In the

United States Court of Appeals

For the Seventh Circuit

No. 22-2208

STEFEN ESCAMILLA,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 1:21-cv-00510 — **William C. Griesbach**, *Judge.*

ARGUED JANUARY 19, 2023 — DECIDED MARCH 9, 2023

Before BRENNAN, SCUDDER, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Stefen Escamilla attempted to purchase a handgun but was denied because he had previously been committed to a mental institution. See 18 U.S.C. § 922(g)(4). Escamilla sued the federal government, arguing that he does not satisfy either of the statute's conditions and seeking an order directing the government to approve the firearm transfer. On cross motions for summary judgment, the district court determined that Escamilla's prior

hospitalization in a mental health unit qualified as having been committed to a mental institution, and therefore, he was prohibited from possessing firearms under § 922(g)(4). Escamilla appeals, arguing that his eleven-day hospitalization did not qualify as a commitment because he was there on a voluntary and informal basis. But the district court properly concluded that Escamilla's hospitalization qualified as a "commit[ment] to a mental institution" under New York state law for the purposes of § 922(g)(4), warranting summary judgment for the government. Escamilla also contends that the district court abused its discretion in taxing costs against him. We affirm the judgment but modify the costs award to correct a calculation error.

I

In 2018, Stefen Escamilla was hospitalized while serving in the Army and stationed at Fort Drum in New York. That March, Escamilla attended an on-base medical appointment and complained of hearing voices all the time that were telling him to commit suicide and would get mad at him when he didn't listen. He was referred to an on-base psychologist who suggested he seek treatment at Samaritan Hospital. Escamilla agreed to go and was escorted by Fort Drum personnel.

At Samaritan, he was examined by a doctor and admitted to the inpatient mental health unit under New York State Mental Hygiene Law (NYMHL) § 9.39(a), which permits the director of a hospital to "receive and retain therein as a patient for a period of fifteen days any person alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others." Doctor's notes from his

initial examination indicate that Escamilla was experiencing auditory hallucinations, depression, and suicidal thoughts with a plan to carry them out. A second doctor examined him the next day and confirmed the first doctor's findings.

Escamilla was discharged from the hospital eleven days later. His discharge notes include diagnoses of mild depressive disorder, social anxiety disorder, panic disorder, and autism spectrum disorder. They also indicate that Escamilla did not want to be discharged because he did not feel safe at Fort Drum.

Just over a year after his hospitalization, in July 2019, Escamilla attempted to purchase a handgun from an online retailer who shipped the gun to a federal firearm licensee in Appleton, Wisconsin. The licensee performed a background check on Escamilla using the National Instant Criminal Background Check System. The background check generated an automatic response denying the firearm transfer. Escamilla inquired about the reasons for the firearm transfer denial, and the FBI informed him that he was prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)(4), as a person who "has been adjudicated as a mental defective or who has been committed to a mental institution."

Escamilla filed this suit under 18 U.S.C. § 925, which allows a person who has been denied transfer of a firearm under § 922(g) to bring an action against the United States for an order directing that the transfer be approved. The government filed a notice of appearance but failed to respond to Escamilla's complaint, so the clerk entered a default, and Escamilla moved for a default judgment. During a hearing on the motion for default judgment, the government admitted that its failure to respond to Escamilla's complaint was due to

negligence. The government moved to vacate the entry of default. The court denied Escamilla's motion, vacated the entry of default, and granted the government leave to file an answer.

Litigation continued, culminating in both parties moving for summary judgment. The court ruled for the government, concluding that Escamilla's admittance to Samaritan under NYMHL § 9.39 constituted a "commitment" within the meaning of § 922(g)(4).

II

Escamilla first argues that the district court erred in setting aside the government's default. We review a grant of a motion to vacate a default for abuse of discretion and will reverse "only if we conclude that no reasonable person could agree with [the court's] judgment." *Pretzel & Stouffer, Chartered v. Imperial Adjusters, Inc.*, 28 F.3d 42, 45 (7th Cir. 1994) (quotation omitted).

