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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 30, 2026
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In re MDM.

No. 377026
Delta Probate Court
LC No. 2024-000636-MI

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

In this civil commitment action under the Mental Health Code, MCL 330.1001 *et seq*., respondent appeals as of right the probate court's order requiring him to participate in certain mental health services. For the reasons set forth in this opinion, we affirm in part and remand in part.

I. BACKGROUND

This appeal arises from a petition for mental health treatment, predicated on alarming threats made by respondent, including intentions to "shoot up" his house and "pistol whip" his mother. Additionally, respondent was reported to have attempted to assault his girlfriend while preventing her from calling the police. In light of these serious allegations, the probate court ordered respondent into protective custody where he was evaluated by a physician and two psychiatrists. Initially, respondent chose to defer the hearing on the petition, agreeing to a comprehensive treatment plan involving both hospitalization and outpatient services for a period of 180 days. However, when he subsequently refused to comply with prescribed psychiatric medication, his case manager sought a hearing to reassess the situation. Approximately six months after the original petition was filed, the probate court conducted a hearing where psychiatrist Dr. Jonathan Harbin provided testimony about the evaluation of respondent and the associated allegations. Dr. Harbin diagnosed respondent with "Unspecified Psychotic Disorder," citing his previous hospitalization related to paranoia and respondent's inability to recall the events outlined in the petition. He characterized respondent as "disorganized, paranoid, and threatening" based on his medical records. Despite Dr. Harbin's lack of recent contact with respondent, he expressed reasonable concerns about the possibility of imminent harm to respondent or others.

At the hearing, the lack of effective representation appeared glaring: respondent's appointed counsel did not deliver opening or closing statements, nor did he call any witnesses or present evidence. His limited cross-examination of the petitioner's witnesses solely addressed respondent's compliance with mental health directives. Ultimately, the probate court concluded that Dr. Harbin's testimony substantiated the claim that respondent was a person requiring treatment under MCL 330.1401(1)(a) and (c). The court ordered respondent to undergo hospitalization for up to 60 days, followed by assisted outpatient treatment for 180 days, authorizing healthcare providers to administer injectable medication if the respondent refused oral medication. Both respondent and his mother requested an opportunity to speak after the court's findings but were directed to communicate through respondent's attorney. Following the hearing, respondent wrote to the probate court expressing his desire to appeal the order. He claimed inadequate defense and limited opportunities to represent himself. Subsequently, he filed a pro se motion for a new trial, asserting ineffective assistance of counsel. However, the probate court failed to respond to this motion, leading to the current appeal. On appeal, respondent contends that he was denied effective assistance of counsel.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

On appeal, respondent argues that he was denied effective assistance of counsel. "The question whether defense counsel performed ineffectively is a mixed question of law and fact; this Court reviews for clear error the [lower] court's findings of fact and reviews de novo questions of constitutional law." *In re Londowski*, 340 Mich App 495, 516; 986 NW2d 659 (2022) (quotation marks and citation omitted). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made." *People v Blevins*, 314 Mich App 339, 348-349; 886 NW2d 456 (2016). Because the probate court did not hold an evidentiary hearing, our review is limited to "errors apparent on the record." *Londowski*, 340 Mich App at 516 (quotation marks and citation omitted). However, we retain authority to remand for an evidentiary hearing if necessary. *Id*.

To establish a claim of ineffective assistance, respondent must first demonstrate that counsel's performance fell below an objective standard of reasonableness. He must also prove that such deficiencies resulted in prejudice that compromised the fairness of the hearing's outcome. In this instance, the respondent argues that his attorney's performance was inadequate in several critical respects: (1) the failure to investigate or present relevant witnesses, (2) inadequate cross-examination of witnesses, (3) the absence of any evidence or legal arguments presented, and (4) ineffective communication with the respondent, denying him the chance to assert his position.

Individuals subject to a civil commitment petition have a right to the effective assistance of counsel. *Id*. at 515. To establish a claim of ineffective assistance of counsel, a respondent must first "show that counsel's performance was deficient under an objective standard of reasonableness." *Id.* (quotation marks and citation omitted). In other words, respondent must show "that counsel made errors so serious that counsel was not functioning as the counsel guaranteed by due process." *Id.* (quotation marks and citation omitted). Additionally, "the respondent must show prejudice by demonstrating that counsel's errors were so serious as to deprive the [respondent] of a fair [hearing] . . . whose result is reliable." *Id*. (quotation marks and citations omitted; alterations in original).

