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

Conservatorship of the Person and Estate of E. C.

C077545

EL DORADO COUNTY PUBLIC GUARDIAN, as
Conservator, etc.,

(Super. Ct. No.
PMH20140081)

Petitioner and Respondent,

v.

E. C.,

Objector and Appellant.

By this appeal, E. C. challenges the appointment of a conservator of her person and estate under the Lanterman-Petris-Short (LPS) Act.¹ She contends: (1) the trial court erred in permitting the conservatorship investigator to testify as an expert and to

¹ Welfare and Institutions Code section 5000 et seq.

relate hearsay diagnoses and evaluations of nontestifying doctors and other treatment providers; (2) there was no substantial evidence to support the jury's finding that she is presently gravely disabled; and (3) there was no substantial evidence to support the court's imposition of the special disabilities permitted by Welfare and Institutions Code section 5357.

We find no merit in E. C.'s first two arguments (finding the first one forfeited) but agree there was no substantial evidence to support the imposition of some of the special disabilities. Accordingly, we reverse the order of appointment to the extent it imposes certain disabilities on E. C. but otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2014, the El Dorado County Public Guardian filed a petition for appointment of a conservator of the person and estate of E. C. based on the allegation that E. C. was gravely disabled as a result of a mental disorder and was unable to provide for her basic personal needs for food, clothing, or shelter. The matter was tried to a jury in August 2014.

In a declaration admitted into evidence by stipulation, a psychiatrist (Dr. Robert Price) attested that he had examined E. C. and determined that she suffers from schizophrenia, "which impairs her ability to provide for her basic needs of food, clothing and shelter." Dr. Price noted that while E. C. "does well with the structure and monitoring of her placement and medications," "[w]hen not [subject to a conservatorship], [she] has been uncooperative and lacks insight into her illness," "[h]er judgment is severely impaired," and "[s]he is not compliant with medication and treatment." Dr. Price further stated that "[s]uch poor judgment from her part will undoubtedly cause her to relapse and become unable to care for herself once again."

Following the receipt of Dr. Price's declaration, Marlene Hensley testified for the public guardian that she is a licensed clinical social worker employed by El Dorado County Mental Health as a psychiatric social worker. One of her tasks is to serve as the

agency's LPS conservator evaluator, which involves "obtaining all the information about [a] patient relative to their need for a conservator." In performing this task, she not only relies on firsthand observation of the patient but also reviews psychiatric assessments from psychiatrists who have seen the patient and gathers reports from other agencies or colleagues, including looking at the patient's history of psychiatric hospitalizations. She had previously testified as a mental health expert regarding LPS conservatorship appointments in at least a dozen cases.

The public guardian's attorney moved to have Hensley "declared to be an expert in the area of reviewing and making recommendations based on reviews and reports for LPS conservatorships." At a bench conference, E. C.'s attorney objected to Hensley "being designated as an expert, as to prior reports and hospitalizations" without stating a basis for that objection. He then expressed concern that Hensley's asserted expertise in "making recommendations regarding LPS conservatorships, runs awfully close to asking the expert witness the ultimate issue that's going to the jury." The public guardian's attorney observed that "the Court requires that we have mental health make an investigation for the Court." The court said, "I think she can give a recommendation. She can tell what her recommendation is, and we can always instruct. The recommendation is just that, a recommendation and the jury can be -- if they feel there's counter evidence." E. C.'s attorney said he would "ask for a special instruction at the end of the trial," and the public guardian's attorney said he had no objection. E. C.'s attorney then said he would "submit to the requested designation on the record," which he did.

During her subsequent testimony, Hensley testified about her review of reports documenting E. C.'s previous hospitalizations dating back to 1988, which confirmed the diagnosis of schizophrenia. E. C.'s attorney did not object to that testimony.

Hensley, who had prepared six different conservatorship reports for E. C. dating back to 1989, testified that E. C. had repeatedly demonstrated that she will not voluntarily accept and comply with treatment, and she had verbally declined treatment. According to

Hensley, E. C. “does not think she has a mental health disorder.” In Hensley’s view, despite the numerous supportive services she has received both on and off conservatorship, E. C. has demonstrated that she cannot provide for her own food, clothing, and shelter and has not been able to manage her schizophrenia and its symptoms when she is not subject to a conservatorship.

At the time of trial, E. C. was being administered antipsychotic medication by injection. E. C. was also receiving pills for cholesterol problems, but she was not taking them regularly as the pills were being found when E. C.’s room was cleaned. According to Hensley, E. C. had not demonstrated that she would voluntarily continue treatment or would voluntarily consider taking medications if the conservatorship were allowed to lapse.

