

**RECORD IMPOUNDED**

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0908-16T2

W.G.,

Appellant,

v.

NEW JERSEY DEPARTMENT  
OF HUMAN SERVICES,

Respondent.

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Submitted January 29, 2018 – Decided March 20, 2018

Before Judges Messano and O'Connor.

On appeal from the New Jersey Department of  
Human Services.

W.G., appellant pro se.

Gurbir S. Grewal, Attorney General, attorney  
for respondent (Melissa H. Raksa, Assistant  
Attorney General, of counsel; Amy Beth Cohn,  
Deputy Attorney General, on the brief).

PER CURIAM

W.G., civilly committed to the Special Treatment Unit (STU)  
pursuant to the New Jersey Sexually Violent Predator Act (SVPA),  
N.J.S.A. 30:4-27.24 to -27.38, appeals from the September 20,  
2016 final agency decision of the Department of Human Services

(DHS), denying his grievance. For the reasons that follow, we affirm.

I

We discern the following facts from the record. The residents of the STU are subject to certain rules, many of which are described in a "Residents' Guide To The STU" (Guide), a handbook each resident is provided when admitted into the STU. According to the Guide, residents who "fail to improve their participation in treatment despite placement on Treatment Probation will be placed on Treatment Refusal status." As the Guide explains, residents must be motivated to fully participate in treatment. To encourage such participation, depending upon the circumstances, the privilege of possessing certain items or obtaining a job within the STU may be granted or withheld in order to motivate a resident to fully engage in treatment.

Consistent with this approach, the Guide states a resident who refuses to participate in treatment in a meaningful manner will be notified in writing he is placed on "Treatment Probation." If placed on probation, the written notice shall provide a brief explanation of the reasons he has been put on probation and, "unless obvious[,] . . . the conditions that must be met to successfully complete the term of probation."

There is a form of remedy that is more severe than being placed on Treatment Probation, and that is being placed on "Treatment Refusal" status. The Guide advises that those who fail to improve their participation in treatment despite being placed on Treatment Probation will be placed on Treatment Refusal status. Unlike when placed on Treatment Probation, the Guide does not impose any requirement that those placed on Treatment Refusal status receive written notice of being placed on such status, including an explanation of the reasons for such placement and the conditions that must be met to be taken off of such status.

W.G. was placed on both Treatment Probation and Treatment Refusal status, yet still did not fully participate in treatment. Therefore, on January 8, 2016, W.G. and his treatment team entered into a "behavior contract," in which W.G. agreed to engage in or refrain from certain behavior. Although W.G. did not sign the contract, it is not disputed he verbally agreed to its terms during a group treatment session.

Specifically, W.G. agreed to bring a notebook to group sessions to record any feedback he received from the staff and his peers and, at the end of each session, to discuss such feedback with the staff "to ensure consistency and understanding." In addition, for the ensuing ninety days, he

consented to limiting his comments to three per group session, none of which was to exceed two minutes, was to pertain to the person "taking the floor or the issue they were discussing," and was not to include W.G.'s own experiences.

W.G. further agreed that, "prior to taking another floor<sup>[1]</sup>," he would present the staff with a list of his five most "therapy-interfering" behaviors, such as lying or "over-talking others," and suggest ways to manage such behavior during group sessions. Finally, he agreed that, over the succeeding ninety days, he would not confront "housekeeping" with any problem unless he first attempted to resolve such problem with three "peer support team members." If unable to resolve the problem, he consented to discussing the problem in a group session for a maximum of five minutes.

The contract also provided that, if he did not meet the terms of the contract, he would be "redirected" one time per group session. If he did not comply with such "warning," he would be asked to leave the group and would receive an unexcused absence. If he received two unexcused absences from a group within a month because of a violation of the contract, his treatment team had the discretion to recommend either Treatment

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<sup>1</sup> The record does not clarify what was meant by "taking another floor."

Probation or placement on Treatment Refusal status. The contract also noted that if he were placed on Treatment Refusal status, the privilege of having a job or possessing certain items would be suspended.

In April 2016, W.G.'s team placed him on "Treatment Refusal" status because he failed to adhere to the terms of the contract. The record does not reveal the manner in which he violated the contract but, significantly, W.G. does not dispute that he did so. In response to being placed on Treatment Refusal status, W.G. submitted a DHS Request/Grievance Form, the internal form used by STU residents to resolve grievances.

