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STATE OF MICHIGAN
COURT OF APPEALS

In re VOIRIN-DOIRIN DEPANHAILLUXE.

SAMANTHA GUYAH,

Petitioner-Appellee,

v

VOIRIN-DOIRIN DEPANHAILLUXE,

Respondent-Appellant.

UNPUBLISHED

May 27, 2021

No. 355012

Washtenaw Probate Court

LC No. 20-000625-MI

Before: JANSEN, P.J., and RONAYNE KRAUSE and GADOLA, JJ.

PER CURIAM.

Respondent, Voirin-Doirin Depanhailluxe, appeals by right the probate court order requiring him to receive involuntary mental health treatment. After a hearing on the petition for mental health treatment, the probate court found respondent to be a “person requiring treatment” under MCL 330.1401(1)(a) and (c). We affirm.

I. FACTS

On September 11, 2020, Samantha Guyah, an adult social worker, filed a petition with the probate court seeking mental health treatment for respondent, who was then located at Michigan Medicine.¹ In the petition, Guyah stated her belief that respondent had a mental illness and, as a

¹ The record does not identify the type of Michigan Medicine facility in which respondent was located. However, the petition for mental health treatment notes that Guyah worked for Michigan Medicine at 1500 East Medical Center Drive in Ann Arbor. Attachments to the petition provide that respondent was personally examined by physicians at the same address. A general search reveals that this address is for the University of Michigan Hospital in Ann Arbor, which is operated by Michigan Medicine. Michigan Medicine, <<https://www.uofmhealth.org/our-locations/university-hospital>> (accessed May 20, 2021).

result of that mental illness, could “reasonably be expected within the near future to intentionally or unintentionally seriously physically injure [himself] or others, and has engaged in an act or acts or made significant threats that are substantially supportive of this expectation.” Guyah based her conclusions on a personal observation of respondent when he presented “with paranoid and somatic delusions [sic] with concern of unintentional [sic] harm and inability to maintain safety.” Guyah requested a combination of hospitalization and assisted outpatient treatment for respondent.

Two clinical certificates were filed with the petition for mental health treatment. Dr. Kelly Hilton, a physician, personally examined respondent for eight minutes on September 11, 2020. Dr. Hilton determined that respondent was mentally ill and certified that respondent exhibited significant guarding, defensiveness, irritability, and paranoia, which limited his medical and mental health care. Dr. Ahmad Shobassy, a physician and psychiatrist, personally examined respondent for five minutes on September 11, 2020. Dr. Shobassy also determined that respondent was mentally ill and certified that respondent was paranoid, frequently irritable and agitated, and once threw construction cones in the middle of a street, endangering others. Dr. Shobassy found that respondent made himself a target for retaliation due to his paranoid delusions and refused medical care for an injured finger. Both Dr. Hilton and Dr. Shobassy concluded that respondent was a person requiring treatment based on the likelihood of injury to himself and his inability to understand his treatment needs. Dr. Hilton added that respondent was unable to attend to his basic physical needs, while Dr. Shobassy noted respondent’s likelihood of intentionally or unintentionally injuring others.

On September 11, 2020, the probate court ordered Washtenaw Community Mental Health to prepare an assessment of available alternatives to hospitalization for respondent. Kathleen Ricketts, a registered nurse and court liaison, submitted respondent’s assessment to the probate court on September 15, 2020. Ricketts recommended that respondent be hospitalized for up to 60 days, followed by assisted outpatient treatment. At the September 16, 2020 hearing on the petition, Dr. Shobassy testified that respondent experienced paranoid and persecutory delusions. Dr. Shobassy further testified that respondent did not believe that he had a mental illness and that he would stop taking medication upon discharge from the hospital. In addition, Dr. Shobassy testified that respondent advised that he would not attend the hearing or talk to Dr. Shobassy and his team unless a court ordered him to do so.

