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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Conservatorship of the Person of H.W.	2d Civil No. B280292 (Super. Ct. No. PR130306) (San Luis Obispo County)
PUBLIC GUARDIAN OF THE COUNTY OF SAN LUIS OBISPO, Petitioner and Respondent, v. H.W., Objector and Appellant.	

H.W. appeals an order granting the petition of the Public Guardian of the County of San Luis Obispo (Public Guardian) for reappointment as the conservator of her person. A jury found that she continues to be gravely disabled as a result of a mental disorder. (Welf. & Inst. Code, § 5000 et seq., Lanterman-Petris-Short Act (LPS Act).) We conclude, among other things, that 1) the trial court erred in giving a special jury instruction, but the

error was harmless; 2) the court did not abuse its discretion in excluding evidence about a prior conservatorship proceeding; 3) H.W. did not receive ineffective assistance of counsel; and 4) substantial evidence supports the court's order for involuntary medication. We affirm.

FACTS

Daisy Ilano, M.D., a psychiatrist, testified that H.W. has been "diagnosed with schizophrenia, paranoid type, and she's still currently gravely disabled as a result of [those] mental disorders." H.W. has insisted on being treated with Risperdal, instead of the medications her doctors have recommended. Her choice has prevented treatment for her "psychotic symptoms," such as delusions and paranoia. She is "very resistant [to] working with the staff." If the conservatorship ended, H.W. would not voluntarily take her medications. She has "never followed through in the outpatient clinic" and "would end up back in the hospital." That has been her history.

H.W. does not have the ability to provide for herself without taking her medication. Ilano said H.W.'s "thought disorder," paranoia, and "prior admissions" show she is not "able to take care of herself." She said, "[H.W. has] always been picked up by law enforcement out there in the community because of her psychosis. . . . She has not been able to even access . . . places where she can get food." H.W. has no "family member [that] is able to take care of her."

Ilano said H.W.'s condition requires "expert assistance." H.W. "lacks insight" about her illness. She needs help in learning about her medications. A "chemical imbalance" in her brain "causes" her mental disorder. She will not be able "to survive on her own out in the community without assistance."

H.W. told Ilano that she would "access the behavioral health services" if released. But H.W. "has said that numerous times before" and had not done so. She is not able to "secure housing" because of her mental disorders. In discussing how she would budget her money, H.W. told Ilano, "That's none of your business." H.W. lacks the financial ability to provide for herself and pay bills. The last time she had a job was seven years ago and she held it for one month. In a "supervised setting," there were times that "she would not eat because she was so paranoid" she believed "she [was] being poisoned."

Ilano said H.W. "is gravely disabled as a result of her mental illness." H.W. meets the "definition" of "gravely disabled under the LPS Act."

H.W. testified she suffers from schizophrenia. She does not want injected medications. She said, "[They] make[] me drowsy, and I don't feel very smart." Her treating doctor felt she would have better results with different medications. But H.W. said, "I'm fine on the medications I'm on." She hears voices when she does not take her medications. She has not had hallucinations "since" she had been "put on the pill form of Risperdal." Her doctors inject her with medications. She said, "They keep me on it. I don't know why."

H.W. testified she has "no idea" why the Public Guardian wants to continue the conservatorship. "I wasn't even gravely disabled when I got arrested." Years earlier she met her needs by using "homeless outreach programs."

When asked how she would be able to find an apartment, H.W. said she "would seek temporary housing in a motel." She has friends in Salinas. She does not like her current board and care facility because "[i]t is very limited," "[there are] not many

social outlets," and "[she] can't have children." She cannot "interact" with people there because she does not "like them." She would obtain the services she needs to "provide" for herself by going to a food stamp office and "behavioral health services." She said, "I feel I'm making progress if I were let out." If the conservatorship ended, she would take her medications.

H.W. now receives income through a "payee program" monitored by the Public Guardian. She receives $897 a month from the Social Security Administration (SSA). Apartments and motels in Salinas rent for $800 a month. She plans "to get an apartment in Salinas," get a part-time job, and buy a car. She last worked seven years ago.

Lisa Niesen, who works in the Public Guardian's office, testified that its program is the "designated" payee for H.W.'s social security and Supplemental Security Income (SSI) benefits. Prior to the conservatorship, H.W. was not able to obtain these benefits. She had been homeless for several years. The Public Guardian obtained her social security and SSI benefits for her. H.W. received $12,000 in retroactive benefits, but H.W. has used those funds "to pay for her care and her personal needs throughout the time of [the Public Guardian's] appointment."

H.W. was in an "acute" care locked facility and then was "recommended for a lower level of care." But she refused "to be moved" there. When she was finally moved to a lower care facility, "she went AWOL within two days and requested to go back to a locked facility." The Public Guardian has placed her in a board and care facility where she can work and be out in the community "freely every day as she wishes." Niesen said, "[W]e give her additional funds" to "go to the store," "go to the movies," "go out to eat." But she must participate in "group treatment

programs." "[W]e are trying to get her . . . on a lower level of care. We just need the opportunity to continue to assist her in doing that." H.W. could not receive her benefits directly from the SSA without a doctor's declaration stating that she could manage her funds. H.W. has not been able to take the necessary steps to become the direct payee of her benefits.

