

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

RESPONDENT'S PROOF REPLY BRIEF

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ISSUES PRESENTED FOR REVIEW

I. A respondent to a proceeding that involves a deprivation of liberty has a constitutional right to represent themselves if competent to do so. The Appellant's motion to proceed pro se was denied without colloquy or individualized determination in a proceeding depriving him of liberty. Therefore, the Respondent's constitution rights were violated.

- *State v. Stephenson, 608 N.W.2d 778 (Iowa 2000)*

II. A recent overt act indicative of the potential for imminent injury must support a court's finding of dangerousness under §229. Head banging that requires no medical attention and causes no injury or mark is not indicative of a potential imminent injury. Therefore, the finding of dangerousness was in error.

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

ARGUMENT

I. The District Court Erred in Denying the Respondent's Motion Based on the Nature of the Proceedings Alone.

Applicable Law:

In *Indiana v. Edwards*, 128 S. Ct. 2379 (2008) the US Supreme reversed a lower Court's ruling that a criminal defendant competent to stand trial must be allowed to represent himself. Hence, "there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights." *Godinez v. Moran*, 113 S. Ct. 2680, 2687 (1993). The Iowa Constitution's guaranty to Counsel is broader than the U.S. Constitution applying the right to counsel to any case involving life of Liberty of the an individual. I. Const. Art. 1 §10. This Court has well developed case law on a district court's "Faretta duty" stating the district court has "an absolute duty to indulge the accused in an on the record colloquy. *State v. Stephenson*, 608 N.W.2d 778, 782 (Iowa 2000). A failure to meet this duty cannot be overcome with by harmless error. *Id* at 782-3.

Argument:

A respondent to in a proceeding that involves a deprivation of liberty has a constitutional right to represent themselves if competent to do. The Appellant's motion to proceed pro se was denied without colloquy or individualized

determination in a proceeding depriving him of liberty. Therefore, the Respondent's constitution rights were violated.

The Due Process Clause grants all citizens the fundamental right to counsel and this entails all people have the right to represent oneself unless there is an individualized determination by the court that they are unable to do so. The State is correct that the right to represent oneself is not absolute and a court has the ability to determine after a colloquy if an individual is capable of conducting their own representation. See Appellee's Brief at 7. *Citing Indiana v. Edwards*, 128 S. Ct. 2379, 2388 (2008), *See also State v. Stephenson*, 608 N.W.2d 778, 782 (Iowa 2000). However, a blanket ban on self-representation for involuntary hospitalizations does not follow from that. Rather under the principles and procedure of *Indiana v. Edwards*, the Respondent was denied his right to counsel and due process, because no determination was made that he was unable to represent himself. 128 S. Ct. at 2386. And under *State v. Stephanson*, the district court had a duty to perform adequate colloquy during a determination of whether respondent's waiver of counsel was effective. 608 N.W.2d at 783.

In *Indiana v. Edwards*, there was an individualized determination that that defendant could not represent himself effectively. 128 S. Ct. at 2388. The Court observed that before that district court denied the defendant's motion to proceed pro se, the same judge had presided over multiple competency hearings involving the

defendant. *Id.* at 2382. Therefore he was well acquainted with facts about his mental health status, which had been tested by the proceedings of those governing statutes. *Id.* In *Edwards* both the district court and the reviewing court commented on the information regarding competency, to which the district court was privy and drew on when making its determination. *Id.* at 2382-2383. The district court in the instant case based its decision solely on the nature of the proceedings.

§ 229.27(1) explicitly states that a finding of involuntary hospitalization does not raise a presumption of incompetence for “any purpose.” See also §229.1(11) Here the district court not only presumed that the respondent was incompetent to represent himself, but did so before an involuntary hospitalization had even been confirmed. (App. at 75.) Because the district court presumed incompetence based on proceedings for involuntary hospitalization it erred. *Id.* at 76.

The requirement of an individualized determination of competency before the denial of a motion to represent oneself also solves the circularity problem. The district court and State warn of a potential circularity problem. Where a §229 proceeding with a self-represented respondent would be undermined because a respondent found to be suffering from a serious mental impairment may be presumed to be inadequate counsel. Then due process may require another set of §229 procedures due to inadequate assistance of counsel. However if a determination or

competency were made first, the finality of the subsequent hearing under § 229 is protected and no circularity problem will emerge.

A blanket ban on self-representation for anyone involuntarily hospitalized improperly assumes respondents are serious mentally impaired. See §229.12(3)(a). Respondents are presumed not to have a serious mental impairment at time of review before the district court,. §229.21(3)(c). The applicant overcomes that presumption by clear and convincing evidence. Until a contrary determination is made, a district court must presume a respondent does not suffer from a serious mental impairment for any purpose, including denial of a motion to proceed pro se.

The Statutory provisions of §229 indicate that proceedings under that chapter can not be used to presume a respondent is incompetent. Furthermore the case law around the right to self-representation in a criminal case indicates that an individualized finding and colloquy are required in order to deprive a person of this right. The district court denied the respondent's motion based on the nature of proceedings and therefor this court should enter order reversing the district court's decision. (App. at 73.)

II. The District Court Erred in finding the Respondent Dangerous.

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. *Id.* "[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. *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*, 421 N.W.2d 118, 124 (Iowa 1988).

Argument:

A recent overt act indicative of the potential for imminent injury must support a court's finding of dangerousness under §229. Head banging that requires no medical attention and causes no injury or mark is not indicative of a potential imminent injury. Therefore, the finding of dangerousness was in error.

Dr. Keller testified about only one incident involving head banging and specifically stated that no bruising or lacerations resulted. (Transcript at p. 8 12-14) (App. at 71). Dr. Keller testified to a fight but stated that he did not attribute this to the respondent and the district court stated that incident would be disregarded. (Transcript p. 22 15-20)(App. at 71.). The only potential recent overt act was a single

instance of head banging out of frustration that lead to no bruise laceration or medical follow-up and this is inadequate.

A finding of dangerous under §229.1(2)(a) as interpreted by this Court in *Matter of Foster* requires a showing of recent overt act indicative of an imminent injury. 426 N.W.2d at 278-79. The second question before the court is more straightforward than the first; does the act of banging ones head without requiring medical attention or leaving a mark justify the State to deprive a citizen of their liberty and bodily autonomy. Case law indicates §229 requires more before allowing such invasion.

Though the Appellant did not reference the self-harm clause of §229(20)(a) that is clearly the applicable section and *Matter of Foster* interprets this clause. 426 N.W.2d at 378. However the Appellant believes that Iowa Code subsections §229(20)(b),(c),&(d) help guide the Court's statutory interpretation. Because those latter sections are more explicit in describing the type and magnitude of harms, these sections show the Legislator intended to require a greater showing of harm before the state could deprive a citizen of their fundamental liberties. In light of the caselaw and surrounding statutory language the evidence presented in this case was inadequate to support a finding of dangerousness under Iowa Code §229(20)(a).

Because the incident described by Dr. Keller was insufficient as a recent overt act to justify a finding of dangerousness the district court erred.

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 V.H.'s right counsel attached and was denied without an individualized determination of competency his right to due process was denied. Because upholding a placement and continued involuntary hospitalization requires a recent overt act that indicates the potential for imminent physical harm, the district court erred in upholding the hospitalization on a recent act that is not indicative of imminent physical harm. For these reasons, the court should enter an order reversing the district court's rulings.

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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 1,581 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 Reply Brief was filed via EDMS on the 11th day of October, 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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