IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: J.P.	**: NO. MH 17-80018**
	:
	: Motion for Expungement
	:

OPINION AND ORDER

In the case at bar, J.P. (the "Petitioner") filed a Petition to Vacate and Expunge Involuntary Civil Commitment under 18 Pa.C.S.A. § 6111.1(g)(1) and 18 Pa.C.S.A. § 6111.1 (g)(2). 18 Pa.C.S.A. § 6111.1(g)(2) provides:

> (2) A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act (the "Act") may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged**.** A petition filed under this subsection shall toll the 60–day period set forth under Section 6105(a)(2).

In seeking this Court's review under the above statutory section, the Petitioner has averred "that the procedural, due process requirements…specifically subsection 50 P.S. § 7302 were not complied with during the initial commitment proceeding and that failure of the committing authority to demonstrate strict adherence to the statutory requirements mandates expungement of the above commitment and destruction of the associated records." (Paragraph 3 of the Petition). Further, the Petitioner alleged "that there was no legal basis for an involuntary commitment in accordance with 50 P.S. § 7302" (Paragraph 15 of the Petition) on the grounds that the Petitioner had repeatedly expressed that he would voluntarily sign himself in for treatment.

The Pennsylvania Supreme Court case, In Re Vencil, 152 A. 3d 235 (Pa 2017), clearly sets forth the standard of review to be utilized by a trial court for a petition filed under 18 Pa.C.S.A. §6111.1 (g)(2). Judicial review of the Petitioner's claims under Section 6111.1(g)(2) involves a determination of "the sufficiency of the evidence upon which the commitment was based." *Id.* In conducting the review of the sufficiency of the evidence to support a 302 commitment, the Court is required to review the facts in the light most favorable to the original decision-maker. *See Id* at 243 *citing* Commonwealth v. Woodard, 129 A.3d 480, 489–90 (Pa 2015) (same for a state criminal conviction); In re Johnson, 284 A.2d 780, 781 (Pa 1971) (same for an adjudication of delinquency); Samuel–Bassett v. Kia Motors Am., Inc., 34 A.3d 1, 34 (Pa 2011) (providing that for a civil action, a reviewing court must examine the record in the light most favorable to the verdict winner to determine "whether the evidence was sufficient to enable the factfinder to find that all the elements of the causes of action were established by a preponderance of the evidence"); Office of Disciplinary Counsel v. DiAngelus, 907 A.2d 452, 456 (Pa 2006) (explaining that sufficiency of the evidence for attorney discipline matters are reviewed with "substantial deference" to the findings of the Hearing Committee and the Disciplinary Board to determine whether unprofessional conduct was proven to meet the evidentiary standard).

The "evidence upon which the commitment was based" that is subject to review is the information contained in the physician's record of the examination of the individual and the resultant findings. *See Id citing* 50 P.S. § 7302(b) (requiring the physician to make a record of the examination and his or her findings). It is the information known at the time of the commitment that is to be reviewed to determine if the commitment was supported by the evidence. It is not a trial de novo to determine if additional information exists to support or reject a 302 commitment. A physician's findings, made at the time of the commitment, to

determine whether the evidence known by the physician at the time, as contained in the contemporaneously-created record, supports the conclusion that the individual required commitment under one (or more) of the specific, statutorily-defined circumstances. *See* 50 P.S. § 7301." *Id* at 242.

The *In Re Vencil* Court reiterated the appropriate trial court review at the end of its opinion:

> As such, under section 6111.1(g)(2), a challenge to the sufficiency of the evidence to support a 302 commitment presents a pure question of law, and the court's sole concern is whether, based on the findings recorded by the physician and the information he or she relied upon in arriving at those findings, the precise, legislatively-defined prerequisites for a 302 commitment have been satisfied and are supported by a preponderance of the evidence. We emphasize that the trial court's review is limited to the findings recorded by the physician and the information he or she relied upon in arriving at those findings, and requires deference to the physician, as the original factfinder, as the physician examined and evaluated the individual in the first instance, was able to observe his or her demeanor, and has particularized training, knowledge and experience regarding whether a 302 commitment is medically necessary. *Id* at 246.

As stated above, this Court's focus in a review of a 302 commitment under section 6111.1(g)(2), is on the contemporaneously-created record to determine if it is sufficient to support the conclusion that the individual required commitment under one (or more) of the specific, statutorily-defined circumstances. The Pennsylvania Superior Court has addressed the standard for the sufficiency of evidence to support a 302 commitment. In Commonwealth v. Smerconish, the Superior Court set forth the standard as follows:

> In *Commonwealth v. Jackson,* 62 A.3d 433 (Pa.Super.2013), this Court recognized:

> The leading case on the sufficiency of a 302 warrant is *In re J.M.,* 556 Pa. 63, 726 A.2d 1041 (1999). Our Supreme Court held therein that the standard for evaluating the validity of such documents is whether reasonable grounds exist to believe that a person is severely mentally disabled and in need of immediate treatment, a standard that is "clearly less exacting than the probable cause standard." *Id.* at 1049. Such a warrant may be based upon hearsay "in light of the emergency nature, therapeutic purpose and short duration" of a section 302 commitment. *Id.* at 1046–47 n. 9. The "guiding inquiry" is whether, "when viewing the surrounding facts and circumstances, a reasonable person in the position of the applicant for a section 7302 warrant could have concluded that an individual was severely mentally disabled and in need of immediate treatment." *Id.* Smerconish 112 A.3d 1260, 1264.