In such form W.G. set forth a number of complaints. In a brief statement, a member of the STU staff rejected his grievance and, in turn, W.G. submitted an administrative appeal. Those grievances W.G. asserted in his administrative appeal that are relevant to the issues on appeal are:

(1) There is no information about a "behavior contract" in the Guide and, thus, the contract was "invalid;"

(2) DHS altered recognized procedures by which to provide a resident with a Treatment Probation notice and should have used a Treatment Probation form instead of the contract; and

(3) The contract violated the terms of a settlement agreement in which DHS entered in the matter Alves v. Main, No. 01-789 (DMC), 2012 U.S. Dist. LEXIS 171773 (D.N.J. Dec. 4, 2012).

As a remedy for his grievances, W.G. demanded the contract be withdrawn and a Treatment Probation notice be issued setting forth: (1) his treatment team's objectives; (2) the consequences if he fails to meet those objectives; and (3) clear time frames.

STU Unit Director Tina Spagnuolo rejected the relief W.G. sought in his administrative appeal. In her decision, she noted that, before entering the contract, W.G. had been placed on Treatment Probation and Treatment Refusal status several times for failing to fully engage in treatment, but to no avail. Therefore, his treatment team determined to place him on a behavior contract as another way of addressing his conduct.

Spagnuolo pointed out W.G. failed to adhere to the terms of the contract, which warned he may be placed on Treatment Refusal status as a consequence. She concluded her opinion by providing W.G. with the following advice:

You are welcome[] to begin addressing the concerns outlined in the behavior contract and reengage in sex offender specific treatment in orientation group. Once this [is] done on a consistent basis, you [will] be placed back into a regular sex offender specific process group and be removed from

[Treatment Refusal] status. In light of the above, I do support the treatment team's current handling of your treatment trajectory.

I urge you to consider the time you have spent at the STU and if you have used it wisely. I encourage you to begin to think about your future and what you envision for yourself. Then begin to start working towards those goals by engaging meaningfully in treatment and working yourself off [Treatment Refusal] status and to eventually becoming a candidate for discharge. . . . When you decide you are ready to reengage in treatment, we will be here to support you.

This appeal ensued.

## II

On appeal, W.G. raises the following arguments for our consideration:

POINT I: RESPONDENT INFRINGED UPON APPELLANT'S ADMINISTRATIVE DUE PROCESS RIGHTS WHEN RESPONDENT, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, UTILIZED AN UNRECOGNIZED TREATMENT FORM TO PLACE APPELLANT ON TREATMENT REFUSAL STATUS, WHICH IS A FORM THAT DEPARTS FROM THE INTERNAL MANAGEMENT PROCEDURES OF THE SPECIAL TREATMENT UNIT, AND WHICH VIOLATES THE TERMS OF THE SETTLEMENT AGREEMENT ARISING FROM THE ALVES v. MAIN LAWSUIT.

POINT II: UNIT DIRECTOR TINA SPAGNUOLO CIRCUMVENTED THE PROCEDURES OF RESPONDENT NEW JERSEY DEPARTMENT OF HUMAN SERVICES' REMEDY SYSTEM WHEN SHE ANSWERED IN THE WRONG PART OF APPELLANT'S REMEDY FORM, WHICH PREVENTED APPELLANT FROM RECEIVING A RESPONSE FROM THE CLINICAL DIRECTOR OR DESIGNEE. (Not raised below.).

In his brief, W.G. clarifies his argument points to some extent. He contends his procedural due process rights were violated because DHS used the contract to place him on Treatment Refusal status. Specifically, he argues the contract was deficient because:

(1) the Guide does not refer to a behavior contract<sup>2</sup> and, according to him, "a behavior contract is not the official notice the [DHS] is supposed to give residents who are placed on Treatment Probation";

(2) the contract did not advise why he was placed on "Treatment Probation" and what he needed to accomplish to avoid being placed on Treatment Refusal status; and

(3) the contract failed to reasonably inform W.G. of "the time frames associated with the length of his probation and refusal placements, nor the length of intervals of [Treatment Refusal], nor any other relevant time frames."

W.G. also maintains DHS failed to comply with the settlement agreement reached in the Alves matter. Finally, he claims Spagnuolo placed her decision on that part of the form that is normally reserved for the Clinical Director to place his decision. He contends that by placing her decision on the wrong

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<sup>2</sup> A complete copy of the Guide was not provided in the record.



part of the form, Spagnuolo precluded the Clinical Director from rendering a decision in this matter. W.G. did not assert the latter argument when before the agency. We note here DHS is not contending W.G. failed to exhaust any administrative appeal before filing his notice of appeal in this court.

