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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

Conservatorship of the Person of P.N.

DEPARTMENT OF AGING AND  
ADULT SERVICES,

Petitioner and Respondent,

v.

P.N.,

Objector and Appellant.

A134320

(San Francisco County  
Super. Ct. No. PMH-11-022802)

Appellant P.N. challenges an order appointing respondent Department of Aging and Adult Services (Department) as conservator of his person under the Lanterman-Petris-Short Act (LPS). (Welf. & Inst. Code,<sup>1</sup> § 5000, et seq.) The court’s order followed a jury’s finding that appellant, 42 years old at the time, was beyond a reasonable doubt “gravely disabled” because of a mental disorder so that he could not provide for his basic needs of food, clothing, and shelter. (§ 5350.) Appellant argues the jury finding was not supported by substantial evidence. We affirm.

I. BACKGROUND

On October 26, 2011, the Department filed a petition for appointment of a temporary conservator and/or conservator pursuant to the LPS Act. The Department

<sup>1</sup> All further undesignated statutory references are to the Welfare and Institutions Code.

alleged appellant was gravely disabled due to a mental disorder and was unable to provide for his basic personal needs of food, clothing, and shelter. The Department sought the appointment of a temporary conservator pending final determination regarding the petition. Emily Lee, M.D., a psychiatrist at San Francisco General Hospital (SFGH), stated in an accompanying declaration in support of the petition that appellant, who was under her care, was “gravely disabled” regarding his ability to provide for his basic needs for food, clothing, and shelter. She described appellant as “a man with a history of ‘voices,’ depression, suicidality, agitation/threatening behavior, and alcohol abuse . . . .” She stated that appellant “has been treated in and out of” the correctional system, including a recent San Quentin stint, for the past 20 years. Dr. Lee further stated that appellant had been “recently released from San Quentin and then [he] quickly became depressed, and suicidal.” She diagnosed him as suffering from schizoaffective disorder and a traumatic brain injury that occurred at age eight. A temporary conservator was appointed the same day the petition was filed.

Subsequently, appellant filed a petition for writ of habeas corpus pursuant to sections 5275 and 5353, to challenge his temporary conservatorship, which was denied.

Jury trial commenced on December 6, 2011, and testimony was heard from Richard Frishman, M.D., a psychiatrist from Napa State Hospital, testifying as an expert regarding appellant’s mental condition. Appellant testified on his own behalf.

The jury returned the following day, December 7, 2011, with a unanimous verdict that appellant was gravely disabled due to a mental disorder. The court appointed a conservator for appellant,<sup>2</sup> and the instant appeal followed.

## II. DISCUSSION

Appellant argues that there was not substantial evidence to support the jury’s finding that he was gravely disabled, because, as a result of a mental disorder, he was unable to provide for his basic personal needs for food, clothing, and shelter. We disagree.

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<sup>2</sup> The conservatorship expires, by operation of law, one year from the date of the order, or December 8, 2012. (§ 5361.)

To establish a conservatorship under the LPS Act, the public guardian must prove the proposed conservatee is gravely disabled beyond a reasonable doubt. (§ 5350; *Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909 (*Smith*)). As relevant in this case, to establish “grave disability,” the evidence must support an objective finding that due to a mental disorder, the person, “is unable to provide for his or her basic personal needs for food, clothing, or shelter.” (§ 5008, subd. (h)(1)(A); *Conservatorship of Carol K.* (2010) 188 Cal.App.4th 123, 134.)

“In reviewing a conservatorship, we apply the substantial evidence standard to determine whether the record supports a finding of grave disability. The testimony of one witness may be sufficient to support such a finding. [Citation.] We review the record as a whole in the light most favorable to the trial court judgment to determine whether it discloses substantial evidence. Substantial evidence, which is evidence that is reasonable, credible, and of solid value, also includes circumstantial evidence.

[Citation.]” (*Conservatorship of Carol K., supra*, 188 Cal.App.4th at p. 134.)

“Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom.” (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577 (*Walker*)). Accordingly, we summarize the testimony that provided substantial evidence in support of the jury’s finding.

A. *Relevant Testimony*

1. Dr. Frishman’s Testimony

While acting as an admitting psychiatrist at Napa State Hospital, Dr. Frishman evaluated appellant after he was transferred from SFGH. Dr. Frishman explained that appellant was sent from SFGH due to the staff’s concern about his condition and “threatening behavior,” which they thought would be better treated at Napa State Hospital. In the course of admitting appellant, Dr. Frishman reviewed appellant’s records from SFGH,<sup>3</sup> including a summary explaining that appellant had been “released from San Quentin, and had not been doing well out on parole,” and he had to be admitted to SFGH.

