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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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Conservatorship of the Person and  
Estate of MARY D.

BUTTE COUNTY PUBLIC GUARDIAN,  
  
Petitioner and Respondent,

v.

MARY D.,  
  
Objector and Appellant.

C066454

(Super. Ct. No. PR39558)

Mary D. appeals from a judgment appointing a Lanterman-Petris-Short (LPS) Act mental health conservator. She contends there is not substantial evidence supporting the finding that she cannot provide for her basic needs for food, clothing, and shelter. We agree and reverse the order appointing the public guardian as Mary's conservator.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mary, diagnosed as having schizoaffective disorder, was psychiatrically hospitalized four times between July 2008 and May 2010. Each time she was delusional and had not been taking her medications. In May 2010, Mary was again not taking her medications because she did not believe she was ill. She was observed walking down the street, naked from the waist down, masturbating in public. She also claimed her father had sexually abused her and later recanted those allegations. She believed she was Mother Earth, that God was her father, and her actual father was God. A temporary conservator was appointed.

A contested conservatorship hearing was held on October 12, 2010. By that time, Mary had been in transitional placement at Trinity Pines for four months.

Dr. Carolyn Kimura, a psychiatrist with Butte County Behavioral Health, testified as an expert. She became familiar with Mary shortly after Mary moved to Trinity Pines. Dr. Kimura testified that she thought she had met with Mary three or four times -- most recently, the day before Dr. Kimura's testimony.

Dr. Kimura had received no negative reports from the program staff, which the doctor found "hopeful." Mary was being medicated with oral Haldol, injectable Haldol (Decanoate), Depakote and Cogentin. The medications were working well and helped her maintain her stability. She was compliant with her medications, although the administration of medications was supervised. The symptoms of Mary's mental illness, including

the delusions and inappropriate behaviors, occurred only when Mary was untreated.

When asked whether Mary was presently able to provide for her own food, clothing and shelter, Dr. Kimura responded, "Well, I think with this structure of the Trinity Pines staff and the day treatment staff, the nursing staff, the case management, I think with all that support she's successful. I would like to see that support continue for at least a year." Based solely on Mary's history of decompensating soon after psychiatric discharge, Dr. Kimura believed Mary would not be able to provide for herself without a conservatorship. When initially asked for her opinion about whether Mary would continue her medications if the court did not establish a conservatorship, Dr. Kimura responded, "with her history of multiple hospitalizations and with her trial a few months ago of not pursuing conservatorship and her failing within a few weeks, I think at this time *I would feel much safer* with her continuing conservatorship for at least a year *just to ensure that she has someone to fall back on if things start to deteriorate* for her." (Italics added.) When asked whether "as of right now . . . with the medication working" [Mary] would be able to provide for her own food, clothing, or shelter or obtain assistance to get those three items," Dr. Kimura testified, ". . . I've met with [Mary] . . . three times and maybe the fourth just yesterday. And the majority of the time she would like to have her meds decreased. She seems to not understand that she has a serious mental illness, and that is the piece that concerns me greatly with

regard[] to future stability." Dr. Kimura testified that Mary's "lack of insight, denying that she had a mental illness[,], denying that she needed medication[,], thinking that the medications were street drugs" has been a "major concern." However, Dr. Kimura did not say how recently Mary had said she wanted to decrease her medications or otherwise had demonstrated a lack of insight into her mental health.

Case manager Holly Massie reported Mary was doing fairly well in the transitional program. Massie had been working with Mary for three months during the most recent temporary conservatorship and had worked with her for six months in 2009 when Mary was placed in a temporary conservatorship. In 2009, when Mary was discharged from the hospital, she was living in an apartment complex, had two jobs and was doing well. Conservatorship proceedings were dismissed. She started requesting a decrease in her medication, stopped taking her Decanoate shot and decompensated. Within a year, she lost her housing and was conserved again.

