Filed 12/9/25 Conservatorship of Monica G. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Conservatorship of the Person of MONICA G.	B342376 (Los Angeles County Super. Ct. No. 22HWMH01196)
PUBLIC GUARDIAN OF LOS ANGELES COUNTY, as Conservator, etc., Petitioner and Respondent, v. MONICA G., Objector and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Rene C. Gilbertson, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Laura Quiñonez, Assistant County Counsel, and William C. Sias, Deputy County Counsel, for Plaintiff and Respondent.

Monica G. (appellant) appeals from an order granting a petition to reestablish conservatorship under the Lanterman-Petris-Short (LPS) Act pursuant to Welfare and Institutions Code section 5350 et seq. Appellant argues the trial court erred by failing to personally advise her of the right to trial by jury and

failing to obtain a personal waiver of that right after her attorney advised the court that appellant wanted a court trial.

Considering the totality of circumstances in this case, we find the trial court's failure to properly advise appellant of her right to a jury trial harmless. We therefore affirm the order.

BACKGROUND

The petition and initial hearing

The Office of the Public Guardian, County of Los Angeles (public guardian) filed a petition for the imposition of an LPS conservatorship of appellant on July 13, 2022. Following appellant's consent, on September 7, 2022, the court found appellant to be gravely disabled, granted the petition, and imposed the conservatorship. Pursuant to a second petition filed on August 10, 2023, the renewal of the conservatorship was granted on December 13, 2023. The order filed January 5, 2024 specified the conservatorship would be retroactive to September 6, 2023.

The public guardian filed a petition for reappointment as conservator of the person and notice of hearing on July 11, 2024.

The initial hearing on the petition for reappointment was held on August 5, 2024. Appellant failed to appear. The trial court granted appellant's counsel's request to appoint Doctor Karine Shakib-Beltran to examine appellant pursuant to Evidence Code section 730. The trial court continued the matter to September 11, 2024, for trial setting.

Trial setting and request for court trial

Appellant appeared with counsel at the September 11, 2024 trial setting hearing. The trial court called the matter, confirmed appellant was the conservatee, and acknowledged her. Counsel stated their appearances, and the following colloquy ensued:

"[THE COURT]: All right. We are here for trial setting. Ms. Santamaria, did you have a chance to speak with [appellant], and how do you wish to proceed?

"[APPELLANT'S COUNSEL]: I have, and she's requesting to have a judge trial.

"[THE COURT]: So based on that, we will waive the jury trial for [appellant]. [¶] We'll waive the jury trial on her behalf and set the matter for a court trial. I'll find good cause to do that with the powers remaining in full force and effect. [¶] Ms. Santamaria, who do you want to have appointed, or do you already have one?

"[APPELLANT'S COUNSEL]: I already have a doctor. Thank you."

The trial court confirmed the court trial date with counsel and ordered transportation. As the hearing ended, the following discussion ensued:

"[THE COURT]: [Appellant], we'll see you back next time, okay?

"[APPELLANT'S COUNSEL]: Your Honor, if we can have public guardian look into—[appellant] is indicating that she's having problems with some of the staff. She has specifically named Ricardo, Cynthia, and Martha. She indicates that all three of them are trying to make her have sex with them, and that she's having problems because of that. If we can have public guardian look into it, please.

"[THE COURT]: Okay. So the public guardian to please address [appellant's] statements that she is having trouble with the staff with those names that were mentioned of Ricardo, Cynthia, and Martha. And to address those concerns addressed by [appellant] and provide that in an update for November 12th.

"Okay. [Appellant], nice to see you today. We'll see you next time."

Off-the-record confirmation of appellant's request for immediate trial

A week before the trial date, appellant was transferred from her previous placement to a new placement. Appellant appeared virtually by WebEx when her case was called on November 12, 2024.

Prior to beginning the proceedings on the record, the court, counsel, and appellant had an off-the-record discussion. The court then noted:

"[THE COURT]: [Appellant] is present on WebEx and is at College Hospital currently. She was transferred there from Harbor View toward the beginning of the month around the 7th, I believe, the staff said.

"We discussed with her off the record if she wanted to proceed today with her trial, and she indicated she would like to get it done today.

"So whenever you're ready, you may call your first witness, Ms. Clarke."

The other parties and counsel who appeared virtually were moved into the waiting room. The court explained that the hearing was to be conducted in private.

