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

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Conservatorship of the Person of  
MARJORIE F.

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MICHAEL NODA, as Public Guardian, etc.,  
  
Petitioner and Respondent,  
  
v.  
  
MARJORIE F.,  
  
Objector and Appellant.

C068717  
  
(Super. Ct. No.  
SCLPSQ11-0358)

Marjorie F., a Lanterman-Petris-Short Act (LPS; Welf. & Inst. Code, § 5000 et seq.)<sup>1</sup> conservatee, appeals the finding she is gravely disabled as a result of a mental disorder and is unable to provide for her basic personal needs of food, shelter or clothing. She claims there is not substantial evidence to support the finding of grave disability and there is not

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<sup>1</sup> Further undesignated statutory references are to the Welfare & Institutions Code.

substantial evidence supporting the imposition of special disabilities on her rights to contract, possess a firearm, and refuse or consent to medical treatment. We affirm.

#### FACTUAL BACKGROUND

Marjorie was the subject of a probate conservatorship of the person and the estate. She lived at the Shasta View Nursing Center, a skilled nursing facility. As part of the probate conservatorship, she no longer retained her right to enter into contracts, consent or refuse medical treatment and to vote. Pam Crowe, the social services coordinator at the nursing home, reported that while at the nursing home, Marjorie exhibited delusional behavior. She would alternate between "refusing to eat or leave her room to sitting by the door with a bag full of her little belongings waiting for Michael<sup>[2]</sup> to pick her up and take her to Carmel Valley." She believed Michael was going to come and take her to "her husband in Carmel Valley who had been sleeping and not eating since she left." Marjorie's regular refusals to eat were sometimes used as leverage if she thought "things were not going to go her way, like she was not going to get to Carmel Valley any time soon or [the probate conservator] was keeping her [from] doing something." She never required medical treatment for refusing to eat, and the episodes rarely lasted more than several days. During these periods, she also

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<sup>2</sup> Although Crowe did not know who Michael was, Dr. Patrick Brown, a psychiatrist with the County of Siskiyou, Behavioral Health Services, testified Michael was Marjorie's son.

refused medication. Marjorie also exhibited behaviors reflecting suicidal tendencies and was put on suicide watch. One suicide attempt appeared to be in an effort to "go to sleep and see Michael." In March 2011, a suicide attempt resulted in her being placed on a section 5150 hold. Marjorie also repeatedly tried to leave the facility to get to Michael. The nursing home does not have a psychiatrist on staff, the staff is not trained to handle psychiatric problems, Marjorie's behavior caused a great deal of disruption at the nursing facility and Marjorie's psychiatric needs were not being met. Crowe contacted Diana Midkiff, the county's Deputy Public Guardian, because Marjorie's behaviors were beyond the facility's means to care for. Based on Marjorie's current behavior, delusions and required level of care, the nursing home would probably not accept her back.

Because the nursing facility was unable to manage Marjorie's psychiatric needs and her needs were not being met, Marjorie needed a higher level of care. Accordingly, as the public guardian, Midkiff sought an LPS conservatorship. An LPS conservatorship would grant Midkiff the authority to place Marjorie in a locked psychiatric facility, authority she did not have under the existing probate conservatorship. Midkiff also described Marjorie's delusions, stating, "She believes that she is married to a spiritual being of some sort and that he resides in Carmel Valley Village and is waiting for her to return there to their home to wake him up. He's apparently been sleeping for a number of years waiting for her to join him, and that is her

constant and fixed delusion." Midkiff researched Saint Germaine, the person Marjorie believes she is married to and found "he was a real person who existed at some time in the 1700s or something, and then there is a religion [sic] cult that believes that he was reincarnated at some point, and this is who she thinks her husband is." Midkiff noted Marjorie is "rather frail and weak. She doesn't eat a lot, so she has a tendency to be very thin and sometimes malnourished." Midkiff tried unsuccessfully to contact Marjorie's children. She was unable to locate Marjorie's daughter. She was able to obtain contact information for Marjorie's two sons but they did not respond to Midkiff's messages. Marjorie did not believe she needed to be under a conservatorship and sometimes denied she was under one.

