

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: E.S. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: E.S. : No. 6 MDA 2016

Appeal from the Order Entered November 23, 2015
In the Court of Common Pleas of Berks County
Civil Division at No(s): 199-15MH

BEFORE: GANTMAN, P.J., PANELLA, J., and JENKINS, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED NOVEMBER 15, 2016**

Appellant, E.S., appeals from the order entered in the Berks County Court of Common Pleas, which granted in part and denied in part Appellant's petition to expunge the record of his involuntary commitment under the Mental Health Procedures Act ("MHPA")¹ or, in the alternative, relieve his firearms disabilities under the Pennsylvania Uniform Firearms Act ("UFA").² We affirm.

The trial court opinion fully sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.³

Appellant raises the following issues for our review:

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION,

¹ 50 P.S. §§ 7101-7503.

² 18 Pa.C.S.A. §§ 6101-6127.

³ The order under review was dated November 20, 2015, but entered on November **23**, 2015.

COMMITTED ERROR OF LAW, OR VIOLATED CONSTITUTIONAL RIGHTS OF APPELLANT BY PLACING THE BURDEN ON...APPELLANT IN RELATION TO HIS CHALLENGES PURSUANT TO 18 PA.C.S. § 6111.1(G)(2), WHEN AS RECENTLY HELD BY THIS COURT IN ***IN RE VENCIL***, 120 A.3D [1028 (PA.SUPER. 2015)], *DE NOVO* REVIEW IS REQUIRED, UNDER A CHALLENGE PURSUANT TO 18 PA.C.S. § 6111.1(G)(2), WHERE...APPELLEES BEAR THE BURDEN OF ESTABLISHING THE SUFFICIENCY UNDER A "CLEAR AND CONVINCING" EVIDENTIARY STANDARD OF PROOF, AS THERE IS NO OTHER STATUTORY MECHANISM TO CHALLENGE THE SUFFICIENCY AND VALIDITY OF A 50 P.S. § 7302 COMMITMENT, UNLIKE A 50 P.S. § 7303 COMMITMENT.

WHETHER THE COURT ABUSED ITS DISCRETION, COMMITTED ERROR OF LAW, OR VIOLATED CONSTITUTIONAL RIGHTS OF APPELLANT BY DENYING...APPELLANT'S CHALLENGE TO THE SUFFICIENCY OF THE COMMITMENT, PURSUANT TO 18 PA.C.S. § 6111.1(G)(2), WHEN THE RECORD IS DEVOID OF ANY EVIDENCE ESTABLISHING...APPELLEES' COMPLIANCE WITH THE STATUTORY AND REGULATORY REQUIREMENTS FOR AN INVOLUNTARY CIVIL COMMITMENT, PURSUANT TO THE MENTAL HEALTH AND PROCEDURES ACT, 50 P.S. § 7101, *ET SEQ.*, AND ITS IMPLEMENTING REGULATIONS, 55 PA.CODE 5100.1, *ET SEQ.*, AND WHERE, TO THE CONTRARY, THE RECORD ESTABLISHES THAT:

A. [A]PPELLANT WAS NEVER EXAMINED WITHIN TWO (2) HOURS OF HIS ARRIVAL, AS REQUIRED BY 50 P.S. § 7302 AND EXPLICITLY EVIDENCED BY THE CONTROLLING DOCUMENT, SECTION VI OF THE 302 PETITION;

B. [A]PPELLANT WAS NEVER ADVISED OF HIS RIGHT TO COUNSEL NOR PROVIDED COUNSEL, PURSUANT TO 55 PA.CODE §§ 5100.86(E), (J)(3); AND,

C. [A]PPELLANT WAS NEVER PROVIDED FORMS MH-782, MH-783A, OR MH-783B, OR ANYTHING SUBSTANTIALLY SIMILAR, AS REQUIRED BY 5[5] PA.CODE §§ 5100.86(E), (G), (J).

WHETHER THE COURT ABUSED ITS DISCRETION, COMMITTED ERROR OF LAW, OR VIOLATED CONSTITUTIONAL RIGHTS OF APPELLANT BY DENYING...APPELLANT'S REQUEST TO VACATE AND/OR EXPUNGE HIS MENTAL HEALTH COMMITMENT CONTRARY TO ESTABLISHED LAW INCLUDING **WOLFE V. BEAL**, 384 A.2D 1187 (PA. 1978), **IN RE VENCIL**, 120 A.3D 1028 (PA.SUPER. 2015), **IN RE RYAN**, 784 A.2D 807 [(PA.SUPER. 2001)], AND **BENN V. UNIVERSAL HEALTH SYSTEM, INC.**, 371 F.3D 165 (3D CIR. 2004) WHEN THE RECORD IS DEVOID OF ANY EVIDENCE, AS SET FORTH IN ISSUE 2, **SUPRA**, THAT APPELLANT WAS (1) EXAMINED WITHIN TWO HOURS OF HIS ARRIVAL AT THE FACILITY, (2) ADVISED OF HIS RIGHT TO COUNSEL OR PROVIDED COUNSEL, (3) WAS PROVIDED THE REQUISITE FORMS—MH-782, MH-783A, OR MH-783B AND WHERE, IN THE ABSENCE OF ANY SUCH EVIDENCE, ...APPELLANT'S COMMITMENT HAS TARNISHED HIS REPUTATION AND HAS PUTATIVELY RESTRICTED HIS FIREARMS RIGHTS FOR THE REMAINDER OF HIS NATURAL LIFE.

(Appellant's Brief at 3-5).

This Court reviews the denial of a petition to expunge a record of an involuntary mental health commitment for an abuse of discretion. **In re Keyes**, 83 A.3d 1016 (Pa.Super. 2013), *appeal denied*, 627 Pa. 766, 101 A.3d 104 (2014). After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Madelyn S. Fudeman, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed March 23, 2016, at 10-17) (finding: court conducted *de novo* review; Appellant's involuntary commitment complied with applicable laws; MHPA and interpretive case law

are unclear which party bears burden of proving sufficiency of evidence for involuntary commitment where petition to expunge is filed; regardless, Appellees clearly established sufficiency of evidence for Appellant's involuntary commitment under standard of clear and convincing evidence; 50 P.S. § 7302(b) requires examination by physician within two hours of individual's arrival at facility, but does not require physician's final commitment determination within same two-hour period; records show that when Appellant arrived at hospital, he was "combative" to extent that restraint order was needed; Appellant was assessed as refusing treatment and exhibiting violent/aggressive behavior toward staff, other patients, or himself; records show Dr. Sigal initiated examination of Appellant at 3:15 p.m., well within two hours of his arrival at hospital; evidence established that course of assessment, observation, and treatment was immediately and continuously provided from time of Appellant's arrival; less than one hour after Appellant arrived, Dr. Sigal examined Appellant and ordered several tests as well as medications to control Appellant's psychosis; Appellant continued to receive extensive observation and testing until Dr. Gordon examined Appellant and signed Section 302 petition at 12:10 a.m.; Appellant's commitment complied with time requirements of MHPA; court did not credit Appellant's or Appellant's mother's testimony that they did not receive Forms MH-782 ("Bill of Rights"), MH-783-A ("Explanation of Rights Under Involuntary Emergency Commitment"), or MH-783-B ("Explanation of

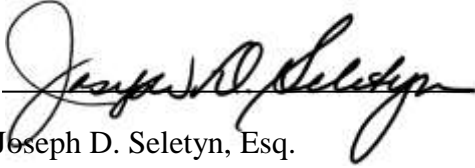
Warrant”); Part IV of Section 302 petition contained clear affirmation that rights described in Form MH-783-A were read to Appellant, and Appellant did not understand those rights (which was unsurprising in light of his mental condition at that time); form MH-783-A referred to attached form MH-782, which explained Appellant’s right to counsel; Appellant’s mother executed Section 302 petition, indicating Mother received and understood relevant paperwork; evidence shows forms were provided; no evidence shows Appellant or Mother requested counsel; Appellant’s involuntary commitment complied with relevant statutes and regulations).⁴ Accordingly, we affirm on the basis of the trial court opinion.

Order affirmed.

⁴ In issue three of his statement of questions involved, Appellant complains of damage to his reputation and restriction of his firearm rights. Appellant, however, failed to develop any argument on those points. Therefore, these claims are waived. **See Commonwealth v. Beshore**, 916 A.2d 1128 (Pa.Super. 2007), *appeal denied*, 603 Pa. 679, 982 A.2d 509 (2007) (*en banc*) (stating failure to develop adequate argument in appellate brief may result in waiver of claim). Moreover, the court’s November 23, 2015 order relieved Appellant of his firearms disabilities under the UFA. Appellant also argues for the first time in his reply brief that Dr. Sigal and Dr. Gordon were not “physicians” within the meaning of the MHPA. That claim is waived because Appellant failed to raise it before the trial court and in his initial brief. **See** Pa.R.A.P. 302(a) (stating issues not raised in trial court are waived and cannot be raised for first time on appeal); **Commonwealth v. Wharton**, 571 Pa. 85, 811 A.2d 978 (2002) (stating reply brief is inappropriate means to present new issues and substantively different from those addressed in original brief).

J-A22034-16

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/15/2016