

Circuit Court for Anne Arundel County
Case No. C-02-CV-19-002251

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1948

September Term, 2019

SHEILA PATRICE DENNEHY

v.

RISK MANAGEMENT BALTIMORE
WASHINGTON MEDICAL CENTER

Fader, C.J.,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: January 29, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Sheila Dennehy, the appellant, contends that she was denied her constitutional right to due process when an Administrative Law Judge (“ALJ”) permitted her to discharge her counsel and then excluded Ms. Dennehy from a proceeding that resulted in her involuntary commitment to the Baltimore Washington Medical Center (the “Medical Center”). The Circuit Court for Anne Arundel County affirmed the ALJ’s decision. Reversing its position before the circuit court, the appellee now agrees that Ms. Dennehy’s due process rights were violated, as do we. Accordingly, we will reverse the circuit court’s judgment and remand to that court with instructions to reverse the decision of the ALJ.

BACKGROUND

In June 2019, an ALJ with the Office of Administrative Hearings presided over a hearing in which the Medical Center sought Ms. Dennehy’s involuntary commitment. The details of the grounds on which the Medical Center sought to justify Ms. Dennehy’s commitment are not relevant, except for the obvious point that the Medical Center alleged that Ms. Dennehy suffered from a sufficiently severe mental illness to justify her involuntary commitment.

At the outset of the proceeding, Ms. Dennehy’s assigned public defender stated that Ms. Dennehy wished to represent herself. Ms. Dennehy confirmed the request, giving as a reason that her counsel “never even met me.” After Ms. Dennehy disagreed with the ALJ’s statement that her counsel “has expertise in this area,” the ALJ permitted her to discharge her counsel and allowed counsel to leave the hearing. Before excusing counsel, the ALJ did not conduct any inquiry into whether Ms. Dennehy’s decision was knowing and voluntary; did not inquire whether Ms. Dennehy truly wished to represent herself, as

opposed to wanting different counsel; did not ask counsel any questions about Ms. Dennehy’s concerns; did not inquire whether Ms. Dennehy wished counsel to remain in the hearing room in case she changed her mind or needed assistance; and did not inquire into whether Ms. Dennehy was prepared to go forward without counsel that day.

After her counsel was excused, the ALJ informed Ms. Dennehy as follows:

So, Ms. Dennehy, the [Medical Center] presents its case first and they have the burden of proving their case by clear and convincing evidence.

You’ll have the right to ask questions of any witness that they present and then you’ll have an opportunity to present your case.

Ms. Dennehy then stated that she was not prepared to present her case that day and asked that it “be thrown out” on the ground that the information in the “paperwork” submitted by the Medical Center was wrong. Interspersed with her explanation that she “ha[d] not had a chance to get [her] case together,” Ms. Dennehy made a number of seemingly unrelated comments, including that her grandfather had been a lawyer in New York City and had come from Europe, that there was “corruption in this country,” and that the Washington Post had stated or questioned whether Donald Trump or America was mentally ill. She asserted that she did not “believe in mental illness,” believed that “we are all being abused” by the system, and stated again that she could not “present my case because I haven’t had time to put it together.”

After Ms. Dennehy stated that she had witnesses she wanted to present who were not there, the ALJ informed her that she had the right to request a postponement. Ms. Dennehy initially declined the offer, stating that “even if there is a postponement how in the world can I present a case – and I’ve studied the law for the last four years[.]”

Ms. Dennehy proceeded to make other statements of questionable relevance to the proceeding, including claiming that she had met with senators and delegates and “know people in Washington, D.C.,” that she knew people working for the President who told her that 33 years earlier she had been “put on a list,” that she had been an “ambassador for overseas” and had “been in 17 countries,” that she sang, that she had taught a variety of subjects, that someone had “called every lawyer in the country and told [them] not to represent me,” and that her uncle had worked at the Pentagon and run NATO. At that point, the ALJ declared that he was “going to move forward with the hearing.”

Ms. Dennehy then declared that she was “canceling this hearing because it’s based on grounds . . . that are not true.” In response, the ALJ informed Ms. Dennehy, who had already interrupted him several times, that he would give her two more opportunities before asking her to leave and “proceed[ing] in [her] absence.” When the ALJ attempted to turn the case over to the Medical Center’s lawyers, Ms. Dennehy interrupted to request a postponement. The Medical Center opposed her request, which the ALJ then denied for lack of good cause, based at least in part on the fact that she had been represented by counsel who had had “the opportunity to review all the documents that the [Medical Center] ha[d] in its possession.”

After additional interruptions by Ms. Dennehy, the Medical Center called its first witness. When Ms. Dennehy objected during the witness’s first statement, the ALJ ordered that she be forcibly removed from the hearing room. In response to Ms. Dennehy’s assertion that she had a right to be present and that she would return, the ALJ informed her that she would “have an opportunity to review the decision once I make it.” The ALJ did

not inform Ms. Dennehy that she would be given an opportunity to return to the hearing room if she agreed to change her behavior and did not permit her to present any evidence or to test the Medical Center’s evidence.

After a recess, the Medical Center presented its case. At the conclusion of the Medical Center’s evidence and summation, the ALJ, noting that the testimony was “unrefuted,” found that the Medical Center had carried its burden in proving “the criteria for involuntary admission . . . by clear and convincing evidence.” Because Ms. Dennehy was not present, the ALJ instructed the Medical Center to inform her of her appeal rights when it provided her with a copy of his order.

