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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Conservatorship of the Person of L.H.

DIEN MACH, as Chief Physician, etc.,

Petitioner and Respondent,

v.

L.H.,

Objector and Appellant.

E055510

(Super.Ct.No. MENPS1100374)

OPINION

APPEAL from the Superior Court of San Bernardino County. J. Michael Welch, Judge. Affirmed.

Brent Riggs, under appointment by the Court of Appeal, for Objector and Appellant.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Richard T. Waldow and Gregory M. Cribbs, Deputy Attorneys General, for Petitioner and Respondent.

This is an appeal by L.H., objector and appellant, from the trial court's order on a petition under Probate Code¹ section 3201, granting Dien Mach, the chief medical physician of Patton State Hospital (Patton), petitioner and respondent, authority under section 3208 to consent on L.H.'s behalf to recommended health care procedures and treatment.

L.H. was admitted to Patton in June 2011 after a judge in Los Angeles County Superior Court declared her incompetent to stand trial on various criminal charges. While at Patton, one of its physicians determined L.H. was borderline diabetic. Because she did not want to take medication, the Patton physician agreed to test L.H.'s blood sugar level again in several months. The subsequent test showed defendant's blood sugar level had gone up. As a result, the Patton physician recommended L.H. take medication for diabetes, as well as submit to various other medical tests and examinations. L.H. declined. At the request of the physician, L.H.'s psychiatrist at Patton tried to persuade her to take the diabetes medication. When L.H. again declined, the physician filed a petition under section 3201 to determine that L.H. lacks capacity to make a health care decision about treatment of her diabetes, and to have respondent named as L.H.'s representative. Following a hearing on that petition, at which the physician, psychiatrist, and L.H. all testified, the trial court found the allegations of the petition true and issued an order authorizing respondent to consent to the recommended treatment on L.H.'s behalf.

¹ All further statutory references are to the Probate Code unless otherwise indicated.

In this appeal, L.H. contends the trial court's order is not supported by substantial evidence. We disagree and, therefore, will affirm.²

DISCUSSION

Section 3201 allows a petition to be filed to determine whether a patient possesses or lacks the capacity to make a health care decision. Section 3204 specifies the content of the petition, which must include, among other things, “[t]he deficit or deficits in the patient’s mental functions listed in subdivision (a) of section 811 that are impaired, and an identification of a link between the deficit or deficits and the patient’s inability to respond knowingly and intelligently to queries about the recommended health care or inability to participate in a decision about the recommended health care by means of a rational thought process.” (§ 3204, subd. (h).) In other words, the petition must allege that as a result of L.H.’s identified mental deficit, she either is unable to respond knowingly and intelligently to questions about the recommended treatment or that she is unable to make a decision about the recommended health care through a rational thought process.

Section 811, subdivision (a), referred to in section 3204, states in pertinent part, “A determination that a person . . . lacks the capacity . . . to make medical decisions . . . shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or

² L.H. also filed a petition for writ of habeas corpus in this court on August 10, 2012. (Case No. E056875.) The petition will be decided by separate order.

deficits and the decision or acts in question: [¶] . . . [¶] (3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following: [¶] . . . [¶] (C) Delusions.”

In this case, the petition alleges, in pertinent part, that L.H. suffers from delusional disorder, persecutory type with grandiose feature. Presumably, that allegation is directed at establishing a deficit in L.H.’s thought processes as demonstrated by the presence of delusions and, thus, the petition arguably alleges the requisite deficit under section 811, subdivision (a)(3)(C). The petition further alleges that L.H. was examined by Dr. Zin, a physician, who determined that she has diabetes mellitus, among other conditions; L.H. has consistently refused procedures and treatment for diabetes mellitus; without treatment L.H. will have uncontrolled high blood sugar, which eventually will lead to coma and death; the medical condition and treatment has been discussed with L.H. on multiple occasions; L.H. stated that she only had gestational diabetes, and she refused to take medication; when L.H. was informed of the test results that indicate she currently has diabetes, she continued to refuse to take medication.

The petition also alleges that L.H. “is preoccupied with the legality of her admission and is not able to process the seriousness of her condition. She continues to be argumentative, challenging her illness and treatment.” That allegation is sufficient to establish the link between L.H.’s purported mental deficit and her ability either to “respond knowingly and intelligently to queries about the recommended health care” or “to participate in a decision about the recommended health care by means of a rational thought process.”

In addition to the statutory requirement that the petition allege L.H. lacks the capacity to make medical decisions, section 3208 states the trial court may only issue an order authorizing the recommended health care treatment and designating a person to give consent on the patient's behalf if the court finds, among other things, that "[t]he patient is unable to consent to the recommended health care." (§ 3208, subd. (a)(3).) Although section 3204 requires the petition allege that the patient lacks capacity to make a medical decision, under section 3208, the trial court may only issue an order authorizing the recommended medical treatment if the evidence also shows the patient is unable to consent.