Trial

The public guardian's sole witness was Dr. Marion Arom. Counsel stipulated to her qualifications to testify. Dr. Arom had interviewed appellant and reviewed portions of her medical charts. Dr. Arom diagnosed appellant with schizophrenia and personality disorder. Appellant became anxious and agitated easily, and screamed and became verbally assaultive when upset. Appellant was hospitalized after a fight. Dr. Arom further explained that appellant has poor judgment and impulse control issues. Appellant had been involved in quite a few incidents as a result of her personality issues. Dr. Arom described the behavior as appellant wanting what she wants when she wants it.

When Dr. Arom spoke with appellant, all she wanted to talk about was leaving her placement. She did not believe she had a mental illness, but took her medication because she believed it calmed her down. Appellant did not relate the medication to any of her symptoms. Appellant did not understand she needs treatment because she has a mental illness. Appellant wanted to be out of treatment.

Appellant was being administered Seroquel, an antipsychotic medication. She was compliant with her

medications at the hospital. They put her at ease. Dr. Arom stated the medication also manages other psychotic symptoms that appellant had experienced.

Dr. Arom described appellant as very bright and articulate. Dr. Arom thought appellant decided she needed her medication in preparation for her trial. When Dr. Arom asked appellant about her medication compliance, appellant did not want to answer and appeared annoyed by the questions. She then told Dr. Arom that she did not need the Seroquel, but it calmed her down. Approximately two weeks before trial, appellant told Dr. Arom that, but for the conservatorship, she would not take her medications. However, the day before trial appellant said she needed the medication and would continue to take it if not subject to the conservatorship. When asked about the discrepancy in appellant's responses, Dr. Arom said appellant was clever and knew what to say to avoid the conservatorship.

Dr. Arom stated appellant was indigent and had nowhere to go. Nor did she have a plan for obtaining clothing or shelter. Dr. Arom was aware of no alternatives to conservatorship.

Appellant chose to testify. Appellant's attorney began by saying, "I didn't get a chance to talk to you yet, but you wanted to proceed with your trial. Try to listen to the questions I'm asking you and try to give the best answer you can, okay?"

Appellant said she was diagnosed with schizophrenia and was currently taking Seroquel. She added she would continue to take the medication if she was not under conservatorship as she believed the medication helped with symptoms of schizophrenia. If she were not under conservatorship, she would get food, clothing and shelter at the "Salvation Army" on "Avalon and Fourth," "where you can take a shower and they give you meals."[1] Appellant had received help from that Salvation Army in the past, and she got her pills at Planned Parenthood. Appellant was

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[1] Appellant gave varying addresses for the Salvation Army shelter, later stating it was located on Avalon and 43rd, then at San Pedro and Fourth.

able to dress herself and ate three meals a day plus snacks. Appellant was aware she was having "really bad putdowns" in the past due to her schizophrenia but some of those symptoms had gone away since she started taking her medication.

On cross-examination, appellant denied telling Dr. Arom that she would not take the medication at their initial meeting. She explained without the medication, she constantly experienced auditory hallucinations. Appellant reiterated her plan to use the Salvation Army for food, clothing and shelter.

Both parties presented closing arguments. The court noted it found Dr. Arom to be very credible. The court believed appellant had shown growth, but at this time, decided to keep the conservatorship in place. The court reappointed the public guardian "for person only" as to appellant.

DISCUSSION

Appellant argues the conservatorship order should be reversed because the trial court failed to properly advise her of her right to a jury trial or obtain a personal waiver of that right.

I. Applicable law and standards of review

Under Welfare and Institutions Code section 5350, LPS conservatorships are, with certain inapplicable exceptions, governed by the procedural rules applicable to conservatorships set forth in the Probate Code. (See, e.g., *Conservatorship of John L.* (2010) 48 Cal.4th 131, 144.) Probate Code section 1828, subdivision (a)(6), provides that "before the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of . . . the right . . . to have the matter of the establishment of the conservatorship tried by jury." The statute provides certain exceptions not applicable here. (Prob. Code, § 1828, subd. (c).)

Appellant relies on *People v. Blackburn* (2018) 61 Cal.4th 1113, 1116 (Blackburn), where the Supreme Court analyzed the advisement requirement in the context of an involuntary commitment of a mentally disordered offender (MDO) beyond termination of parole. In that case, the trial court "did not advise

defendant . . . of his right to a jury trial, did not obtain [his] personal waiver of that right, and did not find that there was substantial evidence that [the defendant] lacked the capacity to make a knowing and voluntary waiver." (*Id.* at pp. 1116–1117.) Thus, the trial court erred in conducting a bench trial that continued the defendant's commitment. (*Id.* at p. 1117.) The court construed the statutory provisions applicable to an MDO to require an MDO defendant to personally waive his or her right to a jury trial before the court may hold a bench trial, unless the defendant lacks capacity to make a knowing and voluntary waiver. (*Id.* at pp. 1124–1125.) In an MDO proceeding, the error is a " 'miscarriage of justice' within the meaning of California Constitution, article IV, section 13 and requires reversal without inquiry into the strength of the evidence in a particular case." (*Id.* at pp. 1132–1133.)