Ms. Dennehy sought judicial review in the Circuit Court for Anne Arundel County on the ground that her constitutional right to due process had been violated at the administrative hearing. The Medical Center opposed the petition and argued that Ms. Dennehy had waived her due process right to be present at the hearing by repeatedly interrupting the ALJ. The circuit court concluded that based on Ms. Dennehy’s disruptive behavior, the ALJ “was well within his rights to remove [her] from the hearing,” and therefore it affirmed the decision. This timely appeal followed.

DISCUSSION

Ms. Dennehy argues that the ALJ violated her constitutional due process rights under Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the United States Constitution, both by allowing Ms. Dennehy to discharge her counsel and then by excluding her from her involuntary commitment hearing. The Medical Center does not agree that either of these actions would necessarily individually violate Ms. Dennehy’s

due process rights, but it now concedes that the combination of the two did. We agree that Ms. Dennehy’s due process rights were violated.

In reviewing an allegation of a due process violation in an administrative hearing, we review the legal conclusions of the ALJ without deference. *Liberty Nursing Ctr., Inc. v. Dep’t of Health and Mental Hygiene*, 330 Md. 433, 443 (1993); *Regan v. Bd. of Chiropractic Exam’rs*, 120 Md. App. 494, 509 (1998), *aff’d sub nom. Regan v. State Bd. of Chiropractic Exam’rs*, 355 Md. 397 (1999).

“[I]nvoluntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law.” *Peterson v. State*, 467 Md. 713, 738 (2020) (quoting *O’Connor v. Donaldson*, 422 U.S. 563, 580 (1975) (Burger, C.J., concurring)). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Due process in an administrative proceeding requires conduct in accordance with “‘basic principles of fairness,’” including “[t]he fundamental requisites of . . . notice and an opportunity to be heard.” *Coleman v. Anne Arundel County Police Dep’t*, 369 Md. 108, 142 (2002) (quoting *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 509 (2001)). As Ms. Dennehy points out, and as the Medical Center now acknowledges, these principles are also enshrined in statutes providing for hearings, the right to consult with counsel, and other protections in proceedings seeking involuntary commitment. *See* Md. Code Ann., Health-Gen. §§ 10-631 – 10-633 (2019 Repl.; 2020 Supp.).

We need not engage in an extended analysis of precisely what due process protections were required in this case, because it is clear to us—and now to both parties—that permitting Ms. Dennehy to discharge her only representative, excusing her counsel from the hearing room, denying her a postponement,¹ and then excluding her entirely from participation in the proceeding, failed to provide her with minimally sufficient due process. Ms. Dennehy was left with no way to hear the evidence that was presented against her or to be heard herself.

With respect to Ms. Dennehy’s counsel, we question whether it would have been permissible for the ALJ to permit Ms. Dennehy to discharge her counsel in light of the allegations—and the ALJ’s ultimate conclusions—about her mental state. *Cf. Vitek v. Jones*, 445 U.S. 480, 496-97 (1980) (“A prisoner thought to be suffering from a mental disease or defect requiring involuntary treatment probably has an even greater need for legal assistance, for such a prisoner is more likely to be unable to understand or exercise his rights.”); *Muhammad v. State*, 177 Md. App. 188, 258-59 (2007) (“One cannot be competent to defend oneself . . . if one does not understand what is going on in the courtroom.”). Ms. Dennehy’s own statements to the ALJ both before and after the ALJ excused her counsel provide additional cause for concern regarding whether she was capable of making a knowing and voluntary choice to discharge counsel.

¹ As the Medical Center observes in its appellate brief, any potential burden on the State’s interests from a postponement was minimal in light of § 10-632(c)(1) of the Health-General Article, which limits a postponement to no more than seven days.

We do not suggest that the ALJ lacked the power to exclude a disruptive participant, even the subject of the proceeding, from the hearing room. However, cases from the analogous criminal context shed light on the limited circumstances in which courts have found it permissible to do so. Although a defendant can be removed from a proceeding if unduly disruptive, “[t]rial *in absentia* should be the extraordinary case, ‘undertaken only after the exercise of a careful discretion by the trial court.’” *Pinkney v. State*, 350 Md. 201, 221 (1998) (quoting *In re Dunkerley*, 376 A.2d 43, 48 (Vt. 1977)). Even in such cases, it is generally required that the court advise the defendant of a right to return if the defendant promises to behave and that the defendant be advised of the opportunity to return at each phase of the proceeding. See *Biglari v. State*, 156 Md. App. 657, 674 & n.7 (2004). Here, the ALJ excluded Ms. Dennehy from the courtroom without giving her any opportunity to return, to listen to the evidence against her, or to present her own case. Nor did the ALJ give her the opportunity to rehire her counsel—with or without a brief postponement—once he realized that she was unprepared or unable to proceed on her own. Under the circumstances, the ALJ’s exclusion of Ms. Dennehy from the hearing room left her entirely unrepresented and was a violation of her due process rights.

Accordingly, we will reverse the judgment of the circuit court and remand with instructions for that court to reverse the decision of the ALJ.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED AND REMANDED WITH
INSTRUCTIONS TO REVERSE THE
ADMINISTRATIVE DECISION. COSTS
TO BE PAID BY APPELLEE.**