.D.?

STATEMENT OF THE CASE

M.D. appeals the involuntary commitment order issued by the Park County District Court on June 20, 2023. (Findings of Fact, Conclusions of Law and Dispositional Order, attached as Appendix A (District Court Document (Doc.) 19)). On June 14, 2023, the State filed a petition asking for M.D. to be involuntarily committed to the Montana State Hospital. (Petition Alleging Respondent is Suffering from Mental Disorder and Requires Commitment (Doc. 11)). The district court appointed counsel and held an initial hearing on June 14, 2023. (Order of Appointments and Setting Hearing Date (Doc. 12)).

On June 19, 2023, the district court held the involuntary commitment hearing. The State presented testimony and a report from professional person Shannon Maroney. (June 19, 2023 Hearing Transcript (Tr.) at 4-18). M.D. testified. (Tr. at 19-22).

The district court ordered M.D. to be involuntarily committed at the Montana State Hospital for up to 90 days. (Doc. 19 at 5). The court authorized the Hospital to administer involuntary medication to M.D. (Doc. 19 at 5).

M.D. was discharged from the Hospital on June 29, 2023. (Notice of Pending Discharge (Doc. 22)). M.D. timely appealed. (Notice of Appeal (Doc. 26)).

STATEMENT OF THE FACTS

On June 13, 2023, M.D. was voluntarily accompanied to the hospital by officers in Livingston for "exhibiting bizarre behavior around town." (Doc. 11 at 6). The State filed a petition for involuntary commitment on June 14, 2023. (Doc. 11). The petition alleged that M.D. was suffering from a mental disorder, was a threat to herself and others, and could not substantially care for her basic needs of food, clothing, shelter, health, or safety. (Doc. 11). The district court ordered

M.D. to be held at the Montana State Hospital (the Hospital) pending a hearing on the petition. (Doc. 12).

The hearing on the petition was held on June 19, 2023. Shannon Maroney, a licensed clinical social worker who served as the professional person, evaluated M.D. before the second hearing. (Tr. at 4). Maroney recommended commitment on the basis that M.D. was substantially unable to care for her basic needs as a result of unspecified bipolar disorder. (Tr. at 10, 11). Specifically, Maroney reported that M.D. had not slept, ate, or drank water for days due to M.D.'s self-reported mania and that M.D. did not have access to sufficient funds. (Exhibit List and Exhibit (Doc. 21) at 2, 5). The district court ordered M.D. to be committed to the Montana State Hospital for up to 90 days, finding that she had a mental disorder, specifically unspecified bipolar disorder, that made her unable to meet her basic needs. (Tr. at 24; Doc. 19).

Maroney also recommended that the Hospital be authorized to involuntarily medicate M.D. (Tr. at 14). While being held at the Hospital prior to the hearing, M.D. was prescribed lithium and Zyprexa. (Tr. at 13). Maroney testified that M.D. understood the need for

medications and was willing to continue taking her medication. (Tr. at 14). Counsel for the State asked Maroney, "…did [M.D.] indicate a willingness to continue on that prescription regime?" (Tr. at 14). Maroney replied, "She did. She stated that she -- she appeared to have the understanding that she needed to be on medications and was willing to. Again, it was more of the ability to obtain those on her own. That seemed to be the issue." (Tr. at 14). Despite this, Maroney still recommended that the district court authorize the Montana State Hospital to administer involuntary medication. (Tr. at 14). Maroney testified that it would be unlikely that M.D. would stabilize without medication, "given the nature of bipolar disorder" and given M.D.'s history. (Tr. at 14).

M.D. was medication compliant while held at the Hospital pending the commitment hearing. (Doc. 21). Maroney reported, "[Montana State Hospital] records indicate that [M.D.] has been medication compliant (Zyprexa and lithium) while she has been there" and that "[s]he was previously stabilized on Zyprexa and lithium." (Doc. 21 at 4, 3). Maroney testified that M.D. "has had very good success with those two medications in the past in stabilizing, quite quickly actually."

(Tr. at 13). There was no indication from Maroney or the Hospital that M.D. had ever refused medication while at the Hospital. M.D. had been admitted to the Hospital two prior times, with the most recent being November of 2022, approximately seven months earlier. (Tr. at 7).