On appeal, respondent specifically argues that his attorney's performance was deficient because he failed to (1) investigate or present witnesses, (2) adequately cross-examine witnesses, (3) present any evidence or arguments, (4) properly communicate with respondent, or allow respondent to speak. Most of the alleged errors, if true, generally constitute a failure to advocate for respondent's preferred position, as required by MCR 5.732(B). See *Londowski*, 340 Mich App at 516. Under MCR 5.732(B), "[t]he attorney must serve as an advocate for the individual's preferred position. If the individual does not express a preference, the attorney must advocate for the position that the attorney believes is in the individual's best interest."

We have previously recognized "the relatively undeveloped state of Michigan law regarding the due-process right to the effective assistance of counsel in civil commitment proceedings." *Id*. at 518. In *Londowski*, this Court remanded the case to the probate court for an evidentiary hearing, evidently because there was insufficient evidence in the limited record to support the ineffective-assistance claim. See *id*. at 517-519. However, this Court declined to remand the only other published case on this issue because the record contained sufficient evidence of counsel's state of mind to rebut the respondent's claim of ineffective assistance. See *In re MAT*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 369255); slip op at 9-10 (finding that counsel's failure to request a jury trial was not unreasonable because, as far as counsel knew, respondent had withdrawn her request for a jury trial).

Here, the record demonstrates that respondent's counsel may have abdicated the fundamental responsibilities of representation guaranteed by the Michigan and United States Constitutions. Counsel's failure to raise any arguments, present any witnesses, or meaningfully cross-examine those called by the petitioner—beyond the narrow issue of respondent's alleged noncompliance with the treatment order—may constitute a wholesale forfeiture of advocacy. This potential abdication would not merely be a lapse in trial tactics, but a deprivation that undermines the adversarial process itself.

Moreover, counsel's potential failure to certify that he had seen and consulted with respondent, as explicitly required by MCL 330.1454(9), is not a trivial procedural misstep. Rather, it is a statutory safeguard designed to guarantee meaningful communication and effective assistance of counsel in mental health proceedings, where the stakes involve fundamental liberty interests. The absence of this certification supports respondent's assertion that he was unable to communicate with his attorney, thereby compounding the denial of effective representation.

While it is a bedrock principle that courts presume counsel's actions arise from sound trial strategy, this presumption is not irrebuttable. As our Supreme Court made clear in *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012), counsel must undertake reasonable investigations or make prudent decisions rendering further investigation unnecessary. Here, unlike in *MAT*, ___ Mich App ___, slip op at 8-9, there is no evidence—direct or circumstantial—that counsel's inaction stemmed from any articulated or apparent trial strategy. Instead, the record is silent as to any tactical consideration, and the absence of advocacy cannot necessarily be rationalized as sound strategy where no alternatives were pursued or considered based on the record.

These alleged oversights reflect a significant potential failure to advocate effectively for the respondent's interests, as mandated by MCR 5.732(B). Under MCR 5.732(B), attorneys must

serve as advocates for their clients' preferred positions. The apparent lack of robust representation based on the available record in this case raises serious questions about the fundamental fairness of the proceedings and the respondent's right to a just hearing. Given the severe nature of the allegations and the consequential impact of the court's ruling, these deficiencies merit thorough scrutiny. Given these circumstances, the analogy to *Londowski*, 340 Mich App at 517-18, is both apt and controlling. The seeming failure of counsel to fulfill even the most basic functions of representation, coupled with the absence of required statutory certification, calls for an evidentiary hearing. Only a full factual record can allow the court to ascertain whether this was a case of constitutionally ineffective assistance. Therefore, as in *Londowski*, we remand for an evidentiary hearing to develop the record regarding respondent's claims of ineffective assistance of counsel.

III. PERSON REQUIRING TREATMENT

Respondent challenges the trial court's determination that he qualifies as a "person requiring treatment" under MCL 330.1401(1). Statutory interpretation presents a question of law subject to review de novo. *In re Tchakarova*, 328 Mich App 172, 182; 936 NW2d 863 (2019). This Court reviews dispositional rulings of the probate court for an abuse of discretion and underlying factual findings for clear error. *Id*. An abuse of discretion occurs when the probate court's decision falls outside the range of reasonable and principled outcomes. *Id*. A factual finding is clearly erroneous if, after reviewing the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made, even if evidence supports the finding. *Id*.