The phrase "unable to consent" is not defined in the Probate Code. The concept of legal capacity to give informed consent, however, is addressed in section 813. Assuming the phrase "unable to consent" means unable to give informed consent, section 813 states in pertinent part, "(a) For purposes of a judicial determination, a person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following: [¶] (1) Respond knowingly and intelligently to queries about that medical treatment. [¶] (2) Participate in that treatment decision by means of a rational thought process. [¶] (3) Understand all of the following items of minimum basic medical treatment information with respect to that treatment: [¶] (A) The nature and seriousness of the illness, disorder, or defect that the person has. [¶] (B) The nature of the medical treatment that is being recommended by the person's health care providers. [¶] (C) The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the

consequences of lack of treatment. [¶] (D) The nature, risks, and benefits of any reasonable alternatives. [¶] (b) A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment.”

According to the evidence presented at the hearing in this case, L.H. declined to take medication for her diabetes even though over the course of several months³ her hemoglobin level had increased from 6.8, which is borderline, to 8.4. When L.H.’s physician, Dr. Zin, explained she needed to be treated for diabetes and also explained the consequences of not treating the disease, L.H. nevertheless refused medication. Dr. Zin acknowledged in his testimony that L.H. understood the significance of the hemoglobin numbers and also understood that a consequence of not taking medication for her diabetes was that her condition would get worse. L.H. told Dr. Zin that she did not want to take medication because she had had gestational diabetes when she was pregnant and her own doctor told her she did not need medication; she could control her diabetes through diet. Dr. Zin testified that he did not believe L.H. had the capacity to consent and to understand what was going on, although he had talked with L.H. several times, and that is why he had asked for assistance from a psychiatrist.

Dr. Merle Madera, L.H.’s psychiatrist at Patton, testified that L.H.’s current diagnosis is delusional disorder, persecutory type, and that her current mental state is that “she’s very preoccupied of legal—her legal case. She always approach [*sic*] us in a legal way. If she’s going to communicate with me—if she gave me a letter, it always in

³ Respondent testified it was three months; L.H. said six months.

legal—appear like legal format, and she—sometimes she will tell me she’s serving me as witnessed [*sic*] by another patient on the unit. She strongly believed that she’s wrongfully been brought to Patton State Hospital, that she wants to go back there to have her trial and she has been charged with seven counts of—has to do with the deeds. Her name was in the deeds that not belong to her.” Dr. Madera testified that he had discussed L.H.’s medical condition with her “in a treatment approach” and how diabetes would affect her life, how important her physical health is, and how it is important for her to be available to her 11-year-old son. According to Dr. Madera, L.H. responded that “she was diagnosed to have diabetes before and she was treating herself with diet, and she told us that she bought books about how to treat her diabetes. And she strongly believes she doesn’t have mental illness and the medication that we’re giving to her is causing her sugar to be up, that she needs to take meds. Before her diabetes is [*sic*] controlled without medication. She’s blaming it on the medication that we’re giving her that’s causing her to have elevated sugar that she required to be treated with medication.” Dr. Madera also testified that L.H. declined medication for her diabetes even after he agreed to take her off the “psych meds.” Instead, she insisted “that if something happened to her, if she died or she have this organ damage, that we’re liable to her, to what happened, whatever happened to her.” In Dr. Madera’s view, L.H. was not rational because she would not even consider his offer that she discontinue the “psych” medication and instead take the diabetes medication. In his opinion, “her persecutory type of delusion, it’s like nobody—she cannot sense—she sense more of doing harm to her than helping her, and I think it’s affecting her judgment significantly.”

The above testimony is sufficient to demonstrate that L.H. lacks the capacity to give informed consent. L.H. understood her blood hemoglobin level of 6.8 was borderline. She nevertheless denied that the increase resulted in her being diabetic and needing medication. The evidence also establishes that L.H. would not accept the diagnosis because of her delusion that people, including her doctor and psychiatrist, were out to harm her rather than help her. L.H.'s refusal to treat her diabetic condition is based on her delusion and, therefore, is irrational. Because she is irrational, L.H. is not capable of informed consent. In short, the evidence is sufficient to show that as a result of a mental deficit, in this case an alleged thought process affected by delusions, L.H. lacks the capacity to give or withhold consent for the treatment of her diabetes.

DISPOSITION

The order filed January 6, 2012, authorizing respondent to consent to medical treatment on L.H.'s behalf is affirmed.

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McKINSTER
Acting P.J.

We concur:

RICHLI
J.

KING
J.