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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

MAX C., Plaintiff and Appellant, v. WESTSIDE REGIONAL CENTER, Defendant and Respondent.	B283062 (Los Angeles County Super. Ct. No. BS146164)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary H. Strobel, Judge. Affirmed.

A2Z Educational Advocates, N. Jane DuBovy, for Plaintiff and Appellant.

Enright & Ocheltree, Judith A. Enright, Julie A. Ocheltree, Noelle V. Bensussen and Aaron Abramowitz, for Defendant and Respondent.

I. INTRODUCTION

Plaintiff Max C. appeals from a judgment denying his petition for writ of administrative mandamus under Code of Civil Procedure section 1094.5. Plaintiff argues he qualified for regional center services pursuant to Welfare and Institutions Code[1] section 4512, part of the Lanterman Developmental Disabilities Services Act (§ 4500 et seq.) (Lanterman Act), as a person with a disabling condition found "to require treatment similar to that required for individuals with an intellectual disability." Plaintiff sought mandamus relief to challenge a decision by the Office of Administrative Hearings (OAH) that he did not have a qualifying developmental disability and was ineligible for regional center services. The trial court denied plaintiff's petition and affirmed the administrative law judge's decision in favor of defendant Coastal Developmental Services Foundation, doing business as Westside Regional Center (Regional Center).

Plaintiff contends the trial court's judgment was not supported by the evidence. We affirm.

II. BACKGROUND

A. *Overview of the Lanterman Act*

"The Lanterman Act is a comprehensive statutory scheme to provide treatment, services, and supports for persons with developmental disabilities. (§§ 4500, 4500.5, 4502, 4511.) The

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1 Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

term "'[s]ervices and supports for persons with developmental disabilities'" is broadly defined in section 4512, subdivision (b) to include diagnosis, evaluation, treatment, care, special living arrangements, physical, occupational, and speech therapy, training, education, employment, and mental health services. The Lanterman Act also accords persons with qualifying developmental disabilities the right to receive treatment and services at state expense. (§ 4502.)" (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 84, 94 (*Ronald F.*).)

To be eligible for treatment and services, a person must have a "developmental disability," defined as "a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual." (§ 4512, subd. (a).) Regional centers are responsible for determining whether an individual has a developmental disability. (§§ 4642, 4643.) Five categories of disabling conditions are eligible for services. At issue here is the fifth category, which defines two types of qualifying disabling conditions: "disabling conditions found to be closely related to intellectual disability *or* to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a), italics added.)[2] An eligible condition cannot be solely a psychiatric

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[2] Previously, the statute used the term "mental retardation." (Stats. 2011, ch. 471, § 6.) It was amended in 2012 to "intellectual disability." (Stats. 2012, ch. 448, § 48; see also § 11014, subd. (c) [as used in state regulation, publication, or other writing, "mental retardation" and "mentally retarded person" have the same meaning as "intellectual disability" and "person

disorder, a learning disability, or physical in nature. (*Ibid.*; Cal. Code Regs., tit. 17, § 54000, subd. (c).)

Plaintiff seeks eligibility for services based on having a disabling condition requiring "treatment similar to" that required by a person with an intellectual disability ("treatment similar to" category).

B. *Factual Background*

At the time of the first administrative hearing, Plaintiff was a 25-year-old man who was adopted at birth. Plaintiff's biological mother reportedly heavily consumed tobacco and alcohol during her pregnancy. His early history included head banging at approximately 18 months of age. Plaintiff was diagnosed with attention deficit hyperactivity disorder (ADHD) and began taking medication at age four. As part of a research study, UCLA diagnosed plaintiff with partial fetal alcohol syndrome (PFAS) at age nine. Specifically, plaintiff was found to have the fetal alcohol syndrome facial phenotype, central nervous system dysfunction, and gestational alcohol exposure. PFAS can cause cognitive, behavioral, and adaptive impairments, including intellectual and learning disabilities, adaptive and executive dysfunction, speech and language delays, behavioral and emotional difficulties, poor social skills, and motor deficits.

Plaintiff was formally diagnosed with fetal alcohol syndrome disorder (FASD) based on a genetic evaluation in 2006. As of 2010, plaintiff was assessed with ADHD, bipolar disorder, and specific learning disorder.

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with an intellectual disability" unless context indicates otherwise].)

Plaintiff attended public school in California until the fifth grade. He attended a boarding school in Connecticut for special needs students from 2006 to 2012. Plaintiff returned to school in California for twelfth grade where he was entitled to special education services. After a short time, plaintiff refused to attend.

