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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Nevada)

Conservatorship of the Person and
Estate of Deborah M.

C068278

NEVADA COUNTY PUBLIC GUARDIAN,

(Super. Ct. No.
LPS0085)

Petitioner and Respondent,

v.

Deborah M.,

Objector and Appellant.

Deborah M., a Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.) conservatee, appeals the order finding she is gravely disabled as a result of a mental disorder and is unable to provide for her basic personal needs of food, clothing, and shelter. She contends the court committed reversible instructional error and counsel's failure to object to the erroneous instruction constituted ineffective assistance of counsel. We disagree and affirm the order.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Deborah has been diagnosed with severe schizophrenia, paranoid type. Since 2003 she has been psychiatrically hospitalized eight times. In March 2011, based on a report of Dr. Price declaring Deborah gravely disabled and unwilling to accept voluntary treatment, the court appointed a temporary conservator of the person and the estate. The matter of a permanent conservatorship was then set for trial before a jury.

Deborah's psychiatric symptoms are severe. On a severity scale of one to ten, with one being mild and ten being very severe, Deborah's schizophrenia is a nine. It manifests in extreme paranoia. Her face gets really tight and she gets rigid. She is angry all the time. She is very paranoid, angry, agitated, and accusatory.

Deborah's persecution delusions include a belief that her husband has twice broken her ribs, though there is no medical evidence of such injuries. She has reported 10 separate injuries she claims she suffered when in a locked psychiatric facility. There was a record of only one injury. She believes her ex-husband is poisoning the water in her home to harm her and will not shower because of the contaminated water.

Deborah will not eat because she believes her food is poisoned. At the time of trial, she was only eating one-third of the food provided because she believed it was poisoned. Deborah was also severely underweight. She is five feet five inches tall. When she was with the Turning Point mental health program in July 2010 she weighed 118 pounds; by February 2011

she weighed only 94 pounds. This significant weight loss was attributed to Deborah's food delusions. It could ultimately lead to death.

Deborah does not believe that she has a mental illness, that she needs to work with a mental health treatment agency, or that she needs medication. As a result, each time she is released from the hospital and her conservatorship ends, she stops participating in treatment, stops taking her medication, and decompensates. She then has to be hospitalized again. This pattern was repeated in 2008, 2009, and 2010. She had to be placed in a locked facility because she could not get along with staff in a less restrictive placement. When she is not medicated, her delusions about water and food resurface and are not sufficiently controlled. They are so intense she will not eat anything and will even refuse a sealed bottle of water. She is "completely unable to manage."

Dr. Quinn, the program manager at Nevada County Behavioral Health, testified as an expert in psychology and the assessment, diagnosis, and treatment of mental health disorders. Carol Stanchfield, the program director for Turning Point, testified as an expert in mental health and the diagnosis, assessment, and treatment of mental health disorders. Deputy Public Guardian Kate Darby testified about her role as Deborah's temporary conservator. Quinn, Stanchfield, and Darby have each had extensive experience with Deborah over the course of her various conservatorships. Each concluded Deborah was gravely disabled as a result of her mental illness.

Stanchfield's conclusion that Deborah was gravely disabled was based on Deborah's pattern since 2008, established over four conservatorships. In each instance, Deborah was hospitalized, and thereafter fully engaged in treatment and maintained her prescription medications. Upon discharge from the hospital, she continued to do well and engage in treatment until the conservatorship ended. Once the conservatorship ended and she was no longer compelled to engage in treatment or take medication, she quickly decompensated and had to be hospitalized again.

Dr. Quinn has evaluated Deborah five times since the fall of 2008. Most recently, in February 2011 Deborah refused to speak with Dr. Quinn. Nonetheless, he met with her and observed her behavior, talked with staff, and reviewed her records. Dr. Quinn concluded Deborah was gravely disabled "because of food and housing. She wasn't accessing -- she wasn't eating at home." This is the same behavior that occurred previously; she had not eaten for many days and had lost a considerable amount of weight. She isolated herself in her room, became aggressive, and it was difficult to live with her. Dr. Quinn concluded Deborah would not voluntarily take her medications in the future and was unaware of any appreciable period of time when Deborah was able to meet her basic needs while not medication compliant. When she is unmedicated, there is no one willing to assist Deborah in meeting her basic needs, and he did not believe Deborah had any plans to maintain her independence and stability if released.

Darby opined a permanent conservatorship was necessary, as Deborah had no housing. She believed Deborah was at risk of dying because her refusal to take medication was increasing her paranoia about eating and drinking. Deborah refused to be weighed, refused all laboratory testing, refused her medications, and refused to shower.

Deborah testified at the hearing. Throughout the proceedings, she had ongoing outbursts and was repeatedly admonished by the court. Initially, Deborah refused to answer county counsel's questions. She then claimed she had been illegally placed in the psychiatric hospital because only felons are housed there and she had not committed a crime. She claimed she had not been told she suffered a mental disorder or schizophrenia. She denied having any mental illness, but claimed she suffered posttraumatic stress from "abuse and untold horrors." She denied she had been taking the medications the conservator wanted her to take, and claimed she had washed the drugs out of her system by using Milk of Magnesia. The use of Milk of Magnesia is also why she lost weight. She believed the medication had almost killed her. She did not want to take the medications because they made her dizzy and disoriented, she had difficulty thinking and walking, she could not see properly, and she kept passing out. She declined to answer questions and claimed she had been drugged. She testified she would do anything to not have to take medication.

