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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

Conservatorship of the Person of WILLIAM C.

DAWAN UTECHT, as Conservator, etc.,

Petitioner and Respondent,

v.

WILLIAM C.,

Objector and Appellant.

F070805

(Super. Ct. No. 14CEPR00660)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Robert H. Oliver, Judge.

Paul Bernstein, under appointment by the Court of Appeal, for Objector and Appellant.

Daniel C. Cederborg, County Counsel and Libby A. Hellwig, Deputy County Counsel for Petitioner and Respondent.

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* Before Gomes, Acting P. J., Kane, J. and Detjen, J.

Appellant William C. (William) appeals from an order appointing a Lanterman-Petris-Short Act (LPS) conservator for him with certain specified powers (Welf. & Inst. Code, § 5000 et seq.).¹ William contends the evidence is insufficient to sustain: (1) the trial court's finding that he was gravely disabled; and (2) the court's order imposing special disabilities on him. We affirm.

FACTS

On July 14, 2014, William was hospitalized at Community Behavioral Health Center (CBHC) pursuant to section 5150² after his mother reported that he was punching holes in the walls at home.

On July 17, 2014, Dr. Aleksandro Vydro diagnosed William with schizophrenia, chronic, undifferentiated type with a history of amphetamine, alcohol and cannabis abuse. Dr. Vydro concluded that William needed a one-year LPS conservatorship for his protection and treatment.

On July 25, 2014, the Fresno County Public Guardian filed a petition for the appointment of an LPS conservatorship for William.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

² Section 5150, subdivision (a) provides: "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services...."

On August 14, 2014, the LPS Conservatorship Investigation Report (investigation report) was filed.

On October 16, 2014, the court conducted a bench trial on the petition. During the trial, Dr. Alexia Morgan testified that she is a senior licensed psychologist employed by the Fresno County Conservatorship Office and had worked as a licensed psychologist in California for 18 years. Dr. Morgan performed a psychological evaluation of William based, in part, on interviews with him on September 29, 2014 and October 14, 2014, which each lasted 20 minutes. On both occasions, she was not able to do a complete regular interview because in addition to being confused and disorganized, William was psychotic and paranoid and he was experiencing auditory and visual hallucinations. Additionally, Dr. Morgan had to end one of the interviews because William glared at her and pounded his fist on the table and she was afraid he was going to become violent. In one interview, Dr. Morgan was able to ask him about his plans for providing himself with food, clothing and shelter. William answered only that he would “use [his] money from SSI.”³

Dr. Morgan also reviewed several records including the investigation report, William’s Department of Behavioral Health file, and William’s Avatar notes; i.e., his electronic health record, including the conservatorship notes of the last few months. These records disclosed that in 2013 William’s mother reported that although William had extended periods when he was catatonic, he would also become aggressive one minute and calm and normal the next. They also disclosed that William had physically assaulted his mother by choking her, had threatened to further physically assault her, and that she became so afraid of him that at night she locked herself in her bedroom with pepper spray and a baseball bat. The records also disclosed that on June 13, 2014, and again on July 14, 2014, William was committed to CBHC pursuant to section 5150 as a

³ William received \$842 monthly in SSI benefits.

dangerous or gravely disabled person after he stopped taking his medication and he became increasingly agitated and violent. During the July 14, 2014 incident, William punched holes in a wall and cut himself with broken glass. He also used a strange voice and vulgar language while cursing at police. William remained at CBHC until he was transferred to Merced Behavioral Center (MBC) on September 17, 2014, where he remained confined.

Based on the records she reviewed and her two interviews of William, Dr. Morgan diagnosed him with schizophrenia paranoid type with symptoms of paranoia, auditory and visual hallucinations, confusion, and disorganized behavior and disorganized thinking.

Dr. Morgan further testified that William was receiving Depakote and Thorazine at MBC. However, even though he was taking these medications William did not have any insight into his mental disorder and he did not understand his need for treatment because he was still experiencing auditory and visual hallucinations. Thus, according to Dr. Morgan, if discharged, he would not voluntarily continue to take his medication and his history indicated that he would then start taking methamphetamine and could become violent with his mother.