Massie testified that the Trinity Pines program involves working with patients on an individually tailored case plan involving independent living skills that includes self-care, care for the patient's housing, budgeting, and cooking. The patient must maintain the skills taught in each component for 30 days and continue to maintain those skills as he or she progresses through the remaining components of the program. While Mary was in the program, Massie received monthly progress reports on Mary and they met once a month.

Mary was currently compliant with her medications. She had not refused to take them. According to Massie, she was also compliant with her case plan and had completed and maintained three of the four program components.<sup>1</sup> She only needed to prepare an exit plan to satisfy the fourth component and graduate from the program.

As far as Mary transitioning into independent living, Massie was concerned that Mary did not believe she needed medication for her illness. "[O]n several occasions," Mary told Massie "either, . . . marijuana works for her, and she doesn't need to take the medication [the psychiatrist was] prescribing, or that she doesn't feel like it's working. She doesn't feel like this medication is right for her, so she shouldn't take it." Massie did not indicate when in the course of Mary's treatment these conversations occurred.

Deputy Public Guardian Cherie Moniz also testified. Moniz first met with Mary at the time of her hospitalization in May 2010. Mary was extremely delusional. She reported she had not taken her medications because they did not work. Moniz later recommended Mary's placement in the transitional program because she believed Mary had the skills and ability to live independently. Mary was doing well in the transitional program and was compliant with her treatment. She was on

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<sup>1</sup> There is some discrepancy in the record as to whether Mary was in the third or fourth component of the program and how many components Trinity Pines offered.

a component of the program called wellness and recovery. She needed to create an exit plan and write an essay about her plan for the future.

Moniz and Mary had discussed her future plans. Mary wanted to go back to college and was adamant that she did not want a roommate. Based on her past history of going off her medications when with him, his lack of oversight, and specific interactions Moniz had had with Mary's father, Moniz did not consider residence with father an appropriate placement for Mary. Moniz did not believe Mary would continue to take her medications if she was not conserved. However, Moniz was not asked for the basis of this opinion.

Mary testified. She described the incident that led to her most recent hospitalization and agreed there had been good reason to hospitalize her at that time. She also explained that a possible genesis of some of her delusions was a response to being subjected to physical abuse by her mother and sister.

She testified she had not been taking her medications prior to her most recent hospitalization because there had been a problem with her Medi-Cal paperwork and the pharmacy could not give her the medications. Since being hospitalized, she had taken her medications regularly and her delusions had been reduced. She had previously said she was not going to take her medications because she was confused and "not educated about them." Based on what she saw on the news, she thought her medications would be harmful.

In the program, she had learned exactly what the medications do, their side effects, and why she takes them. She accurately described the drugs, their purpose and how they are administered. Since being in treatment, she had come to a "whole new realization that I need to take my medications, and it's very important for me to take these medications and . . . I understand I must take these medications or I will not do well out in the world." She also understood the difference between street drugs and her prescription drugs. Her prescription medications are there to help her; street drugs are "just to get someone high." She was going to continue taking her medications because she had learned that without them she becomes delusional and "really crazy."

When asked about telling Dr. Kimura that she wanted to decrease her medication, Mary said, "I just thought that maybe I could do better with fewer medications, but I'm not on that many now . . . . It wasn't a big thing. [¶] I just asked if she thought it would be a good idea to put me on fewer medications, and she told me, no, she [thought] it[ was] a good idea to stay on what I'm on now because I'm doing so well."

Mary understood she would graduate from the treatment program in a couple of weeks. She needed to learn to set boundaries in her life and not let people take advantage of her. And she needed to create an exit plan. When she was released, she intended to continue taking her medications and hoped to move in with her father and start college. She did not want to

have a roommate because she is a private person and did not want to clean up after someone else.

Mary stated that she had had 12 or 13 experiences in the past with street drugs as the result of being with the wrong people and peer pressure. That was when she started showing signs of mental illness. Her father redirected her. Mary credited him with getting her to quit using street drugs.

