



02/28/95 MATTER CAWTHON E. SUTTLES

1995 | Cited 0 times | Court of Appeals of Minnesota | February 28, 1995

HARTEN, Judge

After a hearing, appellant was committed to the Anoka Metro Regional Treatment Center as mentally ill and chemically dependent. He appeals, challenging the sufficiency of the evidence. We affirm.

FACTS

On September 17, 1994, appellant, a 42-year-old admitted long-time cocaine user, collapsed while mowing his lawn. He suffered a brain hemorrhage consistent with trauma or injurious cocaine use. Immediately after the stroke, appellant could not speak or swallow, but eventually he regained the ability to do so. On October 5, 1994, appellant was transferred to the Fairview Riverside Medical Center for rehabilitation, and was released on October 17, 1994. Although warned prior to his discharge that the use of cocaine would be life-threatening, he purchased cocaine the day of his release. According to appellant, he bought the cocaine only to show his wife that although he was able buy it, he had no intention of using it. Appellant was rehospitalized the same day.

On October 18, a petition for judicial commitment as mentally ill and chemically dependent was filed. Dr. William Hague, appellant's treating psychiatrist, diagnosed appellant with vascular dementia and cocaine dependency. His treatment team believed that appellant represents a danger to himself due to the combination of vascular dementia and cocaine dependency. Absent a secure hospital setting, appellant is at very high risk of using cocaine because of his dependency; such use could lead to further brain damage or death. Appellant also requires hospitalization to receive testing and programming for his cognitive deficits. When his cognitive deficits improve, chemical dependency treatment will be available.

Dr. James Jacobson, the court-appointed examiner, diagnosed appellant as suffering from vascular dementia with behavioral disturbances and cocaine dependency. Appellant suffered cognitive damage from the stroke. Although this damage affected his thought, mood and perception, and impaired his judgment, behavior and ability to recognize reality, reason and understand, appellant denies that he has any problems or deficits. Appellant will need to recover from the brain damage before he can obtain chemical dependency treatment. Dr. Jacobson recommended commitment for inpatient treatment.

Appellant testified that he wishes to return home and understands he can no longer use cocaine. He



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acknowledged that he used cocaine once or twice a week for eight or ten years. He does not believe he needs chemical dependency treatment, but is willing to attend just to prove he does not need it.

The trial court committed appellant as mentally ill and chemically dependent. Suttles appeals.

DECISION

Appellant challenges his commitment as chemically dependent and mentally ill, contending that the trial court erred in finding a substantial likelihood of harm from either condition. Minn. Stat. § 253B.02, subd. 2(b) (1994) (chemically dependent person); Minn. Stat. § 253B.02, subd. 13 (1994) (mentally ill person).

Trial court findings will not be set aside unless clearly erroneous. See *In re Heurung*, 446 N.W.2d 694, 696 (Minn. App. 1989). The evidence supporting these findings must be clear and convincing. Minn. Stat. § 253B.09, subd. 1 (1994). This court need not defer to the trial court on a question of law. *In re Stilinovich*, 479 N.W.2d 731, 734 (Minn. App. 1992).

The court found that appellant's recent conduct resulted from his chemical dependency and his mental illness and posed a substantial likelihood of physical harm, as shown by the fact that after being discharged, told not to drive, and told that any further use of cocaine could cause another stroke, he immediately drove his car and purchased cocaine. The court found that he is unable to appreciate the risk involved in this type of behavior and that his craving for cocaine is too strong for him to resist.

Appellant argues that the trial court erred as a matter of law in finding he purchased cocaine to satisfy his craving, and that therefore there was no showing of a substantial likelihood of physical harm from chemical dependency. See Minn. Stat. § 253B.02, subd. 2(b). He contends that his explanation of his purchasing the cocaine to show his wife that he would not use it was the only evidence before the court on the issue of craving.

The trial court, however, considered evidence other than appellant's version of events. We therefore apply the clearly erroneous standard. See *Heurung*, 446 N.W.2d at 696. The other evidence showed that appellant acquired cocaine against the advice of his physicians within hours after being discharged from the hospital. A member of appellant's treatment team and the court-appointed examiner gravely predicted that appellant was at very high risk to use cocaine, which could cause further brain injury or death. Appellant's lack of insight is shown by his hearing testimony that he did not need treatment and simply no longer would use cocaine. The trial court's finding that appellant could not appreciate the risk involved and that his craving for cocaine was too strong for him to resist is supported by the record and is not clearly erroneous.

Appellant also challenges the determination that he is mentally ill, contending there is an



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insufficient showing of a substantial likelihood of harm. See Minn. Stat. § 253B.02, subd. 13(b). The trial court found that the impairment of appellant's mental functioning from his stroke made it highly likely appellant would resume cocaine use, creating a strong risk of further injury or death, if he were not hospitalized in a secure setting. The court found that appellant's recent purchase of cocaine immediately after his discharge from the hospital shows that he poses a substantial likelihood of physical harm.

Appellant argues that because the trial court determined that the risk of harm was based upon his cocaine dependency, he cannot be committed as mentally ill. Minn. Stat. § 253B.02, subd. 13(b)(ii)(d) (providing that impairment from mental illness does not include dependence upon or addiction to drugs or alcohol). This argument ignores the trial court determination that he suffers from vascular dementia, which meets the standards for commitment as mentally ill. Minn. Stat. § 253B.02, subd. 13(a).

Appellant also contends that there was no showing that he was unable to provide necessities or that he made a recent attempt or threat to physically harm himself or others. Minn. Stat. § 253B.02, subd. 13(b). Appellant's cognitive deficits were caused by his mental illness, and prevented him from realizing his need for chemical dependency treatment and from recognizing the risk of cocaine use, as shown by his recent purchase of cocaine. The trial court had clear and convincing evidence to support its determination that appellant posed a likelihood of harm to himself as a result of his mental impairment. See *In re Harvego*, 389 N.W.2d 266, 268 (Minn. App. 1986).

Affirmed.

22 FEBRUARY 1995

James C. Harten

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

