SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0324-21
A-0750-21
A-0975-21
A-2368-21

IN THE MATTER OF THE CIVIL COMMITMENT OF E.S-D.

Submitted March 6, 2023 – Decided April 5, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. SOCC-00053817.

Joseph E. Krakora, Public Defender, attorney for appellant E.S-D. (Thomas G. Hand, Assistant Deputy Public Defender, on the briefs).

Law Office of Tiffany J. Moore, LLC, attorney for respondent Somerset County Adjuster's Office (Justin Halwagy, Assistant County Counsel, Tiffany J. Moore, and Moshood Muftau, First Deputy County Counsel, on the briefs).

PER CURIAM

E.S-D. appeals from four orders continuing his civil commitment at Greystone Park Psychiatric Hospital (Greystone), issued on August 18, 2021; September 29, 2021; November 24, 2021; and February 16, 2022.[1] We affirm.

E.S-D. was charged with killing his grandparents with an aluminum baseball bat in February 2016. A grand jury indicted him on two counts of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); and one count of possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d). A judge determined E.S-D. was incompetent to stand trial and dismissed the charges after he was diagnosed with schizophrenia at Ann Klein Psychiatric Hospital (Ann Klein). In February 2021, in a thorough written decision following a contested hearing with numerous psychiatric experts, the criminal motion judge found E.S-D.'s "'[c]omplex and complete delusional system' precludes meaningful interaction with his attorney with respect to the pending charges and the trial." E.S-D. was admitted to Greystone in July 2021.

E.S-D.'s first review hearing took place on August 18, 2021. Dr. Isabel Allen-Steinfeld testified for the State. She was not E.S-D.'s current treating psychiatrist at Greystone, but she had known him for longer than anyone else

[1] These appeals were filed separately, and the first three were consolidated on motion of E.S-D. December 21, 2021. We consider all four appeals together.

who might testify—about two weeks—and thus was in the best position to speak to E.S-D.'s condition at the time.

Dr. Allen-Steinfeld confirmed E.S-D.'s diagnosis was schizophrenia, though she "[had] not observed any behavior consistent with [that] diagnosis" in the time she had observed him at Greystone. While she "would have to know him longer to say whether" the schizophrenia diagnosis was appropriate, E.S-D. had told her about auditory and visual hallucinations and paranoia he had previously experienced, most recent of which were in the car on the way to Greystone a few months earlier.

Dr. Allen-Steinfeld opined E.S-D. represented a danger to others. Given E.S-D.'s history, he needed a risk assessment through the Special Status Patient Review Committee (SSPRC).[2] She did not recommend conditional extension pending placement (CEPP). The court found Dr. Allen-Steinfeld's opinion credible, based on E.S-D.'s history, her conversations with him and his recent manifestations of mental illness.

[2] "The SSPRC provides review of recommendations made by a patient's treatment team balancing the patient's need to 'successfully participate in treatment and rehabilitative programs, while maintaining a safe and secure therapeutic milieu for patients and staff . . . .'" In re Commitment of T.J., 401 N.J. Super. 111, 114 n.2 (App. Div. 2008) (quoting N.J.A.C. 10:36-1.1).

The court concluded not enough was known about E.S-D.'s condition or how he would react to stimuli outside the hospital and found he was "a real danger to others that . . . [could not] simply be dismissed as being non-existen[t]." It added "[t]he fact that [the] SSPRC is involved is a critical element to establishing safety in this matter." Recognizing E.S-D. may establish stability at some future point, the court found E.S-D. presented a danger to himself, others, or property and ordered continued commitment.

E.S-D.'s next hearing was one month later, in September 2021. Dr. Margarita Gormus, E.S-D.'s then treating physician, confirmed E.S-D.'s schizophrenia diagnosis, as well as cannabis use disorder and attention-deficit/hyperactivity disorder. Dr. Gormus reported E.S-D. refused to have lab work performed, refused to eat, and isolated himself. He stopped taking his medication for four to five days, asserting he wanted to try a different medication due to weight gain caused by the first, so Dr. Gormus had recently started him on a new medication. Dr. Gormus needed three months to see if the medication worked for E.S-D.

Dr. Gormus explained E.S-D.'s self-isolation and restriction of food intake were, historically, "red flags" signaling he was beginning to decompensate. She

thought he needed closer observation. When asked if E.S-D. was a danger to himself or others, Dr. Gormus testified he would be "if he decompensates."

