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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person and Estate of
K.R.

SAN MATEO COUNTY PUBLIC
GUARDIAN,

Petitioner and Respondent,

v.

K.R.,

Objector and Appellant.

A143150

(San Mateo County
Super. Ct. No. PRO0118240)

K.R. appeals from orders appointing the San Mateo County Public Guardian (Guardian) conservator of his person and estate under the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code, § 5000 et seq.),¹ and denying his petition for rehearing of the conservatorship. Substantial evidence supported the initial finding that K.R. was gravely disabled within the meaning of the LPS Act, and the finding on rehearing that he remained gravely disabled. Accordingly, the orders are affirmed.

I. THE CONSERVATORSHIP PETITION

A. Legal Background

“A conservatorship may be established under the LPS Act for any person who is gravely disabled as the result of a mental disorder. (§ 5350.) ‘Gravely disabled’ is

¹ Subsequent statutory references are to this Code.

defined as a condition in which, as a result of a mental disorder, a person is unable to provide for his or her basic personal needs for food, clothing or shelter. (§ 5008, subd. (h)(1)).” (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 696 (*Johnson*).) Grave disability must be proven by the petitioner beyond a reasonable doubt. (*Ibid.*)

B. Factual Background

The conservatorship petition was filed on June 20, 2014, and was heard on August 7. Dr. Lyn Mangiameli testified for the Guardian as an expert psychologist. Mangiameli examined K.R., consulted physicians who had treated him, reviewed his medical and temporary conservatorship records, and came to the “inescapable conclusion” that K.R. was gravely disabled.

At the time of the hearing, K. R. was an inpatient in the acute psychiatric unit at the San Mateo Medical Center (SMMC), referred to in the record as “Three AB.” He had a history of overdosing on psychiatric medication, and attempted suicide by overdose in May. He was admitted to Three AB after the suicide attempt, and then transferred to the Cordilleras Mental Health Rehabilitation Center for continued treatment. On July 16, he was transferred to Psychiatric Emergency Services (PES) at SMMC after cutting his arms with a CD jewel case. After what Mangiameli described as “an unusually long time, by our standard,” at PES, on July 22 K.R. was transferred to Three AB.

K.R. had come to PES at least 30 times since 2007. His behavioral pattern was to harm himself or report thoughts of doing so, but the staff came to conclude that he was “almost invariably” seeking assistance with housing rather than psychiatric treatment. All shelters rejected him because of his aggressive behavior. The Telecare Full Service Partnership program had attempted to obtain housing for K.R., but his placements “always ended in failure.” He lived successfully in an apartment for two years, but in early 2012 he became discontented with his landlord, broke through the landlord’s door with a hammer, and threw the hammer at the landlord. He was charged with assault with a deadly weapon, and convicted, for this incident. Telecare terminated its services to K.R. in July 2014.

Mangiameli diagnosed K.R. with personality and mood disorders, and polysubstance abuse of alcohol, cannabis, and “some methamphetamine.” His mood disorders had “components of both anxiety and depression.” He had borderline personality disorder, antisocial personality disorder, and narcissistic personality disorder. His antisocial personality disorder was reflected in his “rather extensive number of charges, arrests, and incarcerations,” and his many evictions were due to his personality disorders. K.R. “finds a deep need to have people take care of him and satisfy his concerns,” but “sees the world as a place . . . antagonistic to him,” and finds the services he receives “insufficient for him over time.” His distorted world view was “extremely difficult to treat,” and produced “a chronic set of maladaptive behaviors.”

K.R. testified that when he tried to kill himself in May he was feeling “[a] lot of betrayal. Because I—I had just been released the previous day—or not so much released—I’d been kicked out PES. They told me this would not help me. [¶] Dr. Osbeck, who was attending physician at the time, told me, basically, to go kill myself. [¶] He told me that, you know, I wouldn’t be here, coming in here, if I was really suicidal. [¶] So I felt like, you know, like no other choice. Because Telecare was not even trying to provide me with housing. They—they never have.”

