

## Defining the Term Mental Disorder in Nebraska's Statute

**Krista Ulisse, DO**

*Fellow in Forensic Psychiatry*

**Aliana Abascal, MD**

*Assistant Professor of Psychiatry*

*Department of Behavioral Medicine and Psychiatry  
West Virginia University School of Medicine  
Morgantown, West Virginia*

### Nebraska Statute Requires a Mental Disorder to Include a Lack of Legal Understanding and Ability to Protect One's Rights

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In *Nieveen v. Tax 106*, 974 N.W.2d 15 (Neb. 2022), Sandra K. Nieveen appealed the district court's ruling that she was not entitled to an extended redemption period under Nebraska's real property tax law (Neb. Rev. Stat. §77-1827 (2018)). The district court ruled that Ms. Nieveen provided insufficient evidence that she had a mental disorder. The Nebraska Supreme Court upheld the district court's ruling, stating the term mental disorder equates to the previously used term insanity, which requires claimants to establish that their mental illness prevents them from understanding their legal rights, instituting legal action, and acting in protection of their rights.

#### Facts of the Case

Ms. Nieveen did not pay her property taxes in 2013. On March 02, 2015, the Lancaster County Treasurer sold the tax certificate for Ms. Nieveen's property to TAX 106. On March 2, 2018, TAX 106 sent a notice by certified mail to Ms. Nieveen describing their intent to apply for the tax deed to her property in three months. Ms. Nieveen could redeem her property within this time period. Vintage Management, LLC (Vintage), was assigned TAX 106's interest in the tax certificate for Ms. Nieveen's property. On June 22, 2018, Vintage applied for and received the tax deed for Ms. Nieveen's property because she had not redeemed the property. In May 2019, Ms. Nieveen tried to redeem the property, but the Lancaster County Treasurer declined.

Approximately one year after Vintage obtained the tax deed for the property, Ms. Nieveen filed a lawsuit against Lancaster County and Vintage to quiet title the property in her name. She claimed she was entitled to a five-year redemption period instead of the standard three-year redemption period under the real property tax law (Neb. Rev. Stat. § 77-1827 (2018)), because she had a mental disorder at the time of the sale of the tax certificate to TAX 106 on March 2, 2015. She also claimed the issuance of the tax certificate to Vintage violated her rights under the Due Process Clauses, the Takings Clauses, and the Excessive Fines Clauses of the United States and Nebraska Constitutions.

The district court dismissed Ms. Nieveen's claims regarding the alleged constitutional violations of her rights and all claims against Lancaster County. The court heard arguments regarding Ms. Nieveen's claim that she had a mental illness at the time of the sale of the tax certificate, entitling her to a five-year redemption period under Neb. Rev. Stat. § 77-1827. Sabrina Hellbusch, a licensed advanced practice nurse board certified in mental health, confirmed by deposition testimony that Ms. Nieveen had been her patient since November 2018. She offered the diagnoses of "major depressive disorder, recurrent, severe, and generalized anxiety disorder" (*Nieveen*, p 20). Although she had insufficient information to opine on Ms. Nieveen's condition in 2015, she opined that Ms. Nieveen's diagnoses could "cause a person to neglect an important activity and could cause a person to miss important deadlines" (*Nieveen*, p 20). Ms. Nieveen's daughter also testified, stating that her mother did not pay the bills because of a "combination of money and just like — I don't — denial of just life, in general of the way life works" (*Nieveen*, p 20). Vintage submitted an affidavit from Dr. Bruce Gutnik, a psychiatrist, who concluded that the available evidence did not suggest Ms. "Nieveen was unable to manage her own affairs or understand her then current condition" (*Nieveen*, p 21).

The district court ruled that Ms. Nieveen was not entitled to the extended redemption period under Neb. Rev. Stat. § 77-1827 because she did not establish that she had a mental disorder. The definition of mental disorder used by the court was defined in *Wisner v. Vandelay Investments*, 916 N.W.2d 698 (Neb. 2018): a "person with a mental disorder. . . is one who suffers from a condition of mental derangement which actually prevents the sufferer from understanding his or her legal rights or from instituting legal action [,] and . . . a mental disorder. . . is an

incapacity which disqualifies one from acting for the protection of one's rights" (*Wisner*, p 726). Ms. Nieveen appealed to the Nebraska Supreme Court.

#### Ruling and Reasoning

The Nebraska Supreme Court turned to *Wisner's* definition of "mental disorder" for purposes of Neb. Rev. Stat. § 77-1827. Accordingly, to prove a mental disorder, individuals must establish both the presence of a mental health condition and that the condition prevented them from understanding their legal rights or taking actions to protect them. The court noted that the definition previously used for "insane" was later extended to "mental disorder" in some state codes. The Nebraska Court of Appeals previously held in *Vergara v. Lopez-Vasquez*, 510 N.W.2d 550 (Neb. Ct. App. 1993) that "'a mere change of phraseology' will not change the operation of a statute" (*Nieveen*, p 23).

Using this information, the Nebraska Supreme Court found that Ms. Nieveen was required to prove "she had a condition of mental derangement which prevented her either from understanding her legal rights or from taking action to protect her legal rights" (*Nieveen*, p 23). Although Ms. Nieveen provided evidence that she had a mental illness by testimony from a licensed clinician, she did not meet the burden of demonstrating that her illness prevented her from understanding or taking action to protect her legal rights. The court cited Ms. Nieveen's daughter's testimony, which stated Ms. Nieveen's finances and lack of appreciation for the principles governing daily life resulted in her not acting when her tax deed was initially sold in 2015.

The court further highlighted that Ms. Nieveen had previously responded to city notices regarding

her home, indicating awareness of the consequences of inaction. She also did not have a guardian, conservator, or power of attorney at the time her tax deed was sold, reflecting that concerns regarding her ability to manage her daily or financial affairs did not reach the level where concerned parties sought appointment of a guardian or conservator. Ms. Nieveen's expert witness was also unable to opine on her condition in March 2015, while Vintage's expert wrote that there was insufficient evidence to state Ms. Nieveen was unable to protect her rights in March 2015. Accordingly, the court determined that Ms. Nieveen was not entitled to the extended redemption period under Neb. Rev. Stat. § 77-1827. It was also determined that the district court did not err in dismissing Ms. Nieveen's constitutional claims.

#### Discussion

The decision in *Nieveen* is instructive for forensic psychiatrists on the definition of mental disorder and evaluating symptoms of any disorder at the relevant time period for the assessment in question.

*Nieveen* illustrates the discrepancy between the definitions of mental disorder in clinical psychiatry and in the legal sphere. The mere presence of a mental health diagnosis does not automatically qualify as a mental disorder in many laws, as exemplified by *Nieveen*. Forensic psychiatrists must be aware of the legal definitions of terms relating to mental illness in their jurisdictions and recognize that they may not correspond directly to clinical definitions as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). For many assessments, also exemplified by *Nieveen*, the requisite mental disorder or symptoms must have occurred at a relevant point in time.