M.D. told Maroney that she was on lithium, one of the medications that Maroney testified would be important for her stabilization. (Tr. at 13). M.D. acknowledged that her medication was working and insisted that she had not gone off of her medication. (Tr. at 25, 28). She told the district court she just needed to get her prescription refilled, but she was having trouble doing so in the community. (Tr. at 26). The week before her commitment, M.D. had attempted to attend an appointment at Community Health Partners, her medical provider since March 2022, to refill her prescription. (Doc. 21 at 4; Tr. at 8). However, she left before she was able to be seen. (Doc. 21 at 4; Tr. at 8, 12). Her last appointment appears to have been on December 13, 2022. (Doc. 21 at 4).[1] M.D.'s last prescription for lithium was written in September 2022. (Doc. 21).

[1] Maroney's report states M.D.'s last appointment was on "12/13/23." But given that Maroney wrote her report in June 2023, this appears to be a typo. Maroney presumably meant to write, "12/13/22." (Doc. 21 at 4).

M.D. testified that she was experiencing a manic episode when she attended her appointment at Community Health Partners the week before the petition in this case. (Tr. at 21). She said, "I literally just needed a refill. My physician has been out of town for months at a time at [Community Health Partners]. The need here for HRDC and all of these services is so vast, I can't keep up with it." (Tr. at 26). Still, M.D. was willing to comply with treatment and take her medications. Maroney reported that M.D. "stated she was willing to seek treatment for her mental health." (Doc. 21 at 4). Maroney testified that M.D. was willing to continue on lithium and Zyprexa. (Tr. at 14).

M.D. did express to the district court some hesitation about taking whatever medication was handed to her, without knowing more about what she was being given. (*See* Tr. at 26). She expressed some distrust of the Hospital and its knowledge about pharmaceuticals. (*See* Tr. at 26). Maroney also reported that M.D. "stated that she took medications while there but indicated they were the wrong medications." (Doc. 21 at 2). It was not clear what specific medications M.D. was referring to in either statement. However, M.D. did not explicitly indicate any problems with taking lithium and Zyprexa, the medications that she

was on at the time and which Maroney testified would be the medications she needed to stabilize.

The district court expressed the belief that M.D. would voluntarily take her medications while at the Hospital. (Tr. at 24). The district court told M.D., "I have a feeling that you are going to want to get out of [the Montana State Hospital], so you are going to take [the medication]." (Tr. at 24). The district court acknowledged that M.D. knew what she needed to do in terms of her mental health treatment, saying, "You seem to me to know what you need to do to get stabilized, but you've not been able to accomplish that in the community." (Tr. at 22). The district court believed that M.D. would be stabilized and released quickly—which she was, ten days after the hearing. (Tr. at 22, 23; Doc. 22).

Despite acknowledging M.D.'s willingness to take medication voluntarily at the Hospital, the district court told M.D., "If you refuse to take [the medication], and the Montana State Hospital team finds that it's something that you need to have, involuntarily, if necessary, they will be able to do so." (Tr. at 24). Despite the evidence that M.D. remained medication compliant at the Hospital, in its written order, the

district court found that M.D.'s inability to maintain her medication *in the community* had made her "incompetent to give informed consent for medications." (Doc. 19 at 3). The district court concluded that M.D.'s health would deteriorate without medication and that medication "must be administered", so the Hospital "shall determine what medications are warranted and administer them to [M.D.], whether voluntarily or involuntarily." (Doc. 19 at 4).

STANDARD OF REVIEW

This Court reviews a district court's civil commitment order to determine whether its findings of fact are clearly erroneous. *Matter of M.T.H.*, 2024 MT 26, ¶ 12, 415 Mont. 158, 543 P.3d 581. A finding of fact is clearly erroneous if it is unsupported by substantial evidence, if the district court misapprehended the effect of the evidence, or if the Court has a definite and firm conviction that a mistake has been made. *M.T.H.*, ¶ 12. The Court reviews a commitment order's conclusions of law to determine whether they are correct. *M.T.H.*, ¶ 12.

This Court has made clear than an appeal of an involuntary commitment order is not moot despite discharge of the commitment

because the issues "are capable of repetition, yet evading review." *In re Mental Health of D.V.*, 2007 MT 351, ¶ 32, 340 Mont. 319, 174 P.3d 503.

SUMMARY OF THE ARGUMENT

The district court erred when it authorized the Montana State Hospital to involuntarily medicate M.D. A district court can only authorize the use of involuntary medication if it finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. The authorization of involuntary medication must be necessary at the time of the commitment hearing.