E. C.’s placement at the time of trial was in a board and care facility in Orangevale. The facility is staffed and monitored around the clock, and E. C. is provided with her medication and all of her meals. E. C. goes to a clinic to get the injection of her antipsychotic medication and meets with mental health staff when they visit the board and care facility, but she does not participate in the group treatment offered at the facility or in the day program.

Amber Peters, the supervising deputy public guardian with El Dorado County, testified to her familiarity with E. C. Within the previous year, E. C. had told Peters that she believes she does not need a conservatorship and does not believe she has a mental disorder. Peters did not believe E. C. had the ability to care for herself without assistance based on her history, her present plan, and her “insight of where she’s at now and how she plans to move forward and provide for her food and her shelter and her clothing.” When asked what E. C.’s plan was, Peters said, “Her plan included a flight to Hawaii, and that was it. Nothing else.”

The jury returned a verdict finding that E. C. was presently gravely disabled due to a mental disorder. Following the dismissal of the jury, the public guardian’s attorney

presented the court with a proposed order and “ask[ed] the Court to make a finding on the [special] disabilities [permitted by Welfare and Institutions Code section 5357] based on the evidence before this Court including the court investigator’s report signed by Ms. Hensley and Dr. Price’s declaration.” E. C.’s attorney submitted on the matter without offering any input or argument. The court signed the order, which deprived E. C. of the following rights: (1) “[t]he right to possess and/or carry fire arms [*sic*] or other dangerous weapons,” (2) “[t]he right to possess and/or hold a driver’s license to operate a motor vehicle,” (3) “[t]he right to enter into contracts,” (4) “[t]he right to refuse or consent to treatment related to [the] issue of grave disability,” (5) “[t]he right to refuse or consent to other medical treatment unrelated to [the] issue of grave disability,” and (6) “[t]he right to refuse or consent to routine medical treatment unrelated to [the] issue of grave disability.”²

This timely appeal followed.

² Welfare and Institutions Code section 5357 permits the imposition of the following special disabilities:

“(a) The privilege of possessing a license to operate a motor vehicle. . . .

“(b) The right to enter into contracts. . . .

“(c) The disqualification of the person from voting pursuant to Section 2208 of the Elections Code.

“(d) The right to refuse or consent to treatment related specifically to the conservatee’s being gravely disabled. . . .

“(e) The right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee’s being gravely disabled. . . .

“(f) The disqualification of the person from possessing a firearm pursuant to subdivision (e) of Section 8103.”

DISCUSSION

I

Admission Of Hensley's Testimony

On appeal, E. C. contends the trial court erred in permitting Hensley to testify as an expert and to relate hearsay diagnoses and evaluations of nontestifying doctors and other treatment providers as part of her testimony. This argument is forfeited.

“A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion” (Evid. Code, § 353.) “[T]he rule that a challenge to the admission of evidence is not preserved for appeal unless a specific and timely objection was made below stems from long-standing statutory and common law principles.” (*People v. Anderson* (2001) 25 Cal.4th 543, 586.)

Here, E. C.'s attorney objected to Hensley “being designated as an expert, as to prior reports and hospitalizations,” but he did not “make clear the specific ground of the objection.” (Evid. Code, § 353, subd. (a).) Moreover, he abandoned that objection right after making it. Immediately after making the objection, E. C.'s attorney expressed concern that the subject of Hensley's testimony was too close to the ultimate issue to be decided by the jury. E. C.'s attorney eventually said he would “ask for a special instruction at the end of the trial” to deal with that issue, and the public guardian's attorney said he had no objection. E. C.'s attorney then submitted to Hensley's designation as an expert. At no point in the trial did E. C.'s attorney ever object to Hensley relating hearsay diagnoses and evaluations of nontestifying doctors and other treatment providers as part of her testimony.

In the absence of a specific and timely objection raising the issue E. C. now seeks to raise on appeal, E. C.'s argument is forfeited.

II

Sufficiency Of The Evidence Of Mental Disorder And Present Grave Disability

E. C. contends that without the hearsay testimony of Hensley, there was insufficient evidence that she has a mental disorder and is gravely disabled. This argument necessarily depends on E. C.'s previous argument that the trial court erred in admitting Hensley's testimony. We have rejected that argument as forfeited. Thus, the argument that the evidence is insufficient without Hensley's testimony is without merit because E. C. forfeited her challenge to Hensley's testimony.

