STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0523

In the Matter of the Civil Commitment of:
Brian James Turner.

Filed September 14, 2020
Affirmed
Smith, Tracy M., Judge

Cass County District Court
File No. 11-PR-19-2239

Jean Gustafson, Brainerd, Minnesota (for appellant Brian James Turner)

Keith Ellison, Attorney General, Brandon Boese, Assistant Attorney General, St. Paul, Minnesota (for respondent Dr. Chad Erickson, M.D., on behalf of Minnesota Department of Human Services' Forensic Services)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

In the absence of a request for a substitute decision-maker, Minn. Stat. § 253B.092 (2018) does not require that the district court consider whether to appoint a substitute decision-maker before it orders the involuntary administration of neuroleptic medication to a patient subject to civil commitment.

O P I N I O N

SMITH, TRACY M., Judge

Appellant Brian James Turner challenges the district court's grant of an order for the involuntary administration of neuroleptic medications pursuant to Minn. Stat. § 253B.092, arguing that the district court erred by issuing the order without first

considering whether to appoint a substitute decision-maker for Turner. Because the statute does not require the district court to consider the appointment of a substitute decision-maker in the absence of a request, we affirm.

FACTS

Turner was civilly committed to the custody of the Commissioner of the Department of Human Services (DHS) on January 23, 2020. Turner is 26 years old and has a history of schizophrenia, which led to two prior civil commitments. When untreated, his mental illness manifests in psychosis and paranoia. After Turner was released from a previous commitment, he went to live with his parents and, while there, stopped taking his prescribed medication. He then began experiencing hallucinations and paranoia, which led to erratic and at times aggressive behavior. As a result, the district court ordered the current civil commitment and Turner was placed at the Community Behavioral Health Hospital in Bemidji (CBHH-Bemidji).

About a week after he was committed, Turner's treating psychiatrist at CBHH-Bemidji, Dr. Chad Erickson, filed a petition on behalf of respondent DHS asking the district court to authorize involuntary administration of neuroleptic medication to Turner. Neuroleptic medications, as explained by Dr. Erickson, are medications used to "improve mental functioning through a decrease in the psychotic symptoms of mental illness, including psychotic thinking, distorted perceptions, emotional disturbance, and pathological behaviors." Turner had refused to take any neuroleptic medications because he did not believe that they would help him, because he did not believe that he was mentally ill.

The district court held an evidentiary hearing on the petition and heard testimony from Dr. Erickson, a court-appointed examiner, and Turner. Dr. Erickson explained that he had treated Turner in the past and that Turner previously responded well to neuroleptic medications, specifically two medications. Dr. Erickson testified that, to his knowledge, Turner had not suffered adverse side effects from either medication. He explained that neuroleptic medications were the best treatment option for Turner in his current state and that alternative treatments such as therapy would not suffice due to Turner's degree of psychosis. He also opined that Turner was not presently capable of understanding the risks and benefits of neuroleptic medications because his schizophrenia greatly impaired his insight and decision-making abilities on the matter.

The court-appointed examiner agreed with Dr. Erickson's diagnosis of schizophrenia and similarly concluded that Turner lacked insight into his mental illness and need for medication. The court-appointed examiner testified that, although some of the concerns that Turner expressed about side effects of medications were well founded, Turner had not communicated past symptoms to his care team and, on the whole, lacked the capacity to make a reasoned decision.

Turner testified that he would not consent to neuroleptic medications because "[t]here is no good effect from medications." He claimed that taking one of the medications in the past had resulted in weight gain and trouble sleeping and had yielded no benefits. As to other potential neuroleptic medications, he stated that he would not consent to try a new medication because he did not need it.

The district court granted the petition from the bench at the close of the evidentiary hearing. In its findings of fact, conclusions of law, and order that followed, the district court found that that Dr. Erickson and the court-appointed examiner gave credible testimony. The district court determined that Turner lacked insight into his schizophrenia and that he could not determine whether neuroleptic medication was reasonable and necessary. The district court concluded that there were no other available alternative treatments, that the benefits of treatment with neuroleptic medication clearly outweighed the risks and intrusiveness, and that the treatment of Turner's mental illness with neuroleptic medications was reasonable and necessary. The district court's order authorizes the involuntary administration of five specific medications, in order to allow flexibility if Turner does not respond well to one option, and directs that the two that have worked for Turner in the past be tried first.

This appeal follows.

ISSUE

Did the district court err by authorizing involuntary treatment with neuroleptic medication without first considering whether to appoint a substitute decision-maker?