Mary receives around \$1,060 a month in supplemental security income. She was aware if she lived on her own, she would receive a maximum of \$890 a month, but if she lived with her father, she would receive around \$636.39 a month. She would receive less money if she lived with her father because the Social Security Administration does not consider that independent living. Mary believed that if she lived on her own, she would probably pay about \$350 a month in rent. If she lived with her father, she would pay \$500 a month. She would also share the cost of utilities. She was willing to pay the additional money because she would feel safer living with her father and she valued the time spent with her father more than the money itself. She had received food stamps in the past, and believed she could provide for her needs by getting them again. She was already enrolled in Butte College, but thought she had an outstanding bill of \$337. She should receive full financial

aid for her classes, but had to make some corrections on her FAFSA.<sup>2</sup>

Mary believed she had grown more independent since being in the program, even though she expressly recognized that was "paradoxical" given her desire to live with her father. She had learned that without her medications, she could end up hospitalized again. She also understood that the medications helped her with decisionmaking.

The court stated it was impressed with the progress Mary had made and noted she was "certainly one of the most intelligent people that has ever testified in my courtroom." However, while the court found Mary had made "a lot of progress," the court stated, "but your breaks with reality have been very significant and very serious, and I think that the temporary conservatorship has been very beneficial and helpful to you. I would like to see you continue with it at least for the time being . . . ." The court found that Mary was unable to provide for her needs for physical health, food, clothing or shelter, and to manage her financial resources or resist fraud or undue influence. Accordingly, the court granted the petition for conservatorship and appointed the Butte County Public Guardian as the LPS conservator of Mary's person and estate.

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<sup>2</sup> FAFSA is the Free Application for Federal Student Aid form used by the U.S. Department of Education. (<<http://www.fafsa.com/understanding-fafsa/what-is-fafsa>> [as of Feb. 22, 2012].)

## DISCUSSION

Mary contends there is not substantial evidence supporting the trial court's conclusion that she was gravely disabled at the time of the hearing. We agree.

To establish a conservatorship under the LPS Act, the public guardian must prove the proposed conservatee is gravely disabled beyond a reasonable doubt. (Welf. & Inst. Code, § 5350;<sup>3</sup> *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 mental disorder, a 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 (*Carol K.*).)

"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.]" (*Carol K., supra*, 188 Cal.App.4th at p. 134.) "Substantial evidence includes

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<sup>3</sup> Undesignated statutory references are to the Welfare and Institutions Code.

circumstantial evidence and the reasonable inferences flowing therefrom." (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577 (*Walker*).)

If the evidence establishes a person is not presently gravely disabled, but only that he or she may become so because of a future failure to take medication, a conservatorship cannot be established. (*Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 446 (*Guerrero*); *Walker, supra*, 206 Cal.App.3d at pp. 1576-1577; *Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1034 (*Benvenuto*).) However, a lack of insight into one's mental illness and the concomitant refusal to take prescribed medication provides evidence in support of a finding of grave disability. (*Walker, supra*, 206 Cal.App.3d at p. 1577; *Guerrero, supra*, 69 Cal.App.4th at pp. 446-447.)

Respondent concedes that the "likelihood of a future relapse is not grounds for an LPS conservatorship" but argues "if the evidence supports that a person's mental condition would further deteriorate without medication and that person will not take the medication without supervision[,] he [or she] is considered gravely disabled." On this point, the county posits "[t]here is no proof that if the trial court had denied the petition that [Mary] would continue with taking her medications."

It was not Mary's burden to establish she would continue taking the medications. The burden was on the party seeking imposition of the conservatorship to establish beyond a reasonable doubt that Mary was gravely disabled.

(*Conservatorship of John L.* (2010) 48 Cal.4th 131, 143.) In this case, that required proof beyond a reasonable doubt that Mary *currently* lacked insight into her mental illness *and* proof beyond a reasonable doubt that she would refuse to take her medication, leaving her gravely disabled. This burden was not met.

Here, it is undisputed that when Mary is not taking her medications, she is gravely disabled. She suffers delusions, can be assaultive and destructive, and most recently wandered the streets partially naked, publicly masturbating. Upon being hospitalized, she refused treatment and denied she was ill.

