

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-0952

IN THE MATTER OF V.H.,

Appellant.

Alleged to be Seriously Mentally Impaired.

**APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY**

HONORABLE LARS ANDERSON

APPELLEE'S FINAL BRIEF

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On the 13th day of January, 2023, the State served the Appellee's Brief on all other parties to this appeal via EDMS:

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. WHETHER THE RESPONDENT WAS SERIOUSLY MENTALLY IMPAIRED.

Cases

Iowa State Education Association v. State, 928 N.W.2d 11 (2019)

Indiana v. Edwards, 128 S. Ct. 2379 (2008)

In re B.B., 826 N.W.2d 425, 428 (Iowa 2013)

In re Oseing, 269 N.W. 797, 800-01 (Iowa 1980)

In re J.P., 574 N.W.2d 340, 342 (Iowa 1998)

O'Connor v. Donaldson, 422 U.S. 563, 576 (1975)

In re Foster, 426 N.W.2d 374, 377 (Iowa 1988)

State Statutes

Iowa Code § 229

Iowa Code § 229.1(2)(a)

Iowa Code § 229.1(20)

Iowa Code § 229.9

Iowa R. App. P. 6.907

ROUTING STATEMENT

This case should be retained by the Supreme Court. In addition to the rationale made by the appellant, this case also represents an issue of substantial first impression pursuant to Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

The Appellee defers to the statement of the issues provided by the Appellant. Appellant's Brief, p. 6-9.

ARGUMENT

I. **THE DISTRICT COURT DID NOT ERR WHEN IT DENIED THE APPELLANT'S MOTION TO PROCEED PRO SE.**

A. **Standard of Review.**

The review is De Novo for claims of constitutional challenges. *Iowa State Education Association v. State*, 928 N.W.2d 11, 15 (2019).

Preservation of Error.

Error is preserved.

B. **Discussion**

Iowa Code 229.9 states that "the respondent's attorney shall represent the respondent at all stages of the proceedings." This language is not permissive and is based on the reality that a person

who is within a committal proceeding is not able to provide themselves with representation.

Additionally, the Court was correct to point out the potential circular nature of allowing the appellant to do this. Although there could be a scenario where a self-represented individual is successful in a committal case, thereby also demonstrating their ability to provide adequate representation. In the circumstances where an appellant is not successful, the outcome itself demonstrates that the individual was not able to provide proper representation and did not receive competent counsel. This outcome would bring the decision itself into question regardless of the underlying circumstances justifying the committal. The Court's ruling would be undermining itself by the nature of this circumstance and the Court was correct to not proceed down this path.

The appellant bases his argument on possible parallels between a civil commitment and criminal procedure. However, even in the criminal process, the right to represent oneself is not absolute and a Judge has the ability to determine if a defendant is capable of conducting their own defense. *Indiana v. Edwards*, 128 S. Ct. 2379, 2388 (2008). Applying that analysis, the Court was correct in

determining that the appellant did not have that mental capacity when the proceeding was his own civil commitment.

Taken together, the Court was correct in determining that the appellant could not represent himself in the civil commitment proceeding.

II. THE DISTRICT COURT DID NOT ERR IN FINDING THAT A RECENT OVERT ACT EXISTED.

C. Standard of Review.

Involuntary commitments for serious mental illness under Iowa Code section 229 are triable as civil actions and are reviewed for corrections of errors at law. *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013); *In re Oseing*, 269 N.W. 797, 800-01 (Iowa 1980); Iowa R. App. P. 6.907. The district court's findings of fact are binding if they are supported by substantial evidence. *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence. *Id.*

D. Preservation of Error.

Error is preserved.

E. Discussion

The Respondent claims that the element of dangerousness was not met and therefore, he should not be subjected to an involuntary commitment. *O'Connor v. Donaldson*, 422 U.S. 563, 576 (1975) (requiring proof of dangerousness). *In re Foster*, 426 N.W.2d 374, 377 (Iowa 1988) (requiring proof of a recent overt act). Iowa Code section 229.1(20) provides for four bases of dangerousness:

- a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment;
- b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person . . . ;
- c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.
- d. Has a history of lack of compliance with treatment and any of the following apply:
 - (1) Lack of compliance has been a significant factor in the need for emergency hospitalization.
 - (2) Lack of compliance has resulted in one or more acts causing serious physical injury to the person's self or others or an attempt to physically injure the person's self or others.

A recent overt act is required to prove the dangerousness element of civil commitment. *O'Connor v. Donaldson*, 422 U.S. 563, 576 (1975) (requiring proof of dangerousness). *In re Foster*, 426 N.W.2d 374, 377 (Iowa 1988) (requiring proof of a recent overt act).

This was demonstrated when Dr. Keller testified that on May 17, 2022, the Appellant banged his head out of frustration. (Transcript p. 7, Line – 24 - p. 8 – Line 2). This event occurred a week prior to Dr. Keller’s testimony, clearly showing that it meets the threshold for recency. This was not a onetime event, because in the past, there were injuries and bleeding. (Transcript p. 8, Lines 12-14; p. 20, Lines 9-15; p. 21, Lines 21-23). The appellant acknowledges his propensity to engage in this activity but believes that it does not reflect self-harm. (Transcript p. 21, Lines 21-25).

The appellant argues that this behavior does not rise to the level intended by the legislature because it is not severe enough to justify the committal. Iowa Code 229.1(2)(a), which is omitted in the appellant’s argument explicitly lists, “likely to physically injure the person’s self.” As noted above there is no dispute that this has occurred when the appellant bangs his head, causing bleeding or bruising.

The trial court was correct in the determination that there was clear and convincing evidence that this element was proven.

CONCLUSION

The District Court was correct to determine that the Petitioner continued to suffer from a serious mental impairment and the Appellee asks that this decision be affirmed.

REQUEST FOR NON-ORAL SUBMISSION

The State does not request oral argument in the first instance, but if argument is granted, request an equal amount of time to present as granted to the Petitioner.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitations of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **915** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: January 13, 2023

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