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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of M.C.,

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY

Petitioner and Respondent,

v.

M.C.,

Objector and Appellant.

D060454

Super. Ct. No. MH 104810)

APPEAL from an order of the Superior Court of San Diego County, Howard Shore, Judge. Affirmed.

Thirty-three-year-old M.C. appeals a judgment reestablishing a conservatorship of her person pursuant to the Lanterman-Petris-Short Act (LPS Act) (Welfare & Inst. Code

§ 5000 et seq.).¹ She contends that (1) the trial court lacked jurisdiction to hear the petition because there is no evidence that she was served with the medical opinion of two physicians that she was "presently gravely disabled" as required by law; and (2) at trial, the San Diego County Health and Human Services Agency (the Agency) failed to prove beyond a reasonable doubt that she was "presently gravely disabled." We reject her arguments and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In the 2000's, M.C. was hospitalized repeatedly over a seven-year period after experiencing hallucinations, suicidal thoughts, depression and paranoid delusions. She was diagnosed as suffering from bipolar I disorder and manic with psychotic features. In September 2006, an LPS Act conservatorship was established for her. Thereafter, M.C. was placed in several different board and care facilities; her conservatorship terminated in May 2008.

In February 2010, M.C. was hospitalized again for delusional thoughts (including that her name was Anastasia, M.C. was a friend of hers, her mother was actress Sharon Stone and she had just retired after five years in the Armed Forces, working for Russia and the U.S.). After her symptoms failed to improve, the Agency established a temporary conservatorship for M.C. and filed a permanent conservatorship petition in the superior court, alleging that she was gravely disabled and incapable of accepting

¹ All further statutory references are to the Welfare and Institutions Code except as otherwise noted.

treatment on a voluntary basis. The court granted the petition and ordered M.C. placed in a locked facility.

M.C. was later released to a board and care, although she was hospitalized three times during late 2010 and early 2011 for suicidal thoughts, delusional beliefs, increased depression, auditory and visual hallucinations and paranoia. During this same time, M.C. was also enrolled in the Alvarado Parkway Institute Outpatient Program, but refused to participate in it. After she was hospitalized a fourth time in February 2011, the Agency filed a petition to reestablish M.C.'s conservatorship, and she returned to the board and care facility.

At the hearing on the Agency's petition, psychologist Valerie Rice, who had evaluated M.C. that morning, testified that M.C. suffered from bipolar disorder and, as a result, had suffered from depression, hallucinations, and paranoid and delusional thinking, which led to M.C.'s hospitalization four times in the preceding eight months, only one of which M.C. remembered as of their interview. Dr. Rice acknowledged that M.C. had done well since being released back to the board and care facility in April, but opined that M.C.'s limited insight as to the severity of her mental illness rendered her unable to provide for herself on an independent basis.

M.C. testified that she did not need to be subject to a conservatorship and that she had plans to move into an apartment with a friend and hoped to get a job. She indicated that she had been seeing a psychiatrist and taking medications (Haldol, Cogentin and Seroquel) and would continue to do so if she was released from the conservatorship.

When asked about her recent hospitalizations, M.C. said that they resulted from her "feeling sad and worried about not having a job and . . . a normal life." Despite consistent diagnoses to the contrary, she denied having any manic tendencies and indicated that she had refused to participate in the outpatient treatment because it made her sad to see other ill people. Finally, M.C. ascribed her earlier depression problems to the prescriptions she had been given, indicating that she was doing much better since her medications had been changed.

The court found that although M.C. had done well in recent months, there were significant discrepancies between her understanding of the nature and extent of her mental illness and the opinions of the physicians on that subject; it concluded that although M.C. might soon reach the point where she could be released from a conservatorship, she remained gravely disabled. It reestablished the conservatorship for another year, ordering M.C. placed into a board and care facility. She appeals.

DISCUSSION

1. *General Principles*

The LPS Act governs the involuntary detention, evaluation and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled. (§ 5150 et seq.) It authorizes the superior court to appoint a conservator for one who is determined to be gravely disabled (§ 5350 et seq.), so that he or she may receive individualized treatment, supervision and placement. (§ 5350.1.) A person is "gravely disabled" within the meaning of the LPS Act if, as a result of a mental disorder, she "is unable to provide

for . . . her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A); see generally *Conservatorship of John L.* (2010) 48 Cal.4th 131, 142.)

The LPS Act sets forth several requirements pertaining to notice, hearing and trial rights, and other matters relating to conservatorship proceedings. In particular, the it requires that the Agency serve the proposed conservatee with the petition for appointment of a conservator and the citation for conservatorship at least 15 days before the scheduled hearing date and give the proposed conservatee notice of the privileges and rights subject to deprivation as part of the conservatorship. (§ 5350; Prob. Code, §§ 1823, 1824.) After the date of the petition, the court must appoint the public defender or another attorney to represent the proposed conservatee within five days and hold a hearing within 30 days. (§ 5365.)