At the time of the hearing, however, Mary was medically compliant. The evidence indicates that when she takes her medications, Mary is capable of providing food, shelter and clothing for herself. Her symptoms occur only when she is untreated. Dr. Kimura's testimony regarding Mary's lack of insight into her mental illness was based on Mary's past history, not her current condition. Dr. Kimura did not testify that any of the conversations in which Mary inquired about decreasing her medications were recent. Although Mary also expressed to her case manager her belief that she did not need medications, the case manager did not testify that these conversations were recent either. The record does not disclose whether such a conversation occurred the last time the case manager met with Mary, or when Mary was initially hospitalized in May 2010, or in 2009 in connection with the former conservatorship or at some other time. Mary's statement to

the public guardian indicating that she was not taking her prescribed medications because the medications did not work for her was made during her most recent hospitalization, some five months before the conservatorship hearing, at a time when she was delusional and unmedicated. Neither Dr. Kimura's testimony, that of Mary's case manager, nor that of the public guardian is evidence of Mary's current thinking or attitude about taking her medications. Rather, there was no evidence that Mary currently denied her illness or refused treatment.

In fact, the evidence was to the contrary. Mary admitted she suffered from mental illness and delusions. She named all of her medications and understood their purpose in her treatment. She recognized the need to continue her medications and how important they were in maintaining her well-being. She understood her financial situation and her options for housing. She was compliant with her medications, there were no negative comments about her from staff and she was progressing through the program, needing only to complete an exit plan -- a requirement for graduation from the program, but not a requirement to avoid a finding that she is presently gravely disabled. She had plans for her life after her release, including attending classes at Butte College, and had taken steps to achieve those goals. She realized the need to apply for financial assistance and knew how to go about doing that. She understood the need to apply for food stamps and that this would adequately provide for her needs. Moreover, the record does not disclose that Mary was afforded the benefit of a

program like Trinity Pines on her previous contacts with the mental health system. If she had, then there would be reason to discount her recently stated understanding of the need to take her prescribed medications. But having participated in the Trinity Pines program and gained insight about her medications, there was no basis to compare her previous relapses that occurred without the benefit of such programming.

Respondent notes that appellate courts give deference to the credibility determinations of trial courts. We know. The power to judge the credibility of witnesses and to resolve conflicts in the testimony is vested in the trial court, and its findings of fact, express or implied, must be upheld if supported by substantial evidence. (*In re Carpenter* (1995) 9 Cal.4th 634, 646.)

However, the trial court made no express findings of fact related to Mary's credibility. Nothing the court said suggested it doubted Mary's sincerity about taking her medications. Nor did the court find that it was unlikely Mary would follow through with taking her medications notwithstanding her sincerity. And the court did not expressly state any other basis for concluding beyond a reasonable doubt that Mary would not take her medications. The court's comments about Mary's testimony were only complimentary. Under the circumstances, we cannot find that the court impliedly disbelieved Mary. The court's ruling appears to be based on a conclusion that the conservatorship would be beneficial to Mary, not that there was proof beyond a reasonable doubt that she presently lacked

insight into her mental illness and that she would refuse to take her prescribed medications.

A conservatorship cannot be ordered based on a finding that it is beneficial or helpful to the conservatee. A conservatorship cannot be based on evidence that it would be safer for the conservatee, or the desire to ensure that a person who is not gravely disabled will have "someone to fall back on *if* things deteriorate for her." Rather, there must be evidence the conservatee is presently gravely disabled. As this court has previously held, when the evidence establishes a person is not presently gravely disabled, but only that he or she may become so because of a future failure to take medication, a conservatorship cannot be established. (*Benvenuto, supra*, 180 Cal.App.3d at p. 1034.) Based on the record before us, we find there is not substantial evidence to support the finding that Mary is presently gravely disabled.

**DISPOSITION**

The order appointing the public guardian as conservator of Mary's person and estate is reversed.

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MURRAY, J.

We concur:

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ROBIE, Acting P. J.

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BUTZ, J.