E.S-D. testified he restricted his diet because the food at the hospital bothered his stomach, and he wanted to lose the weight he gained while taking the first medication. He told the court he had no symptoms of schizophrenia at the time, and the new medication was working. E.S-D. added he has "never threatened anybody or hit anybody."

The court found E.S-D.'s remark he had not hit anyone indicative of a lack of insight into his illness, and was concerned E.S-D. had been refusing lab tests. The court found Dr. Gormus credible and her opinion "very careful, considered, [and] professional." The court found by clear and convincing evidence E.S-D. remained a danger not only to himself, but also—based upon his condition's current manifestations, potential decompensation, and his violent history—a danger to others. It continued E.S-D.'s commitment.

The following month, November 2021, Dr. Rumana Rahmani—another treating psychiatrist—testified E.S-D. was having auditory and visual hallucinations throughout the day, but he was keeping them under control using a form of meditation. Dr. Rahmani testified E.S-D. was medication compliant, but only to satisfy those who supervised him, as E.S-D. believed he had his

symptoms under control before using the medication. E.S-D. had trouble sleeping and was experiencing night terrors, which E.S-D. attributed to the stress of the court process.

E.S-D. discussed certain incidents with Dr. Rahmani. First, he said a coyote told him to cut himself and spread his blood all over his face, walls, and mirror in order to live—instructions he followed. Another time, E.S-D. "grabbed his mother by the neck and repeatedly [hit] her head against the wall." E.S-D. contended his mother was the aggressor in this situation.

The judge asked Dr. Rahmani several times whether E.S-D. remained dangerous while in the hospital, and after lengthy summaries of E.S-D.'s current symptoms, she stated "he continues to be a danger to self and others." She recommended continued commitment, but with eventual referral to involuntary outpatient commitment (IOC).

The court continued commitment. The judge considered E.S-D.'s history, his insomnia and night terrors, lack of insight, lack of commitment to his medication regime, and the doctor's concern the stress he was experiencing at the time might be making his symptoms worse. The judge suggested IOC may be a future goal but was not convinced E.S-D. was ready for that at the time of the hearing. Additionally, E.S-D. had not yet been submitted to SSPRC or the

Clinical Assessment Review Panel (CARP), an independent reviewing committee. The judge denied E.S-D.'s request for a referral to IOC.

The fourth and final hearing relevant to this appeal was held on February 16, 2022. Dr. Gormus was absent from Greystone from mid-October 2021 until January 2022. When she returned, she suspected E.S-D. was not taking his medication because he was spending more time alone in his room or pacing the hallway. She ordered bloodwork, to which E.S-D. agreed to comply, but had not yet completed.

Dr. Gormus opined E.S-D. still posed a risk of danger to himself or others. If she knew he was compliant with medication and he exhibited no symptoms, she would not consider him a risk. She wanted to start him on a long-acting injectable, but the process would take time, and he would need to provide bloodwork prior to changing medication. She asked that E.S-D. remain committed for at least three months.

In an oral decision, the court found: "Dangerousness is the key. The uncertainty in this matter is based upon the fact that two people perished." The court noted E.S-D. was showing "red flags"—i.e., isolating himself and pacing the hallways.

The court also stressed the importance of the bloodwork. While E.S-D. had agreed to have bloodwork done a few days before the hearing, it was not certain he would follow through with the procedure. Without a blood test, E.S-D. could not be started on long-acting injectable medication or be submitted to SSPRC or CARP. The court stated, "[w]hile the SSPRC and CARP are not controlling, they certainly are influential, and they certainly were created for a purpose." At this point, E.S-D. interrupted the judge to say: "It's not fair. It wasn't my fault. . . . I didn't do a damn thing wrong."

Noting the goal was to place E.S-D. in a less restrictive setting, the court observed those involved "need[ed] to proceed cautiously . . . ." IOC, the court said, would be appropriate for E.S-D. when it could be shown he is no longer a danger. Without bloodwork and treatment with a long-lasting injectable, the court continued commitment. E.S-D. appealed each of the four orders continuing commitment.

I.

Our review of a commitment determination is "extremely narrow." In re D.C., 146 N.J. 31, 58 (1996). We "should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a clear mistake.'" In re Commitment of R.F., 217 N.J. 152, 175 (2014) (quoting

D.C., 146 N.J. at 58). The trial judges who hear these cases "generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Id. at 174 (citing In re Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)).