DISCUSSION

The LPS Act authorizes the trial court to appoint a conservator for a gravely disabled person. (§ 5350.1; *Conservatorship of John L.* (2010) 48 Cal.4th 131.) Grave disability exists when "as a result of a mental health disorder, [the person] is unable to provide for . . . her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).) The proposed conservatee has a right to a jury trial on the issue of whether he or she is a gravely disabled person. (*Conservatorship of John L.*, at p. 143.)

The Special Jury Instruction

H.W. contends the trial court erred by giving a special jury instruction which advised jurors about "the effects of the verdict." (Capitalization omitted.) The Public Guardian agrees. They are correct.

The trial court instructed the jury with "Special Instruction 1," which provides: "A conservatorship automatically terminates in one year, unless another petition is filed at the end of the one year period and it is proven in a court of law that the conservatee is presently gravely disabled. During that year, the conservatee is entitled to other hearings on whether he or she is presently gravely disabled. This trial now being conducted constitutes such a hearing. During the conservatorship year, the conservator may

also end the conservatorship, based on a qualified opinion that the conservatee is no longer gravely disabled."

The relevant issue before the jury was whether H.W. was gravely disabled. The consequences or impact of the verdict and the proceedings that may occur after judgment are not issues the jury is supposed to consider. (*People v. Rains* (1999) 75 Cal.App.4th 1165, 1169; *People v. Allen* (1973) 29 Cal.App.3d 932, 935-936.)

In *People v. Rains*, *supra*, 75 Cal.App.4th at page 1169, the Court of Appeal held it was error for the trial court to permit doctors to testify "about the consequences of a jury's 'true' finding on the issue of whether a defendant in [a Sexually Violent Predators Act] case is a sexually violent predator." But the court held the judgment should not be reversed unless it was "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Id.* at p. 1170.)

Here there was no reversible error because it is not reasonably probable that a result more favorable to H.W. would have been reached had this instruction not been given. (*People v. Flood* (1998) 18 Cal.4th 470, 490; *People v. Rains*, *supra*, 75 Cal.App.4th at p. 1170.) In addition to Special Instruction 1, the trial court gave other instructions that properly confined the scope of the jury's deliberations. It instructed jurors that the issue they had to decide was whether H.W. "*is presently unable to provide* for . . . her basic needs for food, clothing, or shelter because of a mental disorder." (CACI No. 4002, italics added.) The court told the jury not to focus on future events. It said, "[Y]ou may not consider the likelihood *of future* deterioration or relapse of a condition." (CACI No. 4002, italics added.) "[Y]ou

must not consider or discuss the type of treatment, care, or supervision that *may be ordered if a conservatorship is established*." (CACI No. 4004, italics added.) It directed jurors that their "verdict must be based *solely on the evidence presented*." (CACI No. 113, italics added.)

In its instruction on the three factual elements jurors had to consider, the trial court carefully confined the jury's focus to current conditions--whether H.W. 1) "*has* a mental disorder," 2) "*is* gravely disabled," and 3) "*is* unwilling or unable voluntarily to accept meaningful treatment." (CACI No. 4000, italics added.) We presume the jury understood and followed these very clear instructions and applied them to the evidence. (*Beeks v. Joseph Magnin Co.* (1961) 194 Cal.App.2d 73, 78.) The jury rendered a prompt unanimous verdict. Jurors left the courtroom to begin deliberations at 3:37 p.m. and they were excused after their verdict at 4:25 p.m. Moreover, Dr. Ilano's expert testimony was strong evidence proving that H.W. was gravely disabled.

Exclusion of Evidence Regarding a Prior Conservatorship Case

H.W. contends the trial court abused its discretion by excluding evidence that there was a stipulated reversal of a prior conservatorship order involving her. We disagree.

"A decision to admit or exclude evidence lies within the sound discretion of the trial court." (*People v. Von Villas* (1992) 10 Cal.App.4th 201, 249.) To show error, appellant must show the court abused its discretion. (*Ibid.*) A trial court properly excludes evidence that is not relevant. (*Coffey v. Shiomoto* (2015) 60 Cal.4th 1198, 1213.)

The trial court noted that this stipulated reversal in an appeal of a prior conservatorship order involved the trial court's failure to obtain a personal waiver of H.W.'s right to a jury trial.

The court ruled it was irrelevant to the issue the jury was to decide in the current case.

The issue before the jury was whether H.W. was currently gravely disabled. The reversal of a prior conservatorship order involving a prior time period involved a procedural error requiring a new trial. It was not a stipulated reversal based on the merits of H.W.'s health condition. The Public Guardian, in agreeing to that reversal, did not stipulate that H.W. was not gravely disabled. Neither the trial court nor the appellate court in those prior proceedings had ever ruled that H.W. was not gravely disabled. As the Public Guardian correctly notes, introduction of that stipulation could have confused the jury. H.W. has not shown an abuse of discretion.

Ineffective Assistance of Counsel

H.W. contends the judgment must be reversed because her counsel failed to object to inadmissible evidence. We disagree.

