

The court's holding was based on the legislative history of § 13.26.241(a) and related laws, as well as public policy considerations. The court found that the text of the statute, along with other adult guardianship statutes, support the conclusion that "interviews for the purpose of ascertaining capacity to make informed decisions about care and treatment services refers specifically to interviews to determine capacity to make personal medical decisions" (*In re Protective Proceedings of Nora D.*, p 1064). The court found that the phrase "informed decisions" means "informed consent," which in the health care context refers to the principle that a patient must consent prior to a medical treatment or service. With respect to informed consent, the court recognized that the right to refuse medical treatment is a liberty interest that is protected by the United States Constitution. Due to this liberty interest being at stake, the legislature intended that respondents would only be required to answer questions to determine their ability to make personal medical decisions. The court explained that "this exception to the respondent's right to refuse to answer questions ensures that a court has ample evidence before determining whether a guardian is permitted to make sensitive and personal decisions affecting the respondent's bodily autonomy, dignity, and privacy" (*In re Protective Proceedings of Nora D.*, p 1066).

The court noted that there had been a strong focus in the preceding decades, from both a legislative and social policy perspective, on increasing due process protections for respondents in guardianship proceedings and further protecting their rights. When interpreting the statute, the supreme court made it clear that they considered these recent social policy changes and the state's efforts to reform guardianship statutes. They noted that Alaska Senate Bill 3 (SB 3), which passed in 1981, provided that guardianships should be ordered only to the extent necessary to protect well-being and encourage the development of maximum self-reliance and independence of the person. In addition, SB 3 recognized that an individual can be "incapacitated in one respect and competent in another" (*In re Protective Proceedings of Nora D.*, p 1066). This can be seen by the fact that SB 3 aimed to increase the use of limited or partial guardianships, so that guardians would only be authorized based on the magnitude of the incapacitation. The state supreme court also noted that their interpretation of the statute was based on the "strong policy of

restraint" (*In re Protective Proceedings of Nora D.*, p 1066), which explains that an incapacitated person with an ap-pointed guardian is not presumed incompetent, and retains all rights other than those limited by a court. The court made it clear that their interpretation of the statute was based on the social policy goal of reforming guardianship statutes to enhance due process protections.

Discussion

In *In re Protective Proceedings of Nora D.*, the Supreme Court of Alaska held that a respondent in a guardianship proceeding should only be compelled to participate in evaluations that are specific to medical decision capacity, and not to any other type of evaluation, including mental health evaluations. This is a substantial decision because it gives very specific limitations to when a respondent's right to remain silent can be overcome. People cannot be forced to give up the right to remain silent without proper legal justification.

The court could have allowed for a broader interpretation of the statute and considered mental health evaluations to have the purpose of ascertaining decision-making capacity. This would potentially allow for more data to be compiled, enabling the trier of fact to make a more informed decision, though at the cost of infringing on liberty rights. The court's decision to interpret the statute more narrowly was based on their view of social policy considerations in Alaska and is consistent with preserving liberty interest over other potential benefits. The court's decision in this case had the goal of safeguarding liberty rights and maintaining due process protections, by incorporating strict and precisely defined exceptions to the right of refusal to speak. A guardianship respondent maintains liberty rights, just like any other person, and those rights should not be lightly curtailed, and only for very specific purposes.

Acceptance of Voluntary Treatment in Conservatorship Trials

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**Willingness to Accept Treatment Voluntarily
is a Consideration in Grave Disability, Not an
Exemption**

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In *Conservatorship of K.P.*, 489 P.3d 296 (Cal. 2021), the California Supreme Court reviewed a split of authority on the appropriate role that a proposed conservatee's acceptance of voluntary treatment plays in a conservatorship trial. Specifically, the court considered whether willingness to voluntarily accept treatment is a relevant factor for the trier of fact to consider on the issue of grave disability, or if it is a separate element that must be proven. In this case, K.P. appealed the reappointment of a conservatorship challenging the trial court's refusal to modify jury instructions to require, as a separate element, a finding of his unwillingness or inability to accept meaningful treatment. The California Supreme Court ruled that willingness to accept treatment is relevant but not a separate consideration in determining grave disability.

Facts of the Case

Beginning in May 2008, the Los Angeles County Superior Court first granted conservatorship for then 23-year-old K.P. under California's Lanterman-Petris-Short Act (LPS Act; Cal. Welf. & Inst. Code, § 5000 et seq. (1967)). (All statutory references are to the Welfare and Institutions Code). Under § 5350, the LPS Act allows for a one-year appointment of conservatorship for an individual who is "gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism." According to 5350(d)(1), the individual in question is also entitled to either a court or jury trial to determine grave disability. Over the following nine years, the court continuously granted annual renewals of the conservatorship. In April 2018, the Los Angeles County public guardian again filed a renewal petition for conservatorship, and K.P. requested a jury trial.

During the trial, a psychologist who treated K.P. at his residential facility testified that K.P. has

schizophrenia, providing examples of his symptoms, and argued that he lacked "significant insight" into his mental condition and that he required continuous supervision to maintain consistent treatment. K. P.'s mother also testified, and while she affirmed that she would help him to continue his treatment, she could not provide housing for him. During K.P.'s testimony, he agreed to see a psychiatrist and a therapist upon release from the facility, and agreed to remain at the facility until he could find housing. But, he denied having a mental illness and testified that he believed that he was better off without psychiatric medications and planned to stop taking his medications if released from conservatorship. He also provided a plan to supplement Social Security funds with moneys from becoming an entrepreneur.