In 2010, plaintiff's parents contacted the Regional Center for regional services because they were concerned about his ability to live independently as an adult. On January 13, 2011, the Regional Center informed plaintiff that he did not qualify for regional services.

Plaintiff sought reconsideration of the decision. The Regional Center referred him to Gabrielle du Verglas, Ph. D., for evaluation in September and October 2012. After du Verglas's evaluation, the Regional Center again found plaintiff not eligible for regional services. Plaintiff next sought a hearing before the OAH to contest the Regional Center's decision.

C. *Administrative and Trial Proceedings*

Following a two-day hearing in July 2013 , the administrative law judge issued a decision on September 4, 2013 affirming the Regional Center's ineligibility determination. On December 3, 2013, plaintiff filed a petition for writ of administrative mandamus. On February 4, 2015, after a hearing, the trial court issued an interlocutory writ ordering the OAH to "make further findings clarifying its determination that [plaintiff] failed to establish the deficits of intellectual function required to establish an intellectual disability."

On May 8, 2015, the OAH issued its amended decision after remand. The administrative law judge again affirmed the Regional Center's ineligibility decision. On October 23, 2015,

after a hearing, the trial court issued another interlocutory writ requiring the OAH to conduct a further hearing to include documentary evidence, namely the "DSM-5" and the "Fifth Category Guidelines,"[3] that had been cited by the administrative law judge but not included as part of the administrative record.

After two days of hearings, the administrative law judge issued its second amended decision on February 11, 2016. The administrative law judge again affirmed the Regional Center's decision that plaintiff was not eligible under the "treatment similar to" category.

On October 11, 2016, plaintiff filed in the trial court a supplemental brief based on the second amended decision. The trial court also requested and received supplemental briefs on the recent decision in *Ronald F.* We summarize below relevant evidence and testimony presented at the administrative and trial court proceedings.

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[3] "DSM-5" is short for the "American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition." The DSM-5 was published in 2013. "Fifth Category Guidelines" refers to the "Association of Regional Center Agencies Guidelines for Determining 5th Category Eligibility for the California Regional Centers" (the Guidelines). The Guidelines were approved as of 2002. Both the DSM-5 and the Guidelines are used by regional centers to determine an individual's eligibility for services and supports under the Lanterman Act. (See *Ronald F., supra*, 8 Cal.App.5th at p. 95, fn. 3.)

1. Written Evaluations

a. The Regional Center

On December 21, 2010, Valerie Benveniste, Ph.D., prepared a report assessing plaintiff's eligibility for regional center services. Benveniste opined: "Current assessment reveals a young adult who in spite of his overall average I.Q. [intelligence quotient] does not appear equipped to cope with typical daily activities. His impairments manifest in extremely poor arithmetic skills with limited ability to budget, slow processing speed, very poor writing skills, impaired memory, impaired judgment, limited ability for self-direction or goal setting for his future, obsessive-compulsive thoughts and behaviors. History suggests that etiology of his disabilities appears to have a neurological/developmental component . . . that have been exacerbated by significant psychosocial/family stressors, and subsequent mental illness . . . . Due to his extremely complex history, it appears unlikely that it will be possible to tease apart the relative contribution of developmental issues versus mental health/psychosocial issues."

In 2012, du Verglas prepared a report assessing plaintiff's eligibility for services under the Lanterman Act. Du Verglas assessed plaintiff's cognitive abilities with the Weschler Adult Intelligence Scale—Fourth Edition (WAIS-IV). Du Verglas found that plaintiff's Full IQ of 86 was in the 18th percentile, which fell in the low average range of abilities. She determined that plaintiff had relative strength in the nonverbal domain and relative weakness in the verbal domain. She measured plaintiff's adaptive abilities with the Adaptive Behavior Assessment System-II (ABAS-II), designed to evaluate whether an individual displayed various functional skills necessary for daily life without

assistance from others. Based on the ABAS-II test and information from plaintiff's parents, du Verglas scored plaintiff in the 0.3 percentile, placing his adaptive abilities in the extremely low range. Du Verglas concluded that plaintiff's "intellectual abilities do not accurately reflect his practical/adaptive levels of functioning." Plaintiff received a Global Assessment of Functioning of 40. A Global Assessment of Functioning score is a subjective score ranging from 10 to 100, with 100 indicating superior functioning in a wide range of activities and 50 indicating serious impairment in social, occupational, or school functioning. Du Verglas recommended plaintiff receive vocational training, specific instruction on daily living and management skills, and ongoing psychiatric management, and noted that plaintiff showed a "keen interest in securing employment."

b. Roger McCoy

McCoy was a school psychologist who prepared a March 25, 2013 report summarizing various reports and information about the supports and services plaintiff required. McCoy concluded that plaintiff "needs the services of many different people such as teachers, psychiatrists, psychologists, medical doctors, social workers, and rehabilitation counselors" and "needs regional services because he also needs coordination of services."

c. Mary O'Connor, Ph. D.