To establish a patient's need for continued involuntary commitment, the State must present clear and convincing evidence:

> (1) the patient is mentally ill, (2) mental illness causes the patient to be dangerous to self or dangerous to others or property . . . , (3) the patient is unwilling to be admitted to a facility for voluntary care or accept appropriate treatment voluntarily, and (4) the patient needs outpatient treatment . . . or inpatient care at a short-term care or psychiatric facility or special psychiatric hospital because other less restrictive alternative services are not appropriate or available to meet the patient's mental health care needs.
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> [R. 4:74-7(f)(1); see also N.J.S.A. 30:4-27.2(m).]

Additionally, to justify involuntary commitment, "[t]here must be . . . a 'substantial risk of dangerous conduct within the reasonably foreseeable future.'" In re Commitment of J.R., 390 N.J. Super. 523, 530 (App. Div. 2007) (quoting In re S.L., 94 N.J. 128, 138 (1983)). "The evidence must permit the judge 'to come to a clear conviction [that person is mentally ill and dangerous], without hesitancy.'" In re Commitment of M.M., 384 N.J. Super. 313, 334 (App. Div.

2006) (alteration in original) (quoting In re Commitment of G.G.N., 372 N.J. Super. 42, 59 (App. Div. 2004)).

Regarding the August 18, 2021 order, E.S-D. argues the State failed to establish he suffered from a mental illness or that he was dangerous, and the court erred in continuing commitment based on the State's unpreparedness. We disagree.

E.S-D. argues the State failed to establish at the first hearing he had a mental illness. In particular, he points to Dr. Allen-Steinfeld's testimony that, though E.S-D.'s diagnosis was schizophrenia, she had "not observed any behavior consistent with [that] diagnosis on the [Greystone admissions] unit" and "would have to know him longer to say whether" the diagnosis was appropriate.

Dr. Allen-Steinfeld testified E.S-D.'s diagnosis was schizophrenia. E.S-D. was previously diagnosed with schizophrenia at Ann Klein. At the time he entered Greystone, she had not known E.S-D. long enough to say whether that diagnosis was appropriate, but testified E.S-D. told her of his past auditory and visual hallucinations, the most recent of which occurred in the car on the way to Greystone just a few weeks prior to the hearing. Dr. Allen-Steinfeld added E.S-D. also said he was experiencing paranoia.

Even if Dr. Allen-Steinfeld did not herself diagnose E.S-D. with schizophrenia, the symptoms he described to her are evidence of "a current, substantial disturbance of thought, mood, perception, or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality." N.J.S.A. 30:4-27.2(r).

E.S-D. next contends the State failed to establish he presented a danger to himself, others, or property. He argues Dr. Allen-Steinfeld's opinion was a net opinion not based on any facts or other data, and the judge applied the wrong standard and based the finding of dangerousness on his own personal concerns rather than evidence.

N.J.S.A. 30:4-27.2(i) sets forth the definition of "dangerous to others or property":

> [B]y reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior, and any recent act, threat, or serious psychiatric deterioration.

The "net opinion rule . . . forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Polzo v. Cnty. of Essex, 196 N.J. 569, 583 (2008) (quoting State v. Townsend, 186 N.J.

473, 494 (2006)). Dr. Allen-Steinfeld's opinion was supported by factual evidence. Her basis for determining E.S-D. was a danger to others was his history. Given E.S-D.'s history includes bludgeoning his grandparents to death with a baseball bat, this was not unreasonable. Indeed, the law says the determination of dangerousness to others or property "shall take into account a person's history, recent behavior, and any recent act, threat, or serious psychiatric deterioration." N.J.S.A. 30:4-27.2(i) (emphasis added).

Next, E.S-D. construes the judge's finding of a "reality of dangerousness" as inappropriately using a totality-of-the-circumstances test. Nothing in the record indicates the judge applied this standard.

In determining whether a patient poses a danger to self, property, or others, according to the statute, a judge shall consider "a person's history, recent behavior, and any recent act, threat, or serious psychiatric deterioration." N.J.S.A. 30:4-27.2(h) and (i). There must be clear and convincing evidence to support the determination. R. 4:74-7(f)(1). In deciding to continue commitment, the court considered E.S-D.'s history. That it also considered other things in conjunction with E.S-D.'s history does not turn the analysis into a totality-of-the-circumstances test.

E.S-D. lastly argues the court erred in considering the need for more information. The court wanted more information regarding E.S-D.'s condition and the risk to be had going forward. It also noted counsel for the county had just received the case and did not have much time to prepare. Further, the testifying doctors did not have much time to observe E.S-D., who had arrived at the hospital just a few weeks before. Nonetheless, defendant's history of violence was enough at this stage to support a finding he posed a foreseeable risk of danger. There was more information to be developed, but that does not mean the court did not have enough information to make the determination E.S-D. posed a danger to himself or others.

II.

In challenging the September 29, 2021 order, E.S-D. once again argues there was no basis for the court's finding of dangerousness. Specifically, he contends Dr. Gormus's testimony painted only a possibility of danger, rather than the "substantial risk" required by N.J.S.A. 30:4-27.2.

A mere possibility of danger is not enough to satisfy the requirements of Rule 4:74-7(f). See In re Commitment of W.H., 324 N.J. Super. 519, 523 (App. Div. 1999). In W.H., the doctor opined the patient would "possibly" be a danger to himself or others if he were to stop taking his medication. Ibid. The doctor

also testified the patient had a history of violence, but did not present any facts to support that conclusion. Id. at 524. According to witnesses the trial judge found credible, the patient had never been violent, even when he was not taking his medication. Ibid. We reversed the trial court's order continuing commitment, holding the mere possibility of danger with nothing more does not rise to the level of clear and convincing. Ibid.

E.S-D.'s case is different. Dr. Gormus did not testify he would possibly be a danger to others if he decompensated; rather, she testified he would be a danger if he decompensated. Further, at the time, E.S-D. was showing signs of decompensation, including isolating himself and restricting food intake. He had stopped taking his medication for a few days, and had just been prescribed a new medication, the effects of which had not yet been assessed. Lastly—and most importantly—in contrast to the patient in W.H., E.S-D. has a very significant violent history.

Though E.S-D. testified he was restricting his food intake because he was trying to lose weight, the court was entitled to find the doctor more credible. Therefore, the court did not err in considering E.S-D.'s violent history in

conjunction with recent behavior to determine he posed a foreseeable danger to those around him.[3]

E.S-D. argues the court erred in relying on his "uncharged crimes" to conclude he posed a danger to others. We disagree. In State v. Fields, our Supreme Court stated the "prior commission of an act for which [a person] has been relieved of criminal responsibility is powerful evidence of his potential dangerousness and should be weighed accordingly in [the determination of the need for continued commitment]." 77 N.J. 282, 309 (1978).

When determining whether a person should be immediately committed after a dismissed charge due to incompetence to stand trial under N.J.S.A. 2C:4-6, the court considers the conduct underlying the charge. See State v. Moya, 329 N.J. Super. 499, 510-12 (App. Div.), certif. denied, 165 N.J. 529 (2000).

[3] To find a patient is a danger to himself because he is not eating, the court must also find this will likely cause "substantial bodily injury, serious physical harm, or death" in the "reasonably foreseeable future." N.J.S.A. 30:4-27.2(h). While his reduced food intake was a sign of decompensation, Dr. Gormus offered no testimony suggesting it was so severe it would cause substantial bodily injury, serious physical harm, or death. Thus, the finding of danger to self through E.S-D.'s food restriction alone is not supported by clear and convincing evidence. However, this error is harmless in the context of continuing commitment because the finding E.S-D. posed a danger to others was supported by clear and convincing evidence.

Lastly, E.S-D. argues the court "utilize[d] concern in one element of the law to compensate for the lack of proof in another" when it expressed concern that E.S-D.'s release would result in "a tragedy." We reject the argument. The information the judge needed to continue commitment was present. Moreover, the court is certainly entitled to consider society's interest in deciding whether to continue commitment. See In re Commitment of J.L.J., 210 N.J. Super. 1, 5 (App. Div. 1985) (quoting State v. Krol, 68 N.J. 236, 259-61 (1975)) ("The determination of dangerousness involves a delicate balancing of society's interest in protection from harmful conduct against the individual's interest in personal liberty and autonomy.").

III.

