deliberate indifference. This is a subjective standard, requiring proof that prison officials knew of, but disregarded, an excessive risk to the inmate. Accordingly, Mr. Clark was required to allege adequately that prison officials had a sufficiently culpable state of mind. Mr. Clark had asserted that the prison officials had known about his history of significant mental illness and yet had disregarded his pleas to leave the SHU, leaving him there for seven months and causing his mental health to deteriorate. The court concluded that Mr. Clark’s allegations, that prison officials were deliberately indifferent as to the effects of prolonged isolation on Mr. Clark’s already severely compromised mental health, were sufficient to raise a legitimate Eighth Amendment claim.

Finally, the Third Circuit addressed the legitimacy of the district court’s ruling that no established law had been violated during the seven months Mr. Clark spent in the SHU. To meet this subjective standard, the prison officials must have had “fair warning” that their conduct violated the prisoner’s Eighth Amendment right. To address this question, the court reviewed its own precedents, relevant U.S. Supreme Court decisions, and multiple federal circuit court decisions with related fact patterns. In these decisions, the Third Circuit noted that the knowing infliction of serious psychological injury, by whatever means, had consistently grounded Eighth Amendment violation claims. The court also relied on Cmty. Legal Aid Soc’y Inc. v. Coupe, 2016 WL 1055741 (D. Del. 2016), a decision handed down by a Delaware district court when Mr. Clark had been in the SHU for two months. In this decision, the district court ruled that Commissioner Coupe’s alleged conduct of “placing mentally ill inmates in solitary confinement, without adequate mental health treatment and out-of-cell time, raised a viable constitutional claim” (Cmty Legal Aid, p 2). The court also cited a Delaware statute, which was in effect at the time of Mr. Clark’s solitary confinement, preventing courts from imposing a term of solitary confinement for more than three months. The court concluded that the law, along with other sources of notice, sufficiently “warned prison officials that their purported conduct was unlawful” (Clark, p 188). The Third Circuit held that the district court’s grant of qualified immunity was premature, reversed the district court’s order dismissing the conditions of confinement claim, and remanded the case for further proceedings.

Discussion

In Farmer v. Brennan, the U.S. Supreme Court noted that the Eighth Amendment outlaws cruel and unusual punishments, not conditions. The Court also said that “an official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment” (Farmer, p 838). This emphasis on recklessness (i.e., a prison official ignoring a consciously apprehended risk to an inmate) forms the basis for Farmer’s definition of deliberate indifference. The Court held that the Eighth Amendment had a “subjective component,” and that a determination of deliberate indifference mandated “inquiry into a prison official’s state of mind” (Farmer, p 838). And as to this “state of mind,” Farmer held that a prison official could not be deemed liable under the Eighth Amendment unless the prison official disregarded an excessive risk to the inmate’s health or safety.

In Clark, the circuit court held that the petitioner’s conditions of confinement claim could potentially qualify as an Eighth Amendment violation. The court sought to avoid objectivity language such as what a prison official “should have known” and instead to ground the potential violation in the prison officials’ subjective knowledge. Of course, determining with certainty what someone knew is a difficult task.

The Clark case is instructive for clinicians working in corrections facilities and also forensic evaluators who review claims of Eighth Amendment violations. The court in Clark emphasized the construct of “fair warning.” The Third Circuit reviewed cases and laws which gave notice to prison officials that their conduct was a potential violation of Mr. Clark’s Eighth Amendment right. The Third Circuit thus considered Mr. Clark’s claim properly alleged, and they remanded Mr. Clark’s case back to the district court to allow it to proceed on the merits in light of its instruction.

Due Process for Civil Commitment Proceedings

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Patients’ Due Process Rights Are Not Automatically Violated during Civil Commitment Hearings if Counsel Is Not Present

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In In re J.R., 2022 WL 628559 (N.C. 2022), the Supreme Court of North Carolina ruled that the trial judge at a civil commitment hearing had not violated due process when he had asked questions of a treating physician witness (thereby eliciting testimony that tended to support the civil commitment of the patient). The trial judge had done so after the state declined to provide representation at the hearing. The state supreme court found no violation of the respondent’s right to an impartial tribunal.

Facts of the Case

J.R., a patient with a history of bipolar disorder and alcohol use disorder, was found unconscious on the street in Durham, North Carolina, following an alcohol-related seizure. He was transported to Duke University Medical Center (DUMC), where his treating physician petitioned for involuntary commitment owing to concerns that the patient was “likely to cause harm to self” in his current state. A magistrate then entered an order to detain the patient involuntarily until judicial review. Approximately 25 days later, J.R. went before the trial court for an involuntary commitment hearing.

The District Attorney’s (DA’s) Office of Durham County, being under no statutory obligation to appear at hearings that are not at state facilities, had decided to no longer send representatives to attend hearings at DUMC (a private entity). When the judge at J.R.’s hearing announced this scenario, J.R.’s counsel immediately objected to proceeding with the hearing. The trial court elected to proceed with the hearing and welcomed defense counsel to appeal.

The trial court then called a DUMC psychiatrist to testify and asked open-ended questions, such as “State your name and occupation for this [c]ourt, and tell me what it is you want me to know about this matter,” and later, “Anything else?” (In re J.R., p 1–2). The psychiatrist testified that J.R. had been hospitalized eight times in the past year owing to alcohol withdrawal or hyponatremia resulting from a chronic alcohol use disorder, that he had deficits in executive functioning, and that he experienced manic episodes attributable to bipolar disorder. He frequently had left the hospital against medical advice and subsequently had become homeless. He was regularly drinking alcohol, was frequently being charged with public intoxication, and was spending money recklessly and squandering his retirement savings. He also was still currently going through medication-assisted alcohol detoxification. The psychiatrist, therefore, opined that J.R. still posed a danger to himself and that he could not be treated without involuntary commitment.

The trial court concluded that J.R. had a mental illness and was a danger to himself, and entered an order for involuntary commitment. J.R. appealed the trial court’s decision. The North Carolina Court of Appeals affirmed. J.R. appealed to the Supreme Court of North Carolina on the grounds that the court of appeals had erred in determining that his due process rights were not violated.

Ruling and Reasoning

The Supreme Court of North Carolina affirmed the decision of the court of appeals, finding that the respondent’s due process rights had not been violated. The court cited prior cases that indicate that judges are more than just moderators.

Judges are “essential and active factors or agents in the due and orderly administration of justice. It is entirely proper, and sometimes necessary that they ask questions of a witness” (In re J.R., p 4, citing State v. Hunt, 254 S.E.2d 591 (N.C. 1979) p 596). In J.R., the judge had a duty to ask such questions.

The North Carolina Rules of Evidence also anticipate such participation by the judge.

J.R. argued that civil commitment hearings must be adversarial in nature (citing Vitek v. Jones, 445 U.S. 480 (1980)), and that, when counsel for the state does not appear, the judge becomes a surrogate prosecutor for the state by asking questions and eliciting testimony that tends to support the respondent’s civil commitment, thereby eroding the judge’s impartiality and threatening the adversarial nature of the proceeding. But, the court concluded that the judge
had asked neutral questions and “did not take on the role of a prosecutor merely because counsel was not present” (In re J.R., p 4) or merely because the answers to the judge’s questions favored J.R.’s being civilly committed. Further, the argument that a court automatically becomes partial simply by asking questions “elevates form over substance and would have potentially far-reaching, negative consequences” for various types of cases beyond civil commitment hearings (e.g., for various pro se cases, contempt proceedings, domestic violence actions, and sensitive juvenile hearings) (In re J.R., p 4).

Dissent

The dissent said that the court majority’s opinion set up a “straw man” argument by defining J.R.’s position as a request for a blanket rule prohibiting the judge at a commitment hearing from asking questions, owing to this questioning posing a threat to neutrality. Rather, “the problem in these cases is that the trial court elected to proceed to hear a case when one party failed to appear” (In re J.R., p 7). Judges can, of course, ask clarifying questions in a variety of types of hearings when both parties are represented by counsel, but that was not the case here. The trial court had “called the only witness, asked all the questions, and elicited all the evidence used to support J.R.’s commitment,” thereby forcing the judge (even if unwillingly) to “act as the prosecuting party by calling all the witnesses and eliciting the testimony and other evidence necessary to commit the respondent” (In re J.R., p 9).

Although the majority did set out some parameters for such questioning, indicating, for example, that a trial judge should not use language that could “conceivably be construed as either advocacy in relation to the petitioner or as adversative in relation to the respondent,” this scenario still creates “an unfortunate case-by-case legal standard where due process protections depend not on the adherence to well-established procedures of an adversarial process but rather on the particular questions asked by the judge” (In re J.R., p 10).

Discussion

The holding in this case emphasizes the importance of due process in an involuntary commitment hearing given the significant liberty interests and substantial rights at stake. Due process entitles the respondent to an adversarial process, overseen by an independent decision maker. The majority ruled in this case that civil commitment hearings, at least in North Carolina, do not require the presence of counsel representing the state, and that a judge can conduct such hearings without necessarily losing impartiality, even when that judge directly asks questions of witnesses, provided that these questions are “even-handed.” Clinicians must be aware of the commitment laws and procedures and relevant case law in their own jurisdiction. Some states explicitly require state representation at commitment hearings, whereas other states do not.

This case is relevant to all clinicians who work in inpatient settings, given the well-documented tendency for the civil commitment process to shift over time from an adversarial model to a more “commonsense model” (Applebaum P. Almost a Revolution: Mental Health Law and the Limits of Change. New York: Oxford University Press; 1994). In the latter model, the emphasis begins to center on beneficence rather than on the protection of patient rights. All of the major participants in the commitment process (psychiatrists, district attorneys, public defenders, and judges) can end up working collaboratively toward what they view as being in a patient’s best interest, rather than explicitly recognizing the risk of such an erosion occurring and working to preserve the adversarial nature of the process. The presence of a representative for the state therefore does not guarantee the protection of the adversarial process, but the absence of such representation arguably increases the risks of this erosion. Clinicians asked to participate in civil commitment hearings should remain mindful of these concerns.

Nexus between Mental Illness and Dangerousness in Civil Commitment

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