Dr. Brown, the senior psychiatrist with the County of Siskiyou, Behavioral Health Services, testified as an expert. After evaluating Marjorie for dementia and reviewing her hospital records, he determined she did not have dementia and concluded she was delusional. Her delusions included the beliefs that she was working for President Obama and studying DNA implantation. During his interview with Marjorie, she was also "quite delusional." She claimed her son, Michael, had discovered how to put DNA "on the end of a push pin which could then be pushed into the breast of a woman with cancer and cure her." She also denied she had ever refused to eat. Given her history, which revealed that her repeated refusals to eat were part of an extremely long-standing behavior and that she had received electroconvulsive shock therapy for years due to these

repeated episodes of food refusal, Dr. Brown also found her denials delusional.

Dr. Brown noted that in records from both the nursing home and the psychiatric hospital, Marjorie required "a tremendous amount of encouragement to take care of her basic activities of daily living, including eating." Her "behavioral pattern of not caring for herself and not eating" existed over the course of 30 years. This inability to take care of her basic daily needs on her own was an entrenched and worsening pattern. Dr. Brown had also spoken with Marjorie's family, none of whom was willing to care for her or provide third party assistance to her. Her difficult behaviors, including her refusal to eat and refusal to get out of bed were the type of behaviors that "destroyed" her family's ability to continue to care for her.

Marjorie had been diagnosed at the psychiatric hospital with "bipolar disorder mix phase severe with psychotic features" and was being treated with dementia drugs, antipsychotics and a mood stabilizer. Her condition improved while taking the psychiatric medications. Dr. Brown diagnosed Marjorie as having a "psychotic disorder, not otherwise specified, and bipolar disorder, not otherwise specified." He went on to explain in order to be more specific in his diagnosis, he would need additional information and a better history, but he was not able to obtain those. Based on his diagnosis, Marjorie's inability to provide herself with food, clothing or shelter and the unavailability of any third party assistance, Dr. Brown concluded Marjorie was gravely disabled.

The court found Marjorie was gravely disabled. The court noted Dr. Brown was unequivocal in his opinion that she cannot care for herself or provide for her own food, clothing or shelter. Under section 5357, the court also denied her the right to enter into contracts, possess a firearm and to refuse or consent to medical treatment unrelated to her grave disability.

#### DISCUSSION

##### I

Marjorie contends there is not substantial evidence supporting the finding that she is gravely disabled as a result of a mental disorder. (§ 5350.) She challenges Dr. Brown's medical opinion, contending there is no evidence she has a mental disorder other than dementia. She challenges the finding that her mental disorder is causing her inability to provide herself with food, clothing or shelter and argues that any such inability does not present a physical danger. She also claims that she is not gravely disabled because she is able to provide her needs for food, clothing and shelter with the assistance of the Probate Code conservator and there is no evidence she requires placement in a locked facility.<sup>3</sup> We are not persuaded.

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<sup>3</sup> Grave disability is the inability to provide for one's "personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A), italics added.) Throughout these proceedings, the conjunctive "and" was frequently used in place of the disjunctive "or." It appears this is generally inadvertent, not intentional. Because this linguistic distinction is important,

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.) As relevant in this case, to establish "grave disability," the evidence must support an objective finding that due to 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); *In re 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.]" (*In re Carol K., supra*, 188 Cal.App.4th at p. 134.) "Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom. [Citation.]" (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577 (*Walker*)).

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we have corrected the language, except where to do so would alter the meaning the speaker plainly intended.

A. *Mental Disorder*

Marjorie contends there is not substantial evidence she is gravely disabled, in that Dr. Brown's opinion that she has a mental disorder is not supported by adequate facts and reasoning and there is no evidence she has a mental disorder, rather than dementia. We disagree.