Here, M.D. was medication compliant at the time of the hearing. Neither the Hospital nor the professional person indicated that M.D. had ever refused necessary medication while at the Hospital. The professional person testified that M.D. understood the need for medication and was willing to be on medication. Any issues M.D. had staying on medication in the community were issues with obtaining the medication, not refusal to take medication. At the Hospital, where staff would provide M.D. with her medication, these concerns would be dispelled.

The district court likewise expressed a belief that M.D. would stay medication compliant. It was inappropriate for the district court to authorize forced medication in spite of its own belief that forced medication would not be necessary. The authorization of involuntary medication must be struck from the commitment order.

ARGUMENT

The district court erred when it authorized the Montana State Hospital to involuntarily medicate M.D. in spite of M.D.'s history of medication compliance at the Hospital and the district court's own belief that M.D. would stay medication compliant.

"The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." *Washington v. Harper*, 494 U.S. 210, 229 (1990). Due process requires "essential procedural protections" before a person can be forced by the government to take medicine. *Harper*, 494 U.S. at 236. Whether the Hospital should be authorized to administer involuntary medications to a civilly committed person is a separate consideration from whether the person is in need of commitment in the first place. *Compare*, Mont. Code Ann. § 53-21-126(1) with Mont. Code Ann. § 53-21-127(6). Under Montana law, patients at the Hospital "have a right to be free from

unnecessary or excessive medication." Mont. Code Ann. § 53-21-145. Montana's statutes regarding involuntary medication are strictly enforced by this Court. *Matter of R.H.*, 2016 MT 329, ¶ 21, 385 Mont. 530, 385 P.3d 556.

Montana Code Annotated § 53-21-127(6) provides that a district court may authorize involuntarily medication "only when the court finds it is '*necessary* to protect the respondent or the public or to facilitate effective treatment.'" *M.T.H.*, ¶ 25 (quoting § 53-21-127(6)) (emphasis in original). It is not enough to conclude that such authority "may be necessary" in the future. *R.H.*, ¶ 20. It is also not enough for the court to find that the person refused medications in the past. *M.T.H.*, ¶ 26. The district court must find that prior authorization for involuntary medication is necessary at the time of the hearing. *M.T.H.*, ¶ 26. The State "must demonstrate a need" for involuntary medication before a district court can order it. *M.T.H.*, ¶ 25. The Hospital may not "be given prior authorization to medicate individuals involuntarily simply because a particular condition often warrants the use of prescription medications." *M.T.H.*, ¶ 27.

A finding that an individual with a particular mental health diagnosis may at some undisclosed future point in time decide not to take their medications "is insufficient to satisfy the plain language of the statute requiring that involuntary medication 'is necessary.'" *R.H.*, ¶ 21. The district court record must contain evidence supporting the court's finding that forced administration of medication is necessary. *R.H.*, ¶ 21. If the district court authorizes the involuntary administration of medication, the district court "shall" issue a finding as to "the reason involuntary medication was chosen from among other alternatives." § 53-21-127(8)(i).

Here, the district court's order of involuntary medication was not justified. Importantly, M.D. was compliant with medications while held at the Hospital prior to the commitment hearing. (Doc. 21 at 4). The professional person, Shannon Maroney, testified that M.D. had been taking lithium and Zyprexa while at the Hospital, and that she "appeared to have the understanding that she needed to be on medications and was willing to." (Tr. at 14). Although M.D. suggested in her testimony that she may have been hesitant to take some incorrectly administered medication during a previous stay at the Hospital, there

was no indication from Maroney or the Hospital that M.D. had ever refused her prescribed medication while at the Hospital. Maroney noted that M.D.'s issue with taking medication in the community was likely a result of an issue with her ability to obtain the medication on her own, not a refusal to be on the medication. (Tr. at 14). Lack of access to resources in the community, not an unwillingness to take medication, was the issue M.D. faced regarding medication. This issue would not exist in the Hospital, where staff would hand M.D. the medication each day.

M.D. was willing to take lithium and Zyprexa, the medications that the professional person stated would quickly stabilize her. The district court recognized this. The district court told M.D., "You seem to me to know what you need to do to get stabilized . . ." (Tr. at 22). "[B]ut", the district court continued, "you've not been able to accomplish that *in the community*." (Tr. at 22 (emphasis added)). The district court's concern that M.D. had not been able to successfully interact with resources *in the community* did not support a conclusion that she would refuse medication at the Hospital.