However, the high court noted the doctrine of harmless error "does have applicability in this context" in a limited sense. (*Blackburn, supra,* 61 Cal.4th at p. 1136.) In addition to substantial evidence of a defendant's lack of capacity to make a knowing and voluntary waiver, "a trial court's acceptance of a defendant's personal waiver without an express advisement may be deemed harmless if the record affirmatively shows, based on the totality of the circumstances, that the defendant's waiver was knowing and voluntary." (*Ibid.*)

In *Conservatorship of C.O.* (2021) 71 Cal.App.5th 894, 902 (*C.O.*), the Court of Appeal found harmless error where the trial court failed to make a jury trial advisement in an LPS conservator reappointment proceeding after the conservatee's counsel announced on the record, " 'I have spoken to all of my clients, have informed them of their right to be present, the right to have a . . . jury trial, a court trial, or a summary hearing. And unless otherwise stated, they've waived these rights.' "

The *C.O.* court analyzed Probate Code section 1828, subdivision (a)(6), and concluded this provision requires the trial court to directly advise the proposed LPS conservatee on the record of his or her right to have the matter of the

reestablishment of the conservatorship decided by jury trial. The trial court failed to do so, which was statutory error. However, the appellate court determined the error was harmless because the record affirmatively showed C.O. knowingly and voluntarily waived the right to jury trial. Substantial evidence supporting the trial court's implied finding that C.O. knowingly and voluntarily waived his right to jury trial included a citation mailed to him that explained his right to a jury trial, the evidence that his counsel informed him of his right to jury trial, his presence at the hearing when his counsel stated he wanted to proceed by court trial, and evidence of his communications with his counsel as to how he wished to proceed. (*C.O., supra,* 71 Cal.App.5th at pp. 918–919.)

The *C.O.* court analyzed in detail the conservatee's argument the trial court was required to obtain a personal waiver of the jury trial right from the conservatee himself, rather than his lawyer. The court concluded no such language was contained in the applicable Probate Code provisions, therefore, "(absent circumstances suggesting the proposed conservatee's counsel lacked actual authority, counsel disregarded his client's wishes, or that the proposed conservatee was actually unaware of his right to a trial by jury) counsel may waive on behalf of the proposed conservatee his or her right to have the matter of establishment or reestablishment of the conservatorship decided by jury trial." (*C.O., supra,* 71 Cal.App.5th at p. 911; see also *Conservatorship of Mary K.* (1991) 234 Cal.App.3d 265, 271 [finding counsel may waive a proposed conservatee's right to jury trial where counsel stated he had spoken with his client, and she wished to waive a jury trial].)

The *C.O.* court distinguished *Conservatorship of Heather W.* (2016) 245 Cal.App.4th 378, involving proceedings under the LPS Act, because in *Heather W.* "there was no indication in the trial court proceedings in that case of the proposed conservatee's wishes or any evidence that the conservatee's attorney had consulted with the conservatee." (*C.O., supra,* 71 Cal.App.5th at p. 913.)

In another case decided under the LPS Act, *Conservatorship of Kevin A.* (2015) 240 Cal.App.4th 1241, the court concluded automatic reversal was required where the proposed conservatee objected to his counsel's waiver of a jury trial. The court made no specific finding Kevin A. lacked the capacity to decide for himself whether the proceed before a jury, and the court's cursory reference to his counsel acting in his best interest was insufficient. (*Id.* at p. 1251.)

Guided by the above authorities, we review appellant's statutory claims de novo. (*C.O., supra,* 71 Cal.App.5th at p. 904.) We review for substantial evidence the trial court's implied finding appellant's waiver of her right to a jury trial was knowing and voluntary. (*Id.* at p. 918.) We uphold the validity of a jury waiver if the record affirmatively shows it is voluntary and intelligent under the totality of the circumstances. (*People v. Collins* (2001) 26 Cal.4th 297, 310.)

II. Analysis

A. *Advisement on the record of right to jury trial*

The record shows the trial court did not directly advise appellant of her right to a jury trial in this matter concerning reestablishment of the conservatorship. This was statutory error. (*C.O., supra,* 71 Cal.App.5th at p. 909.)