The parties stipulated to Dr. Brown's qualifications as an expert and a board certified psychiatrist. His conclusion that Marjorie was gravely disabled was based on his review of Marjorie's medical records and his three-hour evaluation of her.

Dr. Brown concluded Marjorie suffered from a mental disorder, specifically, a psychotic disorder, not otherwise specified, and bipolar disorder, not otherwise specified, an Axis I psychiatric disorder. Dr. Brown did not simply rely on an unexplained psychiatric label, but explained this diagnosis is a "statement that psychosis has been determined to be evident. Psychosis is a description of a person's inability to experience reality as we know it, so they have aberrations of perception which includes auditory and visual hallucinations, and they have aberrations of thought process which includes delusions where they believe things that are patently false. And they can have thought disorders where they start a sentence, and then they lose track of what they're talking about and end up in thin air. And that she met criteria for having a psychotic illness based on those."

Dr. Brown's diagnosis was based largely on Marjorie's delusions. Marjorie's records revealed a history of delusions and repeated episodes of food refusal. Both Midkiff and Crowe reported Marjorie had constant and fixed delusions, including her belief that she is married to a religious figure from the 1700s. During his evaluation of her, Dr. Brown confirmed that Marjorie was "quite delusional." He recounted her delusions about her son having found a cure for breast cancer, her work for President Obama and her denials of her refusals to eat. Dr. Brown's conclusions also rested on his testing and confirmation that she did not suffer from dementia and the improvement in her condition with the provision of psychiatric medications. There are adequate facts and reasoning underlying Dr. Brown's diagnosis and his conclusion is substantial evidence that Marjorie has a diagnosed mental disorder, not dementia.

B. *Inability to Provide Food, Clothing or Shelter*

Marjorie also argues she is not gravely disabled, as the evidence was not she did not eat due to a "basic inability to eat . . . , but rather [as] a statement of protest or a desire to 'go to heaven.'" She also contends that there was no evidence that her delusions ever caused her to go without food, clothing or shelter. Again, we disagree.

Initially, the statute does not require a showing that the proposed conservatee have a "basic inability to eat." Rather, grave disability is an inability to provide for one's basic personal needs of food, clothing or shelter. (§ 5008, subd. (h)(1)(A).) Furthermore, a finding of "grave disability can be

based on an inability to provide for food, clothing, or shelter. It does not require a finding that a proposed conservatee cannot provide for her food, clothing, and shelter." (*In re Carol K.*, *supra*, 188 Cal.App.4th at p. 135, original italics.)

Marjorie regularly refused to eat and refused to take her medication. Her refusal to eat was a long-standing, well-entrenched behavior which had led to her family's inability to care for her. As a result of this behavior she was sometimes malnourished. Under the probate conservatorship, she had been living in a skilled nursing facility, which was ultimately unable to manage her current psychiatric needs. Her delusions and efforts to get to Carmel Valley to see her "husband," Saint Germaine, resulted in numerous efforts to leave the nursing home, attempt suicide, and refuse to eat. The nursing home had no ability to provide her with psychiatric care. As a result of her increasing delusions, her suicide attempts, her refusal to eat and difficult behaviors, the nursing home could not "take care of her any longer." Based on her condition, Crowe did not believe the nursing home could allow her to return to living there. This was circumstantial evidence that Marjorie's mental disorder precluded her from being able to successfully maintain shelter and supported the finding of grave disability.

