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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person and Estate of
SHIRLEY T.

ORANGE COUNTY PUBLIC
GUARDIAN,

Petitioner and Respondent,

v.

SHIRLEY T.,

Objector and Appellant.

G050372

(Super. Ct. No. 30-2014-00723642)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gerald G. Johnston, Judge. Affirmed.

Monica Vogelmann, under appointment by the Court of Appeal, for Objector and Appellant.

Nicholas S. Chrisos, County Counsel, and James C. Harvey, Deputy County Counsel, for Petitioner and Respondent.

* * *

Shirley T. (Shirley) appeals the judgment establishing a conservatorship over her under the Lanterman-Petris-Short Act (hereafter LPS Act; Welf. & Inst. Code, § 5000 et seq.). (All further statutory references are to the Welfare and Institutions Code.) Shirley contends the trial court committed reversible error in appointing the public guardian as her conservator of the person and the estate, where insufficient evidence showed that she is unable to provide for her basic needs for food, clothing, or shelter. We reject her contentions and affirm the judgment.

I

In May 2014, the County of Orange Public Guardian (hereafter Guardian) filed a petition for appointment of a conservator of Shirley’s person and estate (hereafter the Petition). The Guardian also sought the appointment of a temporary conservator of the Shirley’s person. The court appointed Kevin G. Smith, a public guardian, as temporary conservator on May 20, 2014. The court gave Smith the authority to detain and care for Shirley and require she receive treatment involuntarily.

The Petition was supported by a psychiatrist’s declaration. The psychiatrist opined Shirley suffered from schizophrenia chronic paranoid type. The psychiatrist recommended the Guardian initiate conservatorship proceedings based on the following “facts, observations, and reasons[:]” (1) “[Shirley] has had multiple psychiatric hospitalizations . . . for treatment of psychosis[,] extreme paranoia[,] disorganized [thinking,] and bizarre behavior[;]” (2) Shirley repeatedly denied her illness, refused medical care, and was noncompliant with medication; (3) her “paranoid/persecuting delusions are longstanding for her [and] cloud her judgment[;]” (4) she “has no means of providing [her] own housing [and] basic provisions[;]” (5) her family “has been unable to manage [or] assist [her;]” and (6) some family members were afraid of her.

The Petition was supported by a copy of the application for a conservatorship investigation, submitted by the Western Medical Center in Anaheim (Western) to the Guardian. The application alleged Shirley began a 72-hour involuntary hold on May 2, 2014, and there was evidence of grave disability due to a medical disorder because Shirley was unable to provide for her own food, clothing, shelter, or treatment. Western's application stated Shirley's family reported she had a long history of delusions, paranoia, and aggressive and aberrant behavior towards her family. The family explained Shirley lived in a tent outside the family home and she believed the people living inside the house were trying to poison her. Shirley refused to eat, shower, or stay inside the family residence. The family stated Shirley had been hospitalized twice, she refused psychiatric treatment, and she was noncompliant. The family was seeking a restraining order against Shirley.

The Petition also contained a copy of the notice of certification and certification review hearing form regarding whether probable cause existed to involuntarily detain Shirley at Western on the grounds she was gravely disabled. The notice of certification alleged Shirley was a danger to others and gravely disabled based on the factual allegation her family called 911 after Shirley became violent and attempted to assault her father. Shirley ran away when her family called the police. When a police officer located Shirley, he asked the Psychiatric Emergency Response Team (PERT team) for assistance. Shirley was then placed on a section 5150 involuntary 72-hour psychiatric hold at Western.

A police report of the above incident, also included in the Petition, stated Shirley had picked up a rock and threatened to harm her father. She also threatened her parents with a knife. The police officer filed an application for an assessment, evaluation, and crisis intervention. The officer reported he believed Shirley was gravely disabled because she showed "poor insight and judgment [and she was] paranoid." The officer noted Shirley was delusional because she believed every house or indoor place

was “bugged with video camera[s] recording her and there [was] poison in [the] water and food.” The officer stated Shirley refused her family’s food and shelter and “has long [been] noncompliant with medication and mental health services.” The police officer noted Shirley did not believe she had a mental illness.

