

Procedural Standards for Civil Recommitment Hearings

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Failure to Obtain a Post-petition Mental Health Evaluation for Recommitment is not a Violation of the Petitioner's Liberty Interest

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In *In re B.A.F.*, 496 P.3d 554 (Mont. 2021), the Supreme Court of Montana considered an appeal claiming that the state's failure to obtain a post-petition evaluation before B.A.F.'s recommitment hearing represented substantial prejudice and was a violation of his individual liberty rights under the plain-error doctrine. The state supreme court ruled that, although their evaluation was not conducted pursuant to state code, it did not substantially prejudice B.A.F., and the court had adequate grounds for continued commitment.

Facts of the Case

B.A.F. has a history of paranoid schizophrenia, as well as antisocial personality disorder, and was prescribed seven different medications to help manage his symptoms. As a result of his severe mental illness, B.A.F. was involuntarily committed to the Montana Mental Health Nursing Care Center (MMHNCC) in March 2016 and was subsequently recommitted to the facility each year through 2019. The recommitments were deemed necessary because of B.A.F.'s unresolved psychotic symptoms and frequent episodes of medication noncompliance.

In June 2019, Susan Stevens, a psychology specialist at MMHNCC, examined B.A.F. for the purpose of determining the need for recommitment. Ms. Stevens had submitted mental health assessments for each of the previous recommitment petitions. Ms.

Stevens' recommitment evaluations were based on reviews of both social and psychiatric history, review of medical records, clinical observation, an interview of B.A.F., and a "mental state" examination. But, on the advice of his attorney, B.A.F. refused to participate in the June 2019 prepetition interview. Therefore, Ms. Stevens had to rely on more indirect sources of information, such as clinical observations and a review of pertinent records, to complete her prepetition mental health assessment. The assessment revealed that B.A.F. continued "to experience psychotic episodes and to resist his prescribed medications" (*B.A.F.*, p 556). The psychiatric history review also noted that, in May 2019, B.A.F. had been transferred to a more secure unit due to an intensification of his psychotic symptoms. At the time of transfer, he expressed belief that his roommate had killed his brother. The medical records included a March 2019 report, prepared by B.A.F.'s psychiatrist, which stated that B.A.F. had never had "any sustained" period of time without active psychosis while at MMHNCC. The record review also revealed that B.A.F. had expressed paranoid delusions as recently as June 2019.

In the petition for recommitment, Ms. Stevens noted that B.A.F. continued to experience delusions and hallucinations, and remained intermittently noncompliant with his prescribed medications. As a result, the district court determined that there was probable cause for B.A.F.'s recommitment and subsequently accepted the petition for recommitment. Afterward, in accordance with Mont. Code Ann. §§ 53-21-122(2)(a), -123(1), and -128(1)(c) (2017) (MCA), the court appointed Ms. Stevens to perform a mental health evaluation (referred to as a "post-petition evaluation") on B.A.F. prior to the hearing to consider recommitment. Ms. Stevens failed to submit the post-petition evaluation. Nevertheless, the district court held a recommitment hearing two months later, at which time Ms. Stevens, and the director of nursing at MMHNCC, both testified that B.A.F. remained a danger to himself and others, and that MMHNCC remained the least restrictive environment for him. Based on this testimony, as well as the petition for recommitment, the district court issued a one-year recommitment order for B.A.F.

B.A.F. appealed on the grounds that the ruling was based on an outdated pre-petition evaluation, which was prejudicial in that it failed to reflect his

reported improvement in the two months prior to the hearing. B.A.F. argued that his fundamental right to liberty was violated and that the district court committed plain error, since he was recommitted without undergoing the mandated post-petition evaluation. He characterized the failure to complete the mandated evaluation as a manifest miscarriage of justice which “compromised the integrity of the recommitment process” (*B.A.F.*, p 558).

Ruling and Reasoning

As B.A.F. did not object to the failure to obtain a post-petition evaluation during the recommitment proceedings, he sought plain error review on appeal. The Supreme Court of Montana agreed to review the unpreserved claim per plain error doctrine since the matter was a substantial right, i.e., liberty.

The court stated that, to establish a violation of a substantial right, an appellant must prevail on two prongs. First, the alleged error must involve a fundamental right, and second, the failure to review the alleged error would result in an evident “miscarriage of justice, leave unsettled the fundamental fairness of the proceedings, or compromise the integrity of the judicial process” (*B.A.F.*, p 559). In addressing the first prong, the court examined the state’s claim that B.A.F.’s refusal to participate in the assessment constituted a waiver of this requirement in the recommitment proceedings. In analyzing this claim, the court referred to the purpose of involuntary commitment statutes, as previously established in Montana case law, asserting that the statutes existed to prevent the government from restricting an individual’s liberty without due notice, cause, and process. Therefore, given the liberty concern, as well the clear statutory obligation for the post-petition evaluation noted in Mont. Code Ann. § 53-21-122(2)(a), the court ruled that there was no basis for the state’s claim that B.A.F. waived his right to a post-petition evaluation. The court held that as the civil commitment of B.A.F. involved his fundamental right to liberty, and the state failed to obtain the post-petition evaluation as mandated by Montana statute, the first prong of plain error review was satisfied.

Regarding the second prong of the plain error review, B.A.F. argued that the lack of a post-petition evaluation resulted in a prejudicial conclusion regarding his need for recommitment as it did not allow for consideration of his reported improvement of psychiatric symptoms during the two months between the

filing of the petition for recommitment and the recommitment hearing. But the court noted that the expansive volume of medical records from the preceding three years clearly indicated the severity of his ongoing symptoms. The court pointed out the fact that just a month prior to the recommitment petition, a worsening of B.A.F.’s symptoms had necessitated his transfer to a more secure unit. Additionally, the court noted that initial commitment proceedings were fundamentally different from recommitment proceedings since significantly less information was available for an initial commitment, resulting in the post-petition evaluation having significantly more probative value. The court affirmed the district court’s recommitment order, ruling that B.A.F. had not demonstrated that the state’s failure to obtain a post-petition evaluation resulted in a “manifest miscarriage of justice,” and thus B.A.F. had failed to satisfy the second prong of plain error review.

Discussion

Liberty is the *sine qua non* of fundamental rights. And its curtailment diminishes, or negates, the other fundamental rights. But liberty rights are hardly unlimited. In *B.A.F.*, the Supreme Court of Montana considered whether a failure to meet the evaluation requirements of state statutory law amounted to a violation of a patient’s liberty interest. The court signified the essential import of the right involved by accepting B.A.F.’s unpreserved objection to the lack of a required evaluation. Although the court recognized that proper procedure had not been followed to the letter, the spirit of the law had been upheld; there was ample evidence in the record to demonstrate the need for both continued treatment and institutional confinement.

In *O’Connor v. Donaldson*, 422 U.S. 563 (1975), the Supreme Court defined the legal rationale for civil commitment. Their famous phrase “without more” balanced the liberty versus danger calculus. In *O’Connor*, a patient had been held for 14 years without clearly demonstrated evidence of the danger his liberty would have posed to himself or others. As the Court later stated in *Addington v. Texas*, 441 U.S. 418 (1979), liberty cannot be deprived solely for “idiosyncratic behavior.” In *B.A.F.*, a state supreme court ruled that ample evidence of mental illness, as well as dangerousness, had been demonstrated, even without the “required” post-petition evaluation.