Marjorie's reliance on *Conservatorship of Smith*, *supra*, 187 Cal.App.3d 903 (*Smith*) and *Doe v. Gallinot* (1979) 486 F.Supp. 983 (*Gallinot*), affirmed 657 F.2d 1017, to support her claim that her grave disability must present a physical danger is also misplaced. In *Smith*, a psychiatrist testified the proposed

conservatee could feed and clothe herself and provide for her own place to live. (*Smith, supra*, at pp. 907, 910.) By definition, this meant *Smith* was not gravely disabled. (§ 5008, subd. (h)(1)(A).) *Gallinot* clarified that California's definition of "gravely disabled" was not unconstitutionally vague, as the inability to provide for one's basic needs due to a mental disorder constituted a finding of harm to oneself. (*Gallinot, supra*, 486 F.Supp. at p. 991.) The requisite finding of dangerousness, can be met through neglect or inability to care for oneself. (*Ibid.*)

Here, the testimony was that Marjorie required a "tremendous amount of encouragement to take care of her basic activities of daily living, including eating." Her family was no longer able to care for her because of her behavior. She had also been removed from her residence at the nursing facility because it was unable to manage her behavior and psychiatric needs, and she would likely not be allowed to return to the nursing home as a result of those same behaviors and needs. The inability to maintain housing at the nursing home was evidence that Marjorie could not obtain shelter. This evidence distinguishes this case from the holding of *Smith*. It is specious to contend in this context that a person can be unable to provide for the necessities of life and not present a danger to herself. The evidence of Marjorie's inability to obtain shelter, and of her repeated refusals to eat, resulting in malnourishment, supported the finding she was gravely disabled. This evidence was also sufficient to support a finding that

Marjorie was physically at risk due to her inability to care for herself as defined in the statute, due to her mental disorder.

C. *Probate Conservator as Third Party and Necessity for Placement in a Locked Facility*

Marjorie also relies on section 5350, subdivision (e)(1), which provides a person shall not be declared 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." She contends this subdivision applies to her, because she is able "to provide for her own food, clothing, and shelter with the assistance of others" because the Probate Code conservator "has a duty to protect her independent of the LPS act." She also argues there is no evidence that she required placement in a locked facility.

The probate conservator initially determined an unlocked nursing facility was the least restrictive placement available for Marjorie. (Prob. Code, § 2352, subd. (b).) As a result of her delusions and, in an effort to get to Carmel Valley, Marjorie repeatedly tried to leave the unlocked facility, refused to eat and refused to take her medications. The nursing facility did not have psychiatric care available for Marjorie and the staff was not trained to handle her behaviors. Marjorie's psychiatric needs were not being met by the facility, and the facility requested she be placed elsewhere because of her behavior. Those behaviors also made it unlikely the nursing home would allow her to return to live there. The probate

conservator testified she did not have the authority to place Marjorie in a locked psychiatric facility. That could only be accomplished through an LPS conservatorship.<sup>4</sup> Thus, even with the assistance of a probate conservator, Marjorie was not able to maintain her residence or provide food for herself.<sup>5</sup> Rather, to provide for her daily needs, she needs psychiatric assistance. Marjorie's behavior, including her repeated attempts to leave the facility, provides evidence that the least restrictive placement appropriate for her is a locked facility. Accordingly, we find substantial evidence supports both of these findings.

## II

Marjorie also contends there was not substantial evidence supporting the imposition of the special disabilities under section 5357. Specifically, Marjorie argues there was no evidence that she would be a danger to herself or others if she possessed a firearm, no evidence she needed to be protected from entering any contracts or lacked the capacity to contract and no

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<sup>4</sup> In general, a probate conservatee may not be placed in a mental health treatment facility against their will. (Prob. Code, § 2356, subd. (a).) However, under Probate Code section 2356.5, subdivision (b) when a conservatee is diagnosed with dementia, the conservatee may be placed in a locked facility. Since Dr. Brown concluded Marjorie did not have dementia, this section did not apply to her.

<sup>5</sup> Under the facts of this case, we need not decide whether section 5350, subdivision (e)(1) includes probate conservators as persons who may provide third-party assistance, because even with such assistance, Marjorie has not been able to maintain her residence at the nursing home.

evidence she is incompetent to refuse or consent to medical treatment. The County offers no response to this argument.