The proposed conservatee has the right, within a specified period, to demand a court or jury trial on the issue of whether she is gravely disabled. (§ 5350, subd. (d).) At the trial, the party seeking the conservatorship must prove beyond a reasonable doubt that the proposed conservatee is gravely disabled and, in a trial by jury, the verdict finding such disability must be unanimous. (*Conservatorship of John L.*, supra, 48 Cal.4th at p. 143.) A conservatorship under the LPS Act automatically terminates after one year, unless a petition to reappoint the conservator is timely filed. (§ 5361.)

If the conservator files a petition to reestablish the conservatorship for another year, he or she must give the conservatee and the conservatee's attorney at least 60 days' advance notice of the expiration of the existing conservatorship and 15 days' notice of the

petition hearing date. (§§ 5362, subd. (a), 5365; Prob. Code, § 1824.) These notices must inform the conservatee of the potential disabilities and due process rights associated with establishment of a conservatorship, including the right to counsel and the right to request and appear at a court hearing or jury trial to contest reestablishment.

(Conservatorship of Deidre B. (2010) 180 Cal.App.4th 1306, 1312.)

The same rules that govern the initial establishment of a conservatorship also apply to a proceeding to reestablish the conservatorship, with the state bearing the burden to prove beyond a reasonable doubt that the conservatee remains gravely disabled. (§§ 5350, subd. (d), 5362, subds. (a), (b); *Conservatorship of Joseph W. (2011) 199 Cal.App.4th 953, 961-962.*) The conservatorship may be reestablished in summary fashion at an initial court hearing, or, upon a timely request, through a full court or jury trial. (§§ 5350, subd. (d), 5365, 5362, subd. (b).)

2. *Jurisdiction/Due Process Claims*

In either a conservatorship proceeding or a reestablishment proceeding, jurisdiction over the proposed conservatee is established by service on her of a citation and the petition to establish or reestablish a conservatorship. (§ 5350; Prob. Code, § 1824; *Conservatorship of Forsythe (1987) 192 Cal.App.3d 1406, 1409.*) A petition to reestablish a conservatorship must be supported by a medical declaration signed by two physicians or licensed psychologists that the proposed conservatee is still gravely disabled. (§ 5361.)

M.C. points to the fact that the petition in the record before us does not include the required medical declaration and argues that this defect divested the superior court of jurisdiction to hear the petition and violated her due process rights. The Agency admits this deficiency but requests that we take judicial notice of the declaration of M.C.'s trial counsel, which attaches a "Medical Recommendation and Declaration for Reestablishment of Conservatorship" and indicates that the recommendation was signed by two doctors and was part of the public defender's office files for this case. The Agency asserts that the evidence shows the required medical declaration was attached to the petition it served on M.C., and the superior court therefore had jurisdiction over the matter.

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) Matters that are subject to judicial notice are listed in Evidence Code sections 451 and 452 and are generally matters that are reasonably beyond dispute. (*Post v. Prati* (1979) 90 Cal.App.3d 626, 633.) The Agency contends that judicial notice of the declaration is proper under Evidence Code section 452, subdivision (h), which permits judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Notably, however, the Agency does not cite us to, nor have we found, any authority to support the application of this Evidence Code section to a document like the one in question. (Compare Evid. Code, § 452, subd. (d) [permitting judicial notice of documents in a court record].)

Moreover, even if judicial notice could properly be taken of the existence of the medical declaration, this would not render the declaration's contents a proper subject of judicial notice. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375-1376; *StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.) Thus, for example, if we took judicial notice that the declaration existed in the public defender's office files, we could not likewise take judicial notice that the document contained the opinions of two medical providers, as required by the LPS Act. (See generally *Mangini v. R.J. Reynolds Tobacco Company* (1994) 7 Cal.4th 1057, 1063; *People v. Long* (1970) 7 Cal.App.3d 586, 591.) Absent taking notice of the declaration's contents, the document fails to establish compliance with the statutory requirements.

That judicial notice as requested by the Agency is improper, however, is not the end of our analysis, as the Agency alternatively contends that the absence of the required declaration did not deprive the superior court of jurisdiction to hear and resolve the petition. Although the LPS Act contains numerous requirements intended for the protection of the proposed conservatee's interests, the law is clear that a lack of compliance with such requirements does not necessarily vitiate the superior court's jurisdiction to hear and adjudicate the conservatorship petition.