ANALYSIS

Turner argues that the district court should have considered appointing a substitute decision-maker before it authorized treatment with neuroleptic medications.[1] As an initial

[1] DHS notes that Turner's brief could potentially be interpreted as also raising a sufficiency-of-the-evidence argument—specifically, in the statement-of-the-issues section—and it responds to such an argument "out of an abundance of caution." But we do not agree that Turner's brief shows an intent to assert that issue, and, even if Turner

matter, Turner did not raise the substitute-decision-maker issue in the district court. Minn. Stat. § 253B.092, subd. 6, instructs that a substitute decision-maker shall be appointed by the court "*[u]pon request of any person*, and upon a showing that administration of neuroleptic medications may be recommended and that the person may lack capacity to make decisions regarding the administration of neuroleptic medication." (Emphasis added.) Turner neither requested a substitute decision-maker nor argued that one should be considered in connection with Dr. Erickson's petition. Appellate courts generally will not consider matters not argued to and considered by a district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But this rule is not "ironclad." *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002). Because the issue presented is one of statutory interpretation that does not depend on any disputed facts, and because DHS thoroughly briefed it, we consider it here. *See Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687-88 (Minn. 1997) (deciding new issue on appeal when the facts were undisputed and the issue was raised prominently in the appellate briefing, was an issue of first impression, and involved a statute-based theory).

Turner argues that the structure of Minn. Stat. § 253B.092 requires that, before judicial authorization to administer neuroleptic medication may be sought, the options

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intended to raise it, an argument based on a mere assertion of error is forfeited. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). We thus decline to evaluate a sufficiency-of-the-evidence argument in the absence of adequate briefing. *See In re Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) ("Minnesota appellate courts decline to reach an issue in the absence of adequate briefing."), *review denied* (Minn. June 20, 2017).

outlined in subdivision 2 to administer it *without* judicial review must first be exhausted. *See* Minn. Stat. § 253B.092. One of those options is consent by a substitute decision-maker.

Statutory interpretation is a legal question subject to de novo review. *In re Civil Commitment of Ince*, 847 N.W.2d 13, 20 (Minn. 2014). The purpose of statutory interpretation is to determine the legislature's intent. Minn. Stat. § 645.16 (2018). To discern the legislature's intent, courts look to the plain language of the statute and ask whether the plain language is ambiguous. *Christianson v. Henke*, 831 N.W.2d 532, 536-37 (Minn. 2013). A statute is ambiguous if it is subject to multiple reasonable interpretations. *Id.* at 537. We construe the words and phrases in the statute "according to rules of grammar and according to their common and approved usage." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (quotation omitted). "In addition, the meaning of a word is informed by how it is used in the context of a statute." *State v. Rogers*, 925 N.W.2d 1, 3 (Minn. 2019). Accordingly, courts "consider a statute as a whole to harmonize and give effect to all its parts." *Id.* (quotation omitted).

If the statute is not ambiguous, courts apply its plain meaning and do not "explore the spirit or purpose of the law." *Christianson*, 831 N.W.2d at 537 (quotation omitted). Similarly, if a statute omits words, courts "cannot read them into an unambiguous statute under the guise of statutory interpretation." *In re Commitment of Breault*, 942 N.W.2d 368, 377 (Minn. App. 2020) (quotation omitted).

Minn. Stat. § 253B.092 establishes rules that govern the administration of neuroleptic medication to patients subject to civil commitment as mentally ill. *See* Minn. Stat. § 253B.092, subd.1. Treatment providers for these patients regularly recommend

neuroleptic medication, which can reduce symptoms of psychosis. *Breault*, 942 N.W.2d at 373. If the patient lacks capacity or refuses to consent, treatment providers may seek a judicial determination. *Id.*

Under section 253B.092, patients are presumed to have capacity to make decisions regarding neuroleptic medication. Minn. Stat. § 253B.092, subd. 5(a). If the district court finds that the patient has capacity, the patient's wishes regarding neuroleptic medication control. *Id.*, subd. 8(d). If the district court finds that the patient lacks capacity, though, and if the patient did not clearly state what they would choose to do at a time when they did have capacity, the district court may determine whether a reasonable person would consent to treatment with neuroleptic medication. *Id.*, subds. 7, 8; *see also Breault*, 942 N.W.2d at 373. Subdivision 7 of section 253B.092 identifies relevant considerations for this determination, including the patient's values, the medical risks and benefits, and the past efficacy of medications. Minn. Stat. § 253B.092, subd. 7(c).

Section 253B.092 also authorizes the administration of neuroleptic medications without district court involvement in several specific situations, including when "a substitute decision-maker appointed by the court consents to the administration of the neuroleptic medication and the patient does not refuse administration of the medication." *Id.*, subd. 2(4). Subdivision 6(a) explains how a substitute decision-maker is appointed:

> Upon request of any person, and upon a showing that administration of neuroleptic medications may be recommended and that the person may lack capacity to make decisions regarding the administration of neuroleptic medication, the court shall appoint a substitute decision-maker with authority to consent to the administration of neuroleptic medication as provided in this section.