With the above guidance in mind, this Court now turns to the facts of this particular 302 commitment. It is undisputed that a 302 commitment was issued for the Petitioner on May 16, 2017. Additionally, the testimony and exhibits established certain background facts related to the matter. The Petitioner's girlfriend, B. S., completed and signed the Application for Involuntary Emergency Examination and Treatment ("302 Commitment") paperwork. Respondent's Exhibit 1. The 302 Commitment stated the Petitioner's specific behavior that supports the need for a 302 commitment as:

> "J. P. has become increasingly depressed for the past six months since resigning from his job. He frequently makes statements about suicide. e.g. "I'm depressed…I'm so embarrassed by all of this I just want to die." Today we were fighting about his drinking. He responded by stating "I'll just kill myself." He then grabbed a sharp knife + then went to the bathroom. He then tried to get into the shower. I was able to catch up him before he got into the shower + I was able to pry the knife from his hand. I then called 911. He was taken to the E.R. by the police." Respondent's Exhibit 1.

The Petitioner called B.S. as a witness. B. S.'s testimony confirmed the statements she made in the 302 Commitment. Additionally, B. S. testified she was

told that the 302 Commitment would only be utilized if the Petitioner refused to undergo treatment voluntarily.

Further, the record indicates the Petitioner arrived at the Williamsport Hospital Emergency Room at 3:40 PM and was examined by Dr. Brian Rader at 3:45 PM. Respondent's Exhibit 1, Part VI. Dr. Rader's notes under the "Results of Examination" state:

> Increasing depression over loss of job. Making suicidal gestures. ↑ alcohol abuse lack of insight. Danger to self + potentially others. Threatened self harm knife today, making suicidal statements. Respondent's Exhibit 1, Part VI

Under treatment needed section of Part VI of Respondent's Exhibit 1, Dr. Rader wrote: "Requires psychiatric care in 24◦ locked facility for pt safety".

The above statements and evaluation notes support that on May 16, 2017 the Petitioner was severely mentally disabled and in need of immediate treatment that justified a commitment under section 7302 of the Act. It is clear that the Petitioner's actions, documented in the 302 Commitment paperwork, meet the definition of a "clear and present danger" in Section 7301 of the Act. Additionally, the Petitioner did not dispute the need for psychiatric care. Thus, the record supports a 302 commitment. The Petitioner challenges the 302 commitment on the basis that it was unnecessary because the Petitioner had voluntarily agreed to undergo psychiatric care. Instead of a 302 commitment, the Petitioner contends that the treatment should have been considered a voluntary commitment under Section 201 of the Act.

Turning to the issue of whether or not the Petitioner voluntarily agreed to undergo treatment, the Court must review the medical records in the light most favorable to the original decision maker. *In re Vencil* at 242 and 246. The Respondent submitted to the Court a copy of the emergency room clinical report for the Petitioner on May 16th and 17th of 2017. Respondent Exhibit 4. The Clinical

Report included the notes of the physicians and nurses who provided care to the Petitioner. The entry on page 7 of the physicians' Clinical Report at 14:34 5/16/17 states:

> "Patient was uncooperative at first when he saw that he had no choice in the matter because a 302 was in progress he showed signs of rational thinking by stating he wanted to sign himself in so he would still be allowed to own guns. Dr. Gerst will discuss this further with ARC. Patient will sign himself in but there is a 302 if the patient decides he does not want to come in to the hospital for care.

Despite the indication that the patient was willing to voluntarily undergo treatment, the next entry states: "Patient is currently stating that he is leaving and needed to be locked in room # 20, patient is aggravated and being uncooperative." This entry was only six minutes after the Petitioner indicated he would voluntarily stay for treatment. While the Petitioner did at times raise the possibility of a voluntary treatment commitment, the Clinical Reports are replete with entries wherein the Petitioner was uncooperative and/or expressed his intention and desire to leave to go home. For example, the entry for 3:01 5/17/17 states: "PT states he wants to go home. PT states that "this is ridiculous". PT does not want to talk to crisis worker." Also, see entries at 14:45 5/16/17, 00:26 5/17/17, and 8:56 5/17/17. Additionally, the Clinical Report includes an entry that states "that a 201 was not signed by pt [patient]". See 9:19 5/17/17 entry. Similarly, the police reports related to the matter reflect the Petitioner was uncooperative and expressed his desire to leave the hospital. Respondent's Exhibit 5.

In viewing the entries in the Clinical Reports in the light most favorable to the original decision maker, the record reflects there was sufficient evidence to support the commitment of the Petitioner under Section 302 of the Act. The record is clear that the Petitioner did raise the possibility of a voluntary commitment. The medical providers were aware and noted this possibility. However, there were multiple

statements that 302 commitment paperwork had been completed in case the Petitioner refused to go through with the voluntary treatment. Furthermore, the medical records indicate that the patient never signed a 201 voluntary commitment form. As stated above, the medical records reflect the Petitioner was uncooperative on several occasions regarding treatment. The medical records support that the treating physician made the determination that the 302 commitment was necessary based upon the Petitioner's condition and uncooperativeness. Therefore, this Court must deny the Petition to Vacate and Expunge Involuntary Commitment in this case.

BY THE COURT,

_____
Ryan M. Tira, Judge

cc: Charles Greevy, Esquire
Don Martino, Esquire
Gary L. Weber, Esquire, Lycoming Reporter