The following month, on June 19, 2014, the Guardian filed a “Conservatorship Investigation Report” which reported Shirley was a 39-year-old diagnosed with schizophrenia chronic paranoid type who lived with her parents until they called the police to report she was delusional and violent with them. The report related much the information previously summarized in this opinion with a few additional facts that we will include in our summary. For example, the report noted that during her hospitalization, Shirley remained very paranoid and delusional. “She believes that people are watching her and also keeping an estate from her. She showed no insight and poor judgment.” According to a social worker at Western, “[Shirley] is isolative and acts bizarrely sleeping in the closet. She is internally preoccupied. She is guarded and suspicious. She is anxious. She is not attending any groups. Her ADLs are poor and she requires prompting to perform. She is medication compliant but resistive. She is demanding and intrusive. . . . She does not provide staff with a plan upon discharge.”¹

The conservatorship investigator interviewed Shirley and learned Shirley denied having a mental illness or needing medication. Shirley stated she could provide for her needs from a trust that was being kept from her. She could not remember why she was currently being hospitalized but believed it had something to do with her family. The investigator stated that during the interview Shirley was in unwashed clothes and was wearing a knit cap, although it was not cold, that covered her ears. He reported, “She was guarded and suspicious. She was very focused [on trust funds she believed were] owed to her from a settlement but that it was being kept from her. She would not

¹ ADL is the acronym for “activities of daily living” and include basic self-care tasks.

provide any details.” She demanded the investigator provide her with copies of records relating to the trust.

The investigator spoke with Shirley’s sister, who believed Shirley had been mentally ill for approximately three years. She explained Shirley believed her family was being controlled by someone and they were trying to hurt her. Shirley’s sister stated Shirley believed the house was bugged and people were spying on her so she removed the electrical outlets. She refused to eat because she believed the food was poisoned. Shirley’s family was unaware of a settlement, estate, or trust. Shirley’s parents do not speak English and the family requested the Guardian act as Shirley’s conservator. No member of the family wished to be the conservator because of Shirley’s paranoia against them. The investigator concluded Shirley was gravely disabled and needed a conservatorship.

At the June 30, 2014, trial, the court considered testimony from two witnesses: an expert forensic psychologist, James Earnest, and Shirley. Earnest explained he conducted his evaluation by interviewing Shirley at Western, speaking with the charge nurse at Western, reviewing the Guardian’s investigative report, and evaluating Shirley’s medical and psychiatric records. Based on his evaluation of the above, Earnest opined Shirley suffered from schizophrenia with strong paranoid traits. He explained Shirley displayed paranoid delusions, such as believing the National Security Agency (NSA) had placed surveillance cameras around her house for 30 years. Shirley told Earnest that once she became aware of the cameras, “other investigators had removed [them] before she was able to confirm their presence[.]” Shirley also believed the Department of Justice made the NSA discontinue the video surveillance. Shirley said she wanted to send to the court a document explaining she had been drugged and victimized throughout her lifetime.

Earnest observed Shirley was preoccupied “with health behavior” and was afraid of being contaminated or infected. For example, when Shirley learned she was

getting a new roommate, she repeatedly asked the nurse if the new roommate was “infectious.” Earnest stated the repeated questioning indicated Shirley was unable to process new information and this was likely because of her delusions and anxiety about infections.

In addition to his own observations, Earnest based his medical diagnosis opinion on the fact Shirley had prior hospitalizations over the past three years. Moreover, Shirley was refusing to attend groups at Western and it was taking a great deal of prompting to have her attend to hygiene and grooming. Earnest also found relevant the section 5150 reports, which he recognized did not give very much specific information, but highlighted Shirley’s violent behavior with her family. Earnest stated Shirley had been taking Zyprexa in the dissolvable tablet form (Zydis). It required extra encouragement for her to take the medication because Shirley did not believe she needed it. Shirley did not believe she had a mental disorder but acknowledged she was under a great deal of stress having discovered the surveillance. Earnest opined Shirley had no insight and she did not believe her symptoms and beliefs were not reality based.

Earnest testified Shirley lacked the capacity to give informed consent for psychotropic medication because of her lack of insight, but he opined that she did have the capacity to give consent to routine medicines. He concluded Shirley should be placed in a locked facility because of her problems with medication compliance and the need for treatment intervention to educate Shirley about her psychiatric condition.

Earnest stated he asked Shirley about her plans if she were not put on a conservatorship. Shirley said her sister would find a place for her to live short term and then Shirley would find a long term place to live. Shirley indicated she planned to pay for housing through a recently discovered estate plan, but she admitted she had not received the full details of the inheritance. She had no plans to seek psychiatric assistance or take medication. Earnest concluded “[Shirley] is still actively under the

influence of delusions in making [her] plans[,]” and he determined Shirley was gravely disabled.

On cross-examination, Earnest testified Shirley’s family had brought her food but it was unclear if they had visited her. Shirley indicated she was happy they had not visited because she was concerned about their well being if they came into a hospital setting. Shirley believed she may have suffered a mental breakdown, but not schizophrenia. Her hygiene and grooming at the hospital were reported as fair or poor. She ate her meals and tended to stay away from others in the medical unit. Shirley told Earnest she had friends who could help her, but she did not know how to contact them.

At the trial, Shirley testified she disagreed with the schizophrenia diagnosis and believed she was merely severely depressed. Shirley stated she should not be in a lock-down facility, but rather should be discharged and be permitted to seek her “own counseling.” Shirley did not believe she needed medication other than her antidepressants. Shirley said she was helped by a previous counselor with whom she “clicked.” She believed the medical professionals focused more on medication than actually talking to her. She would prefer treatment based upon compassion. Shirley observed other patients at Western slept all day and walked “around like zombies” and she did not feel the medications did anything but make her sleepy.

When asked about her prior hospitalizations, Shirley explained one was from a mental breakdown and the other was following a fight with her sister. Shirley stated she was 39 years old and the first time she was hospitalized was when she was 36. She was not given medication following these hospitalizations and she did not seek counseling due to “financial distress.”

Shirley stated that around the time she discovered she was under NSA’s surveillance, she had her first mental breakdown and was hospitalized. At the time, she filed two lawsuits against her employers because she assumed they were responsible for initiating the surveillance.

When asked how she planned to take care of herself if she was released, Shirley explained she would seek the help of her five siblings and friends. Her siblings had allowed her to tutor her nieces and nephews in the past, and she could earn income by tutoring again. She had a bachelor's degree in finance and previously held jobs in the financial services industry, earning \$70,000 per year plus bonuses. Shirley stated she did not have the capacity to get that type of a job again, but that she could earn money tutoring. She also understood she could apply for social security disability.

Shirley stated she could cook, do laundry, and maintain a household. She explained she felt less motivation to take care of her personal hygiene and appearance in the hospital because she was depressed by being there. She stated, "Once I am discharged, then, things will be different."

When asked about her family's restraining order against her, Shirley stated she would not honor it and she planned to go to court. However, Shirley also stated she did not plan on going back to their house. Shirley believed her siblings might help her "without any undue influence [*sic*]" caused by Shirley's lawsuit against several federal government agencies. She stated she was a victim of illegal surveillance and falsified records, but acknowledged she could not find actual proof to support of her belief.

On June 30, 2014, the court found Shirley was gravely disabled and ordered the appointment of a conservatory of the person and the estate of Shirley. She filed this appeal.

II

The LPS Act authorizes appointment of a conservator of the person and the estate of any person who is gravely disabled as a result of a mental disorder. (§ 5350.) The term "gravely disabled" is defined in the LPS Act as, "A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).) Grave disability must be

established by proof beyond a reasonable doubt. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235.)

On appeal, “we apply the substantial evidence test to determine whether the record supports a finding of grave disability. [Citation.] The testimony of a single witness is sufficient to support the trial court’s finding.” (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 697.) ““In resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment. . . . ‘In brief, the appellate court ordinarily looks only at the evidence supporting the successful party, and disregards the contrary showing.’ [Citation.] All conflicts, therefore, must be resolved in favor of the respondent.” [Citations.]’ [Citation.]” (*Conservatorship of Isaac O.* (1987) 190 Cal.App.3d 50, 57, italics omitted.)

In our review we do not reweigh the evidence or assess the credibility of witnesses, nor do we attempt to resolve factual conflicts. (See *People v. McKissack* (1968) 259 Cal.App.2d 283, 287.) “Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom.” (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577 (*Walker*).) A lack of insight into one’s mental illness and the concomitant reluctance to accept treatment provides evidence in support of a finding of grave disability. (*Id.* at p. 1577; *Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 446-447 (*Guerrero*).)

In her appeal, Shirley does not challenge the evidence or court’s finding that she suffers from a mental disorder. Nor does she challenge Earnest’s schizophrenia diagnosis. Rather, on appeal Shirley maintains there was lack of substantial evidence to show her mental disorder makes her “gravely disabled” as defined in the LPS Act.

Shirley contends her case is similar to *Conservatorship of Smith* (1986) 187 Cal.App.3d 903 (*Smith*). Shirley describes the case as being about a woman named Elsa, who was “in much worse condition than Shirley” and yet she was not deemed gravely

disabled under the LPS Act. We find the case instructive, but it does not assist Shirley on appeal as she had hoped.

In the *Smith* case there was ample evidence Elsa suffered from a paranoid delusion mental disorder that caused her to become completely fixated on her neighborhood church and she began “an around-the-clock vigil outside the church.” (*Smith, supra*, 187 Cal.App.3d at p. 906.) Having no income, savings, or a permanent home, Elsa sometimes slept on the sidewalk in front of the church and she would often interrupt church services. She was arrested several times for these disruptions. However, she was able to obtain food, clothing, and shelter from others, and she was willing to accept assistance. (*Id.* at p. 910.)

In the conservatorship investigation report, a psychiatrist concluded, “[Elsa] was ‘gravely disabled’ because of her mental disorder caused behavior which brought her into conflict with the community. However, the psychiatrist also concluded that [her] cognitive intellect and most of her personality was intact and, despite the disorder, she could feed and clothe herself and provide for her own place to live. The psychiatrist also testified that [Elsa] had once gone AWOL from the facility, stayed at her aunt’s house and then returned to the church.” (*Smith, supra*, 187 Cal.App.3d at p. 907.)

In the *Smith* case, the appellate court reversed the trial court’s ruling Elsa was gravely disabled for the purposes of conservatorship and involuntary confinement. It held, “We conclude that there is insufficient evidence to prove [Elsa] is ‘gravely disabled’ beyond a reasonable doubt. Despite her admittedly bizarre behavior, [Elsa] is not, nor has she been, incapacitated or unable to carry out the transactions necessary to her survival. No evidence was adduced to show that [Elsa], because of her mental condition, was suffering from malnutrition, overexposure, or any other sign of poor health or neglect. Her refusal to seek shelter is not life threatening. There was uncontradicted evidence that she accepts offers of food and money from friends and relatives. [Elsa] evinces a strong, sincere—if unorthodox—belief in God, her religion

and her place in religion. Under these circumstances, we conclude that [Elsa] is not ‘gravely disabled’ to justify appointment of a conservator.” (*Smith, supra*, 187 Cal.App.3d at p. 910, fn. omitted.)

The court was careful to note “a more complete record” may have warranted a different result on appeal. (*Smith, supra*, 187 Cal.App.3d at p. 910.) The court explained, “[T]he limited testimony adduced at trial compels our conclusion today. Our conclusion might have changed had more extensive testimony on the effect of [Elsa’s] behavior on her health and well-being been elicited, or a more thorough investigation properly introduced into evidence been presented. In this case, however, the investigation mandated by section 5354 was reduced to a two-page typed *form* on which the investigator simply checked the appropriate boxes. The report does not disclose whether suitable alternatives were considered. Nor does it disclose why [Elsa’s] relatives, who could have provided an alternative to institutionalization, were never contacted by petitioner despite their proximity to the proceedings. Most importantly, the report does not disclose why [Elsa] is considered to be gravely disabled. [¶] We realize that our ruling today will add an extra burden to the already scarce fiscal and manpower resources of the public guardians, particularly in the smaller counties of this state.” (*Id.* at pp. 910-911.)

Contrary to Shirley’s contention on appeal, the *Smith* case is not closely analogous to her factual circumstances. The record indicates Earnest, a medical professional, provided expert testimony that included many specific details supporting his conclusion Shirley was gravely disabled. He diagnosed Shirley with schizophrenia and that given her lack of insight into her condition, the nature of her delusions prevented her from making realistic plans for self-care. This conclusion was supported by information in the reports prepared by a law enforcement officer, the crisis intervention team, and the mental health professionals at Western, who all also observed Shirley’s extreme delusional and self-destructive behavior. In contrast, the *Smith* case concerned a person

who held paranoid delusions about her role in a church, not about her entire life circumstances. The medical expert testified that *despite* Elsa's mental disorder her cognitive intellect and personality permitted her to feed, clothe, and shelter herself. (*Smith, supra*, 187 Cal.App.3d at p. 907.) The medical expert opinion our case is that Shirley lacked the cognitive ability to feed and clothe herself and could not process new information. And unlike Elsa, Shirley was not willing to accept offers of food, showers, and shelter and this would negatively affect her health. (*Id.* at p. 910.)

Moreover, it is arguable whether Elsa was in a worse condition than Shirley because there was evidence Shirley was placed on a section 5150 involuntary hold due to a violent outburst. Elsa never placed herself or others in danger. There was evidence Shirley was preoccupied with the delusion she was under constant surveillance, she could not stay indoors, her food was poisoned, and she was being abused. In the grip of her delusion she could not work to earn money, accept offers of assistance, or care for her basic bodily needs.

Shirley's circumstances did not improve after she was placed in Western. Shirley remained reluctant to take care of her basic needs, she slept in a closet, avoided contact, and refused treatment and medication recommendations. Her plans to provide for the basic needs of shelter, food, and clothing were based on two delusions, i.e., she believed she was the beneficiary of a trust and that a sister would continue to support her. However, it was undisputed she was not a trust beneficiary and her family, who had sought a restraining order against her, all desired a public guardian for Shirley. There was no evidence suggesting Shirley's sister had agreed to provide financial support, nor was there any confirmation her family would allowed her to tutor their children. Shirley admitted she could not find a regular job. Shirley did not present a realistic plan for her survival. Unlike the *Smith* case, we have a detailed record of Shirley's unresolved delusions, violent behavior, lack of family support, and her unwillingness to accept offers of food and shelter. Moreover, the trial court observed and was able to evaluate Shirley

during her testimony. Under our standard of review, we may not reweigh the court's credibility determination.

We conclude that because Shirley had no insight into her mental illness, the nature of her delusions, or the need for medication and treatment, it was reasonable for the court to determine Shirley, while unmedicated, was unable to provide for her personal basic needs of shelter, food, or clothing. (See *Walker, supra*, 206 Cal.App.3d at p. 1577 [lack of insight into mental illness and refusal to take medication if released supports finding of grave disability]; see also *Guerrero, supra*, 69 Cal.App.4th at pp. 446-447.) Accordingly, there was substantial evidence to support the trial court's conclusion she was gravely disabled.

III

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.