Deborah also testified she did not believe the food at her ex-husband's home was poisoned; it was bad because it was frozen

food that had defrosted and been refrozen, causing it to rot. She believed the water was toxic because her ex-husband would not shower in the home or drink the water there. They also had a dog who died drinking the water. She denied she weighed only 94 pounds in February, and claimed she weighed 108 pounds. She denied that she had stopped eating, and claimed she "ate everything [she] could." Deborah also testified she received \$800 a month, and paid around \$600 a month in rent.

The jury found beyond a reasonable doubt that Deborah was gravely disabled due to a mental disorder. The court established a conservatorship and appointed a conservator of the person and the estate of Deborah. The court also restricted her from exercising certain rights and privileges, specifically prohibiting Deborah from having a driver's license, possessing firearms, and entering into transactions, and denying her the right to refuse treatment related to her disability.

DISCUSSION

Deborah contends the trial court prejudicially erred by instructing the jury, at the public guardian's request, with the following special instruction: "If a conservatorship is established today, the conservatorship will automatically terminate on May 12, 2012, unless by that date another petition is filed and it is proven in a court of law that the conservatee is presently gravely disabled. Generally, a conservatorship is effective for one year, but it may be terminated earlier if the conservatee is no longer gravely disabled." Deborah contends this instruction improperly "invite[d] the jury to consider

issues extraneous to the determination before it. The issue before the jury is whether or not they unanimously agree that [Deborah] is gravely disabled. [The] special jury instruction instead invited them to consider the length of time she may be subject to the limitations of a conservatorship and to speculate about circumstances under which the conservatorship might be terminated before one year."

Trial counsel did not object to this instruction being given. Based on this failure to object at trial, the public guardian now claims any complaint about the instruction is forfeited. It is not. It is true in a conservatorship case, "when a trial court gives a jury instruction that is legally correct but is "too general, lacks clarity, or is incomplete" (*Conservatorship of Gregory* (2000) 80 Cal.App.4th 514, 520, quoting 7 Witkin, Cal. Procedure (4th ed. 1997) Trial, § 272, pp. 318-319), a party may challenge the instruction on appeal only if it had asked the trial court to give a clarifying instruction." (*Lund v. San Joaquin Valley Railroad* (2003) 31 Cal.4th 1, 7.) However, Deborah's claim here is not that the instruction was too general, unclear, or incomplete, but rather "that the instruction conveyed irrelevant prejudicial information to the jury No objection was necessary to preserve this claim. We therefore address its merits." (*Ibid.*)

In general, "a jury may be instructed about the consequences of a verdict regarding mental illness when [the instruction] is designed to alleviate fear and prejudice toward the mentally ill. It is error, however, to instruct on the

consequences of such a verdict when it would encourage the jury to ignore the evidence and decide the case based on their fear.” (*People v. Collins* (1992) 10 Cal.App.4th 690, 695.) Here, while the instruction did not encourage the jury to decide the case based on fear, a factor less likely to be present in the context of a conservatorship proceeding, it did potentially focus the jury on an improper consideration by informing it that the effect of its decision, a conservatorship, would last no longer than a year and could be terminated earlier after further review. In the absence of authority to the contrary, we will assume, without deciding, that the instruction was given in error. The question then is, was the error prejudicial.

Conservatorship proceedings are civil in nature, and civil trial procedural rules apply. (*In re Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 537.) In a conservatorship case, as in other civil proceedings, a judgment may not be reversed for instructional error, unless after examining the entire case we conclude the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.) That is, instructional error is prejudicial only if it is “reasonably probable defendant would have obtained a more favorable result in its absence. [Citations.]” (*Soule, supra*, 8 Cal.4th at p. 570.) Here, we see no such probability.

The evidence in support of the public guardian’s case was very strong. Three experts testified that Deborah was gravely disabled. Each expert had worked with Deborah since 2008. They

were each familiar with Deborah's mental illness, her lack of insight into her mental illness and historical resistance to treatment, the effect of that resistance to treatment on her mental condition, the availability of third party assistance, and the extent of her illness when not medicated. Deborah denied she had a mental illness and made clear she would not take her medication. Without her medication, she is unable to meet her basic needs, and there is no one willing to assist her in meeting her needs. Deborah has no housing, and her delusions about food and water put her at risk of dying. Deborah's outbursts during trial and her trial testimony further demonstrated the extent of the delusions described by the experts. On this record, we cannot find that the jury's knowledge of the limited duration of a conservatorship and the availability of additional review potentially shortening the time of a conservatorship would have diverted their attention from the evidence. Nor can we find that knowledge would have in any way affected the jury's decision.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

MAURO, J.

HOCH, J.