A finding of grave disability alone is not sufficient to justify the imposition of the various special disabilities enumerated in section 5357. (§ 5005; *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1312-1313 (*Riese*)). The conservatee retains the rights and privileges covered by the special disabilities unless the court, after making separate findings of incapacity to support the imposition of the special disabilities, imposes those disabilities and confers corresponding authority on the conservator. (*Conservatorship of George H.* (2008) 169 Cal.App.4th 157, 165; *Riese, supra*, 209 Cal.App.3d at p. 1313.) Because the special disabilities deprive the conservatee of substantial constitutional rights, due process must be afforded before these rights are compromised. (§§ 5357, 5358; *Conservatorship of Christopher A.* (2006) 139 Cal.App.4th 604, 612.) "The party seeking conservatorship has the burden of producing evidence to support the disabilities sought, the placement, and the powers of the conservator, and the conservatee may produce evidence in rebuttal. [Citation.]" (*Conservatorship of George H., supra*, 169 Cal.App.4th at p. 165.)

Here, Marjorie was the subject of a probate conservatorship of both the person and the estate. The court took judicial notice of this fact. Proceedings under the LPS Act do not terminate the prior probate proceedings. Rather, they are concurrent with and superior to them. (§ 5350, subd. (c).) The

LPS conservatorship order imposing the special disabilities was prepared prior to the hearing and indicated that each disability listed under section 5357 would be imposed, including restrictions on Marjorie's right to possess a firearm, contract, and refuse consent to medical treatment. Before actually imposing the special disabilities, the court asked counsel if he had any concerns about the order, to which counsel responded, "No, I think that the order is consistent with the what the request was, and what Dr. Brown, and that had to simply do with removing the ability to drive, um, and -- well, the order -- the orders -- most of these orders are already in place except with a couple that I anticipated being added to what's already in place in the probate conservatorship, so I'm fine." Accordingly, Marjorie was provided both notice and opportunity to be heard on the issue of the special disabilities.

Under Civil Code section 1556, persons of "unsound mind" are not capable of entering into contracts. There are essentially three classifications of incapacity based on an "unsound mind," (1) entirely without understanding (Civ. Code, § 38); (2) unsound but not entirely without understanding; and (3) susceptible to undue influence. (Civ. Code, §§ 39, 1575; *Smalley v. Baker* (1968) 262 Cal.App.2d 824, 834-835, disapproved on another point in *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 485-486.) Under the established probate conservatorship, Marjorie was already restricted from entering into contracts. Marjorie did not challenge the validity of that condition. Thus, it had already been established by clear and convincing

evidence that Marjorie was "substantially unable to manage . . . her own financial resources or resist fraud or undue influence . . . ." (Prob. Code, § 1801, subds. (b) & (e).) The preexisting restriction on her right to contract provides evidence of Marjorie's susceptibility to undue influence.

As with the right to contract, under the probate conservatorship, Marjorie was prohibited from either refusing or consenting to medical treatment for conditions unrelated to her mental disorder. That is, she had already "been adjudicated to lack the capacity to give informed consent for medical treatment" or "to make health care decisions." (Prob. Code, §§ 2354, subd. (a), 2355, subd. (a).) In addition, Marjorie had a history of refusing to eat and refusing to take her medications, both related and unrelated to her mental disorder. This was sufficient evidence to support the restriction on her right to give or refuse consent to medical treatment.

To support a limitation on a conservatee's ability to possess a firearm or deadly weapon, the court must find "that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others." (§ 8103, subd. (e)(1).) Here, there was such evidence. In March 2011, Marjorie was admitted to a psychiatric hospital under section 5150. Accordingly, as a danger to herself or others, she is prohibited from possessing a firearm for five years after her release. (§ 8103, subd. (f)(1).) Furthermore, she had repeatedly expressed suicidal ideation and attempted to try to kill herself. This is evidence that she

presents a danger to herself if in possession of a firearm and supports the court's imposition of special disability of her right to possess a firearm.

DISPOSITION

The order appointing the conservator is affirmed.

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NICHOLSON, J.

We concur:

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RAYE, P. J.

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MURRAY, J.