Regarding the November 24, 2021 order, E.S-D. again submits the court erred in finding dangerousness. On this point, we observe the court asked Dr. Rahmani several times for her opinion on whether E.S-D. posed a danger to others or himself. The doctor's answers began with an explanation of E.S-D.'s symptoms—which the judge considered to be "circling the issue." However, Dr. Rahmani stated "[m]y opinion is that, yes, he continues to be a danger to self and others, because of the fact of what I have laid out" and "[E.S-D.] continues to present [a] danger to self and others."

Further, whether a patient poses a foreseeable risk of danger is a legal decision that, though guided by expert testimony, the court must make, not the expert. D.C., 146 N.J. at 59. Here, Dr. Rahmani explained her conclusions. She told the court of two violent incidents she had discussed with E.S-D., that he had been stressed, had trouble sleeping, experienced auditory and visual hallucinations and night terrors, did not understand the importance of his medication, and demonstrated a lack of insight into his condition. The court took all of this information, along with E.S-D.'s history of violence, and made a legal decision he still posed a risk of danger. There was adequate clear and convincing evidence supporting this determination.

IV.

E.S-D. argues the February 16, 2022 order must be reversed because Dr. Gormus's testimony lacked support, and the court erred in relying once again on his history to find he posed a danger to himself and others.

According to E.S-D., Dr. Gormus provided a net opinion. As explained, a net opinion is one "not supported by factual evidence or other data." Polzo, 196 N.J. at 583. Dr. Gormus's opinion was supported by factual evidence. She opined E.S-D. still posed a danger, because she believed E.S-D. was not compliant with his medication. She based that belief on the fact he was isolating

himself, pacing the hallway, and presenting differently compared to when she had observed him about three months prior. Since E.S-D. was refusing to have blood work done, there was no way to confirm he was taking his medication as instructed. Without medication, E.S-D. posed a foreseeable danger to others, as indicated by his history.

E.S-D. further argues Dr. Gormus could not tie E.S-D.'s recent behavior to any dangerous conduct on the unit; she had not observed E.S-D. assault anyone or destroy property at Greystone. Given the severity of E.S-D.'s past violence, it was not necessary to point to assaultive behavior on the unit. See In re Savage, 233 N.J. Super. 356, 360-61 (App. Div. 1989) (holding the court did not err in finding a patient whose history included homicide was dangerous based on experts' testimony, though no other specific instances of violence in his recent history were noted).

We also reject E.S-D.'s argument the trial court erred in continuing to rely on his history of violence and its own "personal concerns." There is adequate, competent evidence supporting the court's decision. The finding of dangerousness is not based solely on E.S-D.'s history, as he contends. The court also took into account his recent behavior indicating he was not compliant with

his medication. The trial court made no "clear mistake" warranting reversal here. R.F., 217 N.J. at 175.

V.

In each appeal, E.S-D. also argues the "court abrogated its independent duty to apply the law" by "waiting on [the] SSPRC to make its determination."

He relies on T.J., in which the trial court placed the patient on CEPP status. 401 N.J. Super. at 114. Though T.J.'s condition no longer required treatment in a residential facility, and he had a place to live after discharge, the court denied him discharge for several months. Id. at 114-18. The judge feared he would relapse, and awaited placement designed by the SSPRC. Id. at 123. We reversed the trial court's decision to continue CEPP, noting the court "abrogated the responsibility to perform an independent check on whether confinement was appropriate when faced with inaction by the SSPRC." Id. at 124 (citing In re Commitment of D.M., 313 N.J. Super. 449, 454 (App. Div. 1998)).

Here, at every hearing, the judge expressed a desire to have the SSPRC's input, stating: The SSPRC's input was "critical"; "SSPRC and CARP are particularly geared towards forensic analysis of cases like this to determine the potential for dangerousness . . . decompensation, the necessity of establishing

stability, and the proper after care and placement"; he "would want the guidance of SSPRC and CARP"; and "[w]hile the SSPRC and CARP are not controlling, they certainly are influential[] and . . . created for a purpose."

Unlike T.J., there were several other factors in each hearing justifying E.S-D.'s continued commitment. The judge did not delay in discharging E.S-D. or placing him on CEPP status for the sole reason he had not heard from the SSPRC or CARP. Rather, facing a complicated and serious case, he acknowledged that input from these entities would be useful. We find the court did not abrogate its duty to make the legal determination of whether E.S-D. should continue to be committed.

To the extent we have not addressed the parties' remaining arguments, we determine they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.