K.R. want on to share his view that his current physician was working directly under Dr. Osbeck, and that Telecare had cheated him out of money. The staff at the Cordilleras facility laughed when another patient punched him repeatedly in the ear, and then continued making fun of the incident. His temporary conservator had “expressed a personal dislike for me. [¶] Her exact word were: ‘I’m a thoroughly dislikable person.’ [¶] She’s also stated that, quote ‘because of who I am, I will never get an apartment again.’ [¶] And if it’s up to her, I will remain locked up for a long time.”

K.R. said he told Mangiameli that he agreed with all the diagnoses of his mental condition. But he objected to the conservatorship because “I want to be able to make my own decision. For the past several years I’ve not been given any chance to make my own decision.” He said, “I really sincerely hope that I’m—the conservatorship is not

continued; and that I will continue to remain in the hospital; and even be open to going to other psychiatric facilities under my own choice, instead of, you know, as a prisoner.”

K.R. said that if he were released into the community he could stay for a few nights with a man named Evans, whom he had known since he was 11 years old, and considered “more than a best friend. He’s like a brother.” He could not stay with Evans “on a permanent basis. Because he’s in a housing program, where he has a roommate already.” But they planned to find an apartment where they could live together.

When it sustained the petition, the court described housing as the “real issue” in the case, and found that K.R. did not have a realistic plan for obtaining housing given his “difficult set of circumstances.”

C. Analysis

K.R. contends that his situation is governed by sections of the LPS Act other than those relating to conservatorships because the evidence established at most that his mental condition may make him a threat to himself or others, and not that he is unable to meet his needs for food, clothing, or shelter. (§ 5260 [providing for confinement of a person who, among other things, “present[s] an imminent danger of taking his own life” because of a mental disorder]; § 5300 [confinement of a person who, among other things, presents “a demonstrated danger of inflicting substantial physical harm upon others” because of a mental disorder].) However, there is substantial evidence for the court’s determination that K.R. was gravely disabled because of mental disorders that made him unable to obtain shelter. According to Dr. Mangiameli’s testimony, housing was K.R.’s primary need, but his mental health problems always interfered with the stability and permanence of his placements.

K.R. contends that his case is *Conservatorship of Smith* (1986) 187 Cal.App.3d 903 (*Smith*) But *Smith* is readily distinguishable. *Smith* “believed that she was the only person who could interpret the Bible,” and she testified that because “the Bible commanded her to ‘forsake all’ . . . she rejected shelter and income ‘in order to suffer with Christ and . . . be ‘sanctified’ by obeying the Gospel’s teachings.” (*Id.* at p. 907.) She began “an around-the-clock vigil” outside a church, sleeping on the sidewalk in front

of the church at night. (*Id.* at pp. 906, 910.) “At the times she would enter the church, she would make a disturbance and interrupt services.” (*Ibid.*)

A psychiatrist testifying for the conservator concluded that Smith suffered from “a paranoid delusion, a condition manifested by [her] fixation on the Eureka Church of God.” (*Smith, supra*, 187 Cal.App.3d at p. 907.) The 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.” (*Ibid.*) The petition was granted, and the order imposing the conservatorship reversed.

The court “conclude[d] that in order to establish that a person is ‘gravely disabled,’ the evidence adduced must support an objective finding that the person, due to mental disorder, is incapacitated or rendered unable to carry out the transactions necessary for survival or otherwise provide for her basic needs of food, clothing, or shelter.” (*Smith, supra*, 187 Cal.App.3d at p. 909.) “Bizarre or eccentric behavior, even if it interferes with a person’s normal intercourse with society, does not rise to a level warranting conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival. Only then does the interest of the state override her individual liberty interests.” (*Ibid.*)

In Smith’s case, “[d]espite her admittedly bizarre behavior, [she] is not, nor has she been, incapacitated or unable to carry out the transactions necessary for her survival. No evidence was adduced to show that [Smith], 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. There was uncontradicted evidence that she accepts offers of food and money from friends and relatives.” (*Smith, supra*, 187 Cal.App.3d at p. 910.) Thus, she was not “gravely disabled” under the LPS Act. (*Ibid.*)

Smith’s mental condition did not prevent her from obtaining shelter. The same cannot be said here. K.R.’s mental condition makes him unable to meet that basic need.

