

IN THE SUPREME COURT OF IOWA

No. 22-0952
Johnson County No. MHMH017692

In the Matter of V.H.,
Alleged to be Seriously Mentally Impaired,
V.H.,
Respondent-Appellant

Appeal from the Iowa District Court for Johnson County
The Honorable Judge Lars Anderson

APPELLANT'S FINAL BRIEF

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Matter of Foster, 426 N.W.2d 374 (Iowa 1988)

McNabb v. Osmundson, 315 N.W.2d 9 (Iowa 1982)

STATUTORY PROVISIONS

Iowa Code § 229.1(20)

Iowa Code § 229.14A(5)(c)

ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED IN DENYING THE APPELLANT'S MOTION TO REPRESENT HIMSELF**
- II. THE DISTRICT COURT ERRED IN UPHOLDING THE APPELLANT'S INVOLUNTARY HOSPITALIZATION BECAUSE A RECENT OVERT ACT DID NOT EXIST.**

ROUTING STATEMENT

Pursuant to Rule 6.1101 (2) (c) of the Iowa Rules of Appellate Procedure, this case presents the question of applicability and contours of the constitutional right to self-representation in the context of involuntary hospitalizations under Iowa Code §229 therefore, therefore this case should be retained by the Iowa Supreme Court.

STATEMENT OF THE CASE

Nature of the Case

This is an appeal of the Order Denying the Appellant's motion to proceed pro se and affirming his placement involuntary hospitalization entered on May 25, 2022 in the Iowa District Court for Johnson County.

The Appellant V.H. was denied his right to represent himself at the hearing in violation of his 6th and 14th amendment rights. The Court based its decisions on out of jurisdiction authority and its own reasoning as no on point caselaw exists in the State of Iowa as well as the statutory language of §229.13. Because V.H. was designated his right to represent himself this case should be remained to follow such procedures.

The Appellant's placement and Involuntary Hospitalization were then upheld. The District Court erred in upholding V.H.'s involuntary hospitalization because the Appellee failed to allege a recent overt act adequate to justify a finding of dangerousness. Therefore, the Appellee failed to provide sufficient evidence to meet the standards of Iowa Code §229 clearly and convincingly. Therefore, this Court should reverse the district court's ruling.

Course of Proceedings

The Department of Corrections applied to have V.H. involuntarily hospitalized on May 4, 2020. (See App. pg. 4). Attorney Sandra Hart was appointed to represent V.H. that same day. On May 8, 2020 Judicial Referee Adam Tarr upon hearing granted the department's application and ordered V.H. involuntarily hospitalized. (See App. pg. 10). By separate order that same day, Referee Tarr ordered Attorney Hart remain appointed until May 18, 2020 for purposes of advising V.H. and filing a notice of appeal if he so desired. (See Id.). On May 18, 2020, and without filing a notice of appeal Attorney filed a motion to withdraw. That motion was granted on the same day. On February 18, 2022 a letter was received by the Johnson County Clerk of Court from V.H. stating he wished to contest his involuntary hospitalization and forced medication. The hospitalization had spanned over 21 months when V.H.'s letter was received. The Court reappointed Attorney Hart ordering her to confer with V.H. and submit a report and proposed order on his behalf. On March 25, 2022 a second letter was received by the Clerk of Court from V.H. requesting a hearing date and to proceed pro se. On March 28, 2022 Attorney Charles Paul was appointed to represent V.H. and hearing was before Judicial Referee on April 4, 2022. Magistrate Judge Boyer entered an order upholding the involuntary hospitalization citing the overt act of V.H. banging his head. (See App. pg. 57) On April 8, 2022 the Clerk received and

filed a third letter from V.H., providing notice of appeal and moving the Court to allow him to represent himself with Attorney Paul as standby counsel. V.H. in his notice specifically requested the right to cross examine the sole witness and author of all reports in this case, Dr. Gary Keller. On, April 11, 2022 Attorney Paul filed a formal notice of appeal. (See App. pg. 60) Hearing was set upon Appellant's appeal on March 24, 2022 in the Iowa District Court for Johnson County.