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<sup>3</sup> The SFGH records were identified but not admitted into evidence.

The SFGH records also included various statements made by appellant. During his clinical assessment, appellant said: “ ‘If I go to a program or out to the street I will kill myself.’ ” He also said that he “hears voices telling him to ‘jump off or cut [his] wrist.’ ” He further admitted that he drinks “ ‘a lot’ ” of vodka and would drink every day if he could. During the clinical assessment, when appellant was asked where he would live and how he would get food and clothes, he replied, “ ‘I don’t know.’ ”

Based on his review of appellant’s records and his personal contact with appellant at Napa State Hospital, Dr. Frishman diagnosed appellant with schizoid affective disorder. Dr. Frishman described appellant’s condition as a “schizophrenic-type of illness where there may be difficulty understanding what’s real, what’s not real, combined with an affective component such as depression, or mania, or a mixture of the two that has been present for a certain period of time . . . .” Dr. Frishman explained that a “person suffering from schizophrenia would be unable to take care of themselves, often unable to work or to be socially active. This may be due to just a lack of desire to do that; it may be due to paranoid thinking; it may be due to the auditory hallucinations. They may be experiencing voices telling them to do things or not to do things.” Dr. Frishman testified that appellant had a history of auditory hallucinations and voices. He explained that “it’s the voices that have told him to take his life and have led to suicidal behavior, and these are what we call ‘command hallucinations.’ ” Appellant, however, had not experienced any such hallucinations while at Napa State Hospital.

Dr. Frishman also diagnosed appellant with a cognitive disorder not otherwise specified. He explained this diagnosis is used when the reason for the cognitive impairment is unclear. For example, there may be a history of substance abuse, a head trauma, or meningitis that may contribute to the cognitive difficulties. Dr. Frishman stated that the results of appellant’s “[m]ental [s]tatus exam” indicated that he possibly suffered from dementia as well. While at Napa State Hospital, Dr. Frishman observed appellant as having “adequate” grooming and hygiene; appellant also never refused meals.

Dr. Frishman concluded that appellant was gravely disabled such that he was unable to provide for his basic needs of food, clothing, and shelter. In making this conclusion, Dr. Frishman relied on appellant's medical history and current diagnosis, together with the fact that he had been in and out prison for the past 20 years, such that he had been effectively institutionalized in prison. After his most recent release from prison, appellant was placed in Bridges outpatient housing facility. However, appellant found life at Bridges so stressful that, after his request for transfer to another facility was denied, he left Bridges and chose to live on the streets. After approximately two days on the streets, appellant checked himself into SFGH, due to a self-admitted suicide risk.

Dr. Frishman also considered appellant's long-standing history of alcohol abuse. He believed that part of the reason appellant chose to leave Bridges was that he wanted to drink alcohol. Dr. Frishman explained that appellant's alcohol use would likely interfere with his ability to think rationally and would impair his judgment. Moreover, appellant's use of alcohol rendered his medication ineffective. Dr. Frishman testified that appellant was aware that his alcohol use exacerbates his symptoms, but he continued to drink it whenever he could.

In Dr. Frishman's opinion, appellant required psychotropic medications. He believed that without these medications, appellant's symptoms would continue. He did not believe that appellant had the ability to continue taking these medications in an unstructured environment. Despite appellant's stated intention of accepting treatment, given his mental disorders, Dr. Frishman had serious concerns about appellant's ability to follow through with anything appellant said he would do.

Accordingly, based on all of these factors—i.e., his medical history, current diagnosis, suicide attempts, auditory hallucinations, alcohol abuse, and inability to live successfully outside an institutional setting—Dr. Frishman concluded that appellant was gravely disabled.

## 2. Appellant's Testimony

Appellant testified that as a result of a childhood automobile accident, he suffered a brain injury and lost his memory. He was unable to go to school and left after fourth grade. He has limited reading and writing skills.

Appellant testified that he voluntarily signed himself into SFGH. He admitted telling his doctor at SFGH that he wanted to hurt himself, but explained, "I was just stressed out at the time. I just . . . went to a bunch of programs that I told my parole officer I don't want to be in, but they forced me in there. So I just got stressed out." Another stressor affecting appellant at the time of his admission to SFGH was that he had just been released from San Quentin.

Appellant said when he walked out of Bridges, he had \$99 in his pocket, and it was the weekend, so the parole office was closed. He denied living on the streets. He denied threatening suicide or hearing voices that told him to jump or cut his wrist. He denied that was he was drinking a lot of vodka.

Appellant testified that he would participate in services in the community if released. He said that he was participating in all the services and groups at Napa State Hospital. Appellant also said he showered every day, ate his meals, and was medication compliant. If allowed to return to the community, appellant said he would enter a program, even if it was the same program that previously caused him to render himself homeless because it was too stressful. Appellant testified that during a prior parole period, he paid his own rent at a hotel with a check that his parole officer gave him. While he was at the hotel, no one ever reported that he had problems taking care of himself. In the past, appellant received money from "General Assistance, SSI." Appellant said he was his "own payee" and had money for food. He also said that he could get food at "Glide or St. Anthony in San Francisco." For clothes, he would go to the Salvation Army. He also said that this time around he would keep his psychiatrist appointments and would reach out for help if he needed it.

B. *Analysis*

Here, there is ample evidence supporting the finding that appellant is gravely disabled. Appellant does not challenge the conclusion that he is mentally ill. Rather, he contends there is not substantial evidence that he cannot provide food, clothing, or shelter for himself because of that mental illness. According to appellant, being homeless or lacking an apartment does not establish lack of shelter for purposes of LPS Act commitment. In support, appellant relies upon *Smith, supra*, 187 Cal.App.3d 903.

*Smith*, however, is readily distinguishable from the instant case. There, the proposed conservatee, Smith, was diagnosed as having a paranoid delusion that led her to hold an around-the-clock vigil outside a church. (*Smith, supra*, 187 Cal.App.3d at pp. 906-907.) Occasionally, she became disruptive and was arrested or taken to a nearby mental hospital. (*Ibid.*) At trial, a psychiatrist testified that Smith was “ ‘gravely disabled’ because her mental disorder caused behavior which brought her into conflict with the community. However, the psychiatrist also concluded that her cognitive intellect and most of her personality was intact and, *despite the disorder, she could feed and clothe herself and provide for her own place to live.*” (*Id.* at p. 907, italics added.) The appellate court found this evidence was insufficient to prove Smith was gravely disabled since the record revealed she was able to obtain food, clothing, and shelter, and that she accepted offers of help from others. (*Id.* at p. 910.) The court concluded: “Despite her admittedly bizarre behavior, appellant is not, nor has she been, incapacitated or unable to carry out the transactions necessary to her survival. No evidence was adduced to show that appellant, because of her mental condition, was suffering from malnutrition, overexposure, or any other sign of poor health or neglect. Her refusal to seek shelter is not life threatening.” (*Id.* at p. 910.)

According to appellant: “[B]ecause Smith was homeless but not gravely disabled, the case law establishes that mere lack of an apartment does not suffice to prove inability to provide shelter.” We have no quarrel with the general premise that shelter does not require having an apartment or a house, and that homelessness, in and of itself, is not a sufficient ground for finding one gravely disabled. However, here, unlike in *Smith*,

*supra*, 187 Cal.App.3d at pages 906-907, appellant's inability to provide for his basic need for shelter *is* the result of his mental disorder. In marked contrast to the evidence in *Smith*, appellant's treating psychiatrist did testify that appellant's mental disorder rendered him unable to provide himself food, clothing, or shelter.

Contrary to appellant's assertion, Dr. Frishman's conclusions were supported by specific facts. Dr. Frishman based his opinion on his review of appellant's records from SFGH, which indicated that appellant hears voices, telling him to harm himself. The SFGH records also contained appellant's statements that he would kill himself if he went to " 'a program or out to the street.' " Moreover, the SFGH records contain appellant's admission that he drinks "a lot" of vodka and would drink every day if he could. Dr. Frishman's evaluation of those records, along with his personal contact with appellant, led him to conclude that appellant suffered from schizoid affective disorder, which affected his perception of reality. Dr. Frishman further elaborated that appellant's schizoid affective disorder was "combined with an affective component such as depression, or mania, or a mixture of the two." Dr. Frishman also diagnosed appellant with a cognitive disorder not otherwise specified, which affected appellant's ability to think abstractly, plan, and organize.

Additionally, Dr. Frishman described appellant's use of alcohol, which he believed was part of the reason appellant chose to leave the Bridges facility. Dr. Frishman explained that appellant's use of alcohol rendered his medication ineffective, likely interfering with his ability to think rationally and impairing his judgment. Dr. Frishman testified that appellant was aware that he should not use alcohol, but he continued to drink it whenever he was able. Dr. Frishman further opined that appellant would be unable to continue taking his medications in an unstructured environment and that he would be unable to follow through with meaningful treatment, despite appellant's stated intention to do so.

