

Form #App.R. 15-1

**IN THE INDIANA [SUPREME COURT/ COURT OF APPEALS/TAX COURT]
CAUSE NO. _____**

NAME,)
[Appellant/Petitioner/) [Appeal or petition] from the _____
Plaintiff/Defendant,]) _____ Court.
)
v.) Trial Court case no.: _____
) _____
NAME,)
[Appellee/Respondent/) The Honorable _____
Plaintiff/Defendant.]) _____, Judge.

**APPELLANT'S CASE SUMMARY
(Appearance)**

Party Information

Party or parties that filed Notice of Appeal:

Name: _____
Address: _____

The following party information only if not represented by an attorney:

Tel. No.: _____ Fax No.: _____ E-Mail: _____

Requesting service of orders, opinions and notices of the Court by: E-mail , FAX , or U.S. Mail (choose one)

Attorney or attorneys representing party filing Notice of Appeal, if any [All fields, except FAX, MUST be supplied]:

Name: _____ Attorney # _____
Address: _____
Tel. No.: _____ Fax No.: _____ E-Mail: _____

In forma pauperis: Yes [] No [] (if yes, attach proof of appointment or proof on indigency).

Trial Information

Date case commenced: _____
Date of Judgment/order: _____ (Attach copy of judgment or order appealed from including findings and conclusions (civil) and sentencing order (criminal)
Date Motion to Correct Error denied, or deemed denied, if used: (Attach copy of Motion to Correct Error)
Was case heard by a judicial officer other than a judge? Yes No
If yes, did trial judge sign proposed judgment or order? Yes No
Check the appropriate line(s) to show the ruling being appealed:
 Administrative ruling Injunction Judgment notwithstanding the verdict
 Declaratory judgment Judgment (bench trial) Judgment (probation revocation)
 Directed verdict Judgment (guilty plea) Summary judgment
 Dismissed Judgment (jury verdict)
 Other (specify) _____

Is this a final judgment as to all claims and all parties? Yes No

If no, state the basis on which the judgment/order is immediately appealable.

T.R. 54(B) T.R. 56(C) App.R. 14(A)(1-9)
App.R. 14(B) App.R. 14(C) App.R. 14(D)

Did the trial court issue an order sealing or excluding from public access all or any portion of the trial court records? Yes No

If yes, attach copies of all orders and entries relating to the trial court's decision to seal or exclude information from public access.

Check the appropriate line(s) best describing the nature of the case:

Attorney's fees Education law Professional malpractice
 Child custody/support Employment and labor Real property rights

<input type="checkbox"/> Civil rights	<input type="checkbox"/> Environmental law	<input type="checkbox"/> Sanctions
<input type="checkbox"/> Construction law	<input type="checkbox"/> Equitable distribution	<input type="checkbox"/> Taxation
<input type="checkbox"/> Contempt	<input type="checkbox"/> Guardianship	<input type="checkbox"/> Termination of parental rights
<input type="checkbox"/> Contract law	<input type="checkbox"/> Health care	<input type="checkbox"/> Tort claims act
<input type="checkbox"/> Corporate law	<input type="checkbox"/> Insurance, auto	<input type="checkbox"/> Unemployment compensation
<input type="checkbox"/> Criminal law, Misdemeanor	<input type="checkbox"/> Insurance, other	<input type="checkbox"/> Unfair and deceptive practices
<input type="checkbox"/> Criminal law, habitual felon	<input type="checkbox"/> Intentional torts	<input type="checkbox"/> Utilities
<input type="checkbox"/> Criminal law, probation revocation	<input type="checkbox"/> Juvenile	<input type="checkbox"/> Wills, trusts, estates
<input type="checkbox"/> Criminal law, post conviction relief	<input type="checkbox"/> Landlord/tenant	<input type="checkbox"/> Workers' compensation
Specify _____	<input type="checkbox"/> Municipal law	<input type="checkbox"/> Wrongful death
<input type="checkbox"/> Debtor/creditor rights	<input type="checkbox"/> Negligence	<input type="checkbox"/> Wrongful discharge
<input type="checkbox"/> Dissolution of marriage	<input type="checkbox"/> Paternity	<input type="checkbox"/> Zoning/annexation
<input type="checkbox"/> Driver's license revocation	<input type="checkbox"/> Products liability	
<input type="checkbox"/> Other _____		

Synopsis of judgment and sentence, if applicable: _____

Record Information

Date notice of appeal filed _____ (Attach copy of notice of appeal)

Date clerk's record due to be assembled: _____

Transcript information:
 Court reporter responsible for preparing transcript (Name, address, telephone number):

Transcript ordered: Yes No Payment arrangements made: Yes No
 If no, reason not ordered or made: _____

Est. Transcript length ____ pp.
 Transcript due date: _____

Appeal Information

A short and plain statement of the anticipated issues on appeal: _____

 _____ (Attach copy of motion to correct errors)

Prior appeals in this case with cause number: _____

Related appeals with Cause Number (prior, pending, or potential): _____

Motion for oral argument will be filed: Yes No Undecided

Motion for pre-appeal conference will be filed: No Yes

Purpose: Shorten record Appellate ADR Refine issues Other

If civil case, was ADR used in the trial court? Yes No

If civil case, is Appellant willing to participate in Appellate ADR? Yes No

If yes, provide a brief statement of the facts of the case. Attach additional pages as needed.

If criminal case, status of defendant: On bond Incarcerated

Location: _____

I certify that this case does does not involve issues relating to child custody, child support, child visitation, paternity, termination of parental rights, CHINS, adoption, or any other issue entitled to priority by statute.

I also certify that I have reviewed and complied, and will continue to comply, with the requirements of Indiana Administrative Rule 9(G)(4) to the extent it applies to this appeal.

/s/ Attorney/or pro se litigant's signature

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 20____, the forgoing was served upon the following counsel of record by [state method of service]:

[List Counsel served (including name and address where served)]:

[Signature]

**IN THE
INDIANA COURT OF APPEALS
APPELLATE CASE NO. 49A02-0812-CV-1165**

IN THE MATTER OF THE	)	Marion County Superior Court
COMMITMENT OF K.F.,	)	Probate Division Court 8
Appellant,)	
vs.	)	Cause No. 49D08-0808-MH-38366
)	
ST. VINCENT HOSPITAL AND	)	The Honorable Larry Bradley,
HEALTH CARE CENTER d/b/a	)	Magistrate
ST. VINCENT STRESS CENTER,)	
Appellee.)	

BRIEF OF APPELLANT

Joel M. Schumm
530 W. New York Street
Indianapolis, IN 46202
(317) 951-4060

Attorney for Appellant

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**IN THE
INDIANA COURT OF APPEALS
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IN THE MATTER OF THE)	Marion County Superior Court
COMMITMENT OF K.F.,)	Probate Division Court 8
Appellant,)	
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ST. VINCENT HOSPITAL AND)	The Honorable Larry Bradley,
HEALTH CARE CENTER d/b/a)	Magistrate
ST. VINCENT STRESS CENTER,)	
Appellee.)	

BRIEF OF APPELLANT

STATEMENT OF THE ISSUE

Is an involuntary commitment supported by insufficient clear and convincing evidence of grave disability when the sixty-two-year-old Respondent made some purchases well within her financial means and sometimes had a drink or two at a local bar, although she never drove while intoxicated.

