SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0435-16T4

IN THE MATTER OF THE
CIVIL COMMITMENT OF M.C.

Submitted November 8, 2017 – Decided December 4, 2017

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. ESCC-1134-2016.

Joseph E. Krakora, Public Defender, attorney for appellant M.C. (Richard I. Friedman, Assistant Deputy Public Defender, on the briefs).

Courtney M. Gaccione, Essex County Counsel, attorney for State of New Jersey/County of Essex (Thomas M. Bachman, Assistant County Counsel, of counsel and on the brief).

PER CURIAM

M.C., who was previously involuntarily committed to a psychiatric hospital, appeals from an August 23, 2016 order placing him on conditional extension pending placement (CEPP). See R. 4:74-7(h)(2). He contends that, because there was no evidence that he was dangerous to himself or others at the time of the

hearing, and his sister was willing to provide him a place to live and make sure that he obtained any necessary outpatient treatment, the court should have ordered his release.

Based on our review of the record, we conclude that the trial court's decision was unsupported by the record and was inconsistent with well-established case law concerning the permissible use of CEPP as a disposition in a civil commitment case. Because there was no expert testimony that M.C. was currently dangerous to himself or others, and he had an immediately available place to live in the community, the court should have ordered his release subject to conditions, rather than continuing his involuntary commitment. Accordingly, we reverse the order on appeal.

Contrary to the State's argument, although M.C. has since been released, the appeal is not moot, because absent the relief we provide here, M.C. will remain liable for the cost of his hospitalization. See N.J.S.A. 30:4-80.1; In re Commitment of B.L., 346 N.J. Super. 285, 292 (App. Div. 2002). Consistent with this opinion, we hold that M.C. is not financially responsible for his hospitalization costs between August 23, 2016 and the date of his release, and the State must promptly discharge any lien corresponding to that debt.

As our Supreme Court cautioned decades ago, CEPP is only appropriate where a psychiatric patient cannot safely survive in

the community without an appropriate placement and such a placement is not yet available. In re S.L., 94 N.J. 128, 137-38 (1983). CEPP is not a constitutionally permissible option where a patient is "capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." Ibid.; see also In re G.G., 272 N.J. Super. 597, 603 (App. Div. 1994).

Once a patient has such a community placement available, he or she must be released within forty-eight hours after the hearing. N.J.S.A. 30:4-27.15(b). We have repeatedly emphasized that CEPP is not appropriate as a means of giving the hospital's staff extra time to make arrangements for outpatient treatment.

> We have stressed that "CEPP is not intended as a means for extending an involuntary commitment simply because the hospital has not yet arranged for the periodic follow-up care of a patient not found to be a danger to self, others or property." And, we have cautioned that use of "that erroneous approach . . . devalue[s] [the patient's] constitutional right to liberty." . . . Thus, CEPP is not a fallback option when the [S]tate cannot implement a discharge plan within forty-eight hours, and CEPP is not a means through which the judge may delay a conditional release.
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> [In re T.J., 401 N.J. Super. 111, 124 (App. Div. 2008) (quoting In re M.C., 385 N.J. Super. 151, 162 (App. Div. 2006)); see also B.L., supra, 346 N.J. Super. at 348.]

Against that legal backdrop, we briefly summarize the limited record placed before us. M.C. suffers from chronic paranoid

schizophrenia, with alcohol abuse. He was hospitalized on June 17, 2016, because he was hearing voices telling him to hurt himself, and an initial order of involuntary commitment was entered on June 20, 2016. By the time of the review hearing on August 23, 2016, his psychiatric condition had improved to the point where he no longer posed a danger and he was no longer legally committable. However, his treating psychiatrist testified that she wanted M.C. to remain in the hospital for several more weeks so that she could monitor his response to his dosage of clozapine. She admitted that medical monitoring, including weekly blood testing and administration of the medication, could be performed in the community, but she asked the judge to place M.C. on CEPP status: "The only reason being that I want him to wait until we make proper arrangements for blood work and clozapine medication follow up."

M.C.'s sister appeared at the hearing and testified that she was immediately willing to take him home with her, let him live with her, and "take him to the doctor and get blood work every week." However, the doctor asserted that it would take a month to six weeks to identify an outpatient mental health facility in the sister's neighborhood and to determine whether M.C. had unspecified "benefits" to obtain outpatient treatment.

There was no testimony that any member of the hospital staff had made any efforts, prior to the hearing, to identify a community mental health facility in the sister's neighborhood. Nor was there any explanation as to what "benefits" M.C. would need in order to obtain blood tests or medication monitoring at such a facility, or why it would take a month to six weeks to determine the location of a facility and find out whether the facility would provide him with care.

On this record, we cannot find that the State met its burden of proving, by clear and convincing evidence, that there was a continued need to deprive M.C. of his liberty. See N.J.S.A. 30:4-27.15(a) (The State's burden of proof is by clear and convincing evidence.). M.C. had a supportive family member ready to take him into her home and supervise his outpatient care. If the court was persuaded that M.C. needed follow-up outpatient care to avoid "a high risk of rehospitalization," the appropriate procedure was to order his release on condition that he obtain that care in the community. See N.J.S.A. 30:4-27.15(c) (authorizing conditional release). "[T]he trial court's fear of [the patient's] potential relapse without specific aftercare placements designed by the [hospital staff], however well-intentioned, is legally insufficient to continue his hospitalization." T.J., supra, 401 N.J. Super. at 123.

In conclusion, we cannot accord our usual deference to the trial court's decision here, because the evidence did not legally justify the order keeping M.C. involuntarily confined on CEPP status.[1] See In re D.C., 146 N.J. 31, 58-59 (1996) (Deference is due to the trial court's decision unless it was "clearly erroneous.").

Reversed.

[1] To the extent not specifically addressed here, the State's appellate arguments, including its contention that M.C. failed to "waive" his alleged "right" to remain in the hospital on CEPP status, are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).