The court provided two instructions to the jury from the Judicial Council of California Civil Jury Instructions (CACI). The first instruction for the jury, CACI No. 4000, involved determining whether, beyond a reasonable doubt, K.P. has a mental disorder and if he is gravely disabled as a result of the mental disorder. Pursuant to CACI No. 4002, when "determining whether [K.P.] is presently gravely disabled, you may consider whether he is unable or unwilling voluntarily to accept meaningful treatment" (*Conservatorship of K.P.*, p 299).

K.P. requested that CACI No. 4000 be modified to reflect that a separate element be introduced, requiring a finding that he was "unwilling or unable" to accept treatment voluntarily. Additionally, he made an argument to the court that the final sentence of CACI No. 4002 was inadequate due to it being "thrown in at the bottom of [a] less consequential later jury instruction" (*Conservatorship of K.P.*, p 301). The jury found K.P. to be gravely disabled, and the conservatorship reappointment petition was granted. K.P. appealed, challenging the court's refusal to modify CACI No. 4000. The Court of Appeals concluded that no error was present. The case was further appealed to the California Supreme Court.

Ruling and Reasoning

The California Supreme Court agreed with the appellate court's conclusion after review, thus ending the challenge to the conservatorship. The court interpreted K.P.'s complaint regarding jury instructions to be, in essence, a claim that "unwillingness or inability to accept voluntary treatment is required for a conservatorship to be established" (*Conservatorship*

of *K.P.*, p 302). In the court’s statutory analysis, the court noted that chapter 3 of the LPS Act (§ 5350 et seq.) requires that willingness or ability to accept voluntary treatment must be considered when a conservatorship proceeding is initiated for a person who is an inpatient but not for an outpatient or reappointment. The court also noted that section 5350 does not include any requirement that the proposed conservatee’s willingness to accept voluntary treatment be decided as a separate consideration during the trial. The court added that no such requirement is present within the statutory definition of grave disability. In addition, the court referenced a 1989 amendment to section 5350 that grave disability is not met when a potential conservatee may obtain assistance from another party to meet basic needs, but that it did not add any requirement pertaining to the amenability to receive treatment voluntarily. But, the court added that a conclusion may be drawn by the trier of fact that a potential conservatee may not be gravely disabled if sufficient evidence exists that the person’s willingness and ability to accept voluntary treatment would result in meeting basic survival needs. Relying on multiple prior cases, the only question to consider in a conservatorship trial is whether a mental illness renders the proposed conservatee gravely disabled.

The California Supreme Court then considered K.P.’s interpretation of prior cases, *Conservatorship of Davis*, 177 Cal. Rptr. 369 (Cal. Ct. App. 1981) and *Conservatorship of Walker*, 242 Cal. Rptr. 289 (Cal. Ct. App. 1987). K.P. argued that both *Davis* and *Walker* included instructions to jurors that a separate finding of the proposed conservatee’s unwillingness or inability to accept treatment is required in order for the trier of fact to find the individual gravely disabled. The court, based on prior case rulings and later enacted amendments to the LPS Act, disapproved the applicability of both *Davis* and *Walker* because they strayed too far from the statutory framework.

K.P. also asserted that federal and state due process principles require that a state must prove beyond a reasonable doubt that a conservatee is unable or unwilling to accept voluntary treatment. K.P. argued that “limiting the jury’s consideration to the sole issue of grave disability as defined by the statute would seriously infringe on the conservatee’s due process rights” (*Conservatorship of K.P.*, p 308). Although the court acknowledged the significant liberty interests at stake and agreed that the fact finder must be allowed to consider all credible evidence

relating to the topic of grave disability, including the proposed conservatee’s amenability to voluntary treatment, the court did not agree that the state or federal constitutions require a separate finding on the proposed conservatee’s willingness to accept voluntary treatment. The court determined that K.P.’s argument took too narrow a view of the meaning of grave disability in a conservatorship trial, and noted that K.P. did not explain why a proposed conservatee’s constitutional rights are not protected by the fact finder’s consideration of amenability to voluntary treatment. Thus, the California Supreme Court ruled that the CACI instructions given during the trial were appropriate, the jury’s finding of grave disability was sufficient for conservatorship to be reappointed, and that willingness to accept voluntary treatment was properly considered during the trial.

Discussion

The ruling by the California Supreme Court provides further guidance as to what constitutes grave disability due to a mental illness, and under what grounds an individual is suitable for LPS conservatorship. In essence, the ruling further expands suitability for LPS conservatorship for those with mental illness, thereby increasing the population that would meet the criteria to be under conservatorship. The court justified its rejection of making the criteria stricter by acknowledging and deferring to the legislature’s attempts to provide more access to care for those deemed gravely disabled: The *Walker* and *Davis* cases “upset the carefully calibrated statutory approach through which the Legislature has endeavored to protect both the mentally ill and the public, and to ensure that those in need can receive prompt, appropriate treatment tailored to their individual condition and circumstances” (*Conservatorship of K.P.*, p 307). In a state caring for a large number of individuals with severe mental illness, the court is supporting the state’s efforts to better care for its constituents. This is particularly pertinent as more persons with mental illness are increasingly released into the community because of diversion programs, and jail and prison reform.

Consent for Treatment and Related Matters

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