The parties do not dispute that default was properly entered. The government failed to answer Escamilla's complaint within 60 days, see Fed. R. Civ. P. 12(a)(2), but the district court was permitted to set aside the entry of default "for good cause." Fed. R. Civ. Proc. 55(c). This is a more "lenient standard" than the one for default judgments under Rule 60(b). *Parker v. Scheck Mech. Corp.*, 772 F.3d 502, 505 (7th Cir. 2014) (quoting *Cracco v. Vitran Express, Inc.*, 559 F.3d 625, 631 (7th Cir. 2009)). To set aside the entry of default, the government was required to show (1) good cause; (2) quick action to correct it; and (3) "an arguably meritorious defense to the lawsuit." *Id.* (citing *Sun v. Bd. of Trs. of the Univ. of Ill.*, 473 F.3d

799, 809–10 (7th Cir. 2007)). The government made the required showings here.

First, there was good cause to proceed to the merits. Importantly, "Rule 55(c) requires 'good cause' for the judicial action, not 'good cause' for the defendant's error[.]" *Sims v. EGA Prods. Inc.*, 475 F.3d 865, 868 (7th Cir. 2007); see also *JMB Mfg. v. Child Craft, LLC*, 799 F.3d 780, 792 (7th Cir. 2015) ("As we explained in *Sims*, an entry of default may be set aside for 'good cause,' which does not necessarily require a good excuse for the defendant's lapse."). We view default judgments to be a "weapon of last resort, appropriate only when a party willfully disregards pending litigation." *Sun*, 473 F.3d at 811. And the preference against default judgments is only heightened when such judgment is against the United States. See, e.g., *Harvey v. United States*, 685 F.3d 939, 946 (10th Cir. 2012); *Stewart v. Astrue*, 552 F.3d 26, 28 (1st Cir. 2009). The stakes are high when, as here, public safety is at risk. As such, there was a strong interest in deciding the case on the merits. See *Sun*, 473 F.3d at 811 ("This Circuit has a well established policy favoring a trial on the merits over a default judgment.").

Second, the government took prompt steps to correct its default. What constitutes quick action varies from case to case. In *Sims*, for example, we found that vacating an entry of default was proper even though the government did not move to vacate until five months after the deadline for its answer had passed. 475 F.3d at 866, 868. Here, the government filed its answer five weeks after the original deadline, and the district court did not abuse its discretion in deciding that the government had satisfied the prompt-action requirement.

Third, as we discuss further below, the government presented a meritorious defense to Escamilla's suit, namely, that

Escamilla's admittance to an inpatient mental health unit under New York state law qualified as a commitment for the purposes of § 922(g)(4). See *Cracco*, 559 F.3d at 631 (affirming decision to vacate default where defendant presented a defense and the factual basis for it). Accordingly, the government made the necessary showing at each step, and the district court did not abuse its discretion in setting aside the entry of default.

III

We now proceed to Escamilla's merits argument: that he is not prohibited from possessing a firearm under § 922(g)(4) because he was never committed to a mental institution. We review the district court's grant of summary judgment de novo, construing the record in the light most favorable to Escamilla. *James v. Hale*, 959 F.3d 307, 314 (7th Cir. 2020).

Our analysis is grounded in the statutory text of the applicable federal and state law. As noted above, § 922(g)(4) prohibits a person "who has been committed to a mental institution" from "receiv[ing] any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." While the statute does not define the term, the question of whether someone has been "committed to a mental institution" is a question of federal law. *United States v. Waters*, 23 F.3d 29, 31 (2d. Cir. 1994). To answer the federal law question, we look to the state law that governed a person's prior commitment and then consider whether the state law "is consistent with federal policy." *Id.*; see also *United States v. Whiton*, 48 F.3d 356, 358 (8th Cir. 1995); *United States v. Giardina*, 861 F.2d 1334, 1335 (5th Cir. 1988). We also find guidance in the ATF's regulation defining the phrase:

> A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

27 C.F.R. § 478.11. Because § 922(g)(4) is a criminal statute, we are not required to defer to the ATF's reading of the law, *United States v. Apel*, 571 U.S. 359, 369 (2014), but nonetheless, the ATF regulation merits some deference in light of the "specialized experience and broader investigations and information available to the agency[.]" *United States v. Mead Corp.*, 533 U.S. 218, 234 (2001) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139 (1944)); see also *United States v. McIlwain*, 772 F.3d 688, 694 (11th Cir. 2014) (finding § 478.11 "helpful and persuasive" in construing § 922(g)(4)). So, to have been "committed to a mental institution," the admission must have been (1) involuntary and (2) formally executed by a court, board, commission, or other lawful authority.