In its oral findings, the district court again acknowledged that it believed M.D. would comply with medications: "The final finding and order that I'm making is that they will provide medication to you at the hospital to get you stabilized. If you, and *I have a feeling that you are going to want to get out of there, so you are going to take it*." (Tr. at 24 (emphasis added)). The court continued, "*If you refuse to take it*, and the Montana State Hospital team finds that it's something that you need to have, involuntarily, *if necessary*, they will be able to do so." (Tr. at 24 (emphasis added)). The district court misunderstood the law; the district court itself was required to find that involuntary medication was necessary at the time of the hearing. Instead, the district court deferred this finding to the Hospital, giving the Hospital the power to determine whether involuntary medication was necessary. This was improper. Based on the plain language of the statute, the district court was required to make a finding that involuntary medication was actually necessary. § 53-21-127(6). The court did not find that, because the court did not believe it.

The district court ordered involuntary medication despite evidence that M.D. was compliant while at the Hospital, was willing to take her

prescribed medication at the time of the hearing, and the court's own belief that M.D. would remain medication compliant. The district court made no determination that involuntary medication "is necessary", which the statute requires. § 53-21-127(6). The district court also did not issue a finding as to why involuntary medication was chosen from among alternatives, as it is required to do. § 53-21-127(8)(i).

The district court essentially made a finding that medication was necessary for M.D. to stabilize. However, a finding that *medication* is necessary is not the same as a finding that *involuntary* medication is necessary. A district court can only authorize the use of involuntary medication if it finds that *involuntary* medication is necessary to protect the respondent or the public or to facilitate effective treatment. § 53-21-127(6). Even if the district court found that medication was necessary, it did not find that involuntary medication was necessary. Maroney testified that, due to the nature of her mental disorder and her medical history, M.D. was unlikely to stabilize without medication. (Tr. at 14). However, Maroney believed M.D. would take the medication she needed. The district court echoed this is its order. The court concluded that M.D. needed the medication in order to stabilize. (Doc. 19 at 4).

However, like Maroney, the district court believed M.D. would decide for herself to comply with this medication. There was no reason to believe, and no finding, that *involuntary* medication was necessary.

In *M.T.H.*, the Court, after the State's concession, agreed that the district court's order of involuntary medication was improper. *M.T.H.*, ¶ 24, 28. M.T.H. had refused to take medication in the past; he had been seeing a psychiatrist for two years and had refused to take prescription medication during that time. *M.T.H.*, ¶ 5. Still, the Court explained that it is not enough to show that the person had refused medication at some point: "Even though M.T.H. may have refused medication in the past, it was incumbent on the State to explain why [the Hospital] needed prior authorization to administer medications at the time of his petition hearing." *M.T.H.*, ¶ 26. The Court emphasized the failure of the State to show the district court a need to authorize involuntary medication. *M.T.H.*, ¶ 26. The Court said that the professional person's testimony that prior authorization for involuntary medication was necessary because "[the Hospital] often medicates individuals with M.T.H.'s condition" and "M.T.H. had a history of refusing medications" was not enough to show that involuntary

medication was necessary, especially in light of the testimony that M.T.H. had otherwise been a compliant patient. *M.T.H.*, ¶ 26.

Similarly, in *R.H.* the Court found that the district court's order of involuntary medication was improper. *R.H.*, ¶ 23. The district court ordered involuntary medication of R.H., despite her compliance with medication and no history of refusal, because she could "abruptly decide not to take her medication." *R.H.*, ¶ 19. The Court ruled that "[a] finding and conclusion that in the future a person may become noncompliant is insufficient to meet" the statutory requirement that involuntary medication "is necessary." *R.H.*, ¶ 21.

M.D. was a compliant patient, just like M.T.H. and R.H. M.D. had some history of neglecting to take her medication in the community, but the record suggested this was an access issue, not a refusal to actually take the medication. M.T.H. had refused to take medications for two years leading up to his commitment; M.D. did not even have this extensive history of refusal to be medicated. *M.T.H.*, ¶ 5. M.D. had been medicated for at least some time in the community, before her commitment. She had been previously admitted to the Hospital in November of 2022, approximately seven months earlier. (Tr. at 7). In

the intervening seven months, she had no reported issues. She had successfully attended an appointment with her health provider in mid-December. (Doc. 21). Maroney indicated that her last prescription for lithium was written in September of 2022, but it is unclear how long this prescription lasted. (Doc. 21). Together, this suggests that M.D. was willing to take medication in the community and had at least attempted to be on medication in the community. Similar to *M.T.H.* and *R.H.*, here it was not enough for the State to show that M.D. could not stabilize without medication and that she had some history of failing to take her medication when *not* hospitalized. The State needed to show why the Hospital needed prior authorization to involuntarily medicate M.D. at the time of the hearing. The State failed to make this showing.