The probate court concluded that based on clear and convincing evidence respondent was a person requiring medical treatment under MCL 330.1401(1)(a) and (c) because he had a mental illness. Accordingly, the probate court determined that Michigan Medicine could provide treatment that was adequate and appropriate, and ordered respondent to be hospitalized for up to 60 days during a period of 180 days of assisted outpatient treatment. Respondent now appeals.

II. ANALYSIS

Respondent contends that the probate court plainly erred when it conducted a hearing on a petition for mental health treatment that did not set forth sufficient facts. Respondent further contends that the probate court failed to address whether respondent received notice and whether his attorney properly consulted with him in a meaningful way before the hearing on the petition. We disagree.

A. STANDARD OF REVIEW

This Court reviews a probate court's dispositional ruling for an abuse of discretion and the factual findings underlying a probate court's decision for clear error. *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018). However, in this case, respondent did not raise any issue presented on appeal to the probate court. As a result, our Court will review respondent's unpreserved issues for plain error. See *Marik v Marik*, 325 Mich App 353, 359; 925 NW2d 885 (2018).

“To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000), quoting *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008). Reversal is appropriate when the plain, forfeited error is so serious that it results in the conviction of an innocent defendant or when it “affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant’s innocence.” *Id.* (Quotation marks and citations omitted; alteration in original.)

B. PETITION FOR MENTAL HEALTH TREATMENT

Michigan’s Mental Health Code governs the civil admission and discharge procedures for a person with a mental illness. See MCL 330.1400 *et seq.* Specifically, MCL 330.1434 sets forth the procedure and content requirements for a petition for mental health treatment:

(1) Any individual 18 years of age or over may file with the court a petition that asserts that an individual is a person requiring treatment.

(2) The petition shall contain the facts that are the basis for the assertion, the names and addresses, if known, of any witnesses to the facts, and, if known, the name and address of the nearest relative or guardian, or, if none, a friend, if known, of the individual.

(3) Except as provided in subsection (7), the petition shall be accompanied by the clinical certificate of a physician or a licensed psychologist, unless after reasonable effort the petitioner could not secure an examination. If a clinical certificate does not accompany the petition, the petitioner shall set forth the reasons an examination could not be secured within the petition. The petition may also be accompanied by a second clinical certificate. If 2 clinical certificates accompany the petition, at least 1 clinical certificate must have been executed by a psychiatrist.

(4) Except as otherwise provided in subsection (7) and section 455, a clinical certificate that accompanies a petition must have been executed within 72 hours before the filing of the petition, and after personal examination of the individual.

(5) If the individual is found not to be a person requiring treatment under this section, the petition and any clinical certificate shall be maintained by the court as a confidential record to prevent disclosure to any person who is not specifically authorized under this chapter to receive notice of the petition or clinical certificate.

(6) The petition described in this section may assert that the subject of the petition should receive assisted outpatient treatment in accordance with section 468(2)(d).

(7) A petition that does not seek hospitalization but only requests that the subject of the petition receive assisted outpatient treatment is not subject to subsection (3) or (4).

Here, although respondent argues for more specificity in the petition for mental health treatment concerning respondent, the language of MCL 330.1434(2) required Guyah to present facts that serve as the basis for the probate court to require respondent to undergo mental health treatment. Guyah, a social worker, detailed how she personally observed respondent's paranoid and somatic delusions. Guyah further expressed concern that respondent could inflict unintentional harm and lacked the ability to maintain safety.

Moreover, Guyah's petition complied with MCL 330.1434(3) and (4) by including two clinical certificates, one of which was completed by a psychiatrist. Dr. Hilton, a physician, personally examined respondent for eight minutes on the same day the petition was filed with the probate court. Likewise, Dr. Shobassy, a physician and psychiatrist, personally examined respondent for five minutes on that same day. Each clinical certificate included facts that supported each doctor's findings regarding respondent and their conclusions that he required treatment for his mental illness. Accordingly, the probate court did not plainly err by conducting a hearing because Guyah's petition complied with the requirements set forth under MCL 330.1434.

