

whether there is an alternative ground for such an order. But it would be good practice to assume otherwise [415 F.3d at 1186].

Discussion

The *Sell* decision has had a large impact on the adjudication of defendants found incompetent to stand trial. The ruling has generated appellate level reviews in the Federal and State systems. In California, statutory changes involving incompetent defendants reflect the impact of the *Sell* decision. In the California Penal Code, if a person is found incompetent to stand trial, the evaluator must consider whether the person lacks capacity to make decisions about taking medications and assess the person's level of dangerousness to self and others. The current case reinforces, through the judiciary, the hierarchy of considerations that should be examined when the issue of forcible medication arises. As set out in *Harper*, the involuntary administration of psychiatric medications can be justified on the grounds of decreasing the risk of danger to self or others in an incarcerated population. In its decision, the Tenth Circuit reiterates the Court's qualification in *Sell* that the new criteria should be applied only after more easily answered grounds for forcing medication are exhausted.

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Competence to Stand Trial and Application of *Sell* Standards

Involuntary Medication Allowed in a Nondangerous Defendant, to Restore Competence to Stand Trial

In *United States v. Bradley*, 417 F.3d 1107 (10th Cir. 2005), the United States Court of Appeals for the Tenth Circuit considered whether the court for the District of Wyoming had correctly applied the standards set forth in *Sell v. United States*, 539 U.S. 166 (2003). The district court ordered the involuntary administration of antipsychotic medications to render the defendant competent to stand trial.

Facts of the Case

In January 2003, Steven Paul Bradley was charged with extortion and use of an explosive device. He had thrown a hand grenade at a group of salesman at a car dealership as he rode by on his motorcycle. Attached to the grenade was a note asking for money, because he was dissatisfied with a purchase of a vehicle from the dealership. When interviewed by law enforcement, Mr. Bradley admitted to this incident. Mr. Bradley also indicated that he possessed explosives because he believed someone was trying to kill him.

In February 2003, the court ordered that Mr. Bradley be committed to a hospital for a psychiatric examination to determine his competency to stand trial. Richard DeMier, PhD, diagnosed Mr. Bradley with a psychotic illness. He further opined that Mr. Bradley was a not a danger to himself or others while in the institution and that he was not competent to stand trial. At a competency hearing in June 2003, the court ordered Mr. Bradley recommitted to the hospital for treatment and further evaluation.

Three days before Mr. Bradley's competency hearing, the Supreme Court decided *Sell*, in which the Court held that if a defendant is not dangerous and is competent to refuse medications, then the involuntary administration of medications to restore competence is permissible if three factual (clinical) conditions are met: (1) the treatment is medically appropriate, (2) the treatment is substantially unlikely to have side effects that may undermine the trial's fairness, and, (3) taking into account less-intrusive alternatives, the treatment is necessary to further important governmental trial-related interests.

Dr. DeMier conducted a follow-up assessment of Mr. Bradley with the *Sell* factors in mind. He opined that Mr. Bradley was incompetent to stand trial because of his mental illness. Mr. Bradley has a psychotic disorder, and the treatment of choice was antipsychotic medication. The facility's psychiatrist agreed that antipsychotic medications were medically appropriate. Dr. DeMier concluded that side effects of antipsychotic medications would not undermine the trial's fairness. He opined that treating the psychotic illness would "likely enhance, rather than undermine, the fairness of any legal proceeding in which the patient is a participant." Mr. Bradley was unwilling to take antipsychotic medications voluntarily.

In November 2003, the court again found Mr. Bradley incompetent to proceed with trial, and the court ordered him to consult with counsel about voluntarily agreeing to take medications. Mr. Bradley did not agree to take medications within 10 days, and the court ordered involuntary administration of medications. Mr. Bradley appealed this decision, because he believed antipsychotic medications were not medically indicated.

Ruling and Reasoning

The Tenth Circuit affirmed the district court's decision. The Tenth Circuit noted that the Supreme Court did not articulate a standard of proof for the *Sell* factors nor a standard of appellate review. The court also noted that the Second Circuit, in *United States v. Gomes*, 387 F.3d 157, 160 (2nd Cir. 2004), parsed the *Sell* factors into factual and legal questions: "whether the Government's asserted interest is important is a legal question." The Second Circuit determined that the remaining *Sell* factors depend on factual findings and ought to be proved by the government by clear and convincing evidence. The Tenth Circuit agreed with this decision, "recognizing the vital constitutional liberty interest at stake." The Tenth Circuit expanded the parameters of what it considered to be a legal question to include whether involuntary administration of antipsychotic drugs is necessary to further important governmental interests.

The court noted that there was no dispute that Mr. Bradley was mentally ill and that he faced serious criminal charges that could amount to 50 years in prison. The court then discussed the first two factual questions of the *Sell* factors. Based on Dr. DeMier's report and testimony, the court determined that the government had met its burden of establishing by clear and convincing evidence that antipsychotic medications were medically appropriate and substantially unlikely to have side effects that may undermine the trial's fairness. Dr. DeMier had reported that an antipsychotic drug regimen was the treatment of choice for psychosis and was far superior to nonpharmaceutical interventions. Dr. DeMier had also discussed that newer, atypical antipsychotic medications have fewer side effects. The court found most significant that Dr. DeMier had observed that "individuals with psychotic disorder typically have severe impairment in both the form and content of their thoughts" and that antipsychotic medications

"improve thinking." Further, the court held that the government met its burden in establishing by clear and convincing evidence that less-intrusive treatments were "unlikely to achieve substantially the same results." The court noted that the district court had tried to induce Mr. Bradley to agree to take the medications voluntarily.

The court next turned to the legal questions. The court noted that the Supreme Court discussed two examples in the *Sell* decision that may lessen the importance of the government's interest in bringing a defendant to trial. In the first example, the defendant might meet criteria for civil commitment "that would diminish the risks that ordinarily attach to freeing without punishment one who has committed a serious crime." In the second example, a defendant may have already been confined for a lengthy period pending a determination of competency. The Tenth Circuit held that neither example applied to Mr. Bradley's case and that the court could not identify other special circumstances that would diminish the importance of the government's interest in restoring Mr. Bradley to competence so that he may face trial.

Finally, the court reached the ultimate legal question, concluding that, given the district court's factual findings, the involuntary administration of antipsychotic drugs would significantly further important governmental trial-related interests.

Discussion

In this case, the Tenth Circuit considered whether the district court had erred in applying the *Sell* factors regarding administering involuntary medications to a nondangerous defendant to restore the defendant to competency. The Tenth Circuit noted that, in the *Sell* decision, the Supreme Court had not articulated a standard of proof nor a standard of appellate review. The Tenth Circuit relied on the Second Circuit's 2004 holding that the *Sell* factors ought to be proved by the government by a standard of clear and convincing evidence, "recognizing the vital constitutional liberty interest at stake."

The Tenth Circuit again relied on the Second Circuit when it parsed out the *Sell* factors into factual and legal questions. Whether the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the trial's fairness, and takes into account less-intrusive alternatives are factual questions. Whether involuntary administration of antipsychotic drugs is necessary to further

important governmental trial-related interests is a legal question.

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Health Insurance and Mental Illness

Are Injuries From Attempted Suicide Covered by an Insurance Plan Despite Mental Illness Exclusion?

In *Cary v. United of Omaha Life Insurance Company*, 108 P.3d 288 (Colo. 2005), the Supreme Court of Colorado, reversing the decision of the Colorado Court of Appeals, found that the health insurance plan was ambiguous, and resolved the ambiguity in favor of the insured.

Facts of the Case

Thomas A. Cary, the petitioner, was employed by the city of Arvada, Colorado. The city provided him with health insurance coverage for himself and his 14-year old daughter, Dena, under the Arvada Medical and Disability Care Plan (the Plan). This plan was a municipal health plan overseen by Arvada Medical and Disability Trust Fund (the Trust). The Trust retained Omaha Life Insurance Company (United) to administer the Plan. Mutual of Omaha of Colorado, Inc. (Antero) subcontracted with United to deal with some of United's claims investigations and appeals.

In June 1997, Dena Cary, in the midst of a major depressive episode, shot herself under the chin in an unsuccessful suicide attempt. She had been diagnosed with Bipolar Disorder, a biologically based mental illness, covered under the Plan. Her injuries required hospitalizations and multiple surgeries. When the insured applied for benefits to cover the cost of treatment, the insurance company (United), denied coverage, stating that self-inflicted injuries were not covered by the health insurance policy. The

insured appealed to the Trust, and his appeal was rejected. The insured then sued Arvada, the Trust, United, and Antero in the Denver District Court (trial court) to obtain coverage for Dena's injury and bring a bad-faith claim against the defendants. The trial court found the insurance policy to be ambiguous and resolved the ambiguity in favor of coverage. Following the decision of the trial court, Arvada and the Trust settled the claim.

United appealed, and the Colorado Court of Appeals reversed the trial court finding. The insured appealed to the Supreme Court of Colorado. The court found that the policy was ambiguous and ruled in favor of coverage.

Rulings

The state supreme court held that the Plan's wording could have more than one reasonable interpretation and hence was ambiguous. They resolved the ambiguity in favor of the insured, reversed the court of appeal's holding and remanded the case to the trial court.

Reasoning

The Court found that the Plan was susceptible to two reasonable interpretations. One interpretation is that "Injuries that occur as a result of illness, even if self inflicted, are defined out of the injury definition and covered by the Plan's promise to provide coverage for treatment of an illness." An alternate interpretation is, "Even if an injury is accidental or the result of an illness, it nonetheless would be excluded from coverage if it is self inflicted." Both interpretations are equally reasonable and this makes the Plan ambiguous. The court resolved the ambiguity in favor of the insured and providing coverage for injuries resulting from an attempted suicide caused by mental illness.

Dissent

The dissent argued that "the policy provisions should be read to avoid ambiguities, if possible declaring: The language should not be tortured to create ambiguities." The dissent wrote that determining the meaning of the policy by examining the entire instrument and not by viewing clauses or phrases in isolation would lead to the conclusion that the Plan excluded coverage for self-inflicted bodily injuries.

Discussion

This case highlights the use of the *contra proferentum* rule for interpreting contracts. It also touches on