Escamilla argues that his 2018 hospitalization satisfies neither of these conditions. First, Escamilla argues that his admission was voluntary because he wanted to be there and never tried to leave. But whatever his subjective intentions were at the time, his admission was still involuntary under New York law. Escamilla was admitted to Samaritan Hospital on an emergency status under NYHML § 9.39(a), allowing the director of a hospital to "receive and *retain* therein as a patient

for a period of fifteen days any person alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others." (emphasis added). For a person to be admitted under this section, a staff doctor must first perform an examination and find that he poses a safety threat to himself or others. *Id.* For the hospital to retain a patient for more than forty-eight hours and up to fifteen days, the law requires a second doctor who is a member of the psychiatric staff to confirm the first doctor's finding. *Id.*

Samaritan followed this protocol when it admitted Escamilla. The doctor who conducted his initial evaluation determined that Escamilla posed a substantial risk of physical harm to himself or others. Medical records show that he was experiencing auditory hallucinations, depression, and suicidal thoughts, and the doctor determined that he needed to be admitted on an emergency basis under § 9.39. The next day, Escamilla was examined by a second doctor who confirmed the first doctor's finding. At that point, § 9.39(a) authorized the hospital director to retain Escamilla for up to fifteen days, whether he wanted to be there or not.

The Second Circuit and New York courts have uniformly characterized admissions under § 9.39 as involuntary. See *Phelps v. Bosco*, 711 F. App'x 63, 65 (2d Cir. 2018) (collecting cases); *Matter of Colihan v. State of New York*, 211 A.D.3d 1432, 1436 (N.Y. App. Div. 2022) (collecting cases). Escamilla acknowledges this case law but argues that when a patient willingly receives care and treatment, an admission under § 9.39 can be considered voluntary in that particular circumstance. We disagree and join the Second Circuit and New York courts in concluding that commitment under § 9.39 is

involuntary, regardless of the committed person's subjective intent. Doctors determined that Escamilla was likely to cause serious harm to himself or others, leading to his involuntary retention under the statute. See *Matter of Colihan*, 211 A.D.3d at 1434 (finding that the petitioner's admission under § 9.39 was involuntary because a doctor determined that he was a risk to himself). Escamilla's commitment under § 9.39 was for his own safety because it prevented him from suddenly changing his mind, walking out, and harming himself or someone else.

Escamilla's contrary argument, based on § 9.39(b), is unpersuasive. That subsection provides that if it is determined that a patient is not in need of involuntary care or treatment within fifteen days of arrival at the hospital, he must be discharged "unless he agrees to remain as a voluntary or informal patient." Escamilla contends that the word "remain" demonstrates that a patient's status under § 9.39 is voluntary unless and until it is determined that the person needs involuntary care. But this ignores the more straightforward meaning of the word "remain" within the context of the sentence—it relates not to the patient's pre-existing status but to his continued physical presence at the hospital. In other words, if a patient who has been involuntarily admitted under § 9.39 does not continue to need involuntary care, he may choose to stay—to "remain"—at the hospital to receive care on a voluntary or informal basis. Section 9.39(b) does not suggest that commitment is voluntary under § 9.39.

Our reading is further supported by other provisions of the NYMHL. For example, if Escamilla's hospitalization had been deemed voluntary, he would have been admitted under § 9.13, which governs "Voluntary Admissions." To be

admitted as a voluntary patient, a person may simply "make [a] written application" for care and treatment. § 9.13(a). If the voluntary patient later decides to leave the hospital, the hospital director must "promptly release the patient." § 9.13(b). Because Escamilla was admitted under § 9.39—not § 9.13—he could have been "retained" for fifteen days and thus his admission was involuntary.

Escamilla also argues that he does not meet the regulation's second requirement because he was not formally committed "by a court, board, commission, or other lawful authority." 27 C.F.R. § 478.11. He maintains that formal commitment requires some judicial involvement and thus, he is not prohibited from possessing firearms under § 922(g)(4). But under the plain terms of the regulation, commitment by a court is sufficient but not necessary—commitment by "other lawful authority" will do, with or without judicial intervention. And here, the hospital director (through its staff) committed Escamilla under "other lawful authority." The New York legislature, through NYMHL § 9.39, delegated to hospital directors the lawful authority to commit patients alleged to have a mental illness who are likely to cause serious harm to themselves or others. Our interpretation comports with the Second Circuit's decision in *United States v. Waters*, which held that judicial involvement is not necessary for a commitment under § 922(g)(4). 23 F.3d at 31, 36.