However, the advisement error does not require reversal of the judgment under the circumstances of this case. At the trial setting hearing, in the presence of appellant, appellant's trial counsel advised the court she had spoken with appellant, who was requesting a court trial. The trial court then accepted the jury trial waiver based on counsel's representation. The court set the trial date and ordered transportation for appellant. The court spoke directly to appellant, stating the court would see appellant back on the trial date. Additional discussion ensued regarding appellant's complaints of the staff at her placement. Appellant was present and directly addressed by the court at various times throughout the proceedings.

At the commencement of the November 12, 2024 court trial, appellant appeared remotely. The court noted the parties had

begun with a discussion off the record, explaining, "we discussed with [appellant] off the record if she wanted to proceed today with her trial, and she indicated she would like to get it done today." Thus, the trial court proceeded in accordance with appellant's express wishes.

The record shows appellant was engaged throughout the trial. Appellant was sworn and testified, answering direct questions from the trial court, and asked the court directly if she was still under conservatorship.

The record thus affirmatively demonstrates appellant's waiver was knowing and voluntary. Appellant's counsel informed the trial court, in the presence of appellant, that she had spoken with appellant about how appellant wanted to proceed. Counsel then affirmatively represented that appellant wanted to proceed by means of a court trial. Appellant expressed no disagreement or indication her counsel's statement was contrary to her wishes.[2] The court stated on the record that it had participated in proceedings off the record in which appellant indicated she wanted to get her trial done that day. Again, appellant did not express any disagreement. Appellant was present and participated throughout both the trial setting hearing and the trial. Under these circumstances, the error was not automatically reversible. Instead, we must determine whether the error was prejudicial.

" '[California Constitution,] article VI, section 13 generally "prohibits a reviewing court from setting aside a judgment due to trial court error unless it finds the error prejudicial." ' " (*C.O., supra,* 71 Cal.App.5th at pp. 917–918.) This provision requires us to determine whether the error resulted in a miscarriage of justice. (*Id.* at p. 918.) "In the absence of structural error, the *Watson* standard for demonstrating prejudice controls." (*People*

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[2] During the proceedings appellant did not show any reluctance to speak up when she was in disagreement with something said. At one point, she interrupted Dr. Arom's testimony to say, "That's a lie."

v. Anzalone (2013) 56 Cal.4th 545, 555.)[3] The *Watson* standard requires us to determine whether it is reasonably probable that a result more favorable to appellant would have been reached in the absence of the error. (*C.O., supra*, at p. 917.)

Nothing in the record suggests appellant would have chosen a jury trial over a court trial if the trial court had advised her personally of her right to a jury trial. Appellant's counsel had already informed appellant of this right, and appellant voluntarily elected to proceed by court trial.

Furthermore, appellant does not dispute the evidence relied on by the trial court in determining appellant is gravely disabled. Such evidence, including the testimony of both Dr. Arom and of appellant, supports the conclusion appellant remained gravely disabled at the time of trial. Thus, it is not reasonably probable an outcome more favorable to appellant would have resulted had the trial court personally advised her of her jury trial right. On this record the omission of the jury trial advisement was harmless.

B. *Personal waiver of right to jury trial*

Appellant points to no specific provision of the relevant statutes addressing waiver of the right to a jury trial. Instead, appellant relies on *Blackburn, supra,* 61 Cal.4th 1113 (addressing proceedings concerning an MDO defendant) and *People v. Tran* (2015) 61 Cal.4th 1160 (addressing proceedings for the extension of a commitment under the not guilty by reason of insanity (NGI) statute).

The Penal Code provisions addressing MDO and NGI proceedings are distinct from those at issue here. As discussed at length in *C.O.*, there is an "absence of specific language in [Welfare and Institutions Code] section 5350 or the applicable Probate Code provisions" referencing waiver. (*C.O., supra,* 71 Cal.App.5th at p. 911.) In short, there is "no basis in the language of the LPS Act for a requirement that the trial court

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[3] *People v. Watson* (1956) 46 Cal.2d 818, 836.

obtain a personal waiver of jury trial from the proposed conservatee when, as here, that conservatee's attorney has spoken with the conservatee, has so informed the court, and waived jury on [her] behalf." (*C.O.,* at p. 912.)

The trial court did not err in failing to obtain a personal waiver of a jury trial from appellant. It properly obtained such a waiver from appellant's counsel.

DISPOSITION

The order is affirmed.

CHAVEZ, J.

We concur:

LUI, P. J.

RICHARDSON, J.