To establish ineffective assistance of counsel, H.W. must show her counsel's conduct "fell below the standard of reasonableness and that [she] was prejudiced by that conduct." (*People v. Espiritu* (2011) 199 Cal.App.4th 718, 725.)

Psychiatrists may rely on "reliable hearsay" in "forming their opinion concerning a patient's mental state." (*People v. Campos* (1995) 32 Cal.App.4th 304, 307-308.) But an "expert witness may not, on direct examination, reveal the content of reports prepared or opinions expressed by nontestifying experts." (*Id.* at p. 308.) """"The reason for this is obvious. The opportunity of cross-examining the other doctors as to the basis for their opinion, etc., is denied the party as to whom the testimony is adverse."""" (*Ibid.*) "Any expert may still rely on hearsay in forming an opinion, and may tell the jury *in general terms* that he

[or she] did so." (*People v. Sanchez* (2016) 63 Cal.4th 665, 685.) Medical records and a patient's statements may be admissible as exceptions to the hearsay rule. (*Id.* at p. 675.)

H.W. notes that on direct examination Dr. Ilano testified that H.W. suffers from schizophrenia, paranoid type. The Public Guardian's counsel then asked, "[H]ave any other doctors come to the same diagnosis?" She responded, "Yes." Counsel asked, "[W]ho would that be?" She answered, "[T]hat would be Dr. Buenjemia as well as prior records from Seventh Avenue. The locked facility where she came from also showed a diagnosis of schizophrenia."

H.W. contends her counsel should have objected, but did not, to this evidence. The record does not specifically reveal why counsel did not object. That may hamper a reviewing court's ability to determine whether counsel's decisions "were objectively unreasonable." (*People v. Mickel* (2016) 2 Cal.5th 181, 198.) But the record reflects that H.W.'s counsel, in cross-examining Dr. Ilano, was attempting to show that H.W.'s schizophrenia and paranoia explained why H.W. did not reveal information to her treating doctors and did not trust them. Counsel was also trying to show Ilano was relying on assessments by those treating doctors.

Moreover, H.W. has not shown how the admission of the evidence of Dr. Buenjemia's opinion was prejudicial. H.W. testified, "I do suffer from schizophrenia, yes." The reference to Buenjemia's opinion "consumed only a small portion of [Dr. Ilano's] lengthy testimony." (*People v. Campos*, *supra*, 32 Cal.App.4th at pp. 308-309.) The remainder of her expert testimony "easily supports the jury's" finding that H.W. was gravely disabled. (*Id.* at p. 309.) The jury was instructed it could

not use "the reports and statements" from hospital staff and other persons "as independent proof of [H.W.'s] mental condition." (CACI No. 4010.) It is not "reasonably probable that a result more favorable to appellant would have been reached in the absence of this evidence." (*Campos*, at p. 309.) Given the record, any error is also harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

The Order Authorizing Involuntary Medication

H.W. contends the trial court's order for involuntary medication is not supported by substantial evidence. We disagree.

In reviewing the sufficiency of the evidence, we must draw all reasonable inferences from the record to support the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not weigh the evidence or decide the credibility of the witnesses. (*Ibid.*)

At a hearing before the trial court, the Public Guardian requested an order that H.W. "not have the right to refuse or consent to treatment specifically related to her mental disorder."

"[A] competent adult has the right to refuse medical treatment . . . ." (*In re Qawi* (2004) 32 Cal.4th 1, 14.) "[M]edical treatment can be compelled for a conservatee" under the LPS Act where such treatment is authorized by a court order. (*Id.* at p. 18.) For an order authorizing involuntary medication, there must be proof that the "gravely disabled person is 'incapable of making rational decisions about his [or her] own medical treatment.'" (*K.G. v. Meredith* (2012) 204 Cal.App.4th 164, 179.)

Here the trial court ordered that H.W. "should not have the right to consent to treatment related specifically to her grave disability or routine medical treatment . . . ." A sealed

declaration signed by two physicians supported the court's medication order. In addition, Dr. Ilano testified that H.W. "should not be given the right to refuse" medications because of "her mental disorder" and her "lack of insight as far as the need for treatment and the need for medication." H.W.'s "thought disorder" and "paranoia" prevented her from "being able to take care of herself." She "lacks insight" about her illness. In a "supervised setting," there were times she would not eat because of her "paranoid" belief that "she's being poisoned." Ilano said H.W. needs help in learning about her medications. H.W.'s treating doctor treats her with injectable medications. H.W. testified, "They keep me on it. I don't know why."

H.W. relies on parts of her own testimony to contend the order should be reversed. But the credibility of her testimony and her demeanor were exclusively matters for the trier of fact to consider. The issue is not whether some evidence supports H.W.'s position, it is only whether substantial evidence supports the order. The evidence is sufficient.

We have reviewed H.W.'s remaining contentions and we conclude she has not shown grounds for reversal.

DISPOSITION

The judgment and medication order are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

Jean Matulis, under appointment by the Court of Appeal, for Objector and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy County Counsel, for Petitioner and Respondent.