Filed 6/6/05 Conservatorship of Karen N. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of KAREN N.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES, Petitioner and Respondent, v. KAREN N., Objector and Appellant.	D045389 (Super. Ct. No. MH97381)

APPEAL from a judgment of the Superior Court of San Diego County, Linda B. Quinn, Judge. Affirmed.

After a jury found Karen N. (Karen) gravely disabled, the trial court appointed a conservator of her person. (Welf. & Inst. Code, § 5350 et seq.) Karen appeals.

FACTS

Joy Villavicencio testified that she is a social worker with the inpatient psychiatric unit at Bayview Hospital in Chula Vista. She is acquainted with Karen because of Karen's previous stays at the hospital for grave disability. In July 2004, Karen was residing in an independent living facility and she was brought to the hospital after she ran into the street, took off her clothing, and urinated in a driveway. Although Karen told Villavicencio she did not intend to return to the independent living facility and wanted to live with her son, she was unwilling to provide contact information for him. Villavicencio was of the opinion that Karen was not able to maintain shelter in the community.

Doctor Gregory Bishop, Karen's treating psychiatrist during the preceding year, testified that Karen has a chronic schizoaffective disorder, a combination of schizophrenia and psychosis, and suffers from delusions. Although medication is available, Karen frequently refuses to take it. Bishop's opinion was that Karen was unable to maintain shelter in the community.

Karen testified that she does not have delusions; plans to stay with her son and move back into a mobile home she owns or rent an apartment or room, and will try medication if a psychiatrist recommends it.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). In

Anders v. California (1967) 386 U.S. 738 (*Anders*), the United States Supreme Court held that when a criminal defendant's appointed counsel finds no meritorious ground of appeal after conscientiously examining the record, counsel should advise the court and request permission to withdraw. To protect the defendant's constitutional right to assistance of counsel, counsel must identify anything in the record that might "arguably support the appeal." (*Id.* at p. 744.) The defendant should be furnished with the brief and be allowed to raise additional points. (*Ibid*.) The appellate court "then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous." (*Ibid.*) In *Wende, supra,* 25 Cal.3d at page 441, the California Supreme Court held that in criminal appeals "*Anders* requires the court to conduct a review of the entire record whenever appointed counsel submits a brief which raises no specific issues or describes the appeal as frivolous."

In *In re Sade C.* (1996) 13 Cal.4th 952, the Supreme Court held that the procedures of *Anders* and *Wende* are not applicable to juvenile dependency proceedings. The court said, "[b]y its very terms, *Anders's* 'prophylactic' procedures are limited in their applicability to appointed appellate counsel's representation of an indigent *criminal defendant* . . . . An indigent parent adversely affected by a state-obtained decision on child custody or parental status is simply not a criminal defendant. Indeed, the proceedings in which he [or she] is involved must be deemed to be civil in nature and not criminal." (*In re Sade C., supra,* 13 Cal.4th at p. 982.)

Before *In re Sade C.,* the reviewing court in *Conservatorship of Besoyan* (1986) 181 Cal.App.3d 34, 36 (*Besoyan*), held the *Wende* procedure applied to an appeal of the

imposition of a conservatorship under the Lanterman-Petris-Short Act (LPS Act). In *In re Sade C., supra,* 13 Cal.4th 952, the court did not expressly disapprove of *Besoyan* but said, "[t]o the extent that *any* decision of ours or of the Courts of Appeal states or implies that the applicability of *Anders* goes beyond what is described in the text, it is disapproved." (*Id*. at pp. 983-984, fn. 13, italics added.) In *Conservatorship of Margaret L.* (2001) 89 Cal.App.4th 675 (*Margaret L.*), decided after *In re Sade C.*, the majority held that *Anders* and *Wende* remain applicable to LPS Act proceedings for conservatorship of the person. However, in our view the Supreme Court's disapproval in *In re Sade C.* of *any* Courts of Appeal case extending the procedural protections of *Anders* and *Wende* beyond the factual context of *Anders* shows the Supreme Court's intent to overrule *Besoyan* and make the procedural protections of *Anders* and *Wende* inapplicable to conservatorship proceedings.[1]

In determining whether our independent review of the record is required, we note that the LPS Act involves a balance between the medical objectives of treating sick people without legal delays and insuring that persons are not deprived of their liberties without due process of law. We agree with the dissent in *Margaret L.,* that our independent review of the appellate record is not required to maintain this delicate balance, because there are safeguards afforded the conservatee throughout the duration of the conservatorship process. (*Margaret L., supra,* 89 Cal.App.4th at pp. 686-687 (conc.

---

1 This issue is currently pending before the California Supreme Court. (*Conservatorship of Ben C.* (2004) 119 Cal.App.4th 710, review granted Sept. 15, 2004, S126664.)

& dis. opn. of Rylaarsdam, J.).) Additionally, the one-year limitation on a conservatorship essentially renders *Wende* review ineffective because the commitment order has or will soon automatically expire before an appeal is processed.

This court has noted that in the juvenile dependency context, *Wende* review is "nearly always unproductive" and results in needless delay. (*In re Kayla G.* (1995) 40 Cal.App.4th 878, 888; *In re Angelica V.* (1995) 39 Cal.App.4th 1007, 1016.) We must balance the benefit of applying *Anders* and *Wende* against "the lost time and money, and most importantly, delay in entering a final decision." (*Margaret L., supra,* 89 Cal.App.4th at p. 687 (conc. & dis. opn. of Rylaarsdam, J.).) Historically, there have been relatively few appeals of conservatorship orders. Extending *Anders* and *Wende* to LPS Act proceedings may encourage appellate counsel who cannot find any appealable issue to seek our independent review of the entire appellate record each time a recommitment order is entered. As the court recognized in *In re Sade C.*, "[p]rocedures that are practically 'unproductive,' like those in question, need not be put into place, no matter how many and how weighty the interests that theoretically support their use. To be sure, these procedures may have 'symbolic' value of some kind. [Citation.] Such value, however, is too slight to compel their invocation." (*In re Sade C., supra,* 13 Cal.4th at pp. 990-991.) We conclude that the procedures of *Anders* and *Wende* do not apply to review of conservatorship proceedings under the LPS Act. Accordingly, we do not independently review the appellate record for error.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.