Smith did not *want* shelter. In contrast, K.R. keenly wants shelter, but cannot secure or maintain it because of his mental disorders. The *Smith* case is thus inapposite.

II. THE REHEARING PETITION

A. Introduction

A conservatee may petition for a rehearing of the conservatorship order. (§ 5364.) On rehearing, the conservatee must prove by a preponderance of the evidence that he or she is no longer gravely disabled. (*Barber v. Superior Court* (1980) 113 Cal.App.3d 955, 966.)

K.R. petitioned for rehearing on the ground that his friend Robert Evans was willing and able to take responsibility for him and give him a place to live. Section 5350, subdivision (e)(1) provides that “a person is not ‘gravely disabled’ if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.”

B. Factual Background

At the October 29 hearing on the petition, Evans testified that he met K.R. in foster care, had known K.R. for almost all his life, and saw K.R. almost every day. He last saw K.R. about a week before the hearing, at a hospital in San Carlos. He was “[n]ot too clear” on why K.R. was hospitalized, but knew that K.R. had been suicidal in the past, and thought he might have made another suicide attempt.

Evans lived in a house with five other people who rented from the same landlord and were willing to have K.R. move in. He said that he would pay K.R.’s bills “until he gets back on his feet.” He thought that K.R. could get a job doing “[a]nything he puts his mind to.” When he was asked whether K.R. would need his supervision, Evans answered, “I would say probably for a short while, but [K.R.] is pretty competent.”

Evans thought K.R. would not attempt suicide if they lived together because “I would be there” and K.R. would be in a “safe environment.” Evans worked 40 hours a week, on varying shifts, as a forklift operator. When he was at work, his good friend Jason, who knew K.R. well, would be home and available to attend to K.R.’s needs.

Jason worked, usually in the morning, in “contracting and redevelopment of property.” Evans said he would adjust his work schedule if necessary to be home when Jason was working. Evans believed his employer would agree to the adjustments.

Dr. Mangiameli testified that K.R. continued to suffer from anxiety, depression, and multiple personality disorders. His symptoms had worsened since the last hearing. He continued to be angry, demanding of others, and dissatisfied with whatever treatment he received. Of most concern, he nearly succeeded in killing himself while in Three AB on the morning of September 20. He was found unconscious and had to be resuscitated. Blood testing showed that he had methadone in his system, a medication not prescribed for him. When he was revived, K.R. denied trying to commit suicide, but was very angry saying that he had “do-not-resuscitate orders, and that it was inappropriate that we allowed him to survive”

When Mangiameli was asked whether K.R. needed constant supervision, he answered: “Well, he was on the Acute Psychiatric Unit. We have had exceedingly few suicides in the entire history of that unit. And he managed to have a near fatal one. That was in a highly-structured, highly supervised environment that is designed to the point of being sterile to prevent access to the means to hurt oneself.” Mangiameli did not “believe that any services in the community right now would be adequate for the level of supervision and care that [K.R.] requires to prevent him from harming himself.” K.R. was transferred from SMMC to California Psychiatric Transitions (CPT), a psychiatric treatment facility, on October 13, where he “remain[e]d on 15 minute checks . . . somebody is actually going around and checking on him every 15 minutes.” Mangiameli believed that K.R.’s need for treatment was “extended. Certainly in months and easily up to around a year. Perhaps even longer if there is an ongoing threat to his existence.”

K.R. testified that he had been taken off the 15-minute suicide watch at CPT the day before the hearing, and that Mangiameli was lying when he testified that CPT had reported that he was not participating in group programs. He denied attempting suicide with methadone. He said SMMC staff “accidentally mixed up my medication and gave

me someone else's methadone." He recounted: "For a whole week, I was complaining of shortness of breath, cough, excessive phlegm. Ignored. I was ignored at every time. . . . [¶] On the day before I aspirated phlegm into my lungs, I had a blood oxygen level of 80 percent. I told Marcy, a nurse there. She laughed, and said it must be something wrong with the machine. That's impossible. [¶] On the night before I went to sleep that night, I asked for some cough medicine, cough drop, something. Told them I was really sick, really feeling bad. No one cared. The next day, I woke up and I was on a respirator."