Disposition of the Case in the District Court

On March 5, 2022 the Appellant through his attorney filed a formal motion to proceed pro se with Attorney Paul as standby counsel. (See App. pg. 66) Appellant asked that his motion be heard on March 24, 2022 before his appeal of the order confirming his placement and involuntary hospitalization. (See Id.) Upon hearing the Honorable Lars Anderson denied the Appellant's motion and affirmed his placement and involuntary hospitalization by written order issued n May 25, 2022. (See App. pg. 72) The District Court cited only the overt act of V.H. banging his head in finding that dangerousness existed to continue his commitment. (See Id.)

STATEMENT OF THE FACTS

V.H. was remanded to the custody of the Department of Corrections (the department) on May 30, 2019 after the revocation of a term of imprisonment not to exceed eight years. The sentence resulted from four aggravated misdemeanors ordered to run consecutively. The convictions were for two counts of assault causing injury to people in certain professions and three counts of harassment in the 1st degree. Just before the department sought to involuntarily hospitalize V.H. he had what they referred to as a working diagnosis of other specified mood disorder. The Department of Corrections sought to involuntarily commit and thereby forcibly medicate V.H. beginning on May 4, 2020. (See App. pg. 2) The allegations at the time of the initial filing were that V.H. had spit water on the pants and boots of correctional officers and threatened to swallow a sprinkler head. . (See App. pg. 42) The court granted the department's application and V.H. remained subject to forcible injection of medications for a period over two years. . (See App. pg. 10, 64)The department's continued filings indicate that the justification for a continuing finding of dangerous supporting the involuntary hospitalization shifted to allegations that V.H. had banged his head causing minor bleeding that never required emergency medical treatment. . (See App. pg. 57)

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING THE APPELLANT'S MOTION TO PROCEED PRO SE

Preservation of Error:

Appellant preserved error on this issue by filing a written motion with the District Court that was ruled upon and denied on May 24, 2022.

Standard of Review:

The review is De Novo for claims of constitutional violations. *State v. Majeres*, 722 N.W.2d 179, 181 (Iowa 2006)

Applicable Law:

Appellant facing involuntary hospitalization have both a constitutional and statutory right to the assistance of counsel. See *McNabb v. Osmundson*, 315 N.W.2d 9, 11–14 (Iowa 1982) and Iowa Code § 229.14A(5)(c). Citizens subject to involuntary hospitalization have their freedom curtailed by equivalent of incarceration and thus due process is implicated and they are due the right to counsel. Citizens subject to involuntary hospitalization are subject to invasions of their bodily autonomy when forcible medicated or subject to other involuntary medical procedures. See *Id.* The right to counsel comes with the right to represent oneself.

Forcing counsel upon the unwilling violates the right to counsel. See *Faretta v. California*, 95 S. Ct. 2525, 2533–34 (1975)

Argument:

The right to due process and counsel guaranteed by the 14th and 6th amendments is violated when counsel is thrust upon an unwilling Appellant. See *Faretta v. California*, 95 S. Ct. 2525, 2533–34 (1975) V.H. was forced to proceed by counsel after moving the court to represent himself. Therefore, V.H. right to due process and counsel were violated.

V.H. moved the court informally by letter and through the written motion of his attorney to personally present his response to the department of corrections allegations. However, V.H. was incarcerated at the time of these proceedings, his right to bodily autonomy in refusing injections of psychoactive drugs is sacrosanct and must not be denied without due process of law. The right to counsel in criminal cases carries with it the right to present one's own defense. Similar to the context of involuntary hospitalization, criminal cases carry the risk of curtailing the freedom of the accused. Moreover, both types of proceedings carry their own stigma that can affect the accused throughout the rest of their lives. See *In re B.B.*, 826 N.W.2d 425, 431 (Iowa 2013). Further, involuntary hospitalization allows the invasion of the individual's bodily autonomy. Through forcible injection of drugs and potential

other medical procedures, the mind of the hospitalized is subject to involuntary control. For these reasons the rights of the respondent in such a proceeding require the same due process right to present one's own defense.

It is important to note that V.H. was not found to be incompetent nor was there a factual finding that he was unable to present his own defense. Rather the District Court ruled a respondent to an action under Iowa Code §229 does not have the right to present his or her own defense. The Constitution requires that a respondent under Iowa Code §229 not found to be incompetent nor otherwise inadequate have the right to present his or her own defense and not have a counsel forced upon them.

The Circularity problem

II. THE DISTRICT COURT ERRED IN FINDING THAT RECENT OVERT ACT EXISTED.

Preservation of Error:

Appellant preserved error on this issue by timely filing a notice of appeal to the District Courts final decision upholding placement and involuntary hospitalization.

Standard of Review:

Involuntary civil commitment proceedings are special actions triable to the court. In re Mohr, 383 N.W.2d 539, 541 (Iowa 1986). The district court's findings of fact are binding on us only if supported by substantial evidence. Id. We view evidence to be

“substantial” if a reasonable mind would accept it as adequate to reach a conclusion. C.F. Sales, Inc. v. Amfert, Inc., 344 N.W.2d 543, 553 (Iowa 1983).

Pertinent Facts:

The order confirming placement and de novo appeal affirming that order relied on allegations that V.H. had banged his head alone as the overt act justifying his continued deprivation of liberty.

Applicable Law:

A finding of dangerousness is “constitutionally necessary,” to allow the deprivation of liberty entailed by an involuntary hospitalization. B.A.A. v. Chief Medical Officer, 421 N.W.2d 118, 124 (Iowa 1988). Such a finding requires a recent overt act including a threat for a finding of dangerousness. “[A]n “overt act” connotes past aggressive behavior or threats by the respondent manifesting the probable commission of a dangerous act upon himself or others that is likely to result in physical injury” Matter of Foster, 426 N.W.2d 374, 378 (Iowa 1988). A qualifying overt act must involve unprovoked violence or threat of such against others or oneself. See Id. at 379. The evidentiary standard and required finding for confirming a placement under I.C. §229 are identical to an initial finding. See B.A.A. v. Chief Med. Officer, Univ. of Iowa Hosps. & Clinics, 421 N.W.2d 118, 124 (Iowa 1988)

Argument:

A placement and an involuntary hospitalization cannot be upheld without proof of an overt act involving violence likely to result in physical injury. See *Matter of Foster*, 426 N.W.2d 374, 378 (Iowa 1988). The district court here upheld an involuntary hospitalization on testimony that V.H. had caused minor bleeding by banging his head. Because this testimony does not rise to a qualifying overt act, the district court erred in upholding the involuntary hospitalization.

The statutory scheme of Iowa Code §229 which lays out the required severity of other predicted outcomes and the severity of the deprivation of liberty require a showing beyond the potential of minor bleeding. The finding of the Magistrate Court that the head banging here had the potential to cause brain damage is based upon the testimony of Dr. Keller who states that no medical attention was required to treat any injury nor to rule out one. The evidence here does not indicate imminent injury. See *Matter of Foster*, 426 N.W.2d 374, 379 (Iowa 1988). And is not predictive of the kind of harm more specifically enumerated Iowa Code § 229.1(20) (b),(c), and (d). Those sections make clear that the type of injury that the legislator intended to serve as the justification for such a deprivation of liberty must require professional attention (b); possible debilitation or death (c); or need for emergency hospitalization (d). See *Id.* The evidence provided of head banging here does not rise to the level of an overt act that would

justify the loss of freedom and invasion of personal autonomy associated with and involuntary hospitalization under Iowa Code §229.

CONCLUSION

The district court erred in its denying V.H.'s motion to represent himself and in affirming his placement and continued involuntary hospitalization. Because the right counsel attaches to respondent facing involuntary hospitalization under I.C. §229 and the right to counsel contains the right to represent one's self the district court erred in denying V.H.'s motion to represent himself. Because upholding a placement and continued involuntary hospitalization requires a recent overt act supported by substantial evidence, the district court erred in upholding the hospitalization based on reports of V.H. banging his head. For these reasons the court should enter an order reversing the district court's rulings.

REQUEST FOR ORAL ARGUMENT

Oral argument would assist this Court in its analysis of the issues presented.

Consequently, Appellant requests oral argument.

/s/ Charles D. Paul

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903 (1) (g)(1) or (2) because this brief contains 2,512 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903 (1)(g)(2).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1) (e) and the type-style requirements of Iowa R. App. P. 6.903(1) (f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14 point font.

/s/ Charles D. Paul

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that this Proof Brief was filed via EDMS on the 22nd day of August, 2022 and that a copy of this document will be served this date by US Mail upon any counsel of record or unrepresented parties in this action not served by the electronic filing system.

/s/ Charles D. Paul

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ATTORNEY FOR APPELLANT