C. NOTICE

MCL 330.1453 of the Mental Health Code details the type of notice required to be given to a respondent prior to a hearing on a petition for mental health treatment:

(1) The court shall cause notice of a petition and of the time and place of any hearing to be given to the subject of the petition, his or her attorney, the petitioner, the prosecuting or other attorney provided for in section 457, the hospital director of any hospital in which the subject of a petition is hospitalized, the spouse of the subject of the petition if his or her whereabouts are known, the guardian, if any, of the subject of the petition, and other relatives or persons as the court may determine. Notice shall be given at the earliest practicable time and sufficiently in advance of the hearing date to permit preparation for the hearing.

(2) Within 4 days of the court's receipt of the documents described in section 452(1)(a), the court shall cause the subject of the petition to be given a copy of the petition, a copy of each clinical certificate executed in connection with the proceeding, notice of the right to a full court hearing, notice of the right to be present at the hearing, notice of the right to be represented by legal counsel, notice of the

right to demand a jury trial, and notice of the right to an independent clinical evaluation.

Relatedly, MCR 5.734 provides, in pertinent part:

(A) Service of Papers. When required by the Mental Health Code, the court must have the necessary papers served. The individual must be personally served. The individual's attorney also must be served.

* * *

(C) Time for Service.

(1) A notice of hearing must be served on the individual and the individual's attorney

(a) at least 2 days before the time of a hearing that is scheduled by the court to be held within 7 days or less; or

(b) at least 5 days before the time scheduled for other hearings.

In this case, the record shows that Guyah personally served respondent with the Notice of Hearing on September 14, 2020, two days before the hearing on the petition for mental health treatment. Also, respondent was aware of the hearing because Dr. Shobassy testified that respondent did not want to attend. Respondent exhibited similar behavior by refusing to participate in a deferral conference or speak with Dr. Shobassy's team unless required by a court order. Also, respondent's appointed counsel attended the hearing and did not object to, or disagree with, the probate court's conclusion that respondent received notice of the hearing. Thus, the probate court did not err by finding that respondent received proper notice.

D. CONSULTATION WITH COUNSEL

Under the Mental Health Code, MCL 330.1454(1) states that "[e]very individual who is the subject of a petition [for mental health treatment] is entitled to be represented by legal counsel." Additionally, MCL 330.1454(7)-(9) sets forth specific requirements for a respondent's legal counsel:

(7) Legal counsel shall consult in person with the subject of a petition at least 24 hours before the time set for a court hearing.

(8) Legal counsel for the subject of a petition under section 452(1)(A) who is hospitalized pending the court hearing shall consult in person with the individual for the first time not more than 72 hours after the petition and 2 clinical certificates have been filed with the court.

(9) After the consultation required in subsection (7) or (8), counsel promptly shall file with the court a certificate stating that he or she personally has seen and has consulted with the subject of a petition as required by this section.

Here, the record shows that the probate court appointed counsel for respondent on September 11, 2020. Yet, neither the register of actions nor the transcript of the September 16, 2020 hearing indicates when appointed counsel consulted with respondent. In addition, the register of actions does not identify a certificate being filed in accordance with MCL 330.1454(9). Because of this, the probate court erred when it did not confirm on the record that appointed counsel consulted with respondent about the petition for mental health treatment and related hearing or require respondent's appointed counsel to file the certificate required under MCL 330.1454(9).

However, based on the record before this Court, and the arguments presented, the probate court's error does not in itself demonstrate prejudice to respondent. Respondent's arguments on this issue focus on the responsibilities and mistakes of his appointed counsel rather than how the probate court plainly erred by not ensuring a meaningful consultation between respondent and his appointed counsel occurred before the hearing on the petition for mental health treatment. Respondent fails to set forth how he might have been prejudiced by the alleged failure of his counsel to consult with him as required by the statute. Respondent speculates instead of providing this Court with a position that necessitates a thorough plain error analysis.² Because of this, respondent's argument on this issue fails.

Affirmed.

/s/ Kathleen Jansen
/s/ Amy Ronayne Krause
/s/ Michael F. Gadola

² Our Supreme Court has explained that “[i]t is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).