Courts have found individuals with comparable psychiatric histories to be gravely disabled, specifically because their refusal to take their medication prevented them from being able to provide themselves with food, shelter, or clothing. (*Conservatorship of*

*Johnson* (1991) 235 Cal.App.3d 693, 696–698; *Walker, supra*, 206 Cal.App.3d at pp. 1576–1577.) For example, in *Johnson*, the court upheld such a finding where, after the appellant’s previous hospitalization for hallucinations and subsequent suicide attempt, an expert witness testified that the appellant’s noncompliance with taking medication made her incapable of providing for food, shelter, or clothing for herself. (*Johnson* at pp. 696–698.) Similarly, in *Walker*, the court upheld a finding of grave disability where, as here, the appellant might have been able to provide himself with food, shelter, and clothing, but his refusal to take his medication prevented him from engaging with reality to facilitate such provisions. (*Walker* at pp. 1576–1577.)

Here, although appellant was medication compliant while at Napa State Hospital, there is substantial evidence that appellant—when left to his own devices—abuses alcohol, which renders his medication ineffective. Moreover, Dr. Frishman believed that appellant would be unable to continue taking his medications in an unstructured environment and would be unable to accept meaningful treatment.

In short, substantial evidence established that appellant suffered from a very serious mental disorder that caused him to be suicidal and disengaged from reality, such that he was unable to care for his basic needs, including his needs for shelter, food, and clothing.

Finally, appellant also contends that there must be a showing that the inability to provide for one’s basic personal needs is “so severe that it presents a physical danger to self.” Appellant, citing *Doe v. Gallinot* (1979) 486 F.Supp. 983, 991, affirmed 657 F.2d 1017, argues that the constitutionality of the LPS Act depends upon such a finding. *Gallinot* is consistent with our finding of substantial evidence. In *Gallinot*, the federal district court held that the term “gravely disabled” under the LPS Act was not unconstitutionally vague, but that because there was a significant risk of erroneous application of the standard for involuntary commitment, due process required a hearing to review probable cause for detention beyond the 72-hour emergency period of section 5150. (*Gallinot*, at pp. 991-994.) In concluding that the standard was not too vague, the court recognized that “[s]tandards for commitment to mental institutions are

constitutional only if they require a finding of dangerousness to others or to self. [Citations.] . . . “[*T*he threat of harm to oneself may be through neglect or inability to care for oneself.” ¶] California’s ‘gravely disabled’ standard is not too vague to meet this test. It implicitly requires a finding of harm to self: an inability to provide for one’s basic physical needs. It further limits the standard to an inability arising from mental disorder rather than other factors.” (*Id.* at p. 991, italics added.) In reaching its conclusion, the court recognized that “[t]he standard does not expressly require a finding of dangerousness or harm. The statute even states it as an alternative to an express dangerousness standard.” (*Ibid.*)

Appellant quotes from *Smith, supra*, 187 Cal.App.3d 903, where the court pointed out that despite Smith’s “admittedly bizarre behavior, [she] is not, nor has she been, incapacitated or unable to carry out the transactions necessary to her survival. No evidence was adduced to show that [she], because of her mental condition, was suffering from malnutrition, overexposure, or any other sign of poor health or neglect. Her refusal to seek shelter is not life threatening.” (*Id.* at p. 910.) We have previously distinguished *Smith* on its facts. Unlike the expert in *Smith*, Dr. Frishman testified here that appellant *was* unable to provide for his basic personal needs for food and shelter and that he presented a danger to himself. Even if we accept appellant’s assertion that a grave disability finding requires evidence that the person’s disability is “so severe that it presents a physical danger to self,” a legal issue we do not determine herein, the evidence was sufficient to support a finding that appellant was physically at risk due to his inability to care for himself as defined in the statute, due to his mental disorder. It is specious to suggest, as appellant does, that there was no evidence of any physical danger because although “[t]here was evidence that [he] was suicidal, [it was] not as a result of failing to eat, dress, or take shelter.” Appellant’s command hallucinations, which have caused his suicidal ideation, clearly place his health and his life seriously at risk.

### III. DISPOSITION

The order appointing the conservator is affirmed.

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Baskin, J.\*

We concur:

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Reardon, Acting P.J.

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Rivera, J.

\* Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.