Dr. Morgan also testified that due to William's auditory and visual hallucinations, his inability to think clearly, and his disorganized thoughts and behavior, he would not be able to provide for his basic needs of food, clothing and shelter.

Dr. Morgan testified that she interviewed William's grandmother, Theresa T., on September 29, 2014. Dr. Morgan did not believe that an offer by Theresa T. to take care of William's basic needs was appropriate because Theresa T. was in denial that William had a mental disorder, that he had difficulty with methamphetamine, and that he could be violent. During the interview, Theresa T. asked Dr. Morgan why she cut off the interview with William. When Dr. Morgan asked Theresa T. if she noticed that William was aggressive and did not seem to know what was going on, Theresa T. indicated she

did not notice those things, and she did not understand why the interview with William was cut short.

In Dr. Morgan's estimation, even though MBC was a locked facility, it was the least restrictive placement option for William because of his symptomology of being confused, disorganized and suffering from auditory and visual hallucinations. Additionally, notes from the facility showed that as of October 5, 2014, William's overall functioning was poor, that he was not making progress, and that he was still adjusting to the facility.

Dr. Morgan further testified that due to the symptoms of schizophrenia, William was unable to operate a motor vehicle, enter into and understand the ramifications of commercial contracts, or safely possess firearms, and he did not have the capacity to refuse treatment related to his mental disorder or other medical conditions. William's methamphetamine abuse and dependence, and his history of violence, provided additional support for Dr. Morgan's conclusion that William could not safely possess firearms.

Theresa T. testified that William had been living with her for eight years and that his mother also lived with her. If William were released to Theresa T.'s care he would have a room in her house and Theresa T. would have time to take care of William because she is retired. According to Theresa T., William did not need a lot of care because he got up in the morning by himself and groomed himself while she prepared breakfast. She also testified that she and William took walks and watched television together. She did his grocery shopping, his laundry, cleaned up after him, and provided for all of his needs.

Theresa T. further testified that she would try to make sure William took his medications; however, sometimes he did not want to take them and that created a problem because he could get very sick. When asked if she thought William was suffering from a mental disorder, Theresa T. responded, "Well, he has a problem, but I can't pinpoint it, *but it's not that severe.*" (Italics added.) The only time she had seen

William violent was when he punched the walls and she believed it was caused by William drinking and not taking his medications. When asked if she had ever seen William use methamphetamine, Theresa T. responded she did not know where the methamphetamine would have come from because he was under her constant care and she did not know how he could pay for it. She believed he may have used methamphetamine when he was living alone but not while he had lived in her house. Theresa T. emphatically believed that William had made progress during his current commitment. Theresa T. also testified she could take better care of William than MBC because she had been his primary caretaker since he was a baby.

The defense then rested without calling William to testify. After hearing argument, the court held that William was gravely disabled and that the offer of third party assistance by Theresa T. would not be appropriate and might put him and others at risk. The court, without objection, also appointed a conservator and ordered that William not have the right to: (1) possess a driver's license; (2) enter into contracts; (3) possess firearms or deadly weapons; (4) refuse or consent to treatment related to his mental illness; and (5) refuse or consent to treatment unrelated to his mental illness.

DISCUSSION

The Sufficiency of the Evidence that William was Gravely Disabled

William contends that Dr. Morgan's conclusion that he could not provide food, clothing, or shelter for himself on a basic level was not supported by adequate facts and reasoning as required by *People v. Bassett* (1968) 69 Cal.2d 122, 141 (*Bassett*). Alternatively, he contends that his inability to provide this care for himself was not so serious that it presented a physical danger to him. William also contends that he was not gravely disabled because with Theresa T.'s assistance he could provide himself with food, clothing, and shelter. We reject these contentions.

“The LPS Act governs the involuntary detention, evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled. [Citation.]

The Act authorizes the superior court to appoint a conservator of the person for one who is determined to be gravely disabled [citation], so that he or she may receive individualized treatment, supervision, and placement [citation]. As defined by the Act, a person is ‘gravely disabled’ if, as a result of a mental disorder, the person ‘is unable to provide for his or her basic personal needs for food, clothing, or shelter.’”