The district court's ruling that the Hospital could involuntarily medicate M.D. if she hypothetically decided not to comply with medication is similar to the district court's order in *R.H.* This Court made clear in *R.H.* that a finding that a person may theoretically become noncompliant with medication in the future "is insufficient to meet" the statutory requirement that involuntary medication "is necessary." *R.H.*, ¶ 21. Here, the district court's authorization of

involuntary medication "if necessary" did not meet the statutory requirement that the court find that involuntary medication was necessary at the time of the hearing, especially in light of the district court's own belief that M.D. would remain medication compliant.

This case is distinguishable from *Matter of C.B.* There, the Court found that the district court's order of involuntary medication was proper and supported by an extensive history of medication non-compliance and the critical nature of the medications. *Matter of C.B.*, 2017 MT 83, ¶ 43, 387 Mont. 231, 392 P.3d 598. C.B. suffered from bipolar disorder; she was aggressive, combative, and abusive towards family, and she was chronically homeless. *C.B.*, ¶ 2. C.B. had become compliant with medication while hospitalized at Billings Clinic pending an evidentiary hearing. *C.B.*, ¶ 4. However, medical records showed that she was frequently noncompliant with her prescribed medication. *C.B.*, ¶ 2. Four petitions for commitment were filed in a span of seven months. *C.B.*, ¶ 3. For those seven months, C.B. was habitually non-compliant with her medications when she was not hospitalized. *C.B.*, ¶ 40. C.B. would stabilize when she was medicated at the clinic but would destabilize again within weeks of being discharged. *C.B.*, ¶ 40.

The Court found that the district court order of involuntary medication was justified on the basis that C.B. "require[d] regular and systematic medication to return to her better mental and physical health" and "her history of noncompliance with medications or her outright refusal to take them." *C.B.*, ¶ 39. The Court distinguished this case from *R.H.* on the basis that R.H. had no history of medication noncompliance. *C.B.*, ¶ 41.

Here, although the professional person testified that medication was necessary for M.D. to improve, M.D. did not have an extensive record of noncompliance like C.B. The record does suggest that M.D. was not taking her medications at the time the petition was filed, but again, Maroney testified that this was likely an issue with accessing medication, not a result of M.D.'s deliberate refusal to take the medication. (Tr. at 14). C.B. had never taken her medication on her own; she would take medication at the Hospital and go off of it as soon as she was discharged, deteriorating quickly.

M.D. did not have the same pattern as C.B. of being medicated by the Hospital, stabilizing, immediately going off medication, and being recommitted. M.D. had been compliant with her medication for at least

some time after her previous admission to the Hospital. She had a prescription for lithium and had successfully seen her medical provider in December, six months earlier. She had gone seven months without any known issues. M.D.'s most recent stay at the Hospital was in mid-November 2022, seven months earlier. (Doc. 21 at 4). Nothing in the record indicated any issues in the intervening period. Her medication noncompliance due to her struggle to refill her prescription, after being compliant, is not the same as C.B.'s chronic noncompliance upon discharge.

The district court did not make a finding that involuntary medication was necessary at the time of the hearing. In its written order, the district court found that M.D. was "incompetent to give informed consent for medications" as a result of "not [being] able to maintain her required medication while in the community." (Doc. 19 at 3). The district court concluded, "[M.D.]'s physical and mental health will deteriorate further without proper administration of medications, that [M.D.] must be administered said medications, and that the Montana State Hospital shall determine what medications are warranted and administer them to [M.D.], whether voluntarily or

involuntarily." (Doc. 19 at 4). This finding that M.D. needed medication in general, and that she struggled to acquire it *in the community*, does not satisfy the statutory requirement that it "is necessary" to authorize the Hospital to involuntarily medicate M.D.

CONCLUSION

The Court should reverse the district court's order authorizing the Hospital to involuntarily medicate M.D. The district court did not make the requisite finding, and the evidence did not support a finding, that it was *actually necessary* to authorize the Montana State Hospital to administer M.D.'s medication involuntarily. The portion of the commitment order authorizing the Hospital to administer involuntary medication must be struck.

Respectfully submitted this 21st day of January, 2025.

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By: /s/ Emma N. Sauve
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,341, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Emma N. Sauve
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APPENDIX

Findings of Fact, Conclusions of Law and Dispositional Order……App. A

CERTIFICATE OF SERVICE

I, Emma Nelson Sauve, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-21-2025:

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