O'Connor was the director of the UCLA Fetal Alcohol Spectrum Disorders Clinic who had evaluated plaintiff multiple times during his youth. O'Connor prepared a report dated September 6, 2005, evaluating plaintiff when he was 13 years old.

She determined that pursuant to the Weschler Intelligence Scale for Children, Fourth Edition, plaintiff had a Full Scale IQ of 70, which placed him in the 7th percentile of cognitive ability. However, O'Connor opined that the Full Scale IQ did not best represent plaintiff's general cognitive functioning. She described plaintiff's abilities as being in the average range for verbal comprehension and perceptual reasoning, borderline range for working memory, and extremely low range for processing speed. O'Connor also tested plaintiff's academic achievement, concluding that he had "significant deficits" and that his "academic skills lie well below what would be expected based on his cognitive testing results." She concluded that these "impairments are related to central nervous system dysfunction related to effects of fetal alcohol exposure."

A month later, O'Connor summarized plaintiff's treatment at UCLA and her conclusions in two letters dated October 3, 2005 and October 31, 2005. While she reported that plaintiff had cognitive functioning in the 37th percentile, she also noted that assessments indicated that he had "pervasive deficits in cognitive and adaptive functioning that are often found in children with Fetal Alcohol Syndrome." That evaluation showed that "[i]n the context of an average IQ, [plaintiff] had problems in self regulation, executive function, working memory, and adaptive functioning meeting the criteria for [central nervous system] dysfunction," which she attributed to plaintiff's FASD. O'Connor opined plaintiff met the criteria for regional center eligibility under the fifth category because he "has neurocognitive impairments that existed since birth and that are expected to continue indefinitely" and "will require long-term treatment similar to that required for individuals with an intellectual

disability," such as "medication management, supportive psychotherapy, vocational and job training."

d. Paige Rubin, M.A.

Rubin was a school psychologist who evaluated plaintiff in January 2012. In a March 21, 2012 report, Rubin found plaintiff's socialization skills, communication skills, and daily living skills fell in the moderately low range. Plaintiff presented with deficits in adaptive behavior and attention. He also showed significant deficits academically in math and written language and a delay in receptive language skills. Rubin concluded that plaintiff would benefit from special education support.

2. Testimony

a. Margery C.

Margery C. is plaintiff's mother. She testified at both administrative hearings about his various limitations, including his inability to live independently and support himself.

b. Thompson Kelly, Ph. D.

Kelly was the chief psychologist and coordinator of intake services at the Regional Center and a member of the clinical team that assessed plaintiff's eligibility. Kelly testified at both administrative hearings. He testified that the Regional Center's clinical team had multiple opportunities to review plaintiff's case.

According to Kelly, plaintiff's test scores and assessments were inconsistent. Plaintiff had scores that placed him in the "intellectually disabled realm" on some tests in some areas and above average scores in other areas. Plaintiff had significant functional limitations in learning, but not significant functional

limitations in receptive or expressive language, self-care, mobility, self-direction, independent living, or economic self-sufficiency. (See § 4512, subd. (l) ["substantial disability" defined as "existence of significant functional limitations" in three or more of the above areas, as determined by a regional center and as appropriate for age].) Kelly believed that plaintiff, while not economically self-sufficient at the time, had the capacity for economic self-sufficiency. He explained that individuals with learning disabilities can develop learned helplessness. Kelly concluded that plaintiff had a learning disabled profile, but not a condition similar to mental retardation. In reaching this conclusion, Kelly acknowledged plaintiff's FASD diagnosis but stated that the diagnosis "in and of itself" was not "a qualifying factor" for fifth category eligibility.