For example, in *Conservatorship of Forsythe, supra*, 192 Cal.App.3d at page 1412, the Agency's predecessor failed to serve the proposed conservatee with a copy of the conservatorship investigation report as required by the LPS Act. This court concluded that the failure to serve the report violated the statutory requirements, but was

not fatal to the superior court's jurisdiction so long as the proposed conservatee was served with the conservatorship petition and the citation to establish the conservatorship. (*Id.* at pp. 1411-1412, citing *Conservatorship of Ivey* (1986) 186 Cal.App.3d 1559, 1566; see also *Conservatorship of James M.* (1994) 30 Cal.App.4th 293, 298-299 [holding that the agency's failure to commence trial within 10 days as required by § 5350, subd. (d), did not divest the superior court's jurisdiction]; *Conservatorship of Delay* (1988) 199 Cal.App.3d 1031, 1038.)

M.C. counters that the requirement for a medical declaration triggers her due process rights and is thus necessary to establish the court's jurisdiction. (See *Conservatorship of Delay, supra*, 199 Cal.App.3d at p. 1038 [holding the proposed conservatee waived a challenge to the court's jurisdiction over her person by participating in a trial on the merits, but did not waive a challenge to the validity of the means of service of the petition on her as violative of her due process rights].) However, although it is without question that a conservatorship proceeding implicates a proposed conservatee's constitutional due process rights (*Conservatorship of Ivey, supra*, 186 Cal.App.3d at p. 1566), it is not also true that noncompliance with any statutory requirement rises to the level of a due process violation. As in *Conservatorship of Forsythe, supra*, 192 Cal.App.3d 1406, M.C. was served with notice of the hearing on the petition and the citation, was represented by appointed counsel at the hearing and appeared at the hearing to contest the merits of the petition.

Even if M.C. was not served with the required declaration (something that is not affirmatively asserted in her briefs), she had ample opportunity to point out this deficiency in the superior court, but did not do so. By proceeding with the hearing on the merits without raising any objection to the sufficiency of the supporting documentation, M.C. forfeited such a challenge for purposes of appeal. (See *Conservatorship of Joseph W.*, *supra*, 199 Cal.App.4th at pp. 967-968 [holding that a proposed conservatee's failure to object to the court's misinterpretation of his request for a hearing as a demand for a court trial and his participation in that trial forfeited the issue on appeal, noting that a timely objection would have allowed correction of the error].)

For the foregoing reasons, we reject M.C.'s jurisdictional challenges.

3. *The Sufficiency of the Evidence to Establish Present Grave Disability*

In proceedings under the LPS Act, the Agency must prove beyond a reasonable doubt that the proposed conservatee is presently gravely disabled. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235; *Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 302-303.) M.C. challenges the sufficiency of the evidence to establish that she was presently gravely disabled (i.e., suffering from a mental disorder that rendered her unable to provide for basic personal needs for food, clothing or shelter) at the time of the hearing. (§ 5350; see also § 5008, subd. (h)(1).) In the face of such a challenge, we review the evidence in the light most favorable to the Agency and must affirm the judgment if there is substantial evidence to support it. (See *Conservatorship of Johnson*

(1991) 235 Cal.App.3d 693, 697; *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15, 18.)

Although a trier of fact may not rely on a perceived likelihood that the proposed conservatee will stop taking the medications prescribed to treat her mental illness as a basis for determining that she is presently gravely disabled, it may rely on her past failure to take mental health medications when prescribed, coupled with evidence that she lacks insight as to her mental illness, as a basis for making such a finding. (*Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 446-447; *Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1573.) Here, the trial court did precisely that and its finding is supported by ample evidence in the record.

It is undisputed that M.C. was hospitalized numerous times during the course of her adult life, including on four occasions in the eight months preceding the proceedings to reestablish her conservatorship.² This evidence supports an inference that M.C. had difficulty complying with the medication regimen established for her by her physicians, even at a time when she was living in a board and care facility, and that this caused her to become disorganized and delusional in her thinking to the point where she had to be hospitalized numerous times.

² In fact, the March 2010 conservatorship investigation report indicated that the record of M.C.'s placement history, as recited herein, may not provide a complete picture of her hospitalizations as the records of treatment she received as a qualified recipient of Medicare and Medi-Cal benefits were unavailable to the investigator and thus outside "the purview" of the investigation.

Further, Dr. Rice testified that M.C. had limited insight into the "extent and severity of her mental illness." This opinion was substantiated by M.C.'s own testimony at the hearing, in which she essentially denied suffering from any mental illness other than depression, and her statements to Dr. Rice that she had only been hospitalized on one occasion in the months preceding the hearing.

This foregoing evidence is sufficient to support the court's determination that M.C. was presently gravely disabled as of the date of the hearing.

DISPOSITION

The judgment reappointing the conservator is affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.