E. C. next contends that even with Hensley's testimony, there was insufficient evidence that E. C. is *presently* gravely disabled. In E. C.'s view, "there was no evidence that she was unable to provide for her food, clothing and shelter," but instead only "speculation that if released she would relapse and become gravely disabled." We disagree.

"A conservator of the person, of the estate, or of the person and the estate may be appointed for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism." (Welf. & Inst. Code, § 5350.) As applicable here, "'gravely disabled' means . . . [¶] [a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (*Id.*, § 5008, subd. (h)(1)(A).)

In arguing that the evidence here was insufficient to support a finding that she is presently gravely disabled, E. C. relies primarily on this court's decision in *Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030. As we will explain, *Benvenuto* is distinguishable.

Benvenuto had its roots in another decision by this court four years earlier, *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15. In *Murphy*, the public guardian sought to extend a conservatorship over an alcoholic, Murphy. (*Id.* at p. 17.) Two experts testified at the hearing. (*Ibid.*) The first "opined that Murphy was 'competent to

manage his affairs' ” but expressed the belief that if Murphy was allowed to do so, “he would once again indulge in alcohol, hence becoming ‘greatly disabled and a threat to himself if not to others.’ ” (*Ibid.*) The second testified similarly, saying she did not find that Murphy, in his present state, was unable to manage his own affairs, but that if he were to return to consuming alcohol he would “ ‘in all likelihood . . . again become greatly disabled.’ ” (*Ibid.*) This court concluded that “the evidence demonstrated [Murphy] was not” presently gravely disabled because “both expert witnesses testified Murphy was presently capable of managing his own affairs.” (*Id.* at pp. 18-19.)

Four years later, this court reached a similar result in *Benvenuto*. In that case, a doctor testified that Benvenuto suffered from schizophrenia, which was in partial remission because Benvenuto was taking antipsychotic medication. (*Conservatorship of Benvenuto, supra*, 134 Cal.App.3d at p. 1033.) The doctor further testified that “[b]ecause of the medication, Benvenuto presently ha[d] the ability to provide for his food, shelter, and clothing needs,” but “if Benvenuto went to live with his mother, as proposed, he would be likely to regress and become gravely disabled in a fairly short period of time.” (*Ibid.*) This court concluded that the doctor’s testimony did not establish *present* grave disability, reasoning as follows: “The circumstances here mirror those in the *Murphy* case. In *Murphy* the conservatee was not presently gravely disabled but medical witnesses thought he would likely soon become so because of his propensity to take the drug ethanol. Here Benvenuto is not presently gravely disabled but medical witnesses thought he would likely soon become so because of his propensity not to take the drug Prolixin. We discern no principled basis for distinction between these circumstances.” (*Id.* at p. 1034.)

What *Murphy* and *Benvenuto* have in common is the fact that in both cases, the experts who testified agreed that the conservatees, at the time of trial, were capable of managing their own affairs -- that is, they were able to provide for their basic personal needs for food, clothing, and shelter. That is not the case here. No one testified that

E. C. is capable of providing for her basic personal needs. Although Dr. Price used some language that tends to evoke *Murphy* and *Benvenuto*, when he testified that “poor judgment from [E. C.’s] part will undoubtedly cause her to *relapse* and *become* unable to care for herself *once again*” (italics added), unlike the experts in *Murphy* and *Benvenuto* he never clearly opined that E. C. was, at the time of trial, capable of providing for her basic personal needs, even while on medication. The most he said was that E. C. “does well with the structure and monitoring of her placement and medications.” However, given that E. C. was living in a board and care facility at the time, with 24-hour staffing and monitoring and with all of her medications and meals provided for her, Dr. Price’s statement cannot reasonably be construed as supporting, let alone requiring, a finding that E. C. is capable of providing for her own basic needs, particularly when Dr. Price’s statement is viewed in context, and not in isolation as E. C. would have it.

On the evidence here -- which stands in sharp contrast to the evidence in *Murphy* and *Benvenuto* -- we are satisfied there was sufficient evidence to support the jury’s finding that E. C. is gravely disabled by her schizophrenia.

III

Sufficiency Of The Evidence Supporting The Imposition Of Special Disabilities

On appeal, E. C. contends the imposition of the special disabilities permitted by Welfare and Institutions Code section 5357 was not supported by substantial evidence. We agree in part.