Kelly also concluded that plaintiff did not require treatment similar to a person with an intellectual disability. Kelly referred to the Guidelines, which state: "In determining whether an individual requires 'treatment similar to that required for mentally retarded individuals,' the team should consider *the nature of training and intervention* that is most appropriate for the individual who has global cognitive deficits." Kelly testified that the Regional Center eligibility team uses the Guidelines in determining whether an individual requires treatment similar to that required by individuals with intellectual disabilities. Kelly opined that plaintiff did not have the global cognitive deficits of an individual with an intellectual disability, referring to the years of evaluations showing plaintiff had "peaks and valleys." Kelly testified that global cognitive deficits indicated subnormal testing in all domains. Because

plaintiff had strengths in some areas, he did not need the "global teaching similar to an individual with an intellectual disability."

Kelly testified about the distinction between "treatment" and "services" for fifth category eligibility. He explained that many people who do not have development disabilities as defined by section 4512 would benefit from regional center services, which is why focusing on treatment, not services, is important. Regional centers offer services in housekeeping, money management, expenses, shopping, and hygiene.

As an example of the difference between treatment and services, Kelly explained that independent living skills training is a service provided by the Regional Center that could benefit many individuals who do not have an intellectual disability. Treatment is how one would instruct an individual on independent living skills. Treatment is different for individuals with and without an intellectual disability. For example, someone with schizophrenia who could benefit from independent living skills services would be taught in a manner that would break through the internal stimuli.

For an individual with an intellectual disability, the treatment is to break down skills into small steps and practice those steps with the individual. Such an individual would have a performance cap. For an individual with a learning disability, the information is also broken down but not in the same way. For example, for an individual with mathematics and verbal concept formation disabilities, Kelly might use visual hands-on manipulatives. The treatment would vary depending on what worked with the individual's learning style.

c. Ann Simun, Psy. D.

Simun was plaintiff's expert at the first administrative hearing. She interviewed plaintiff for two hours and reviewed his records. Simun acknowledged that plaintiff had average scores on various IQ measurements, which is not "classic intellectual disability." But she testified that FASD could manifest cognitive impairments in areas other than IQ, such as executive functioning, planning skills, and learning and retaining information, all of which plaintiff displayed. Simun opined that plaintiff qualified for regional services under the fifth category because he would require help with employment, obtaining housing, managing money, transportation, cooking, and hygiene.

d. Melissa Waybright, Psy. D.

Waybright was plaintiff's therapist and testified at the second administrative hearing. Waybright opined that plaintiff required treatment similar to a person with an intellectual disability. She concluded that he needed help with self-care and day-to-day skills required for independent living of the sort provided by a regional center, such as assistance with hygiene, shopping, making appointments, budgeting, public transportation, cooking, cleaning, and job coaching.

e. Jennifer White, MSW

White was a social worker who provided therapy to plaintiff. She testified that plaintiff had deficits in executive functioning that limited his ability to work and live independently.

3. Statement of Decision

On March 4, 2017, following a hearing, the trial court adopted its tentative decision and denied the petition for writ of administrative mandamus. The trial court concluded that *Ronald F.* clarified the distinction between "treatment" and "services" in section 4512, noted that the plaintiff had not challenged *Ronald F.'s* interpretation of the statute, and then applied that interpretation in its analysis.

In its independent analysis of the evidence, the trial court found that Kelly's testimony was detailed, clear, and consistent and merited significant weight. Kelly had shown sufficient knowledge and understanding of plaintiff's history and condition in support of his opinion and more knowledge than other witnesses of the regional center treatments offered to persons with an intellectual disability. The trial court determined O'Connor's letter deserved less weight than Kelly's testimony in part because she did not expressly explain how plaintiff required treatments similar to those required by an individual with an intellectual disability.

The trial court gave less weight to Waybright's testimony because it was less detailed and clear than Kelly's testimony. And, the trial court found Waybright's testimony suggested that Waybright believed plaintiff could benefit from services by a regional center as opposed to treatment. The trial court also accorded Simun's testimony less weight because Simun did not give a clear or compelling opinion that plaintiff required treatments similar to those required by a person with an intellectual disability. The trial court noted that McCoy's report did not identify any specific treatment that plaintiff needed similar to a person with an intellectual disability.

The trial court concluded that plaintiff had not met his burden of showing that the OAH's decision was not supported by the weight of the evidence. Judgment was entered on April 7, 2017.

