

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

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4 Court File No. 19HA-PR-20-939

5 In the Matter of the Civil Commitment of:

6 Charles Helmer,

7 Respondent.
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10 The above-entitled matter came duly on for
11 Hearing before the Honorable Tim D. Wermager, Judge of the
12 above-named Court, on June 1, 2021 at the Dakota County
13 Judicial Center, Hastings, Minnesota, via Zoom Technology.

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15 A P P E A R A N C E S

16 **ALL PARTIES APPEARED VIA ZOOM TECHNOLOGY**

17 Jennifer Jackson, Assistant Dakota County Attorney,
18 appeared on behalf of the State.

19 William Lubov, Esquire, appeared on behalf of
20 Charles Helmer.

21 Rayeed Ibtesam, Esquire, appeared on behalf of
22 Ann Fuller.

23 The Respondent; Stephanie Johnson, case manager; and
24 Ann Fuller were also present.
25

1 (This hearing is being held during the COVID-19
2 pandemic restrictions and is subject to the limitations of
3 remote technology including, but not limited to, cell
4 phone/computer wi-fi/data connection, signal reception,
5 video/audio signal interference, signal interruptions, and
6 other restrictions and limitations associated with remote
7 court hearings via telephone/cell phone/speakerphone and/or
8 videoconferencing.)

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10 (Whereupon, the following proceedings were duly
11 had:)

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13 THE COURT: This is the matter of Charles Helmer,
14 File PR-20-939. Appearances are Jennifer Jackson, Assistant
15 Dakota County Attorney; Stephanie Johnson, Mental Health
16 Resources; William Lubov, attorney for Mr. Helmer; Rayeed
17 Wendt Ibtesam, attorney for Ann Fuller, who has filed a
18 motion as an interested party.

19 And it's my understanding Ms. Fuller is
20 Mr. Helmer's mother, is that correct, Mr. Ibtesam?

21 MR. IBTESAM: That is correct, your Honor.

22 THE COURT: All right. This matter is scheduled
23 this morning for a review hearing as well as a motion
24 hearing. We'll address the motion hearing first.

25 MR. LUBOV: Your Honor, I'd like to provide the

1 Court with some preliminary information before you hear the
2 motion.

3 THE COURT: I'm sorry, who was talking?

4 MR. LUBOV: This is William Lubov.

5 THE COURT: Okay. All right. Go ahead,
6 Mr. Lubov.

7 MR. LUBOV: Yes. I've had an opportunity to speak
8 with Ms. Jackson about the issue of the continuing ECT, and
9 my understanding is we are in agreement that a future
10 application for ECT intervention for Mr. Helmer would be
11 based upon a new petition rather than the existing order
12 having to do with ECT. So in other words, that would not be
13 activated without filing a new petition for ECT. Hopefully,
14 I've correctly stated that, Ms. Jackson.

15 MS. JACKSON: That's correct. At this time
16 Mr. Helmer is not receiving any ECT treatments. In the
17 event that any new ECT treatments would be recommended, we
18 would file a new petition to begin an acute phase again
19 anyway. So at this point in time for purposes of today and
20 the motion, the County does not intend to ask for an
21 extension of the ECT petition, and the ECT petition can be
22 dismissed at this time.

23 THE COURT: Okay. Thank you. Are there any other
24 agreements?

25 MR. LUBOV: Ms. Jackson and I have had discussions

1 regarding the extension of the commitment, and she's going
2 to confer with the case manager. And our recommendation is
3 to request on behalf of Mr. Helmer that the extension would
4 not exceed six months.

5 THE COURT: All right. That's your understanding,
6 Ms. Jackson, or is this -- is this an agreement or that,
7 Ms. Jackson, you're in the process of negotiating on?

8 MS. JACKSON: Your Honor, I have had some
9 discussions with the case manager very briefly this morning
10 about the length of the extension, and I believe Ms. Johnson
11 can confirm that we would be -- in terms of settlement for
12 today, the County would be in agreement with a six-month
13 extension of the commitment with the extension of the Jarvis
14 as well.

15 THE COURT: All right. Mr. Lubov, is that your
16 understanding?

17 MR. LUBOV: It is, your Honor.

18 THE COURT: Okay.

19 MR. LUBOV: And I thank Ms. Jackson for conferring
20 with the case manager about this.

21 THE COURT: All right. Okay. That probably takes
22 care of the review hearing then.

23 MR. LUBOV: I believe it does, your Honor.

24 THE COURT: All right. Well, thank you for
25 resolving that issue.

1 So then we can address the motion, which,
2 Mr. Ibtesam, that is your motion. Given the parties'
3 agreement that was just entered and in particular with
4 regard to the ECT hearing, does that make your motion on the
5 ECT issue a moot point?

6 MR. IBTESAM: Right. Right, your Honor. If the
7 County has agreed to not extend ECT without a further
8 petition, then I suppose, as you stated, one of our two
9 issues, we can let go of that, but there still remains the
10 issue of neuroleptic medication.

11 THE COURT: Correct. All right. And I've
12 reviewed at least the motion and the briefs. I haven't
13 reviewed in detail the affidavits. But with regard to your
14 motion then, Mr. Ibtesam, anything else you want to add or
15 make an argument and record of?

16 MR. IBTESAM: No, your Honor. I certainly don't
17 want to waste your time this morning. Most of my arguments
18 would have been just highlighting the arguments already
19 stated in writing in the brief. Basically we do believe
20 that we are entitled to an injunction; in short, because
21 Mr. Helmer is irreparably harmed, his memory has been
22 affected, his quality of life has been severely affected.

23 We do have at least three or four psychologists
24 with extensive background in this research, in this area of
25 law and psychology stating that the chance of relapse are

1 extremely high for people on neuroleptic medication as well
2 as long-term recovery is lower. We do see the intended --
3 the negative effects happening in front of my eyes in
4 Charles Helmer as well as the fact that no one else is going
5 to be affected by this injunction if you were to grant it,
6 and lastly, your Honor, public interest is not affected. So
7 those are basically, in a nutshell, the four-factor test for
8 preliminary injunction. But once again, your Honor, those
9 are pretty much all stated in the brief.

10 THE COURT: Just a few questions here. It's an
11 unusual proceeding to bring an injunction on a commitment
12 matter. The order was issued, I believe, in December, and
13 there was no appeal on that order. Is requesting an
14 injunction a way of getting around the fact that it wasn't
15 appealed?

16 MR. IBTESAM: Your Honor, obviously, there's a
17 deadline for appealing decisions, your Honor. Injunction,
18 we do feel that at that point we hadn't really been able to
19 see the effects of either ECT or the neuroleptic medication.
20 As more and more weeks went by and time went by, both me,
21 Ann Fuller, as well as the psychologist involved in this
22 matter, we really saw the problems it had. So your Honor,
23 now we're more -- I guess, you know, we are in possession of
24 more information that puts us in a position to bring an
25 injunction under Minnesota Statute 260E.

1 So in a nutshell, your Honor, we believe that the
2 injunction is a valid response because we have more
3 information now.

4 THE COURT: All right. One of the affidavits is
5 by Dr. Lee Coleman, who apparently reviewed some of
6 Mr. Helmer's medical records and legal documents. Has
7 Dr. Coleman interviewed or met with Mr. Helmer?

8 MR. LUBOV: No.

9 THE COURT: I'm sorry, that question was for
10 Mr. Ibtسام.

11 MR. IBTESAM: Your Honor, I would actually defer
12 to -- I think it might have been Attorney Lubov that might
13 have made a comment. He being Charles Helmer's lawyer, he
14 particularly might have more information on that. But at
15 the very least I know that all of the documents that we have
16 listed to be reviewed, it was all reviewed, yeah.

17 THE COURT: All right. Mr. Lubov, are you aware
18 of whether Dr. Coleman has interviewed or met with
19 Mr. Helmer?

20 MR. LUBOV: I do not believe he has, but I don't
21 know that definitively.

22 THE COURT: All right. I did -- and I don't know
23 if the parties received a copy; Mr. Helmer's father filed a
24 letter with the court requesting that I appoint an uncle as
25 his guardian. And apparently there is -- is there a

1 guardianship proceeding pending, Mr. Ibtesam?

2 MR. IBTESAM: Your Honor, I am not retained for
3 the guardianship matter, although my understanding as of a
4 couple weeks was that I think Dakota Conservators was the
5 guardian appointed after Ann Fuller voluntarily stepped
6 down. But once again, your Honor, since I am not the lawyer
7 for the guardianship matter itself, I am not in the best
8 position to comment on that.

9 THE COURT: All right. Well, I assume everybody
10 agrees I am not the appropriate judge to be addressing or
11 appointing a guardian. That's a whole separate proceeding
12 probably in front of the judge that handles those matters.
13 But I just want to make the parties aware that there had
14 been that request, and I'm simply not in a position to
15 address the guardianship matter.