The person seeking the imposition of the special disabilities permitted by Welfare and Institutions Code section 5357 bears the burden of producing evidence supporting the disabilities sought. (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1578.) “The fact that [the conservatee] continue[s] to be gravely disabled d[oes] not by itself satisfy the evidentiary requirements for the imposition of special disabilities under section 5357. A conservatee does not forfeit any legal right nor suffer legal disability by reason of the LPS commitment alone.” (*Walker*, at p. 1578, fn. omitted.) “The better

practice is for the conservator to disclose, by the questions asked or the argument made, the evidence relied upon to support special disabilities under section 5357.” (*Walker*, at p. 1578.)

Here, as E. C. notes, no specific evidence was presented directed to the issue of the special disabilities, particularly those involving the right to drive a motor vehicle, enter into contracts, and possess a firearm. The public guardian’s evidence focused on whether E. C. had a mental disorder that made her unable to provide for her basic personal needs for food, clothing, and shelter. Indeed, the public guardian’s attorney did not even present any argument specific to the imposition of the special disabilities, except to ask the court to impose them “based on the evidence before this Court including the court investigator’s report signed by Ms. Hensley and Dr. Price’s declaration.” Nothing in either of those documents, however, specifically addressed the imposition of the special disabilities.

On appeal, the public guardian argues that the imposition of the special disabilities was justified because “[t]he evidence shows a history of psychiatric hospitalizations and instability when [E. C.] is not under conservatorship,” and “there was testimony that [she] becomes agitated when she is not compliant with her medication and when she is not under conservatorship.” The public guardian also adverts to prior incidents when E. C., while not under conservatorship, “traveled great distances with no plan for how she was going to care for herself or get treatment.” The problem with these arguments is that they focus exclusively on what happened in the past *when E. C. was not under conservatorship*. The special disabilities, however, are to be imposed on E. C. *while she is under conservatorship*. Thus, the public guardian needs to point to evidence that there is a need for these disabilities even while E. C. is under conservatorship, residing in a 24-hour board and care facility, and receiving her antipsychotic medication by injection. Unfortunately, the public guardian points to no such evidence. Although the public guardian refers to a statement by Dr. Price that E. C.’s judgment is “severely impaired,”

that statement, taken in context, appears to refer to periods “[w]hen [E. C. is] not conserved.” In any event, even if it could be understood to refer to periods when E. C. is under conservatorship and is being medicated for her schizophrenia, the bare statement that her judgment is “severely impaired” does not, without more, constitute substantial evidence supporting the imposition of the special disabilities permitted by Welfare and Institutions Code section 5357.

Despite the failure of the public guardian to point to evidence justifying the imposition of the special disabilities, we find the evidence sufficient to support two of those disabilities: specifically, “[t]he right to refuse or consent to treatment related specifically to the conservatee’s being gravely disabled” and “[t]he right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of [her] being gravely disabled” (Welf. & Inst. Code, § 5357, subds. (d) & (e)), which are covered by paragraphs 4(d) and 4(f) in the conservatorship order.³ There was substantial evidence in the record that if left to her own devices, E. C. will not take the medicine to treat her schizophrenia, which is the mental disorder that prevents her from being able to care for herself. Also, Hensley testified that E. C.’s physician “wants her to take an increased dose of her cholesterol medication, and she won’t do it.” Based on this evidence, the trial court was justified in imposing the special disabilities on E. C.’s right to refuse or consent to treatment related to her schizophrenia and routine medical treatment unrelated to that condition.

³ Paragraph 4(e) of the conservatorship order covers “[t]he right to refuse or consent to other medical treatment unrelated to [the] issue of grave disability,” while paragraph 4(f) covers “[t]he right to refuse or consent to routine medical treatment unrelated to [the] issue of grave disability.” Because only paragraph 4(f) is provided for by and consistent with the terms of section 5357 (see Welf. & Inst. Code, § 5357, subd (e)), paragraph 4(e) of the order must be stricken.

With respect to the other special disabilities -- specifically, “[t]he privilege of possessing a license to operate a motor vehicle” (Welf. & Inst. Code, § 5357, subd. (a)), “[t]he right to enter into contracts” (*id.*, subd. (b)), and “[t]he disqualification of the person from possessing a firearm pursuant to subdivision (e) of Section 8103” (Welf. & Inst. Code, § 5357, subd. (f)) -- we find no substantial evidence to support their imposition. Accordingly, the paragraphs of the conservatorship order imposing those disabilities -- paragraphs 4(a), 4(b), and 4(c) -- will be stricken.

DISPOSITION

Paragraphs 4(a), 4(b), 4(c), and 4(e) of the order appointing conservator of the person and estate filed August 12, 2014, are stricken. As modified, the order is affirmed.

ROBIE, Acting P. J.

We concur:

MAURO, J.

HOCH, J.