We also note that such commitments are not shielded from the state judiciary altogether. Patients admitted under § 9.39 must be given a notice advising them of their right to request a court hearing. NYMHL § 9.39(a). The patient, any relative, friend, or the mental hygiene legal service may give such written request to the director of the hospital who must then

forward a copy of the request to the local supreme court or county court. *Id.* Upon receipt of the request, the court must hold a hearing within five days. *Id.* At the hearing, the court must examine the patient, hear testimony, and decide whether there is reasonable cause to believe the patient poses a safety threat and that continued treatment is appropriate. *Id.* If such a determination is made, the court issues an order authorizing the continued retention. *Id.* Such robust protections certainly indicate that admission under § 9.39 is formal and lawful. Notably, no such procedural protections exist for voluntary admissions under § 9.13, further suggesting that commitment under § 9.39 is involuntary.

In sum, because Escamilla was involuntarily "committed to a mental institution" by lawful authority, § 922(g)(4) prohibited him from possessing a firearm. Accordingly, we affirm the district court's grant of summary judgment to the government.

IV

Lastly, we address the issue of taxed costs. We review a district court's awarding of costs for abuse of discretion. *Harney v. City of Chicago*, 702 F.3d 916, 921 (7th Cir. 2012) (citation omitted).

Costs are taxed against a losing party. Fed. R. Civ. P. 54(d)(1); 28 U.S.C. § 1920. Taxable costs include "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case." 28 U.S.C. § 1920(2). Here, the government filed a bill of costs for $449.10, all associated with Escamilla's deposition. The deposition transcript was taxed at $289.10 ($4.90 per page, for 59 pages). The remaining $160 was for the court reporter's attendance at

the deposition. The district court awarded the full $449.10. Escamilla argues that this award was improper for three reasons.

First, Escamilla argues that costs related to court reporter attendance at a deposition are not taxable. That is incorrect, and the $160 for the court reporter's deposition attendance was properly included in the taxed costs. See *Cengr v. Fusibond Piping Sys., Inc.*, 135 F.3d 445, 457 n.14 (7th Cir. 1998).

Second, Escamilla contends the court erred in taxing the deposition transcript at $4.90 per page instead of $3.65 per page (the maximum rate set forth by the Judicial Conference). See Transcript Rates, https://www.uscourts.gov/services-forms/federal-court-reporting-program. The government agrees with this point. Although we note that the Eastern District of Wisconsin does not have a rule establishing the Judicial Conference rate as the maximum taxable rate, c.f. Northern District of Illinois Local Rule 54.1(b), it is nonetheless appropriate in the absence of a showing that a departure is warranted. Accordingly, the judge should have taxed the deposition transcript pages at the rate of $3.65, not $4.90.

Third, the parties dispute how many pages are taxable. The deposition transcript was 59 pages: 46 pages of transcribed testimony, 10 pages of word indices, and 3 cover pages. Escamilla argues that the deposition transcript should have been taxed for only the 46 pages of transcribed testimony rather than the full 59 pages. The government concedes that the 3 cover pages should not have been taxed but argues that it may have been proper to tax the 10 pages of word indices. We acknowledge the split amongst the district courts on whether the cost of printing word indices is recoverable. See, e.g., *In re Method of Processing Ethanol Byproducts and Related*

Subsystems ('858) Patent Litig., No. 1:10-ml-02181, 2020 WL 240944, at *3 (S.D. Ind. Jan. 15, 2020) (collecting cases). In some circumstances, word indices can be essential to understanding the content of a deposition transcript. Accordingly, we cannot say that the district court abused its discretion in including the index pages with the transcript costs.

Finally, the government's bill of costs listed only a single original transcript. The government argues that this invoice was filed in error and that it was actually billed for a copy of the deposition transcript as well. Therefore, the government contends that in addition to the cost for the original transcript, the cost of its copy of the deposition transcript is also taxable. But the government concedes that despite having a corrected invoice at the time, it never filed the corrected invoice with the district court. Accordingly, the district court did not err in taxing only those costs associated with the single original transcript listed on the invoice that was filed.

We modify the award of costs to tax only 56 pages at a rate of $3.65. After adding the cost of the court reporter's attendance, the proper adjusted taxed costs amount to $364.40.

AFFIRMED WITH MODIFICATION TO COSTS