Id., subd. 6(a). A substitute decision-maker must apply the same standards listed in subdivision 7 that the district court applies when making decisions regarding the administration of neuroleptic medication. *Id.*, subd. 6(b). While a substitute decision-maker can withhold consent or can consent when the patient does not refuse, the substitute decision-maker's consent cannot override the patient's refusal to take the medication. *Id.*, subds. 2(4), 6(b).

Turner argues that the ordering of the subdivisions in section 253B.092 requires that treatment providers like Dr. Erickson first pursue administration of neuroleptic medications without judicial review under subdivision 2, before pursuing a judicial order for administration of neuroleptic medication under subdivisions 7 and 8. Turner contends that interpreting the statute this way would "set a more defined procedure" and be less intrusive on patients' liberty interests.

DHS responds that nothing in the plain language of the statute supports Turner's argument and that the language of the statute as a whole cuts against Turner's proposed interpretation. After a careful review of section 253B.092, we agree.

First, as DHS points out, the statute only provides for the appointment of a substitute decision-maker "[u]pon the request of any person." *Id.*, subd. 6(a). Nowhere does it require that a district court consider a substitute decision-maker when there has been no request for one. Additionally, the procedure that must be followed when a treatment provider seeks judicial authorization to administer neuroleptic medication is clearly outlined in subdivision 8. Subdivision 8 contains no requirement that the treatment provider first seek

appointment of a substitute decision-maker before requesting judicial authorization. *Id.*, subd. 8.

Second, language throughout section 253B.092 suggests that consideration of a substitute decision-maker is not a necessary prerequisite to judicial authorization to administer neuroleptic medication. *See, e.g.*, Minn. Stat. § 253B.092, subds. 6(d) (stating that, at a hearing on a request for authorization to administer neuroleptic medication, "*[i]f* a substitute decision-maker has been appointed by the court, the court shall make findings regarding the patient's capacity . . . and affirm or reverse its appointment of a substitute decision-maker" (emphasis added)), 7(a) ("When a person lacks capacity to make decisions regarding the administration of neuroleptic medication, the substitute decision-maker *or the court* shall use the standards in this subdivision in making a decision regarding administration of the medication." (emphasis added)).

Third, interpreting the statute as Turner requests would create a futile requirement in cases, such as this one, in which the patient actively refuses neuroleptic medication, because a substitute decision-maker cannot override a patient's express refusal. *Id.*, subds. 2(4), 6(b). Even if the district court had appointed a substitute decision-maker, Dr. Erickson could still have petitioned for and the district court could still have granted the order for the involuntary administration of neuroleptic medication.

In sum, Turner asks this court to read into Minn. Stat. § 253B.092 a procedural requirement that is nowhere to be found in the plain language of the statute. He contends that doing so would afford greater protections to patients refusing treatment with neuroleptic medications. Even if this were true, when a requirement is not present in a

statute, we will not "read [it] into an unambiguous statute under the guise of statutory interpretation." *Breault*, 942 N.W.2d at 377 (quotation omitted). And, while Turner claims that the legislature may have intended to create such a procedural requirement in order to protect patient rights, courts do not explore the purpose of a law in the absence of an ambiguity. *Christianson*, 831 N.W.2d at 537. We accordingly hold that the district court did not err by failing to consider appointing a substitute decision-maker in this case.

Even if we were to interpret the statute as Turner requests, though, he would still not be entitled to relief. If an appellant shows that the district court erred, the mere existence of that error is, by itself, insufficient to require a grant of relief; the appellant must also show that the error was prejudicial. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of rule 61); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) ("Although error may exist, unless the error is prejudicial, no grounds exist for reversal").

Here, Turner contends that a substitute decision-maker should have been requested or considered, but, as explained above, a substitute decision-maker does not have the authority under Minn. Stat. § 253B.092 to override a patient's refusal to accept neuroleptic medications. Minn. Stat. § 253B.092, subds. 2(4), 6(b). Turner expressly refused any neuroleptic medications. Thus, his treating physician's only path to administering medication was to petition for judicial authorization, as he did. The appointment of a substitute decision-maker would have changed nothing, and Turner has accordingly not shown prejudice.

D E C I S I O N

Because no one requested that the district court appoint a substitute decision-maker, the district court did not err by ordering the involuntary administration of neuroleptic medications to Turner without first considering a substitute decision-maker. And, even if it was error, Turner has not shown prejudice.

Affirmed.