Under the Mental Health Code, a probate court may order involuntary mental health treatment upon a finding by clear and convincing evidence that the individual is a "person requiring treatment." *Tchakarova*, 328 Mich App at 182-183; MCL 330.1465. As pertinent to this appeal, MCL 330.1401(1) defines "person requiring treatment" as follows:

> (a) An individual who has a mental illness and, as a result of that mental illness, can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in acts or made significant threats substantially supportive of the expectation.
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> * * *
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> (c) An individual who has a mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused a demonstrated unwillingness to voluntarily participate in or adhere to treatment deemed necessary, in the opinion of a competent clinician, to prevent relapse or harmful deterioration of his or her condition, and who presents a substantial risk of significant physical or mental harm to self or others. [MCL 330.1401(a), (c).]

The probate court, after hearing the testimony of Dr. Harbin, concluded that respondent was a person requiring treatment as defined in MCL 330.1401(1)(a) and (c). On appeal, respondent does not challenge the finding that he suffers from a mental illness. Rather, he contends that Dr.

Harbin's testimony was insufficient to establish that respondent presented a risk of harm *at the time of the hearing, sinc*e Dr. Harbin's evaluation occurred nearly six months prior.

Even accepting respondent's premise, a probate court need only find that a respondent satisfies one of the statutory criteria to be determined a person requiring treatment. See MCL 330.1401(1). Notably, MCL 330.1401(1)(c), unlike subsection (a), does not require proof of a reasonable expectation of harm "within the near future." Instead, subsection (c) requires a finding that: (1) respondent has a mental illness; (2) respondent's judgment is so impaired that he lacks understanding of the need for treatment; (3) respondent has demonstrated unwillingness to participate voluntarily in necessary treatment; (4) a competent clinician deems treatment necessary to prevent relapse or deterioration; and (5) respondent presents a substantial risk of significant physical or mental harm to self or others. Dr. Harbin's uncontradicted testimony satisfied each of these elements.

Respondent contends that the probate court improperly relied on inadmissible hearsay when it considered Dr. Harbin's references to the petition's allegations. This argument is without merit. Michigan Rule of Evidence 1101(b)(10) expressly authorizes probate courts to consider hearsay information to the extent it underlies the opinion of a qualified mental health expert. See also *People v Dobek*, 274 Mich App 58, 94; 732 NW2d 546 (2007) ("An expert may base an opinion on facts or data perceived by or made known to the expert at or before the hearing, including inadmissible hearsay, if such facts or data are of a type reasonably relied upon by experts in the field."). The rule recognizes the practical realities of mental health evaluation, where experts necessarily draw upon a diverse array of sources, including hearsay, in forming their clinical assessments. Excluding such information would unduly constrain the fact-finder's ability to assess whether the statutory criteria for involuntary treatment have been met. Accordingly, the probate court did not err in considering the information underlying Dr. Harbin's expert testimony, even if that information included hearsay.

After a thorough review of the record, we are not left with a definite and firm conviction that the probate court clearly erred in its determination that respondent qualified as a person requiring treatment under MCL 330.1401(1). However, our analysis and conclusion on this issue are firmly anchored in the evidence adduced before the probate court and is guided by the principle that appellate courts afford substantial deference to the trial court's findings, particularly with respect to witness credibility and the weighing of evidence. We emphasize, however, that this holding is rendered without prejudice and remains subject to the trial court's subsequent findings of fact and conclusions of law on remand.

If, following the hearing on remand, the probate court concludes that respondent's trial counsel rendered constitutionally deficient performance and that such deficiencies resulted in actual prejudice affecting the fairness or reliability of the outcome, the probate court is authorized to find that the State failed to satisfy its evidentiary burden under the statute. In such circumstances, the probate court may order a new hearing to safeguard the integrity of the proceedings and the rights of respondent. Accordingly, our present disposition does not prejudice any claim or finding by the probate court that, absent the alleged ineffective assistance of counsel, the outcome in the probate court may have been different.

Affirmed in part and remanded in part. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense