

*In the Matter of G.P.*

Supreme Judicial Court of Massachusetts

September 10, 2015, Argued; November 5, 2015, Decided

473 Mass. 112

The G.P case was the first to address the question of what is needed to prove that a person should be committed under § 35 of Chapter 123.

The trial court's order finding that G.P. should be committed was her addiction to heroin and that she was unable to control the addiction. There was also evidence that at some point she was involved in physical altercations with her mother. The SJC found that was not enough to show that she was at risk of serious harm to herself or others, as defined in the statute. The risk of overdosing and addiction, by themselves are insufficient to support a commitment. As serious and unfortunate as G.P.'s condition was, the SJC found that the evidence did not satisfy the requirements of § 35 for an order of commitment.

In reaching its decision the SJC addressed, for the first time, several important issues.

1. What is the standard of proof required at a commitment hearing under G. L. c. 123, § 35?

Answer: clear and convincing evidence. To meet this burden there must be facts establishing the "likelihood of serious harm," are "highly probably true".

2. Do the rules of evidence apply in a hearing for commitment pursuant § 35?

Answer: No, except for privilege (patient-doctor/therapist, attorney-client). Hearsay must be substantially reliable to be admitted. The evidence must be "competent" and must include medical testimony.

3. What is the temporal proximity of the evidence to show the risk of harm including "likelihood of serious harm" to the respondent or others required for an order of commitment?

Answer: the likelihood of serious harm must be imminent, which means days and weeks, not months and must be the result of respondent's alcohol or substance abuse, or both. Addiction and risk of overdose, by themselves are not sufficient.

4. What is the quantum of risk necessary to establish 'a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community?'

Answer: the threatened harm is not an inability to sustain oneself in the community. The harm is physical impairment or injury to the respondent and is shown by evidence that:

(1) the respondent's judgment is so adversely affected by the abuse of alcohol or drugs that the respondent cannot protect himself or herself from physical harm, and

(2) the respondent's community does not include any reasonably available external source of adequate protection.