STATEMENT OF THE CASE

On August 26, 2008, a temporary (ninety-day) commitment was entered against K.F. App. 20-21. The commitment expired on November 24. App. 21. Rather than seeking to renew that commitment, on November 24 St. Vincent's filed a request for an involuntary commitment. App. 26. A commitment hearing was held on December 5. Tr. 1-108; App. 5. At the conclusion of that hearing, the

trial court issued an order involuntarily committing K.F. to St. Vincent's Stress Center until June 1, 2009. App. 7-8.¹

A notice of appeal was timely filed on December 30, 2008. App. 1-2. The court reporter filed her notice of completion of the transcript on March 13, 2009, and this brief was timely filed on April 13.

STATEMENT OF FACTS

Sixty-two-year-old K.F. has been married forty-one years, has raised seven children, and has eleven grandchildren. Tr. 74, 87, 90. She cleans the house, does the laundry, makes dinner, keeps abreast of current events, and regularly attends church. Tr. 89, 92, 97-98. Her husband is a lawyer and sometimes goes to bed early. Tr. 75, 87. After dinner some evenings K.F. would go to a nearby bar where she would have a drink or two, play arcade games, and make new friends. Tr. 75-76. She recently inherited more than \$60,000, which she invested in a certificate of deposit. Tr. 82. She purchased a television and laptop and was considering purchasing a home. Tr. 81-82, 83-84.

This is an appeal from a commitment ordered on December 5, 2008. At that hearing Dr. Mishra testified that K.F. was suffering from Bipolar Disorder with a "co-concurrent alcohol abuse diagnosis." Tr. 10. He also expressed the view that K.F. was suffering from a grave disability because "[s]he has continued to spend money, and spend money independently, and drink, and drink and drive."

¹ Pursuant to Appellate Rule 46(A)(10), a copy of the commitment order is appended to this brief. The name on the order has been altered to use initials pursuant to Indiana

Tr. 11; Tr. 20. He expressed concern of these behaviors “in the context of [K.F.’s] emotional state,” remarking that her speech and interactions with people change when she is “manic.” Tr. 13.² Dr. Mishra agreed that at least part of K.F.’s agitation was attributable to her belief she was being held illegally after the temporary commitment expired. Tr. 25.

Issues concerning alcohol consumption were a prominent part of the hearing. Although the earlier commitment included a standard list of “special conditions,” the one prohibiting alcohol use was not marked. App. 21.³ Over the course of the previous year K.F. was involved in minor accidents, two of which were her fault and none of which involved alcohol. Tr. 78. There was no evidence that K.F. ever drove while legally intoxicated. Tr. 26, 52, 63, 76, 103.

SUMMARY OF THE ARGUMENT

There is insufficient evidence to support the involuntary commitment because the hospital failed to provide clear and convincing evidence that K.F. is gravely disabled. Grave disability requires an individual be “in danger of coming to harm” because of a substantial impairment that results in her “inability to function independently.” Here, the evidence showed that K.F. made a couple of

Administrative Rule 9(G)(4)(d).

² Another witness testified that K.F. told him, “I have no reason to live.” Tr. 34. On cross-examination, however, he agreed the statement was “if she was sent to a state hospital, she would have no reason to live,” and such statements are not a threat of suicide but an expression of “how much they don’t want to go in an environment” like a state hospital. Tr. 35.

³ One of K.F.’s daughters testified about a subsequent “family meeting” at which alcohol use was discussed. Although she believed the commitment “was supposed to be modified,” she conceded that never occurred. Tr. 53.

purchases viewed as inappropriate by some family members and spent some evenings at a local bar, although there is no evidence she ever drove while legally intoxicated. The commitment in effect prior to the hearing at issue in this case did not preclude her from consuming alcohol.

STANDARD OF REVIEW

The standard of review is not entirely clear. Many cases recite the following standard: when reviewing a challenge to the sufficiency of the evidence to support a mental health commitment, this Court looks to the evidence most favorable to the trial court's decision and the reasonable inferences drawn from its decision. See, e.g., In re Commitment of J.B., 766 N.E.2d 795, 799 (Ind. Ct. App. 2002). This Court will affirm the trial court if the commitment order represents a conclusion that a reasonable person could have drawn. Id.

However, sufficiency cases ultimately pose a legal question, which suggests de novo review is appropriate. This Court neither reweighs the evidence nor judges the credibility of the witnesses. B.K.C. v. State, 781 N.E.2d 1157, 1163 (Ind. Ct. App. 2003). Rather, it considers the evidence favorable to the judgment and reasonable inference drawn from that evidence and will affirm if the evidence and inferences "constitute substantial evidence of probative value to support the judgment." Id. This determination of "substantial evidence" is a question of law, Linger v. State, 508 N.E.2d 56, 59 (Ind. Ct. App. 1987), and questions of law are reviewed de novo on appeal. Kladis v. Nick's Patio, Inc., 735 N.E.2d 1216, 1219 (Ind. Ct. App. 2000).

ARGUMENT

An involuntary commitment is supported by insufficient clear and convincing evidence of grave disability when the sixty-two-year-old Respondent made some purchases well within her financial means and sometimes had a drink or two at a local bar, although she never drove while intoxicated.

A “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” Addington v. Texas, 441 U.S. 418, 425 (1979); Commitment of M.M. v. Clarian, 826 N.E.2d 90, 97 (Ind. Ct. App. 2005), trans. denied (“We recognize the extraordinary curtailment of liberty involved with a commitment to a mental hospital.”). “There is no constitutional basis for confining a mentally ill person who is not dangerous and can live safely in freedom.” Commitment of J.B. v. Midtown, 581 N.E.2d 448, 451 (Ind. Ct. App. 1991), trans. denied.

A person can be involuntary committed in Indiana only upon a showing by clear and convincing evidence that she is (1) mentally ill and (2) dangerous or gravely disabled. Ind. Code § 12-26-2-5(e); In re Commitment of J.B., 766 N.E.2d 795, 799 (Ind. Ct. App. 2002). The trial court found that K.F. suffers from Bipolar Disorder, a mental illness under Indiana Code section 12-7-2-130; that conclusion is not challenged on appeal. App. 7. Although the trial court also found that K.F. is “gravely disabled,” the commitment cannot stand because there is not clear and convincing evidence of grave disability.⁴

⁴ The trial court did not find that K.F. was dangerous to herself or dangerous to others. App. 7.

Grave disability is a condition in which an individual, as a result of her mental illness, “is in danger of coming to harm” because she: (1) is unable to provide for her “food, clothing, shelter, or other essential human needs,” or (2) has a “substantial impairment or an obvious deterioration” of “judgment, reasoning, or behavior that results in [her] inability to function independently.” Ind. Code § 12-7-2-96.

There is no dispute that K.F. is able to provide for her own food, clothing, shelter, and other essential human needs. Tr. 20. The hospital’s argument for grave disability appears to focus instead on the second prong, i.e., K.F. was in danger of coming to harm because of “a substantial impairment or an obvious deterioration” of “judgment, reasoning, or behavior that results in [her] inability to function independently.” Ind. Code § 12-7-2-96.

Dr. Mishra expressed the view that K.F. was suffering from a grave disability because “[s]he has continued to spend money, and spend money independently, and drink, and drink and drive.” Tr. 11; Tr. 20. He expressed concern of these behaviors “in the context of [K.F.’s] emotional state,” remarking that her speech and interactions with people change when she is “manic.” Tr. 13. Dr. Mishra agreed that at least part of K.F.’s agitation was attributable to her belief she was being held illegally after the temporary commitment expired. Tr. 25.

Although Dr. Mishra and some of K.F.’s daughters and sisters were unhappy with a few of K.F.’s recent lifestyle choices, none of these show a “substantial impairment” or “obvious deterioration” of K.F.’s judgment or

reasoning that evince an inability to function independently. K.F. inherited more than \$60,000 and should have been free to spend a small portion of that amount on a new television and laptop computer. Tr. 82-84. Moreover, K.F. should have been free to spend some of her evenings at a neighborhood bar where she has one or two drinks, plays arcade games, and talks with her friends. Tr. 75-76. There is no evidence that she has ever driven while legally intoxicated, nor has she ever been involved in an accident while returning home from the bar. Tr. 26, 52, 63, 76, 78, 103. Although Dr. Mishra was concerned about health risks from alcohol use combined with K.F.'s medication, Tr. 20, an earlier commitment included a standard list of "special conditions," and the one prohibiting alcohol use was not marked. App. 21.

The statute does not permit an involuntary commitment when a few family members are unhappy with a few purchases or the manner in which their sister or mother is spending her time. The statute requires a substantial impairment that results in an "inability to function independently." K.F. is fully able to function independently. If anything, the complaint seems to be that she is too independent. "[A]bnormal conduct" is not enough for ordering involuntary commitment; rather, "[l]oss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior." Addington, 441 U.S. at 427. Although K.F.'s behavior is well within the range of normal behavior, even "[e]rratic behavior in some areas of an individual's life does not necessarily render the person incapable of appreciating and making rational

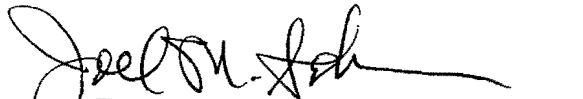
choices.” Commitment of J.B., 581 N.E.2d at 451 (quoting Coylar v. Third Judicial Dist. Court, Etc., 469 F. Supp. 424 (C.D. Utah 1979)). It is not enough that a person is not functioning perfectly or ideally; St. Vincent had to prove that K.F. was unable to function independently.

K.F. has “lived 62 years without people telling [her] how to live.” Tr. 84. In the absence of clear and convincing evidence of grave disability she should be allowed to continue to live her life as she sees fit. Cf. Commitment of Steinberg, 821 N.E.2d 385, 389 (Ind. Ct. App. 2004) (finding no grave disability for a schizophrenic man with “paranoid type features” who had his own apartment where he lived with a roommate); Commitment of L.W. v. Midtown, 823 N.E.2d 702, 704 (Ind. Ct. App. 2005) (reversing determination respondent was gravely disabled when evidence showed he had insight into his illness and was able to provide for his needs).

CONCLUSION

For the foregoing reasons, K.F. respectfully requests this Court vacate her involuntary commitment because it is not supported by sufficient clear and convincing evidence of grave disability.

Respectfully submitted,

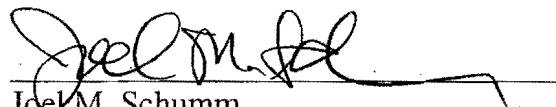


Joel M. Schumm
Attorney No. 20661-49
Appellate Public Defender

CERTIFICATE OF SERVICE

I certify that a copy of the Appendix and the foregoing Brief of Appellant were duly served by first-class mail upon the following on this 13th day of April, 2009:

Kendra L. Conover
Angela Smith
One American Square
Suite 2000, Box 82064
Indianapolis, Indiana 46282


Joel M. Schumm

Joel M. Schumm
530 W. New York Street
Indianapolis, IN 46202
(317) 951-4060

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION COUNTY SUPERIOR
COURT NO. 8, PROBATE DIVISION
CAUSE NO.: 49D08-0808-MH-038366

IN THE MATTER OF THE COMMITMENT OF)
)
K██████████F██████████,)
RESPONDENT)

FILED

DEC 05 2008

C.J. Deltzer
Judge of the
Marion Superior Court
Probate Division

ORDER OF REGULAR COMMITMENT

This matter came before the Court on the 5th day of December, 2008, for hearing on a Petition for Regular Commitment at which time St. Vincent Hospital and Health Care Center, Inc. ("Petitioner") appeared by counsel, Kendra L. Conover, of the law firm Hall, Render, Killian, Heath & Lyman, P.C. K██████████F██████████ ("Respondent"), appeared in person and/or by counsel, Marianne Halbert.

Upon evidence presented, the Court now finds by clear and convincing evidence:

1. Respondent is suffering from Bipolar disorder and alcoholism.
2. Respondent is () dangerous to self or () dangerous to others, as defined in I.C. 12-7-2-53. Respondent is (X) gravely disabled as defined in I.C. 12-7-2-96.
3. Respondent is in need of custody, care and treatment at ST. VINCENT STRESS CENTER for a period of time expected to exceed ninety (90) days.
4. Placement is determined to be the least restrictive environment suitable for treatment and stabilization as well as protecting Respondent while restricting Respondent's liberty to the least degree possible.
5. That the treatment plan for the Respondent has been fully evaluated, including alternate forms, and is believed to result in benefiting the Respondent while outweighing any risk of harm.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Respondent is accordingly committed to the designated facility until discharged or until the Court terminates the commitment.

IT IS FURTHER ORDERED that the head of the facility, his or her designee, or the attending physician submit a Periodic Report no later than 6/1/09 at which time the treatment plan will be reevaluated by the Court.

IT IS FURTHER ORDERED that upon attaining outpatient status, Respondent is to abide by the following special conditions to the Order of Commitment:

- Respondent shall take all medications as prescribed.
- Respondent shall attend all clinic sessions as scheduled and follow through with recommended outpatient treatment with an appropriate provider.
- Respondent will maintain his address and phone number with the Court and designated facility.
- Respondent shall not harass or assault family members or others.
- Respondent shall not use alcohol or drugs, other than those prescribed by a certified medical doctor.
- _____

IT IS FURTHER ORDERED that the designated facility is granted an Order to Treat unless Respondent does not substantially benefit from the medications. The Order to Treat shall be reevaluated by the Court upon the filing of the Periodic Report.

DATED: December 5, 2008

J. C. Bradley
JUDGE, MARION SUPERIOR COURT NO. 8
PROBATE DIVISION

IN THE
INDIANA COURT OF APPEALS

Case No: 49A02-0812-CV-01165

IN THE MATTER OF THE)	
COMMITMENT OF K.F.,)	
	)	Appeal from the Superior Court of Marion
Appellant/Respondent Below,	)	County, Probate/Mental Health Division
)	
vs.	)	Lower Court Cause Number:
	)	49D08-0808-MH-38366
ST. VINCENT HOSPITAL & HEALTH)	
CARE CENTER, INC., d/b/a ST.	)	The Honorable Charles J. Deiter, Judge
VINCENT STRESS CENTER,	)	Larry Bradley, Magistrate
)	
Appellee/Petitioner Below.)	

**BRIEF OF APPELLEE, ST. VINCENT HOSPITAL AND
HEALTH CARE CENTER, INC. d/b/a ST. VINCENT STRESS CENTER**

Kendra L. Conover, Attorney No. 26313-49
Angela M. Smith, Attorney No. 18168-29
HALL, RENDER, KILLIAN,
HEATH & LYMAN, P.C.
Suite 2000, Box 82064
One American Square
Indianapolis, IN 46282
(317) 633-4884
*Attorneys for Defendant/Appellee, St. Vincent
Hospital and Health Care Center, Inc. d/b/a st.
Vincent Stress Center*

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I. STATEMENT OF THE ISSUE

Whether, considering the evidence most favorable to the Trial Court's decision and all reasonable inferences to be drawn therefrom, the Trial Court reasonably concluded that K.F. was mentally ill and gravely disabled.

II. STATEMENT OF THE CASE

On August 26, 2008, after an evidentiary hearing, the Marion County Superior Court 8 (hereinafter the "Trial Court") found there existed clear and convincing evidence that: 1) K.F. was suffering from a mental illness, specifically Bipolar Disorder; and 2) K.F. was gravely disabled and in need of custody, care and treatment at St. Vincent Hospital and Health Care Center, Inc. d/b/a St. Vincent Stress Center ("St. Vincent"). Thus, the Trial Court ordered K.F.'s commitment to the St. Vincent Stress Center until November 24, 2008. (Appellant's App., p. 20-21).

During this term of temporary commitment, K.F. was admitted to St. Vincent as an inpatient from August 21, 2008 through September 4, 2008, when she was discharged for outpatient care. She was re-admitted to St. Vincent for inpatient services six days later, on September 10, 2008, until a second discharge for outpatient care on September 26, 2008. (Appellant's App., p. 23-24.)

On November 20, 2008, less than five days before the expiration of the initial commitment term, K.F. was again admitted to St. Vincent for inpatient treatment of her mental illness. (Transcript, p. 24, l. 19-21.) This third admission remained under the authority of the Trial Court's August 26, 2008, order of temporary commitment until November 24, 2008.

Because K.F. was in need of continued inpatient treatment but the statutory notice period for an extension of the commitment term had already passed, St. Vincent timely filed an

Application for Emergency Detention on November 24, 2008. (See IND. CODE § 12-26-6-10(f); Appellant's App., p. 30-33). The application was supported by an Affidavit from Sanjay Mishra, M.D., in which he stated that in his medical judgment, K.F. suffered from a psychiatric disorder and alcoholism; and that these conditions "substantially disturbed her thinking, feelings, or behavior and impairs (K.F.'s) ability to function." (Appellant's App., p. 33). Dr. Mishra also noted that K.F. was "verbalizing suicidal ideation with (a) plan – (and exhibiting) manic behaviors." (Id.) The Report Following Emergency Detention was timely filed on December 2, 2008. (Appellant's App., p. 34-35). And on December 3, 2008, the Trial Court ordered K.F.'s continued detention, pending a hearing on St. Vincent's November 24, 2008 Application. (Appellant's App., p. 37).

On December 5, 2008, the Trial Court held a full evidentiary hearing during which, both St. Vincent and K.F. were duly represented by counsel. In addition to Dr. Mishra and K.F., Keith Parrish, LCSW who is K.F.'s outpatient therapist, K.F.'s two daughters, K.F.'s sister, K.F.'s husband, and K.F.'s son each testified at the hearing. At the close of evidence, the Trial Court found by clear and convincing evidence that K.F. was in fact: (1) suffering from Bi-Polar Disorder and Alcoholism; (2) gravely disabled; and (3) in need of custody, care and treatment at St. Vincent for a period expected to exceed ninety (90) days. The Trial Court thus ordered K.F.'s regular commitment to St. Vincent until discharged or until the Court terminated the commitment. (Appellant's App., p. 7-9).¹ This appeal ensued.

III. STATEMENT OF THE FACTS

Sometime in 2008, K.F.'s behavior changed markedly. A practicing member of the Catholic faith and married for 41 years, K.F. now left her home after dinner 3-4 nights per week,

¹ Because K.F. had been the subject of a prior involuntary civil commitment, the court had the discretion to order a regular commitment of K.F. (Tr., p. 4-7; IND. CODE § 12-26-3-9.)

and went to a local bar to drink, socialize with men and play arcade games. (Tr., p. 67; 75-77.) While at the bar, she would have "at least two" drinks of either vodka over ice or "Manhattans" before returning home between 10 and 11 p.m. (Tr., p. 67, 76, 77).² K.F. also had consistent access to alcoholic beverages at home, and admitted to drinking alcohol at home on a daily basis. (Tr., p.31; 43). There was evidence that K.F. was unable to accurately remember and count the number of alcoholic drinks she consumed daily. (Tr., p. 67).

While K.F. had always been known to her family as a "very careful driver", she now freely admitted to drinking and driving. (Tr., p. 11; 20; 61; 77). She also admitted to having been in 5 car accidents between April and November, 2008. (Tr., p. 39, l. 10-11; p. 78, l. 4-6).

Likewise, while historically, K.F. had always been fiscally very conservative, she had recently been spending "outrageous" amounts of money. (Tr., p. 46, l. 9-20). She went from having never held a credit card, to becoming "obsessive" about getting credit cards. When she received a new card, she "maxed out" the spending limit within 3 weeks. (Id.). Furthermore, in a span of three months, K.F. purchased three computers, including two laptops and a new computer for her house, and a big screen television. (Tr., p. 47; 49).

During this period, K.F. also discussed the purchase of 3 very different homes and she independently made distinct offers to purchase 2 of these. (Tr., p. 60, l. 16 – p. 61, l. 12). A home was a huge purchase for K.F. She does not earn any income, but for interest on a \$62,000 CD purchased with an inheritance following her mother's death in 1999. (Tr., p. 82, l. 15-25). Furthermore, there was no consistency in the goals behind such a purchase or in the prices of the homes K.F. had selected for purchase. (Tr., p. 61, l. 7-9). The culmination of K.F.'s new spending habits caused a "severe strain" on her husband, a lawyer who maintains a private

² A "Manhattan" typically consists of two shots of whiskey, one shot of sweet Vermouth, and a dash of Angostura bitters.

criminal defense practice in Brownsburg, Indiana, while serving as a public defender for Hendricks County. (Tr., p. 47; 87, l. 11-20.)

On a recent occasion, K.F. informed her daughter that she was planning to renew her wedding vows. In anticipation of the occasion, K.F. had taken her wedding dress to be cleaned and pressed. (Tr., p. 58, l. 4-7). However, the same weekend, K.F. left her husband of 42 years and went to a hotel. (Id.). In fact, K.F. left her husband on two separate recent occasions to stay in a hotel. (Tr., p. 58, l. 1). While at the hotel, K.F. once called her sleeping daughter at 12:30 a.m. to inform her that gas prices at two local gas stations had dropped and to recommend she go fill up her car's gas tank. (Tr., p. 58, l. 7-13). Later the same morning, K.F. again called her daughter to convey that K.F. had contacted a former employer to request a job, but during the course of the conversation berated the former-employer for his past actions. (Tr., p. 58, l. 14-22).

K.F.'s uncharacteristic behavior exemplified her impaired judgment and put her in harm's way. K.F. brought a young woman she met in a bar home to stay the night. (Tr., p. 66, l. 13-20). When K.F. is off her medications she becomes manic as evidenced by her "lack of insight and her tendency of being very impulsive and easily agitated ...(and) her choice of words and language gets very colorful and fiery" (Tr., p. 12, l. 10-15). There were witnessed incidents when she became confrontational and aggressive with both family members and strangers. (Tr., p. 69, l. 8-12; p. 73, l. 6-15). On one such occasion in July, 2008, a man reacted violently in response. (Tr., p. 69, l. 10-12).

When in a manic phase, K.F.'s behavior was impulsive and hyperactive. She was very easily agitated. Her speech pattern was pressured. And she was prone to excessive spending and grandiosity. (Tr., p. 12, l. 10-15; p. 13, l. 9-16; p. 15, l. 4-10). Her "judgment is so poor that she's engaging in behaviors that place her in harms way." (Tr., p. 22, l. 24-25). Those behaviors

included: (1) "drinking and driving; (2) not taking her medicines; and (3) placing herself in potentially dangerous situations while she is alcohol-impaired and in an untreated manic state." (Tr., p. 23, l. 6-8).

Dr. Mishra opined that K.F. was truly addicted to alcohol and unable to avoid its use. (Tr., p. 16). The combination of the pharmaceutical regime needed to stabilize her bi-polar disorder and alcohol consumption placed K.F. at a heightened risk of danger. (Tr., p. 16, l. 22 – p. 17, l. 4). She had been repeatedly directed by Dr. Mishra to stop using alcohol because it complicated her treatment and put her at risk for coming to harm, but she openly admitted that she continues to "drink; drink and drive and not take her meds." (Tr., p. 20, l. 13-20). At the hearing, when asked about the risk of mixing her medications with alcohol, K.F. responded: "That's why I drink (and) then take the medicine (after I return home)." (Tr., p. 85, l. 10-23).

K.F. had little insight into her illness. (Tr., p. 19, l. 8-23). She does not believe that she has a Bi-Polar Disorder. (Tr., p. 75, l. 11-15). She did not want to take the prescribed medications. (Tr., p. 84, l. 23 – p. 84, l. 1). And she was defiant regarding her right to drink alcohol. (Tr., p. 84, l. 18-23; 85, l. 10-23). She planned to stop her medications and outpatient therapy as soon as the initial temporary commitment order terminated. (Tr., p. 32, l. 9-11).

In order for treatment to succeed, K.F. needed to: (1) take her medications; (2) keep her follow-up appointments; and (3) discontinue the use of alcohol. (Tr., p. 16, l. 5-10). Without the order for involuntary commitment in place, Dr. Mishra anticipated that K.F. would stop taking her medications, continue abusing alcohol, and continue to place herself in harm's way. (Tr., p. 24, l. 6-8). Therefore, in Dr. Mishra's clinical judgment as well as the opinion of K.F.'s outpatient therapist, two daughters and sister, a regular commitment to St. Vincent was in K.F.'s

best interest at that time. (Tr., p. 24, l. 9-11; p. 24, l. 15-17; p. 50, l. 11-16; p. 63, l. 25 – p. 64, l. 3; p. 68, l. 8 – p. 69, l. 12).

The Trial Court agreed.

IV. SUMMARY OF THE ARGUMENT

When considering the evidence most favorable to the Trial Court's decision and all reasonable inferences to be drawn therefrom, a reasonable person could have concluded that K.F. was mentally ill and gravely disabled. Thus, the Trial Court's order for K.F.'s involuntary commitment was prudent, appropriate, and should be affirmed.

V. STANDARD OF REVIEW

When we review an order for commitment, we consider only the evidence favorable to the judgment and all reasonable inferences therefrom. We will not reweigh the evidence or judge the witnesses' credibility. Where the evidence is in conflict, we are bound to view only evidence that is most favorable to the trial court's judgment. If the trial court's commitment order represents a conclusion that a reasonable person could have drawn, the order must be affirmed, even if other reasonable conclusions are possible.

Commitment of Bradbury v. Comprehensive Mental Health Services, 845 N.E.2d 1063, 1065 (Ind.Ct.App., 2007), *internal citations omitted*.

VI. ARGUMENT

The Evidence Was Sufficient to Support the Trial Court's Finding that K.F. was Gravely Disabled

A court may order regular commitment for more than ninety (90) days if a petitioner proves by clear and convincing evidence that the individual is: (1) mentally ill; and (2) either dangerous or gravely disabled. IND. CODE § 12-26-7-5.

In the present case, K.F. challenges only the Trial Court's finding that she was "gravely disabled."³

For purposes of involuntary commitment, K.F. is deemed "gravely disabled" if she has a condition in which she, as a result of mental illness, is in danger of coming to harm because she (1) is unable to provide for her own food, clothing, shelter, or other essential human needs; *or* (2) has a substantial impairment or obvious deterioration of judgment, reasoning or behavior that results in her inability to function independently. IND. CODE § 12-7-2-96. (emphasis added).

In re the Mental Commitment of W.W., 592 N.E.2d 1264 (Ind.Ct.App. 1992), this Court affirmed a trial court's finding of "grave disability" relying, in part, on the treating physician's explanation of the patient's mood disturbances, as manifested by his behaviors of irritability, easy agitation, pressured speech, and impaired relationships. *Id.* at 1266; also see, *Commitment of Bradbury*, 854 N.E.2d 1063, 1065 (Ind.Ct.App. 2006). In the present case, Dr. Mishra testified that when manic, K.F. was very impulsive, easily agitated, hyperactive and exhibited "tremendous pressure speech." (Tr., p. 12, l. 10-15; p. 13, l. 9-16). Her family further testified to witnessing episodes of aggressive, confrontational behavior by K.F., with at least one such episode invoking a violent response. (Tr., p. 69, l. 10-12; p. 73, l. 6-15).

K.F.'s behaviors and grandiose presentation were all "classic" symptoms of mania in a bipolar patient. (Tr., p. 15, l. 6-10). While no single behavior in isolation causes tremendous concern, the culmination of K.F.'s manic behaviors in the context of her emotional lability, impairs her judgment, reasoning and behavior to the extent that she puts herself in harm's way. (Tr., p. 13, l. 9-16). One behavior that caused Dr. Mishra the most concern was K.F.'s consistent pattern of consuming alcohol and driving. The concern was not with the legality of K.F.'s

³ K.F. does not dispute the Trial Court's determination that she suffers from the mental illness of bipolar. K.F. is not dangerous to herself or others. (Appellant's App., p. 7). The only issue challenged on appeal is whether there was sufficient evidence to support the Trial Court's finding that K.F. is "gravely disabled."

actions. Rather, Dr. Mishra was concerned for K.F.'s safety due to the "special danger" resulting from the combination of K.F.'s bipolar disorder, necessary medication regime, and alcohol. (Tr., p. 26, l. 7-10). K.F. had been repeatedly warned of this danger but consistently and defiantly ignored it. (Tr., p. 84, l. 14 – p. 85, l. 1; l. 10-23).

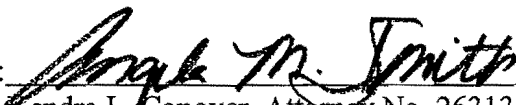
Dr. Mishra explained that for K.F. to successfully manage her Bi-Polar Disorder, she would need to: (1) take her medications as prescribed; (2) participate in out-patient treatment with a qualified Mental Health Care provider; and (3) refrain from consuming alcohol. There was ample testimony to support the Trial Court's finding that without court ordered treatment, K.F. would not take her medications, or continue with outpatient care and she would drink alcohol as she pleased, despite the dangers in doing so. (Tr., p. 31, l. 19 – p. 32, l. 14; p. 61, l. 13 – p. 62, l. 12; p. 84, l. 14 – p. 85, l. 1, 10-23). Thus, there existed clear and convincing evidence to support the Trial Court's conclusion that K.F. was mentally ill and had a substantial impairment in judgment, reasoning and behavior resulting in her inability to function independently.

VII. CONCLUSION

The evidence most favorable to the Trial Court's determination and the reasonable inferences therefrom support this Court's affirmation of the Trial Court's order for the regular commitment of K.F. There was sufficient evidence from which a reasonable person could have concluded that, at the time of the hearing, K.F. suffered from a mental illness and was gravely disabled. Therefore, the Trial Court's commitment order should be affirmed.

Respectfully submitted,

HALL, RENDER, KILLIAN, HEATH & LYMAN, P.C.

By: 
Kendra L. Conover, Attorney No. 26313-49
Angela M. Smith, Attorney No. 18168-29
Suite 2000, Box 82064
One American Square
Indianapolis, IN 46282
(317) 633-4884
*Attorneys for Appellee, St. Vincent Hospital and
Health Care Center, Inc. d/b/a St. Vincent Stress Center*

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief of Appellee, St. Vincent Hospital and Health Care Center, Inc. d/b/a St. Vincent Stress Center, by United States first class mail, postage prepaid, upon the following counsel of record this 18th day of May, 2009:

Joel M. Schumm
530 W. New York Street
Indianapolis, IN 46202



Angela M. Smith
Hall, Render, Killian, Heath & Lyman, P.C.
Suite 2000, Box 82064
One American Square
Indianapolis, IN 46282

**IN THE
INDIANA COURT OF APPEALS
APPELLATE CASE NO. 49A02-0812-CV-1165**

IN THE MATTER OF THE	)	Marion County Superior Court
COMMITMENT OF K.F.,	)	Probate Division Court 8
Appellant,)	
vs.	)	Cause No. 49D08-0808-MH-38366
)	
ST. VINCENT HOSPITAL AND	)	The Honorable Larry Bradley,
HEALTH CARE CENTER d/b/a	)	Magistrate
ST. VINCENT STRESS CENTER,)	
Appellee.)	

REPLY BRIEF OF APPELLANT

Joel M. Schumm
530 W. New York Street
Indianapolis, IN 46202
(317) 951-4060

Attorney for Appellant

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IN THE MATTER OF THE)	Marion County Superior Court
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HEALTH CARE CENTER d/b/a)	Magistrate
ST. VINCENT STRESS CENTER,)	
Appellee.)	

REPLY BRIEF OF APPELLANT

SUMMARY OF THE ARGUMENT

The involuntary commitment was not supported by “clear and convincing evidence” that K.F. was gravely disabled. Specifically, St. Vincent’s did not offer clear and convincing evidence of an inability “to function independently.” Rather, St. Vincent’s relies in part on symptoms of K.F.’s mental illness, which cannot be used to prove the wholly separate requirement of grave disability. Moreover, K.F.’s purported use of “inappropriate” or “aggressive” language does not evince an inability to function independently simply because one person had a potentially violent reaction. Finally, K.F. should be held to no different standard than a man would be. Spending some evenings at a local bar, making a few purchases well within one’s financial means, and raising one’s voice at someone at a family gathering is not the stuff of grave disability for any Hoosier—male or female.

ARGUMENT

An involuntary commitment is supported by insufficient clear and convincing evidence of grave disability when the sixty-two-year-old Respondent made some purchases well within her financial means and sometimes had a drink or two at a local bar, although she never drove while intoxicated.

St. Vincent's agrees it was required to prove two separate things: (1) mental illness and (2) grave disability. Br. of Appellee at 6 (citing Ind. Code § 12-26-7-5). These are elements—not factors. Both must exist, and mental illness is not disputed in this appeal. Mental illness, however, cannot weigh so heavily as to diminish or obviate the necessary proof of grave disability. Put another way, manifestations of mental illness, such as agitation or pressured speech, cannot satisfy the wholly separate requirement of grave disability. Br. of Appellee at 7.

Grave disability is a condition in which an individual, as a result of her mental illness, “is in danger of coming to harm” because she: (1) is unable to provide for her “food, clothing, shelter, or other essential human needs,” or (2) has a “substantial impairment or an obvious deterioration” of “judgment, reasoning, or behavior that results in [her] inability to function independently.” Ind. Code § 12-7-2-96. To meet this element, St. Vincent's points to “episodes of aggressive, confrontational behavior by K.F., with at least one such episode invoking a violent response.” Br. of Appellee at 7. The testimony of a single witness, K.F.'s sister, is cited. Id. The sister testified that K.F. “gets into confrontations with strangers. She becomes very aggressive. And, my concern is the way they respond to her. I witnessed this one time, when a man became violent with us.” Tr. 69. The sister

clarified the incident occurred at her brother's house and involved an in-law who was "persistent" in "wanting to watch the Colts game." Tr. 73. K.F. had a low tolerance for the man, shook her finger at him, and told him to shut up. Tr. 73. At the same gathering, according to the sister, K.F. also made "inappropriate" comments and "used very colorful language that was unnecessary." Tr. 73.

Grave disability requires an inability to function. This is not a requirement that a person with mental illness be docile, much less a doormat. The Supreme Court has made clear that "idiosyncratic behavior" cannot justify the loss of liberty that comes with an involuntary commitment. Addington v. Texas, 441 U.S. 418, 427 (1979). K.F.'s conduct is "within a range of conduct that is generally acceptable." Id. at 426-27. Verbal exchanges over a Colts game or other trivial or serious matters are not at all uncommon in workplaces or at family gatherings. K.F. should not be held responsible for an irrational, unreasonable, or violent reaction to her pointed language. To hold otherwise would mean any person suffering from a mental illness could be committed for saying just about anything—or certainly from raising their voice or pointing their finger; someone might overreact with violence.

As regards the concerns with alcohol consumption, St. Vincent's appears to concede that K.F. never drove intoxicated. Br. of Appellee at 7-8. Rather, it focuses on concerns for her safety because of alcohol coupled with her medication. Br. of Appellee at 8. However, K.F. should not be found unable to function on this basis when an earlier commitment included a standard list of

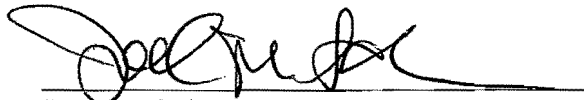
“special conditions,” and the one prohibiting alcohol use was not marked. App. 21. K.F. complied with the existing commitment order and should not be committed anew for conditions that were expressly not part of that order.

As a final point, this case gives rise to concerns of gender equality. If a man spent some evenings at a local bar, made a few purchases well within his financial means, and raised his voice at someone at a family gathering, it is unlikely anyone would question that behavior. Indeed, men experiencing a so-called mid-life crisis often spend large sums of money (sports cars) and engage in a variety of behavior far more dubious than what is alleged in this case. Some of these men may be suffering from a mental illness, and rarely does anyone suggest they should be involuntary committed. K.F. should be held to no different standard.

CONCLUSION

For the foregoing reasons, K.F. respectfully requests this Court vacate her involuntary commitment because it is not supported by sufficient clear and convincing evidence of grave disability.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joel M. Schumm', written over a horizontal line.

Joel M. Schumm

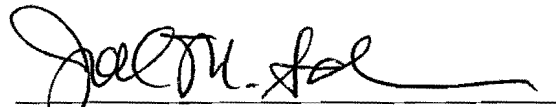
Attorney No. 20661-49

Appellate Public Defender

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Appellant was duly served by first-class mail upon the following on this 5th day of June, 2009:

Kendra L. Conover
Angela Smith
One American Square
Suite 2000, Box 82064
Indianapolis, Indiana 46282



Joel M. Schumm

Joel M. Schumm
530 W. New York Street
Indianapolis, IN 46202
(317) 951-4060

FOR PUBLICATION

ATTORNEY FOR APPELLANT:

JOEL M. SCHUMM
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

KENDRA L. CONOVER
ANGELA M. SMITH
Hall, Render, Killian, Heath & Lyman, P.C.
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE)
COMMITMENT OF K.F.,)

Appellant-Respondent,)

vs.)

No. 49A02-0812-CV-1165

ST. VINCENT HOSPITAL AND HEALTH)
CARE CENTER d/b/a ST. VINCENT STRESS)
CENTER,)

Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles J. Deiter, Judge
The Honorable Larry Bradley, Magistrate
Cause No. 49D08-0808-MH-38366

July 22, 2009

OPINION - FOR PUBLICATION

CRONE, Judge

Case Summary

K.F. appeals an order granting the petition, filed by St. Vincent Hospital and Health Care Center d/b/a St. Vincent Stress Center (“St. Vincent”), for her involuntary regular commitment.¹ K.F. asserts that there was insufficient evidence to establish that she was gravely disabled. We reverse.

Facts and Procedural History

The evidence most favorable to the judgment reveals that sixty-two-year-old K.F. has been married for more than forty years to her husband, an attorney. Tr. at 87. Together, they have raised seven children and have eleven grandchildren. K.F.’s daily activities include cleaning the home, doing laundry, and making dinner. *Id.* at 89. She attends Mass weekly, bowls in a league, enjoys socializing, keeps up on current events, and does yard work. *Id.* at 88-90, 92.

Sometime in 2008, K.F.’s relatives noticed a change in her behavior. She began to go to a local bar three or four evenings per week and have a couple drinks and play games before returning home around 10:00 or 11:00 p.m. *Id.* at 67, 76-77. She was involved in five car accidents, maxed out a new credit card, and took steps to purchase a new home contrary to her husband’s wishes. *Id.* at 11, 20, 46, 60-61, 67, 75-77. She admitted to drinking alcohol daily but not to driving while legally intoxicated. *Id.* at 26, 52, 63, 76, 103. She spoke of renewing her wedding vows, took her wedding dress to be cleaned and pressed, but

¹ An involuntary commitment for a period to exceed ninety days is a “regular” commitment. *See* Ind. Code Ch. 12-26-7. In contrast, an involuntary commitment for a period of less than ninety days is a “temporary” commitment. *See* Ind. Code Ch. 12-26-6.

then went to a hotel away from her husband for a weekend. *Id.* at 58. Other unusual behaviors included calling one of her daughters at 12:30 a.m. to advise her to fill up her gas tank, bringing home a woman from the bar to stay one night, and raising her voice and using colorful language toward an in-law. *Id.* at 58, 66, 69, 73. Recently diagnosed with bipolar disorder, K.F. did not wish to take her medication or to avoid alcohol. *Id.* at 10, 75, 84.

On August 21, 2008, K.F. was admitted to St. Vincent as an inpatient. On August 26, 2008, the court held an evidentiary hearing and found there existed clear and convincing evidence that K.F. was suffering from a mental illness, specifically bipolar disorder, and that she was gravely disabled and in need of custody, care, and treatment at St. Vincent. The court ordered K.F. committed to St. Vincent until November 24, 2008. However, K.F. was discharged to outpatient care on September 4, 2008. She was readmitted to St. Vincent inpatient care from September 10, 2008 through September 26, 2008. She was again readmitted to St. Vincent on November 20, 2008.

On November 24, 2008, the original end date for K.F.'s commitment, St. Vincent filed an application for emergency detention. Attached to the application was the physician's statement of Dr. Sanjay Mishra, the psychiatrist who treated K.F. at St. Vincent. Within that statement, Dr. Mishra had checked boxes indicating that K.F. was suffering from "a psychiatric disorder" and "alcoholism/addiction to narcotics or dangerous substances ... which substantially disturbs Respondent's thinking, feelings, or behavior, and impairs Respondent's ability to function, [specifically,] verbalizing suicidal ideation with plan – manic behaviors." App. at 34. In the December 2, 2008 report following emergency

detention, Dr. Mishra checked boxes for “bipolar disorder” and “gravely disabled.” *Id.* The following day, the court ordered K.F.’s continued detention pending a hearing on St. Vincent’s November 24 application.

On December 5, 2008, the court held an evidentiary hearing during which it heard testimony from Dr. Mishra, K.F., Keith Parrish (K.F.’s outpatient therapist), and several members of K.F.’s family. Dr. Mishra, Parrish, two of K.F.’s daughters, and one sister agreed that a regular commitment to St. Vincent was in K.F.’s best interest. Dr. Mishra opined that in order for treatment to succeed, K.F. needed to take her medications, keep her follow-up appointments, and discontinue the use of alcohol – none of which he believed she would do absent an order for involuntary commitment. That same day, the court issued an order for involuntary commitment, found that K.F. was “suffering from Bipolar disorder and alcoholism,” marked the box for “gravely disabled,” determined that K.F. was in need of placement in St. Vincent for a period “expected to exceed ninety (90) days,” and required that a report by the head of St. Vincent or the attending physician be submitted to the court by no later than June 1, 2009² for reevaluation. *Id.* at 7-8.

Discussion and Decision

Civil commitment is a significant deprivation of liberty that requires due process protections. *Commitment of L.W. v. Midtown Cmty. Health Ctr.*, 823 N.E.2d 702, 703 (Ind. Ct. App. 2005). When reviewing the sufficiency of the evidence in commitment cases, we

² While it is possible that K.F.’s commitment has been terminated, no motion to dismiss her appeal has been filed. Indeed, her reply brief was file-stamped on June 5, 2009, four days after the June 1 evaluation date. Accordingly, we will address the issue raised.

look only at the evidence and reasonable inferences therefrom most favorable to the trial court's judgment. *In re Commitment of A.W.D.*, 861 N.E.2d 1260, 1264 (Ind. Ct. App. 2007), *trans. denied*. We may not reweigh the evidence or judge the credibility of the witnesses. *Commitment of M.M. v. Clarian Health Partners*, 826 N.E.2d 90, 96 (Ind. Ct. App. 2005), *trans. denied*. "If the trial court's commitment order represents a conclusion that a reasonable person could have drawn, we will affirm the order even if other reasonable conclusions are possible." *Id.*; *In re Commitment of Bradbury*, 845 N.E.2d 1063, 1065 (Ind. Ct. App. 2006).

To demonstrate that a person should be committed involuntarily, a petitioner must show "by clear and convincing evidence that: (1) the individual is mentally ill and either dangerous or gravely disabled; and (2) detention or commitment of that individual is appropriate." Ind. Code § 12-26-2-5(e) (emphasis added). If at the end of a "hearing and the consideration of the record an individual is found to be mentally ill and either dangerous or gravely disabled, the court may enter" one of two orders. Ind. Code § 12-26-7-5(a). It may enter an order for the individual's "custody, care, or treatment, or continued custody, care, or treatment in an appropriate facility" or for the individual to "enter an outpatient therapy program under IC 12-26-14." *Id.* Such an order continues until the individual has been discharged from the facility, released from the therapy program, or an order is entered by the court to terminate the commitment or release the individual from the therapy program. Ind. Code § 12-26-7-5(b).

On appeal, K.F. does not challenge the finding that she is mentally ill, and there was no showing that she was dangerous. *See* Appellant's App. at 7 n.3 (acknowledging that K.F. "is not dangerous to herself or others"). Rather, the crux of the case is whether St. Vincent presented sufficient evidence that K.F. was gravely disabled. Indiana Code Section 12-7-2-96 defines "gravely disabled" as

a condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual:

(1) is unable to provide for that individual's food, clothing, shelter, or other essential human needs; or

(2) has a substantial impairment or an obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently.

As the wife of a supportive husband for forty-plus years, K.F. has food, clothing, shelter, and other essential human needs. Accordingly, St. Vincent does not hang its hat on the first definition of "gravely disabled." Rather, St. Vincent seems to focus on the second definition: "substantial impairment or obvious deterioration of judgment, reasoning, or behavior that results in an inability to function independently." *See* Ind. Code § 12-7-2-96. St. Vincent candidly admits that "no single behavior in isolation causes tremendous concern," but then asserts that the "culmination of K.F.'s manic behaviors in the context of her emotional lability, impairs her judgment, reasoning and behavior to the extent that she puts herself in harm's way." Appellant's Br. at 7.

St. Vincent relies heavily on Dr. Mishra's testimony about the "special danger" resulting from the combination of K.F.'s bipolar disorder, necessary medication regime, and alcohol. Tr. at 26. Dr. Mishra opined that for K.F. to successfully manage bipolar disorder,

she would need to take her medication as prescribed, attend follow-up appointments for treatment with a qualified mental health care provider, and refrain from consuming alcohol -- none of which he believed she would do as an outpatient. *Id.* at 16, 17. However, when asked whether K.F. is unable to function independently, Dr. Mishra was equivocal. He replied, "Yeah, I mean she doesn't have a job, and she's never ... that's a tough one for me. I think it would be hard ... hard for us to believe that she could last very long, when the insight judgment is so impaired." *Id.* at 22.

Two of K.F.'s daughters opined that she could not function independently. *Id.* at 48, 61. Yet, K.F.'s husband and son disagreed and noted that they spent far more time with K.F. than the daughters/relatives who are in favor of commitment. *Id.* at 91-94, 97-98. Moreover, the evidence revealed that K.F. had inherited more than \$60,000, thus making her increased spending more understandable. While K.F. never denied drinking alcohol at times, there was no evidence that she had ever driven while intoxicated or that any of her car accidents³ had involved alcohol. K.F. disagreed with her late-in-life diagnosis of bipolar disorder and wished to seek a second opinion before taking serious medications -- hardly a completely irrational reaction. Although K.F.'s husband acknowledged that she had some problems, he supported her financially and emotionally and was willing to facilitate outpatient therapy for her. With her seven children grown, K.F. had an active life of housework, cooking, church, bowling, and socializing.

³ Two of the five accidents were K.F.'s fault. Tr. at 78.

In light of the above, we cannot say that St. Vincent presented clear and convincing evidence that K.F., as a result of mental illness, was in danger of coming to harm because she had a substantial impairment or an obvious deterioration of judgment, reasoning, or behavior resulting in the *inability to function independently*. While K.F. may have made some unusual decisions and/or displayed certain behaviors characteristic of a person with bipolar disorder, “her conduct presents too slender a thread to support an involuntary commitment.” *Commitment of J.B. v. Midtown Mental Health Ctr.*, 581 N.E.2d 448, 452 (Ind. Ct. App. 1991) (reversing involuntary commitment where respondent, who was suffering from alcoholism and had been arrested for driving while intoxicated, public intoxication, and public indecency, ran away into traffic and hitchhiked to avoid her mother); *see also In re Commitment of Steinberg*, 821 N.E.2d 385, 389 (Ind. Ct. App. 2004) (reversing involuntary commitment where respondent went about activities of daily living while hospitalized and where he maintained an apartment with a roommate), *trans. denied*. Therefore, we reverse.

Reversed.

BRADFORD, J., and BROWN, J., concur.

STATE APPEALS 101

Judge Cale Bradford
Jill Ellis
Joel Schumm

Overview

- The Appellate Rules
- Getting the appeal on track & motions
- Briefing
- Oral argument
- Rehearing/transfer
- Your questions

Appellate Rules

- Rules 1-3: Scope, Definitions, Forms
- Rules 4-8: Jurisdiction
- Rules 9-20: Initiation of Appeal
- Rules 21-26: General Provisions
- Rules 27-33: Record on Appeal
- Rules 34-42: Motions
- Rules 43-48: Briefs
- Rules 52-53: Oral Argument
- Rules 54-55: Petitions for Rehearing
- Rules 56-64: Supreme Court Proceedings
- Rules 65-67: Court Procedures, Powers and Decisions

GETTING STARTED

Notice of Appeal: Rule 9

• “Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited except as provided by P.C.R. 2.” App. R. 9(A)(5).

- Contents
- Service
- Filing fee \$250 or IFP status

Appellant’s Case Summary: Rule 15

• [New form in 2011](#)—using the old form will get you a Notice of Defect

• No other motion will be filed until a complying Appellant’s Case Summary is filed. App. R. 15(E).

Notice of Defect

- Issued under standing order from the Indiana Supreme Court
- Gives you 10 business days to cure defects in document which is then filed as of the date the defects are cured
- Allows no substantive changes to document
- "Uncured" documents are returned to party

Record: Rules 9, 10, 11, 12

- Duties of the Appellant
 - Request entire or portions of transcript
 - Make timely payment arrangements with court reporter
 - Promptly seek order compelling completion of transcript or clerk's record if not timely filed
 - Request certified statement of evidence if transcript is unavailable (App. R. 31)
 - Pay attention to record issues in appeals from administrative agencies
- Where is the record?
 - Clerk's Record is NOT transmitted to the Court of Appeals (App. R. 12(A))
 - Transcript transmitted after Appellant's Brief filed in criminal appeal, after all briefing completed in civil appeal

MOTIONS

Motions: Motions Panel

- Matters always considered:
 - Motions for discretionary interlocutory appeal (App. R. 14(B))
 - Successive petitions for post-conviction relief (P.-C.R. 1(12))
- Matters *almost* always considered:
 - Motions to dismiss

Motions: Motions Panel

- Motions routinely considered:
 - Motions to file belated briefs
 - Motions for stay pending appeal (including emergency)
 - Motions to remand
 - Motions to appear as amicus curiae
 - Motions for pre-appeal conference
 - Motions for appellate ADR
 - Motions for expedited consideration
 - Motions to file oversized briefs
 - Motions to consolidate

Motions: Chief Judge

- Once a case is fully briefed and assigned to a writing panel, that panel rules on all motions. Until a case is fully briefed, the Chief Judge generally rules on most motions, including most frequently:
 - Motions for extension of time
 - Motions to compel the clerk's record or transcript

Motions: Process

- Response to any motion must be filed within 15 days (+3 days if served by mail) App. R. 34(C), 25.
- Party must seek leave to file reply to response (and tender reply) within 5 days (+ 3 days if served by mail).
- Staff attorney review and recommendation
- Motions Panel or Chief Judge review
- Order

BRIEFS AND APPENDICES

Parts of a Brief: Rule 46

- Statement of Issues
- Statement of Case
- Statement of Facts
- Summary of Argument
- Argument
 - Include standard of review (or separate section)
- Conclusion
- Appealed order (must be included)
- Page/word limit is a maximum—not a goal

Appendix: Rule 50

- Civil vs. Criminal
 - Civil: Include only relevant documents
 - Criminal: Include everything Rule
- Some documents bound separately (green)
 - Administrative Rule 9(G)
- Be sure to include table of contents at beginning and verification at the end

Oral Argument

- 105 oral arguments heard in 2010
 - 116 orders setting oral argument
 - 66 orders denying requests for oral argument
- When and why should you ask?
 - Rule 52
- ["Appeals on Wheels"](#)
- Types of questions to expect
- Preparation
 - Indiana Appellate Institute

Rehearing/Transfer

- Ethical duty to inform client
 - *In re Roberts*, 842 N.E.2d 1293 (Ind. 2006)
- Rehearing, transfer, neither or both
 - Published/not-for-publication opinions
 - Rule 65: Motions to Publish
 - Grounds for rehearing: Rule 54
 - Grounds for transfer: Rule 57(H)