III. DISCUSSION

A. *Standard of Review*

The denial of regional center services concerns a vested fundamental right requiring the trial court to exercise its independent judgment on the evidence presented in the administrative hearing. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143; *Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1492 (*Samantha C.*).) The party challenging the administrative decision bears the burden of convincing the court that the administrative findings are not supported by the weight of the evidence. (Code Civ. Proc., § 1094.5, subd. (c).) There is a strong presumption that the administrative hearing's factual findings are correct. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

"On appeal, our task is to determine whether the trial court's findings are supported by substantial evidence." (*Mason v. Office of Admin. Hearings* (2001) 89 Cal.App.4th 1119, 1130 (*Mason*); accord, *Samantha C., supra*, 185 Cal.App.4th at p. 1492.) Thus, plaintiff's argument that the "weight of the evidence" supports a finding that he qualifies for regional center services refers to the wrong standard.

"In reviewing the evidence, we resolve all conflicts in favor of the party prevailing at the trial court level and must give that party the benefit of every reasonable inference in support of the

judgment. ""When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its deductions for those of the superior court."""" (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1461; accord, *Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 753 (*Norasingh*).) "Further, we cannot reweigh the evidence. Thus, we do not determine whether substantial evidence would have supported a contrary judgment, but only whether substantial evidence supports the judgment actually made by the trial court." (*Norasingh, supra*, 229 Cal.App.4th at p. 753; *San Diego Unified School Dist. v. Commission on Professional Competence, supra*, 194 Cal.App.4th at pp. 1461-1462.)

To the extent that the trial court interpreted the Lanterman Act, we review the statutory construction de novo. (*Ronald F., supra*, 8 Cal.App.5th at p. 92.)

B. *The Trial Court Properly Interpreted Section 4512*

During the trial court proceedings, Division 2 of this district decided *Ronald F.*, which analyzed section 4512's use of "treatment" and "services" and concluded that "the Legislature intended the term 'treatment' to have a different and narrower meaning than 'services'[.]" (*Ronald F., supra*, 8 Cal.App.5th at p. 98.) The statutory scheme defines "services" as including "treatment," along with many other benefits such as cooking, public transportation, money management, and rehabilitative and vocational training (*ibid.*), indicating that while a treatment may be a service, not all services are treatments.[4]

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[4] That the *Ronald F.* court conducted its statutory interpretation in deciding whether *Samantha C.* was a doctrinal

The difference between "treatment" and "services" impacts fifth category eligibility because section 4512, subdivision (a), defines the "treatment similar to" category as a disabling condition requiring "treatment similar to that required for individuals with an intellectual disability." (§ 4512, subd. (a).) Section 4512, subdivision (a), does not refer to services. The trial court applied *Ronald F.*'s interpretation of section 4512 and its distinction between "treatment" and "services" in its analysis of the evidence concerning plaintiff's eligibility under the "treatment similar to" category.

While plaintiff does not challenge *Ronald F.*'s statutory interpretation, he contends that *Samantha C.* governs here and requires the conclusion that he satisfies eligibility under the "treatment similar to" category. In *Samantha C.*, the plaintiff suffered a hypoxic (oxygen deprivation) birth injury, causing cognitive disabilities and adaptive functioning deficits. (*Samantha C., supra*, 185 Cal.App.4th at pp. 1470, 1493.) She was found ineligible for regional center services under the "treatment similar to" category.[5] (*Id.* at p. 1492.) The appellate court reversed, holding that she was eligible under the fifth category because, like persons with an intellectual disability, she required "many of the same kinds of treatment, such as services providing help with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching and skill development

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change for res judicata purposes does not limit the validity or effect of its interpretation.

[5] Section 4512, subdivision (a), in effect at the time *Samantha C.* was issued used the term "mental retardation" instead of "intellectual disability." (Stats. 2006, ch. 399, § 1.)

approaches, and supported employment services." (*Id.* at p. 1493.) The court did not address the statutory differences between "treatment" and "services" and instead used them interchangeably.

Plaintiff's argument that *Samantha C.* dictates a conclusion of fifth category eligibility here is unpersuasive. In sum, plaintiff argues that his disabling condition and necessary treatment are similar to Samantha's condition and treatment and therefore he, like Samantha, should be determined eligible under the fifth category. Plaintiff's syllogism fails because it accepts *Samantha C.*'s conflation of "treatment" and "services" and ignores *Ronald F.*'s statutory interpretation. It also does not address the substantial evidence before the trial court and discussed below supporting a finding of no eligibility.

Because *Ronald F.*'s interpretation of section 4512 clarifies the distinction between "treatment" and "services," an issue that *Samantha C.* did not directly address, the trial court did not err in using *Ronald F.*'s interpretation in its analysis.

C. *Substantial Evidence Supports the Trial Court's Judgment*

The parties do not dispute that the trial court exercised its independent judgment. Rather, plaintiff contends that the trial court's judgment is not supported by the evidence. We disagree.

Substantial evidence, in particular Kelly's testimony, supports the trial court judgment. Kelly testified in detail, explaining his conclusions that plaintiff did not have a substantial disability under the Lanterman Act and did not require treatment similar to that required by individuals with an intellectual disability. The trial court gave Kelly's testimony considerable weight, more than any other witness.

Plaintiff counters that evidence, including from O'Connor, Simun, and Waybright, established that plaintiff's FASD constitutes a substantial developmental disability with significant functional limitations that prevent him from living independently and being self-supporting. But, Kelly disagreed about the impact of plaintiff's diagnosis. He testified that plaintiff had a significant functional limitation in learning, but did not have a significant functional limitation regarding self-care, receptive and expressive language, mobility, self-direction, capacity for independent living, or economic self-sufficiency. Du Verglas' evaluation also supported the conclusion that plaintiff had strengths and weaknesses.

In any event, Plaintiff's contention that evidence establishes that he has a developmental disability is not sufficient unless he can show that the disability falls within one of section 4512's five categories. Because plaintiff only seeks eligibility under the "treatment similar to" category, the question is whether plaintiff requires treatment similar to that required for individuals with an intellectual disability. Kelly testified that he did not and explained why. As the trial court noted, other witnesses did not distinguish clearly between treatment and services, were vague about how plaintiff's necessary treatment was similar to that required for individuals with an intellectual disability, and generally were less credible.

Plaintiff attacks Kelly's conclusion by arguing that Kelly understood the fifth category to require *both* a disabling condition closely related to an intellectual disability *and* a disabling condition requiring treatment similar to that required for an individual with an intellectual disability. Plaintiff points to Kelly's references to the Guidelines, arguing that the Guidelines

also conflate the two separate bases for fifth category eligibility and are outdated. Plaintiff contends that the DSM-5 is a better framework of determining the supports needed. And, Plaintiff asserts that the trial court repeated this error.

This argument is unsupported by the record. Kelly testified that he and the Regional Center assessment team considered both types of fifth category eligibility and did not find that plaintiff qualified under either one. And, the Guidelines clearly distinguish between the two bases for fifth category eligibility. (*Samantha C., supra*, 185 Cal.App.4th at p. 1477.) The Guidelines' use of the term "cognitive global deficits" does not create another criterion for eligibility as plaintiff asserts. Rather the Guidelines focus on "the nature of training and intervention most appropriate" for the particular individual. While Kelly discussed the Guidelines, he also testified without reference to the Guidelines about his conclusion that plaintiff did not require treatment similar to that required for individuals with an intellectual disability. And, he considered the more current DSM-5. Finally, nothing in the trial court decision indicates that the trial court conflated the two types of fifth category eligibility in rejecting plaintiff's petition.

Next, plaintiff argues that Kelly described a treatment for persons with an intellectual disability, i.e., step-by-step breakdowns, that other witnesses, namely plaintiff's mother and Waybright, testified was necessary for plaintiff. Thus, plaintiff asserts that the evidence demonstrates he requires the same treatment as a person with an intellectual disability. The trial court considered this argument and concluded that the evidence did not strongly support plaintiff nor undermine Kelly's testimony. We see no basis to disturb the trial court's conclusion.

Plaintiff contends Kelly's testimony and analysis was incomplete because it did not account for mild intellectual disability and treatments required for that condition. Plaintiff asserts that he has been assessed with the adaptive function level of an individual with mild to moderate intellectual disability. And plaintiff contends that Kelly ignored the reality of plaintiff's "actual adaptive functioning." Plaintiff in effect is asking us to reweigh the evidence, which we cannot do. (*Norasingh, supra*, 229 Cal.App.4th at p. 753.) These complaints cannot overcome the substantial evidence supporting the judgment.

Finally, plaintiff argues that the trial court denied his petition because it concluded he has a learning disability and therefore is not eligible under section 4512. Plaintiff misreads the trial court's decision. The trial court analyzed the evidence about plaintiff's eligibility under the "treatment similar to" category. Nowhere did the trial court state that plaintiff was not eligible because he has a learning disability.

IV. DISPOSITION

The judgment is affirmed. Defendant Westside Regional Center is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SEIGLE, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.