The scope of our review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "An appellate court ordinarily will reverse the decision of an administrative agency only when the agency's decision is 'arbitrary, capricious or unreasonable or [] is not supported by substantial credible evidence in the record as a whole.'" Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)).

"A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" Stallworth, 208 N.J. at 194 (quoting In re Carter, 191 N.J. 474, 483 (2007)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)).

However, "an appellate court is 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue[.]'" Carter, 191 N.J. at 483 (quoting

Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Indeed, an agency's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995).

Here, W.G.'s principal argument is that his procedural due process rights were violated because DHS used the contract to place him on Treatment Refusal status. Among other arguments, he also maintains the Guide does not refer to a behavior contract, and a contract is not the kind of notice a resident is to receive when placed on "Treatment Probation."

First, a copy of the entire Guide is not in the record, a deficiency that has hampered our review. Rule 2:6-1(a) requires that the appendix contain parts of the record "essential to the proper consideration of the issues." Second, assuming the Guide does not refer to behavior contracts, W.G. was not placed on Treatment Probation but Treatment Refusal status. The Guide does not require one placed on Treatment Refusal status receive any written notice in advance. Third, and more important, what cannot be overstated is the context in which W.G. entered into the subject contract.

W.G. was not fully participating in treatment. The treatment team had placed W.G. on both Treatment Probation and

Treatment Refusal status several times in the past to induce him to fully engage in treatment, without success. The team determined to use a different remedy to confront W.G.'s difficulty with fully engaging in treatment. Instead of putting W.G. on Treatment Refusal status which, according to the Guide, it was at liberty to do, the team permitted and W.G. agreed to enter into the subject contract. There is no question this remedy was far more innocuous than being placed on Treatment Refusal status.

The contract clearly specified the manner in which W.G. was to behave under certain situations, predominantly in group therapy. The conduct he consented to engage in under the terms of the contract was not punitive at all. In fact, it was designed to be therapeutic. W.G. agreed that, if he did not adhere to the terms of the contract, the team had the discretion of placing him on Treatment Refusal status if he had two unexcused absences (as defined by the contract) from the group because of a violation of the terms of the contract.

W.G. does not cite and we were unable to find any authority to support the premise that the use of the contract under these particular circumstances violated his rights to procedural due process. In fact, the State has considerable discretion in determining the treatment for a person committed under the SVPA.

M.X.L. v. N.J. Dep't of Human Servs./N.J. Dep't of Corr., 379 N.J. Super. 37, 48 (App. Div. 2005). "[T]he States enjoy wide latitude in developing treatment regimens" for sex offenders. Kansas v. Hendricks, 521 U.S. 346, 368 n.4 (1997).

Here, the State used the contract to treat W.G. in a fashion other than placing him on Treatment Probation or Treatment Refusal status because the latter two remedies did not work. W.G. agreed to the terms of the contract. For reasons he does not divulge, he violated the contract, although he does not reveal the consequences of being placed on this status. He does not state what privileges, if any, were suspended.<sup>3</sup>

The Guide does state that residents placed on Treatment Refusal status "will not be assigned institutional jobs or allowed privilege possession[s] such as personal televisions unless clinically contradicted." If he lost the kind of privileges mentioned in the Guide, no procedural due process protection was violated. See M.X.L., 379 N.J. Super. at 48 (noting the suspension of personal television and job opportunities does not trigger procedural due process protections). If he endured any other consequence, we are

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<sup>3</sup> The record indicates that when placed on Treatment Refusal status in the past, the privilege of holding a job within the unit and possessing certain entertainment devices was suspended.

foreclosed from addressing it because W.G. declined to identify what it was.

We have considered W.G.'s remaining arguments, and conclude they are without sufficient merit to warrant discussion in a written opinion, see Rule 2:11-3(e)(1)(E), but add the following brief comments.

W.G.'s argues DHS violated the settlement agreement which it entered in the Alves matter. In that matter, certain residents of the STU brought a class action suit against various public officials of the State of New Jersey concerning their treatment and other issues. The matter settled, and one of the provisions in the settlement agreement was the State would not intentionally prolong a STU resident's treatment.

Here, in his brief before us, W.G.'s argument DHS violated the settlement agreement is cryptic. When before the DHS, he argued, without elaboration, that the contract intentionally prolonged his treatment. To the extent that is his argument on appeal, we are unable to discern any basis for it. The contract was designed to facilitate and, thus, expedite W.G.'s treatment, not prolong it. There is nothing about and W.G. failed to identify how the terms of the contract extended treatment.

In summary, there was sufficient credible evidence in the record to support the agency's decision. Given our highly deferential standard of review, we find no reason to reverse it.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION