

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-238

MAY 21 2010

MAY TERM, 2010

In re T.B.

} APPEALED FROM:
}
} Windham Family Court
}
} DOCKET NO. 7-1-09 Wmmh

Trial Judge: Katherine A. Hayes

In the above-entitled cause, the Clerk will enter:

T.B. appeals from a family court order granting the State's application for continued treatment. T.B. contends the State failed to prove by clear and convincing evidence that: (1) she would become a danger to herself if treatment were discontinued; and (2) the danger would occur in the near future. We affirm.

T.B., a woman in her mid-thirties, has been committed to the care and custody of the Commissioner of Mental Health since October 2008, when she stipulated to an order of non-hospitalization after being held at the Vermont State Hospital for observation. The terms of the non-hospitalization order included provisions that the State would drop criminal charges of disorderly conduct and false alarm, that T.B. would continue to seek medical treatment with her mental health care provider at Healthcare and Rehabilitation Services in Brattleboro (HCRS), and that she would continue to take all medications prescribed by her physicians.

In January 2009, the Department of Mental Health filed an application for continued treatment in the Windham Family Court. A hearing on the merits was held in June 2009. T.B.'s case manager at HCRS—whose background includes twenty years of experience in the field of mental health—and her treating psychiatrist, Dr. Marx, testified on behalf of the State. T.B. presented no evidence. Dr. Marx explained that T.B. suffers from paranoid schizophrenia which, untreated, had resulted in unconnected thoughts, delusions, and severe mood swings. T.B.'s case manager testified that one of T.B.'s delusional beliefs when she was untreated was that bugs and insects were infesting her bed. She had removed all of the cloth cover and filling from her mattress and slept on the wire coils, resulting in wounds where the springs had punctured the skin. The case manager had also observed T.B. walk into the middle of a busy street during the day, stop, and bend over to collect acorns. The case manager noted that prior to the medication order T.B. had frequently walked the city streets alone late at night and had allowed homeless people and others using controlled substances to sleep at her apartment.

Since receiving treatment, however, T.B. had improved significantly. She had agreed to live with her sister, who supervised her medications, applied for disability benefits, met with a therapist twice a month, and regularly participated in the women's group meetings at HCRS. All of these activities T.B. was either unwilling or unable to engage in prior to receiving treatment. T.B. had also made it clear to her case manager that without the order of non-hospitalization she would cease taking her medications.

Dr. Marx testified that, since taking an antipsychotic medication, T.B.'s mood swings had quieted and she had become able to engage in conversations and therapy. Dr. Marx expressed "grave doubts" as to whether T.B. would continue to take her medications without a court order. He acknowledged that he could not predict whether T.B. would decompensate to the point of again facing criminal charges if she ceased taking her medication, and did not know precisely what would happen to her. If the order were to expire, however, Dr. Marx explained that the "danger would be that she would not be able to take proper care of herself." Her inability to organize her thoughts and reason clearly would make it difficult for her to "liv[e] a day-to-day life," which he explained meant being unable "to get up in the morning, dress yourself appropriately, keep your place clean, see to it that you have the provisions that you need for food." The case manager concurred, stating that T.B. had exhibited "[t]remendous change[s]" since the medication order, and needed to remain on her medication to ensure her health and safety.

Based on the foregoing, the trial court found by clear and convincing evidence that T.B. suffered from a mental illness, schizophrenia, which had severely affected her capacity for reasoned judgment and organized thought; that since the medication order T.B. had improved greatly, being able to participate in counseling and live in a safe and healthy environment; that an order of continued treatment was necessary to ensure she continued to take her medications; and that without such an order it was probable that T.B. would revert to her prior behaviors, which exposed her to risks of assault from strangers, bodily injury from traffic and other daily hazards, and illness and injury from her inability to properly care for herself. Accordingly, the court concluded that the State had adequately shown that without continued treatment T.B. would pose a danger to herself, and granted the application. This appeal followed.

Under the pertinent statutory scheme, the State was required to prove by clear and convincing evidence, see *In re M.C.*, 2005 VT 60, ¶ 4, 178 Vt. 585 (mem.), that T.B. was a "patient in need of further treatment," meaning that she was a patient who was receiving adequate treatment and "who, if such treatment is discontinued, presents a substantial probability that in the near future his or her condition will deteriorate and he or she will become a person in need of treatment." 18 V.S.A. § 7101(16). The statute defines a "person in need of treatment" as one who "poses a danger of harm to himself, to herself, or to others," *id.* § 7101(17), and provides that a danger to oneself may be shown by establishing that the person

has behaved in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, personal or medical care, shelter, or self-protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

Id. § 7101(17)(B)(ii).

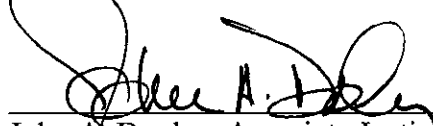
T.B. contends the State failed to prove by clear and convincing evidence that she posed a danger to herself if treatment were discontinued. Our review of the claim is limited. As we have explained, "[t]his Court reviews a trial court's findings of fact in the light most favorable to the prevailing party, disregarding the effect of modifying evidence, and we will not set them aside unless they are clearly erroneous." *In re T.C.*, 2007 VT 115, ¶12, 182 Vt. 467 (quotation omitted). We will uphold the court's conclusions "if they are consistent with the controlling law and are supported by the findings." *Id.* (quotation omitted).

Reviewed in light of these standards, we discern no basis to disturb the trial court's ruling. T.B. is correct that Dr. Marx expressed an inability "to predict" whether she would revert to criminal conduct if her medication were discontinued and replied that he had "no clue" when asked very broadly "what would happen to [T.B.]" if treatment were discontinued. As noted, however, Dr. Marx was also quite clear that T.B. would revert to her state of disorganized and irrational thinking if the order were discontinued, and "[t]he danger would be that she would not be able to take proper care of herself" or make the necessary daily decisions required to live. The case manager's specific observations of T.B.'s behaviors before she went on the medication reinforced this concern and supported the court's finding that T.B. would face a risk of harm from assault, traffic, or other daily hazards. The evidence was therefore sufficient to meet the statutorily required showing that, unless treatment was continued, T.B.'s mental health would deteriorate and she would be unable to ensure her personal care, self-protection or safety. 18 V.S.A. § 7101(17)(B)(ii); see *In re M.C.*, 2005 VT 60, ¶ 5 (granting application for continued treatment based on psychiatrist's testimony that patient's delusions rendered him incapable of taking care of himself or performing daily tasks). Accordingly, we find no basis to disturb the court's ruling that T.B. was a patient in need of further treatment.

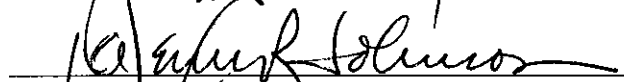
T.B. additionally contends that the evidence was insufficient to show that a discontinuation of the treatment order would result in a deterioration of her condition and a risk to her health and safety "in the near future," as required by statute. 18 V.S.A. § 7101(17)(B)(ii). T.B. contends that there was no evidence on this point to support the court's finding that the deterioration would occur "within a relatively near future," which the court construed to be at least "within a few months." T.B. also appears to suggest that the timeframe the court applied was erroneous, and that the statute requires a showing the patient will deteriorate more quickly. The statutes do not define "near future," and we find nothing in the statutory scheme or our caselaw imposing a specific time period within which the patient's health must be likely to deteriorate. This is not surprising since mental deterioration necessarily occurs over time and is not subject to precise measurement or timeframes. See, e.g., *In re L.R.*, 146 Vt. 17, 19 (1985) (holding that a "present mental condition which, in 'a matter of time,' will result in serious physical injury or death is a present danger"). Thus, while the treating psychiatrist here did not testify as to precisely when or how soon T.B.'s mental condition would deteriorate to the point that it threatened her health and well being, he was clear that it would inevitably and necessarily occur if the medication order were discontinued, and this was sufficient in the circumstances to meet the standard. Accordingly, we find no basis to disturb the judgment.

Affirmed.

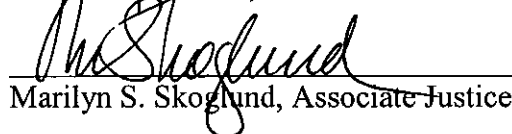
BY THE COURT:



John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice