

nurse was engaged in the diagnosis and treatment of child abuse, the dissenters noted that, “child abuse is a crime, not a medical condition” (*Schmidt*, p 27). In addition, D.V. had no motivation to tell the truth, since she was unaware of the purpose of the nurse’s questioning, and therefore did not expect effective medical treatment. Despite high concern for child abuse, they called for the adoption of a rule that would allow hearsay statements by children in abuse cases in a reliable manner, thus avoiding concern over a Sixth Amendment violation.

Discussion

Mandated reporters are expected to report any credible concern of potential abuse, not to investigate it. However, even in child protective investigations, individuals often doubt a child’s report of victimization, particularly when the child has cognitive difficulties and the allegation or child’s statement is bizarre, as it was in this matter.

When does medical diligence morph into criminal investigation? *Schmidt* illustrates how divergently laws can be interpreted when balancing rights, and the complexity surrounding the protection of society’s most vulnerable. The three-to-two decision on this case exemplifies our society’s continued difficulties in addressing competing interests in child abuse cases. The lines between its definition as a crime versus medical condition, and its management in civil versus criminal proceedings are often blurry, a cause for concern when those who are abused are children with limited ability to advocate for themselves.

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Sex Offender Registration When Not Guilty by Reason of Insanity

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Louisiana Sex Offenders Found Not Guilty by Reason of Insanity Are Subject to Sex Offender Registration Requirements

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In *State v. Cook*, 226 So. 3d 387 (La. 2017), the Louisiana Supreme Court considered whether individuals found not guilty by reason of insanity (NGRI) of sex offenses should be subject to the same public registration and notification requirements as convicted sex offenders. The district court provided relief from registration for the defendant who had been adjudicated NGRI three decades earlier. On appeal, the Louisiana Supreme Court ruled that registry requirements are a civil, nonpunitive measure to promote public safety and therefore may apply to those found NGRI.

Facts of the Case

Glenn Cook was a 56-year-old who had “severe chronic mental illness involving at times paranoia, delusional and disordered thought processes, and mood instability” (*Cook*, p 388). He had a history of psychiatric treatment dating back to his teenage years. In 1986, the Orleans Parish District Court found Mr. Cook NGRI of attempted aggravated rape. He was subsequently committed to inpatient psychiatric care, where he remained until his release to a group home in 1999. In 2002, he relapsed and was recommitted to inpatient psychiatric care. He returned to a community group home in 2004, where treatment notes indicated his adherence to treatment recommendations and group home rules. He nevertheless required additional inpatient psychiatric care in 2009 and again in 2015. In 2016, he was discharged to a structured group home, where again records indicated treatment adherence and appropriate behavior.

In 2016, Mr. Cook petitioned the Orleans Parish District Court for relief of the requirement to register as a sex offender. The district court granted his request. Subsequently, the state attorney general requested that the district court reverse its decision, arguing that the Orleans Parish District Court was the incorrect venue for seeking such relief. The attorney general argued that the applicable state statute, La. Rev. Stat. Ann. § 15:544.1 (2013), stipulated that such requests be submitted to 19th Judicial District Court for centralized review, rather than to the original district court.

The Orleans Parish District Court held a hearing to address the attorney general's request. The district court concluded that La. Rev. Stat. Ann. § 15:544.1 (2013) did not apply in the case of Mr. Cook, because he was not convicted of a sex offense, but rather adjudicated NGRI. The district court thereby denied the attorney general's request. In response, the attorney general petitioned the Louisiana Supreme Court for a supervisory writ to overrule the district court's decision.

Ruling and Reasoning

The Louisiana Supreme Court's majority ruled that the district court erred in its conclusion that the state's registration statute did not apply to Mr. Cook. The district court's decision was thereby vacated and the supervisory writ granted.

The court agreed with Mr. Cook that a conviction is distinct from an NGRI ruling. However, the court further determined that state statute did not distinguish between NGRI and conviction for the purposes of sex offender registration requirements. The court supported this argument by citing a separate statute, La. Rev. Stat. Ann. § 15:541.7 (2013):

Conviction or other disposition adverse to the subject means any disposition of charges, except a decision not to prosecute, a dismissal, or an acquittal, except when the acquittal is due to a finding of not guilty by reason of insanity and the person was committed.

The court noted that a "disposition adverse to the subject" explicitly includes individuals adjudicated NGRI and committed. The majority further said that "while La. Rev. Stat. Ann. § 15:541.7 could be better drafted, we cannot say its meaning is unclear" (*Cook*, p 391). The court concluded that a plain-language interpretation of the statute's language was broad enough to include NGRI as grounds for registration.

Commenting on the ramifications of this interpretation, the court argued that a defendant found NGRI and returned to the public might subsequently relapse. Therefore, such an individual poses "no less a risk" than someone convicted of a similar crime. The court emphasized that the legislative intent of Louisiana's sex offender registration and notification statute is for promotion of public safety and not punishment of those registered. Therefore, the court concluded, that registration requirements could be reasonably applied to Mr. Cook, because he

may still pose a risk to the public despite a finding of NGRI.

In summary, the court held that an NGRI ruling is no different than a conviction where sex offender registration and notification requirements are concerned. The district court had therefore erred in excusing Mr. Cook from registration requirements.

Dissent

Judge Weimer dissented on multiple grounds. First, he said that, for the purposes of registration requirements, the term "conviction" was not defined in statute clearly to include those found NGRI. Therefore, the majority's reasoning that the statute applied to those found NGRI was inappropriately speculative and not an interpretation of the actual language of the statute.

Second, Judge Weimer commented that the majority's conclusions regarding those found NGRI were too broad. Specifically, there was no allowance for individualized assessment to determine whether such individuals have the capacity to comply with registration requirements. He noted that unconditional application of registration requirements to those found NGRI might lead to a cycle of repeated failures to register and that the resulting legal process would be onerous and detrimental to those with serious and persistent mental illness.

Discussion

State v. Cook addressed whether individuals found NGRI of a sex offense should be subject to the same registration requirements as those convicted of similar crimes. Sex offender registration is associated with public stigma, constraints in employment and housing, and general limitations of individual privacy and autonomy. Nevertheless, registration and notification requirements are considered civil in nature, and not punitive. The governmental interest in protecting the public was deemed sufficient to justify the consequences of sex offender registration to the individual.

This case highlights the unique treatment that sex offenders receive in the criminal justice system. Unlike other violent crimes whose perpetrators may pose future risk to the public, registration requirements are intended only for those who commit sex offenses. As noted by the dissent, the majority ruling did not allow for individualized assessments to determine whether individuals found NGRI have the capacity to adhere to registration requirements and un-

derscored how blanket registration requirements, although civil in nature, could confer harm to this class of offender. The majority, however, held that those found NGRI could still be mandated to register as sex offenders.

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Applicable Standard of Review of Decision to Remove the Guardian of Estate and Trustee of a Special Needs Trust

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Abuse of Discretion Is the Correct Standard of Review for Decision to Remove Guardian of an Estate and Trustee of a Special Needs Trust, Not De Novo Review. The Assistant Clerk May Not Only Consider Whether the Guardian and Trustee Complied With the Special Conditions of the Trust, But Also Whether He Acted Prudently and in the Best Interest of the Beneficiary

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In re Estate of Skinner, 804 S.E.2d 449 (N.C. 2017), Supreme Court of North Carolina reviewed an assistant clerk's decision to remove the guardian of the estate and trustee of a special needs fund of an incompetent individual and determined what should be the correct legal standard and application for such a review.

Facts of the Case

On April 13, 2010, the assistant clerk of the superior court found Cathleen Bass Skinner (at the time Cathy Bass) incompetent on account of disability, related to the presence of early stages of dementia and a seizure disorder, and appointed Wake County Human Services as her guardian.

On August 3, 2010, Mark Skinner married Ms. Bass and moved to be appointed as her guardian. He

sought counsel of two attorneys for these actions. On August 2, 2011, Mr. Skinner was appointed permanent guardian of Mrs. Skinner's person by the assistant clerk of the superior court.

Mrs. Skinner's mother, Kathleen Bass, died in August 2012 and named Mrs. Skinner as a beneficiary. Mrs. Skinner's siblings, Douglas Bass and Nancy Clark, filed a motion to have Ms. Clark appointed guardian of Mrs. Skinner's estate. Mr. Skinner filed a competing motion to be appointed guardian of his wife's estate.

On October 9, 2013, the assistant clerk appointed Mr. Skinner guardian of Mrs. Skinner's estate on the basis that Mr. Skinner and Mrs. Skinner were legally married, shared an apartment, and appeared to love each other. The Assistant Clerk also found that Mrs. Skinner would be at risk of losing her Social Security disability benefits and Medicaid assistance if her inheritance was not placed in a Special Needs Trust. The assistant clerk laid out the conditions that Mr. Skinner had to satisfy before he could be appointed the guardian of Mrs. Skinner's estate: that he secure a bond in the amount of \$250,000; that he set up a Special Needs Trust for Mrs. Skinner; and that no inheritance be spent except pursuant to the provisions of the Special Needs Trust. In addition, he was required to report all receipts and expenditures annually to Ms. Clark.

After posting the requisite bond, Mr. Skinner executed the Cathleen Bass Skinner Special Needs Trust, which was approved by the assistant clerk in March 2014.

In July 2014, Mr. Bass and Ms. Clark petitioned to have Mr. Skinner removed as the guardian of Mrs. Skinner's estate and to appoint Ms. Clark as successor trustee of the trust on the grounds that Mr. Skinner had violated his duty to report and account. The assistant clerk reviewed the evidence and found that Mr. Skinner had used the trust fund for personal expenditures, including paying for legal fees, buying a new house, furniture, and appliances and investing in a prepaid funeral insurance policy. The clerk concluded that Mr. Skinner lacked appropriate judgment and had breached his fiduciary duties and subsequently removed him as the trustee and guardian of Ms. Skinner's estate. Mr. Skinner filed a notice of appeal in trial court.

The trial court affirmed the assistant clerk's order. On appeal to the court of appeals, Mr. Skinner asserted that there was insufficient evidence to show