

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF WINONA

THIRD JUDICIAL DISTRICT

3

4 In the Matter of the  
Civil Commitment of:

Court File No: 85-PR-24-46

5 David Austin Russell,  
6 Respondent.

**JARVIS HEARING**

7

**TRANSCRIPT OF PROCEEDINGS**

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9 The above-entitled matter came on for hearing before  
10 the Honorable Carmaine Sturino, Judge of District Court, on  
11 Monday, December 2, 2024, at 11:05 a.m. via Zoom for Government.

12

**A P P E A R A N C E S**

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15 Paul R. Ellison, Assistant Winona County Attorney,  
16 Winona, Minnesota, appeared via Zoom on behalf of the County of  
17 Winona.

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19 William L. H. Lubov, Esq., Golden Valley, Minnesota,  
20 appeared via Zoom on behalf of the Respondent, who also appeared  
21 via Zoom.

22

23 ALSO PRESENT: Amy Engel, Winona County Health and  
24 Human Services.

25

1 (Whereupon, the following proceedings were held:)

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3 THE COURT: Good morning, everyone. We are here  
4 in a civil commitment matter involving Davis Russell, Court File  
5 85-PR-24-46. Mr. Russell is present with Attorney Lubov.  
6 Attorney Paul Ellison is here from the county attorney's office.  
7 Ms. Dannehy is here as Mr. Russell's guardian.

8 Any other -- I know we have a number of observers.  
9 Any other party, though, that I've not mentioned?

10 Ms. Engel, your role?

11 MS. ENGEL: Commitment social worker for Winona  
12 County.

13 THE COURT: Thank you so much.

14 MS. ENGEL: Yep.

15 THE COURT: All right. And before we begin, I'm  
16 going to remind you that this will be conducted as a formal  
17 courtroom. There are no recordings allowed, either visual or  
18 audio. One person will speak at a time to ensure that we have a  
19 clear record.

20 Just a brief overview is Ms. Dannehy, again, is  
21 here. There is a court order for guardianship in 85-PR-19-1081 on  
22 behalf of David Russell. There is an underlying civil commitment  
23 and previous Jarvis order dated January 23, 2024. It was reviewed  
24 again on June 25th and August 21st.

25 What brings us here today is a request for an

1 additional medication. That is the only thing we are here for  
2 today.

3 Mr. Ellison, I will hear from you first.

4 MR. ELLISON: Thank you, Your Honor.

5 I noted there's -- the ECT petition was withdrawn  
6 from Regions. The only request before the Court is to add  
7 Clozaril to the approved list of medications. It's my  
8 understanding that is just a -- would be as a backup medication.  
9 Mr. Russell's been doing well, to my understanding, on his current  
10 medication and making progress.

11 So just asking that Clozaril be added to the  
12 current Jarvis order based on the Court's previous finding that a  
13 Jarvis order is appropriate. If the Court wants to limit it as  
14 being a backup medication only as needed, that would be fine with  
15 the petitioner. Thank you.

16 THE COURT: All right. And to be specifically  
17 clear, on the January 23rd order conclusion -- or order --  
18 paragraph 3 had identified the specific medication types that were  
19 allowed. And then at the amended order of June 25th Conclusions  
20 of Law, paragraph 2 had identified the specific medications  
21 allowed. And then in the August 21st order the specific  
22 medications were not reviewed again; is that correct?

23 MR. ELLISON: I believe that's correct, Your  
24 Honor.

25 THE COURT: All right. And --

1 MR. LUBOV: Your Honor, may I be heard?

2 THE COURT: Who was that?

3 MR. LUBOV: William Lubov, Your Honor. Good  
4 morning.

5 THE COURT: Yep. Yep. I'm getting to you. I  
6 just want to make sure --

7 MR. LUBOV: Okay.

8 THE COURT: -- I have everything that Mr. Ellison  
9 wants me to know.

10 Do you have additional exhibits or anything for  
11 today's hearing?

12 MR. ELLISON: I do not, Your Honor. It looks like  
13 there's not a provider here from the hospital so I have nothing  
14 else to present to the Court.

15 THE COURT: All right. Ms. Rosenfield (phonetic),  
16 what's your connection?

17 COURT CLERK: Your Honor, it doesn't seem that  
18 she's connected to audio.

19 THE COURT: Okay. All right. Mr. Lubov, I will  
20 hear from you. And how do you like -- how would you like to  
21 proceed today?

22 MR. LUBOV: Your Honor, hold on. I'm getting just  
23 -- I'm not getting your screen. I'm getting Ms. Rosenfield's  
24 screen right now.

25 THE COURT: I hear a lot of typing. I don't know

1 who's doing that. Ms. Rosenfield, I think that --

2 COURT CLERK: Your Honor, I believe -- I think  
3 we're going to have to mute her.

4 THE COURT: Mr. Lubov, whenever you're ready.

5 MR. LUBOV: Thank you, Your Honor. Good morning.

6 First of all, I don't believe that we are properly  
7 before you today for a number of reasons.

8 No. 1, no motion has been served to amend the  
9 Jarvis order.

10 No. 2, no examiner has been qualified or has  
11 written any report having to do with the medication Clozaril and,  
12 therefore, I don't believe that that's properly before the Court.

13 No. 3, I have -- well, let me first of all offer  
14 -- no. The letter from an individual by the name of Sadia,  
15 S-A-D-I-A, Boyou, B-O-Y-O-U, APRN, CNP is not properly qualified  
16 nor has she submitted a sworn statement in support of a request  
17 for the amendment.

18 And most importantly, we do not have any  
19 individual qualified to provide expert testimony to the Court  
20 relative to the benefits and risks involved in considering the use  
21 of Clozaril.

22 So the first part of the motion, of course, is we  
23 don't belong in front of you this morning because the civil  
24 procedure has not been followed; and secondly, the request made  
25 was by an individual who is not qualified to make such a request.

1 I know that it may be done from time to time, but  
2 I'm standing upon the principle here that this is not a medical  
3 record. This is a communication with the Court from someone who  
4 is not qualified to render an opinion about Clozaril and has not  
5 provided any testimony that would provide the appropriate basis to  
6 authorize the use of Clozaril.

7 On those grounds, I don't believe that we have any  
8 basis or the Court does not have any basis to proceed today.

9 THE COURT: All right. Anything else that you  
10 want to say today on that?

11 MR. LUBOV: Me? I'm done. I'm sorry.

12 THE COURT: No. You're good. You're good.

13 Mr. Ellison, any response?

14 MR. ELLISON: Just briefly, Your Honor.

15 I guess my understanding -- there was some  
16 confusion, I'm guessing, on Regions part because of the change in  
17 the hearing for today. Honestly my Outlook has not been working  
18 this morning so I'm not sure if they had reached out to me  
19 otherwise. I don't have any real counters for Mr. Lubov's  
20 presentation for the Court. I can certainly follow up with  
21 Regions as needed to get a more voluminous -- or more documents  
22 filed with the Court if they are still wanting to proceed adding  
23 Clozaril other than what the medication -- the medications that  
24 Mr. Russell's current taking.

25 So if Your Honor wants to essentially do nothing

1 on today's hearing in accordance with Mr. -- excuse me -- what  
2 Mr. Lubov said, I don't really have any counters for what the --  
3 the presentation he's making here today.

4 MR. LUBOV: And may I be further heard, Your  
5 Honor?

6 THE COURT: Absolutely. Go ahead.

7 MR. LUBOV: Thank you.

8 I don't know how the petitioner wants to proceed  
9 ultimately, obviously, but an affidavit describing risks or  
10 benefits would not be sufficient for your consideration. I would  
11 have to have the opportunity to cross-examine any individual  
12 offering an opinion as to the appropriateness of Clozaril for  
13 Mr. Russell.

14 THE COURT: All right. At this point I am simply  
15 going to agree with Mr. Lubov for the simple point that we are not  
16 properly here today. However Mr. Ellison wishes to go about that,  
17 if he wishes to a second time, is up to him. So you heard what  
18 Mr. Lubov says about the sufficiency of an affidavit versus a  
19 person. I will leave that to you to make your decision. I would  
20 anticipate the same objection at the next hearing. But if you do  
21 want this to be heard again, there would need to be a motion to  
22 amend the current Jarvis order with a supporting affidavit and  
23 then we will schedule a hearing for that.

24 All right. Mr. Lubov, anything else for you  
25 today?

1 MR. LUBOV: Nothing further, Your Honor. Thank  
2 you.

3 THE COURT: All right. Mr. Ellison, any questions  
4 for me on my order?

5 MR. ELLISON: No, Your Honor. Am I -- I guess one  
6 question. Am I drafting a proposed order for the Court or is the  
7 Court handling that aspect?

8 THE COURT: We will do that.

9 MR. ELLISON: Thank you, Your Honor.

10 THE COURT: The Court will.  
11 Court clerk, anything for you?

12 COURT CLERK: No. Thank you, Your Honor.

13 THE COURT: I just want to be sure that Janna  
14 Weise (phonetic), Ph.D., is not who you were expecting from  
15 Regions and that she is an observer.

16 MR. ELLISON: I don't believe that's who I was  
17 expecting, Your Honor. I just looked at my Outlook. And with the  
18 holiday weekend, there was a breakdown in the communication here.  
19 I'll follow up as needed with Regions.

20 THE COURT: All right. Thank you, everyone. That  
21 will conclude our hearing then.

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23 (Whereupon, the proceedings were adjourned at 11:14 a.m.)

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