16 All right. Ms. Jackson, any -- well, Mr. Ibtesam,
17 anything else that you wish to say in light of my questions?

18 MR. IBTESAM: Nothing further.

19 THE COURT: I guess one question I forgot to ask,
20 if the injunction is granted, you know, you're asking for a
21 preliminary and ultimately a permanent one, is that correct?

22 MR. IBTESAM: Yes.

23 THE COURT: If that's granted, I'm assuming that
24 would be in effect only as long as this commitment
25 proceeding is in effect.

1 MR. IBTESAM: I believe so, because that would be
2 the period that it would be applicable to.

3 THE COURT: Right. So in other words, if that
4 injunction is granted and ultimately the commitment is
5 terminated and if there was a new commitment down the road
6 for some reason, a new proceeding, the injunction would not
7 be binding on any future commitment proceeding.

8 MR. IBTESAM: Right now, your Honor, we are not
9 asking for a binding on future proceedings.

10 THE COURT: Okay. All right. Thank you.
11 Ms. Jackson, anything further?

12 MS. JACKSON: Your Honor, the County has filed a
13 response to the motion. At this time we do believe that the
14 Jarvis hearing was conducted in a fair manner. As the Court
15 indicated, the appeal time has certainly run. It is very
16 uncommon to see an injunction motion filed for the type of
17 relief that is being sought today. And as the Court pointed
18 out, the injunction would only be as long as the length of
19 the commitment, which the Jarvis petition typically runs the
20 same length as the petition, the Jarvis order.

21 At this time Mr. Helmer has a treating
22 psychiatrist. She is in the best position to determine
23 which medications are better and work for Mr. Helmer. He
24 seems to be responding. There has been some opposition by
25 Mr. Helmer for the ECT treatments and medication, and she is

1 doing her best to meet him where he is to try to determine
2 what medication works best for him.

3 He seems to be responding to his current
4 medication, which is a neuroleptic, which would be under the
5 protection of the Jarvis order that was granted by the
6 Court. We're asking the Court to allow the Jarvis order to
7 remain in place so that Mr. Helmer can receive the
8 neuroleptic medications that he needs. He seems to be
9 responding to those medications, and the psychiatrist is in
10 the best position to make those determinations. Although
11 some medications do have risks, we do believe that the
12 benefits do outweigh the risks for Mr. Helmer to have these
13 medications so he can stabilize himself and remain in the
14 community.

15 At this time we're asking that the motion for
16 injunction be denied and that the Jarvis order remain in
17 place for Mr. Helmer. Thank you.

18 THE COURT: All right. And just to be clear, you
19 had mentioned earlier that the case manager was working with
20 Mr. Helmer on the medications and the ECT, but the ECT has
21 come to an end and there will be no further, absent filing
22 of a new petition, is that correct?

23 MS. JACKSON: That is correct. There is no
24 intention to administer any further ECT treatments at this
25 time for Mr. Helmer. And if that is the case, a new

1 petition would be filed in the future.

2 THE COURT: All right. Mr. Lubov, on behalf of
3 your client, anything you wish to state on the record?

4 MR. LUBOV: In a rare instance of me not
5 commenting, I take no position on the motion.

6 THE COURT: Okay. All right. Thank you.
7 Anything further, Counsel?

8 MR. LUBOV: No, your Honor.

9 THE COURT: All right. Then on the motion for
10 injunction, I'll take it under advisement, look things over,
11 and try to get an order out as soon as I can. Thank you for
12 appearing.

13 MR. LUBOV: Thank you, your Honor.

14 MS. JACKSON: Thank you.

15 THE COURT: All right. That will conclude these
16 proceedings.

17 (Whereupon, this matter was
18 concluded.)

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STATE OF MINNESOTA)

) ss.

COUNTY OF DAKOTA)

BE IT KNOWN that, I took the foregoing Transcript of Proceedings on June 1, 2021 in Hastings, Dakota County, Minnesota via remote technology;

That the foregoing transcript is a true and correct transcript of my stenographic notes in said matter;

That I am not related to any of the parties hereto, nor interested in the outcome of the action;

WITNESS MY HAND AND SEAL this 2nd day of June, 2021.

/s/ Darla K. Fretheim

Darla K. Fretheim, RPR

My Commission Expires January 31, 2025