(*Conservatorship of John L.* (2010) 48 Cal.4th 131, 142.) The testimony of a single expert is sufficient to sustain a finding that a person is “gravely disabled” as a result of a mental disorder so as to justify establishment of a conservatorship. (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 696-697.)

“On appeal ‘the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom.” (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577.)

Medical records indicated that in 2013, William’s mother reported that sometimes William would be in a catatonic state and other times he would alternate between being aggressive one minute and calm and normal the next. She also reported that William assaulted and choked her and placed her in so much fear that she locked herself in her bedroom at night with a bat and pepper spray for protection. During the summer of 2014, William was committed twice to CBHC pursuant to section 5150 after he stopped taking his medications, including on July 14, 2014, when he became violent and punched holes in walls and cut himself with broken glass.

In evaluating William, Dr. Morgan reviewed his medical records and interviewed him twice. Dr. Morgan, however, had to abruptly terminate at least one interview because William began glaring at her and pounding on the table. During each interview William appeared confused and disorganized. He also appeared psychotic and paranoid

and acted like he was experiencing auditory and visual hallucinations. William did not have any insight into his mental illness, he did not understand his need for treatment, and when asked how he would provide himself with food, clothing, and shelter he stated only that he would use his money from SSI.

Based on her personal interviews of William and a review of his medical records and the investigation report, Dr. Morgan concluded that William suffered from schizophrenia paranoid type, and that he manifested symptoms of paranoia, auditory and visual hallucinations, confusion, and disorganized thinking and behavior. She also concluded that as a result of the mental illness symptoms William was experiencing, he was unable to provide for his food, clothing, and shelter. Thus, the record contains substantial evidence that supports the court's finding that William was gravely disabled within the meaning of the LPS Act.

William misplaces his reliance on *Bassett* to contend that Dr. Morgan's testimony was insufficient to sustain the court's finding that he suffered from a grave disability. In *Bassett* the issue before the court was whether the record contained sufficient evidence of the defendant's ability to premeditate and deliberate to support a first degree murder conviction. The *Bassett* court reversed the defendant's conviction and sentence finding the prosecution had not sustained its burden of proof. In doing so, the *Bassett* court found the testimony of two psychiatrists who testified for the prosecution to be insubstantial because they rendered their opinions without having examined the defendant, they adduced no reasoning in support of their conclusions, and they did not attempt to refute the mass of defense evidence to the contrary that included the testimony of four psychiatrists who had examined the defendant personally. (*Bassett, supra*, 69 Cal.2d at pp. 144-145.) The opinion of a third prosecution psychiatrist, who had personally examined the defendant, was found not to constitute substantial evidence because his testimony revealed he labored under a misunderstanding of the term "premeditation." (*Id.* at pp. 147-148.)

Bassett is easily distinguishable from the instant case because, here, Dr. Morgan based her opinion on her personal examination of William and his medical records, and the defense did not present any expert testimony to challenge her testimony.

William contends that grave disability has been interpreted to mean disability so severe that it is life threatening and that there is no evidence that his inability to provide care for himself was that severe. This contention ignores Dr. Morgan's testimony that William was *unable to care for himself* because of his mental illness and the symptoms he was experiencing. Further, William has not cited any authority that holds that a person must actually be suffering from severe physical symptoms such as malnutrition, overexposure, or other signs of extremely poor health that resulted from his inability to care for himself before a finding of grave disability may be made. Accordingly, we reject William's contention that the evidence is insufficient to sustain the court's appointment of an LPS conservator for him.

The Third Party Offer of Assistance

William contends he was not gravely disabled because he could eat, dress, and take shelter with Theresa T.'s assistance. We disagree.

“[A] person is not ‘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.” (§ 5350, subd. (e)(1).)

“Under section 5350, subdivision (e)(1), a person is not gravely disabled only if he or she can *survive safely* with the assistance of a third party.” (*Conservatorship of Johnson, supra*, 235 Cal.App.3d at p. 699.)

Theresa T. testified that she could provide William with food, clothing, and shelter. However, Dr. Morgan testified that due to William's deteriorating mental health he needed to be in a locked facility. Further, according to Dr. Morgan, William did not have any insight into his mental disorder and it would not be appropriate to release him to

Theresa T. because she was in denial about William's mental illness, his use of methamphetamine, and his ability to become violent.

Moreover, Theresa T. conceded she would not be able to ensure that William took his medications. Further, even though Theresa T. must have known that William received monthly SSI benefits, she claimed he did not have any money to buy methamphetamine. Additionally, Theresa T. claimed not to have noticed William glaring at Dr. Morgan and pounding on the table during one interview with her and William was in Theresa T.'s care when he was involuntarily committed on June 13, 2014, and on July 14, 2014. These circumstances support Dr. Morgan's conclusion that it would not be appropriate to release William to Theresa T. and the court's implicit conclusion that William could not survive safely with Theresa T.'s assistance. (*Cf. Conservatorship of Johnson, supra*, 235 Cal.App.3d at p. 699 [mother's assistance did not meet requirement of statute, in part, because expert testified that the most appropriate placement for the appellant was in a locked psychiatric facility and mother's ability to ensure the appellant's participation in treatment was questionable due to the appellant's lack of insight].)

The Imposition of Disabilities

"If a person is found gravely disabled and a conservatorship is established, the conservatee does not forfeit legal rights or suffer legal disabilities merely by virtue of the disability. [Citations.] The court must separately determine the duties and powers of the conservator, the disabilities imposed on the conservatee, and the level of placement appropriate for the conservatee. [Citations.] 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." (*Conservatorship of Christopher A.* (2006) 139 Cal.App.4th 604, 612.)

William cites a myriad of reasons why the evidence is insufficient to sustain the court's imposition of disabilities with respect to his right to drive, to possess firearms or

dangerous weapons, to enter into contracts, and to give or withhold consent for medical treatment. For example, he claims the evidence is insufficient to sustain the court's imposition of a disability on his right to possess firearms because the evidence that he was dangerous to others was hearsay that he objected to. With respect to his right to drive, he contends the evidence is insufficient to sustain the court's imposition of a disability on this right because Dr. Morgan did not explain how his symptoms made him an unsafe driver. William also complains that the court did not make a factual finding that he would present a danger to others, which it was required to make (see § 8103, subd. (e)(1)) before it could impose a disability to own firearms or other dangerous weapons.

Absent evidence to the contrary we presume the court implicitly made the requisite findings. (Evid. Code, § 664 [“It is presumed that official duty has been regularly performed”].) And, on appeal we “must presume in favor of the judgment every finding of fact necessary to support it warranted by the evidence.” (*Homestead Supplies, Inc. v. Executive Life Ins. Co.* (1978) 81 Cal.App.3d 978, 984.) Thus, to the extent William contends that the court imposed the disabilities in a procedurally flawed manner, he forfeited his right to challenge the imposition of these disabilities on this basis by his failure to object in the trial court. (*Conservatorship of Joseph W.* (2011) 199 Cal.App.4th 953, 968 [forfeiture rule generally applies to all civil and criminal proceedings].)

Moreover, Dr. Morgan testified that because of his schizophrenia William experienced auditory and visual hallucinations, confusion, disorganized behavior and disorganized thinking and that he required medication to control his symptoms. She also testified that as a result of these symptoms William was unable to safely possess firearms, operate a motor vehicle, enter into and understand the ramifications of commercial

contracts, and that he lacked the capacity to refuse medical treatment.⁴ It was also undisputed that William refused to take his medication. This evidence supported the court's imposition of the disabilities discussed above. (Cf. *Conservatorship of George H.* (2008) 169 Cal.App.4th 157, 166 [evidence of mental illness, refusal to take medication, and that the appellant suffered delusional beliefs and auditory hallucinations supported the order suspending the appellant's driving privilege and right to contract].) Accordingly, we also reject William's contention that the record does not contain any evidence that supports the court's imposition of these disabilities.

DISPOSITION

The judgment is affirmed.

⁴ As an expert witness, Dr. Morgan was entitled to rely on hearsay in testifying on William's mental capacities. (*Conservatorship of Torres* (1986) 180 Cal.App.3d 1159, 1163.)