

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of NICOLE O.,

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY

Petitioner and Respondent,

v.

NICOLE O.,

Objector and Appellant.

D062440

(Super. Ct. No. MH107355)

APPEAL from an order of the Superior Court of San Diego County, Gale E. Kaneshiro, Judge. Affirmed.

Thirty-five-year-old Nicole O. appeals a judgment establishing a conservatorship of her person pursuant to the Lanterman-Petris-Short Act (the LPS Act) (Welf. & Inst. Code, § 5000 et seq.).¹ She contends that the San Diego County Health and Human Services Agency (the Agency) failed to present substantial evidence to (1) establish that she was "presently gravely

disabled" and (2) support the court's order placing her in a closed, locked facility. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Nicole was diagnosed with schizoaffective disorder when she was 16 and was hospitalized multiple times from 1995 to 2005 as a result thereof. After being hospitalized four times in four months in 2005, a conservatorship was established over Nicole in November based on a jury finding that she was gravely disabled. Nicole was placed in an inpatient treatment program at the Alpine Special Treatment Center (the Alpine Center).

Nicole was hospitalized several more times the following year and in June 2007, a conservatorship was temporarily established over her and she was placed at the Cresta Loma inpatient treatment program. The conservatorship was later terminated, however, after a jury determined that Nicole was not presently gravely disabled and she moved to an independent living facility.

Nicole was hospitalized at the University of California San Diego (UCSD) Medical Center's psychiatric unit in August 2007 and returned to Cresta Loma under another temporary conservatorship, but that conservatorship was terminated in December 2007 based on a jury determination that she was not gravely disabled. After being discharged, Nicole went to Mexico for several weeks. When she returned to the United States, she was picked up at the border in a psychotic and malnourished state and with a severe wound on one wrist. She was hospitalized several more times in 2008 as a result of her failure to take her medications.

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

In May 2009, Nicole began consistently taking her medications, which included a monthly antipsychotic injection (Prolixin), and thereafter she was able to live on her own in an apartment, although she had trouble managing her money, spending so much on clothing or knickknacks that she did not have enough for food. Further, in late 2010 she stopped complying with her medication regimen and was hospitalized for her symptoms several times in 2011. In August 2011, Nicole was evicted from her apartment (which was dirty, unkempt and had many holes punched in the walls) and she went with her father to live in Rosarito Beach, Mexico. Unfortunately, she did not take Prolixin while there and she ended up homeless in Tijuana.

In early 2012, Nicole returned to San Diego and in March she sought treatment for a cold at UCSD. (All further dates are in 2012 except as otherwise noted.) She presented as having delusions, paranoia, hallucinations and disorganized thinking and suffering from malnourishment and was admitted to UCSD's psychiatric facility. She was treated by a team of doctors, including Dr. Louisa Steiger. In May, Nicole was transferred from UCSD to the Alpine Center.

In the interim, the Agency filed a petition to establish a conservatorship over Nicole, and a temporary conservator was appointed for her. Judge Frederick Maguire held a hearing on the Agency's petition in May, wherein Dr. Steiger testified that Nicole suffered from schizoaffective disorder, bipolar type, and, as a result, was subject to hallucinations, and paranoid, delusional and disorganized thinking. Although Nicole complied with her medication plan while hospitalized, Dr. Steiger opined that, based on her history and limited insight into her mental illness, Nicole would not continue to be medically compliant if

unsupervised and thus would not be able to consistently provide for herself on an independent basis. Dr. Steiger also testified that the least restrictive level of placement for Nicole was a closed, locked facility, at least for a four-month period; Dr. Steiger also indicated that if Nicole continued to do well during that period, she might qualify for a change in placement thereafter.

Nicole testified at the hearing, indicating that she had been consistently taking Prolixin for her disorder, except during her most recent time in Mexico when it was too inconvenient for her to come back to the United States, and that she ultimately returned to UCSD specifically to get a Prolixin shot. She testified that she was "very, very capable" of providing for her own shelter, food and clothing, as she had "for years," and planned to live in a board and care facility or a single occupancy room hotel if she was not placed into a conservatorship.

Judge Maguire found that Nicole suffered from a mental disorder and, based on her state when she appeared at UCSD and the medical testimony that she needed several months of consistent treatment to allow her to reach a baseline point with her mental illness, sustained the Agency's petition, appointed a conservator for Nicole and ordered her to be placed in a closed, locked facility. Nicole thereafter demanded a jury trial on the issue of whether she was gravely disabled.

At trial, Dr. Steiger gave similar testimony as she had at the hearing before Judge Maguire as to Nicole's diagnosis and its consequences, noting that Nicole's mental illness had impaired her ability to provide food, clothing and shelter for herself in the past. Dr. Steiger also testified that schizoaffective disorder would affect Nicole's ability to independently maintain her medication regimen because it caused her difficulties in processing information about her disorder and resulting behaviors and because in the past she had denied having a

psychiatric condition. Although Nicole complied with her medication plan during her most recent two-month hospitalization and her condition had improved "dramatically" as a result, Dr. Steiger opined that, based on Nicole's history and limited insight into the severity of her mental illness, Nicole would not continue to take her medications if unsupervised and, as a result, she would not be able to consistently provide for herself on an independent basis.