K.R. said that SMMC kept "a bunch of clothes, a bunch of my money," and a copy of his do-not-resuscitate directive when it transferred him to CPT. He said that a doctor at CPT told him on the day before the hearing that "if it was up to him, he would release me." K.R. said his monthly SSI check of around \$981 would enable him to afford the room that Evans could provide him.

The court denied the petition, saying it was "not convinced that K.R. is no longer gravely disabled simply because Mr. Evans is willing to supervise him." The court told K.R., "It is my hope that you can go back into society soon, but it is just too early."

C. Analysis

In support of his claim that he has at most been shown to be a threat to himself or others rather than gravely disabled, K.R. asserts that "especially at the rehearing, Dr. Mangiameli focused almost exclusively on a recent suicide attempt . . . and said nothing about the ability to provide for food, clothing or shelter." K.R. maintains that "[g]rave disability does not include suicidal ideation." However, K.R. was previously proven by substantial evidence to be gravely disabled, and on rehearing the court could properly consider that he was suicidal.

According to Mangiameli, K.R.'s mental condition had worsened between the time of the hearing on the conservatorship and the rehearing. Thus, when K.R. sought rehearing, he was no more able to obtain shelter on his own than when he was originally determined to be gravely disabled. The only changed circumstance was Evans' ability to give him a place to live. But a friend's help overcomes a person's grave disability only

“if that person *can survive safely* without involuntary detention” with the friend’s assistance. (§ 5350, subd. (e)(1) [italics added].) Substantial evidence supported a conclusion that this was not the case for K.R. The court could accept Mangiameli’s opinion that, for his own safety, K.R. required a level of supervision and care that no community services, much less someone like Evans, however well intentioned, could provide.

K.R.’s case is very similar in this respect to *Johnson, supra*, 235 Cal.App.3d 693. Johnson was involuntarily admitted to the county psychiatric health facility multiple times before the trial of the conservatorship petition, including an admission following a suicide attempt. The conservator’s expert, Dr. Wang, did not believe that Johnson was suicidal at the time of trial, but diagnosed her as suffering from “ ‘schizophrenia with several depressive features [of] suicidal proportion.’ ” (*Id.* at p. 697.) He testified that Johnson had no insight into her mental health problems or need for treatment, and had a “history of noncompliance with taking medication.” (*Ibid.*) His testimony was sufficient to support the trial court’s finding of grave disability. (*Id.* at pp. 697–698.)

Citing section 5350, subdivision (e) Johnson argued that she could not be found to be gravely disabled because her mother, Sarah Cornelius, was willing and able to help her meet her personal needs. The court disagreed:

“[D]espite Ms. Cornelius’s laudable intentions, there was substantial evidence to support a conclusion that the assistance she offered fell short of that required under section 5350, subdivision (e)(1). As the trial court observed, [Johnson’s] condition was ‘beyond an ordinary person’s ability to deal with, . . . [requiring] expert assistance.’ Dr. Wang testified that the most appropriate placement for [Johnson] was a locked psychiatric facility due to her need for a ‘structured place that has [a] high level of professional staffing . . . [and] supervision.’ Any less restrictive placement was rejected by Dr. Wang as unsuitable.

“Considering the evidence, the trial court reasonably could conclude that, even with the best of intentions, Cornelius would be unable to provide the type of structured environment [Johnson] required. Cornelius had six other children in the home and was

employed four days a week. While she testified that a friend would care for [Johnson] when Cornelius was at work, there was no evidence this person was qualified to assume such a responsibility.” (*Johnson, supra*, 235 Cal.App.3d at p. 698.)

The same reasoning applies here.

III. DISPOSITION

The orders on the petitions are affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Pollak, J.