Nicole's mother, L.K., also testified about Nicole's diagnosis and history, indicating in part that although her daughter did well with medication, she did not believe that Nicole could live independently given Nicole's frequent medication noncompliance over the years. Although Nicole had lived with L.K. on and off until 2005, she was unable to do so after that time because of her aggressive and occasionally violent behavior, although L.K. kept in frequent in-person and telephone contact with her since then. L.K. also testified that although Nicole was good at getting into board and care or other housing situations, they usually did not last for more than one or two months because Nicole would go off of her medications and then leave. Finally, L.K. testified about Nicole's difficulties in managing money and said that since August 2011 she had been administering Nicole's Social Security benefits, which she used to pay for Nicole's food and shelter when Nicole was not institutionalized.²

Nicole also took the stand, testifying that she knew she had schizoaffective disorder and had been taking Proloxin consistently for six years to treat it, although she felt that her prior delusions (many of which she denied having) resulted from stress rather than medication

² When she was able to make the necessary arrangements, L.K. would pay such funds directly to the third parties who provided Nicole with shelter and food because if she provided the funds to Nicole, Nicole tended to use the money to buy clothes, trinkets or coffee rather than food.

noncompliance. She opined that she was "absolutely" capable of providing food, clothing and shelter for herself and that she would continue to take her medications if she was not placed in a conservatorship. She also admitted that she was in a much better mental state at the time of trial than she was when most recently admitted to UCSD.

The jury found that Nicole was presently gravely disabled. Trial Judge Gale Kaneshiro adopted Judge Maguire's findings and order establishing the conservatorship for a year and requiring Nicole to be placed in a closed and locked facility. Nicole appeals.

DISCUSSION

The LPS Act governs the involuntary detention, evaluation and treatment of persons who, as a result of a 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.)

1. *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.) Nicole

challenges the sufficiency of the Agency's evidence to establish her grave disability (i.e., that she suffered 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.)

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 the sole basis for determining that she is presently gravely disabled; however, 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 if it determines that she will not take her medication unless she is required to do so and that her mental disorder makes her unable to provide for her needs for food, clothing or shelter. (*Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 446-447; *Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577.)

Although not uncontroverted, the Agency's evidence showed that Nicole was hospitalized at least 20 times in the 14 years prior to the current trial and that many of these hospitalizations arose from her failure to take the medications prescribed for her disorder and the resulting deterioration of her mental condition. Further, Dr. Steiger testified that Nicole had limited insight into the extent and severity of her mental illness, indicating that Nicole had at times denied having any psychiatric condition. The limited nature of Nicole's understanding

of her disorder was also illustrated by her trial testimony that she had only stopped taking her prescribed medications on a few occasions in the preceding years and that stress, rather than her failure to take the medications, was what caused her to become delusional. This evidence supports a conclusion that Nicole consistently had not complied with the medication regimen established for her by her physicians unless she was under the supervision of hospital staff and that she would continue to do so in the future.

Similarly, the evidence of Nicole's frequent psychotic breaks, her recurring inability to maintain consistent housing and the number of occasions on which she was found to be substantially malnourished supported a finding that when Nicole was not taking her medications, her mental disorder rendered her unable to provide for her needs for food, clothing or shelter.

The foregoing evidence amply supports the jury's determination that Nicole was presently gravely disabled as of the time of trial.

2. *Nicole's Placement in a Closed and Locked Facility*

After a person is found to be gravely disabled as the predicate for establishing a conservatorship under the LPS Act, the court must place the conservatee in a "suitable facility," which is defined as "the least restrictive residential placement available and necessary to achieve the purpose of [the] treatment." (§ 5358, subd. (c)(1).) The determination of the appropriate placement must be based on the recommendations of the conservator and the evidence presented at trial. (§§ 5356-5358.)

Based on Nicole's consistent history of noncompliance with her medication program while she was living in other settings, the conservator recommended that she be placed in a closed, locked treatment facility. Similarly, Dr. Steiger testified that such a placement was necessary because of the likelihood that Nicole would leave a less restrictive placement and again become noncompliant with her medications. This evidence is sufficient to support the trial court's order placing Nicole in a closed, locked facility.³

³ The Agency alternatively requests that this court take judicial notice under Evidence Code section 452, subdivision (h), of the fact that Nicole has been transferred to a board and care facility and reject Nicole's challenge to her placement as moot. We deny the Agency's request, which is completely lacking in evidentiary and legal support. (See Evid. Code, § 452, subd. (h) [which authorizes judicial notice of facts 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"].) Contrary to the Agency's suggestion, the mere fact that appellant's counsel might be able to confirm his client's current placement by contacting her does not make the fact of her current placement a proper subject of judicial notice pursuant to this statute.

DISPOSITION

The judgment reappointing the conservator is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.