



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-25-00168-CV

IN THE MATTER OF J.D.

On Appeal from Probate Court No. 2
Tarrant County, Texas
Trial Court No. 2024-MH04730-2

Before Sudderth, C.J.; Wallach and Walker, JJ.
Opinion by Justice Wallach

OPINION

Appellant J.D. (Jack)¹ appeals from a probate court order authorizing the forced administration of psychoactive medication. *See* Tex. Health & Safety Code Ann. §§ 574.070, .106, .108(a). Jack complains about (1) the underlying order for inpatient mental health services, (2) the probate court's reliance on generally applicable statutory provisions as opposed to those specific to criminal-commitment patients, (3) the sufficiency of the evidence showing that he was a danger to himself or others, and (4) the sufficiency of the evidence showing that the order for the administration of psychoactive medication was in his best interest. Jack additionally complains that (5) he was denied effective assistance and prejudiced by his counsel's failures and that (6) the probate court judge failed to rule on his request for her disqualification. Because the first two challenges are contrary to precedent, the next two challenges are within the bounds of the factfinder's discretion, and the last two challenges are not supported by the evidence, we will affirm.

Background

Jack was arrested for possession of a controlled substance of more than four grams but less than 200 grams, *see* Tex. Health & Safety Code Ann. § 481.115(d), and the criminal court later determined that he was incompetent to stand trial, *see* Tex. Code Crim Proc. Ann. art. 46B.054. The criminal court ordered Jack be committed to an

¹We use an alias for J.D. to protect his privacy.

inpatient mental health facility for “appropriate treatment” to restore his competency, *see* Tex. Code Crim. Proc. Ann. art. 46B.073, and he was subsequently admitted to North Texas State Hospital on November 7, 2024. Jack’s treating physician, Dr. Vivek Shah, filed an application with the probate court to authorize the forced administration of psychoactive medication on December 3, 2024. *See* Tex. Health & Safety Code Ann. § 574.104. The probate court then conducted a hearing on this matter on February 4, 2025. *See id.* § 574.106.

At the hearing, Dr. Shah and Jack both testified. Dr. Shah, the chief psychiatrist at North Texas State Hospital, testified that Jack was diagnosed with delusional disorder. He stated that the diagnosis was based on “current symptoms of persecutory and grandiose delusion, disorganization in thought process with rapid pressure speech . . . and preoccupation with somatic symptoms.” Dr. Shah also testified that Jack had been hostile, irritable, demanding, and uncooperative since he was admitted to the hospital. According to Dr. Shah, Jack was not attending any of the classes for competency restoration and was refusing to engage in the weekly treatment team visits.

Dr. Shah testified that Jack believed that the prior competency determination was based on that doctor’s political agenda against him—part of a conspiracy to deprive Jack of his civil rights. Dr. Shah also detailed what he referred to as incidents where Jack cursed, yelled, and threatened staff at the hospital. The threats Dr. Shah referenced were statements that Jack would contact the medical board to revoke “their licenses.” Dr. Shah testified that Jack would become upset when he would not receive what he

asked for or if it took too long for him to receive it. One female staff member at the hospital had stated she was afraid that Jack would “swing at her” when he was “yelling and threatening staff.”² Dr. Shah stated these behaviors were a manifestation of Jack’s mental illness.

Dr. Shah also testified that he had previously prescribed Zyprexa to Jack—an antipsychotic medication to help with delusions—but Jack had refused to take the medication. Dr. Shah said that he had even offered to work with Jack to adjust the dosage should Jack experience any side effects or issues, but to no avail.³ According to Dr. Shah, Jack’s rationale for refusing the medication was that he did not need the medication, did not have any mental illnesses, and had been brought to the hospital wrongly because everyone was conspiring against him. Dr. Shah stated that these were not rational reasons to refuse the medication, and that the symptoms of his mental illness were “affecting his function and blurring his judgment.” Dr. Shah went on to explain that Jack’s symptoms, like delusions, could impact his sleep and physical health, and every new episode of delusion or psychosis would be worse without treatment. Dr. Shah testified that administration of the psychoactive medication was the proper and

²There was no evidence presented that Jack ever did “swing at her” or anyone else at the hospital.

³The potential side effects of the recommended medication are weight gain and akathisia—inner feelings of restlessness or tremors. Dr. Shah testified that he thought a low dose might be helpful, despite the possible side effects—which he would attempt to mitigate.

customary course of treatment for Jack, was necessary for the treatment of his mental illness, was in his best interest, and would hopefully allow him to regain competence. Dr. Shah also testified that he believed that Jack's mental illness was preventing Jack from fully understanding the rationale of the prescribed medication.

Despite being represented by defense counsel, Jack interrupted Dr. Shah's testimony multiple times, attempting to contradict Dr. Shah's statements. Following Dr. Shah's testimony,⁴ the probate court announced that it would take judicial notice of the court's file. The court did not specify which documents were included, and Jack did not object or seek clarification regarding the probate court's taking judicial notice.

Jack then testified. Defense counsel asked Jack if he was receiving vitamin D supplements, but instead of answering the question, he described his various grievances against Dr. Shah, claiming that he was being denied other medications, and explaining that he has a genetic disorder. Counsel again asked Jack when he began receiving vitamin D supplements, and Jack stated that "[f]or 90 days" they fought with him about it and finally after "30 days of thinking [he] was delusional" he received an endocrinology visit. He explained that he is not getting enough of the vitamin D supplement and that his labs showed he is getting "just barely enough." Counsel asked the question twice more before Jack testified that he started the supplement

⁴Dr. Shah was also cross-examined by defense counsel and testified that Jack was receiving treatment for vitamin D deficiency and hypothyroidism.

“yesterday.” Counsel asked if, in the past when he was taking the vitamin D supplement, Jack’s health issues had been resolved, and Jack gave a detailed explanation of his varied grievances and issues while he was in jail.

Defense counsel further clarified the question, asking if Jack had experienced better concentration when taking vitamin D supplements for prolonged periods. Jack testified that his concentration was “[t]remendously” better and detailed how he was diagnosed with the deficiency and at what vitamin D level he feels best. Counsel asked Jack if he would begin to attend competency classes if he received the proper amount of vitamin D supplement, and Jack eventually responded that “[his] brain just isn’t— isn’t working. Dr. Shah is right.” He maintained that he did not believe he needed competency classes and that he was there wrongly because someone else had claimed he was paranoid and delusional.

Finally, defense counsel asked Jack *why* he did not want to take Zyprexa as prescribed. Jack stated that the medication was a schizophrenia medication and that he was scared of “what Josef Mengele⁵ is gonna try to do to [him].” Jack then opined for more than two full pages of the reporter’s record about how there was nothing wrong with him and how the medical staff was reckless. He testified that he thought the

⁵Josef Mengele was a “SS physician [who] conducted inhumane, and often deadly, medical experiments on prisoners at Auschwitz. He became the most notorious of the Nazi doctors . . . [and] was nicknamed the ‘angel of death.’” U.S. Holocaust Mem’l Museum, Wash. D.C., *Holocaust Encyclopedia*, Josef Mengele (Nov. 15, 2024), <https://encyclopedia.ushmm.org/content/en/article/josef-mengele>.

medication would make him “worse” because he had “[no] need for psychotropic medications” and because he had no mental illness—nor any family history of mental illness.

After hearing the testimony, the probate court ordered the administration of psychoactive medication,⁶ finding that Jack presented a danger to himself or others; that he lacked the capacity to make treatment decisions; that he refused to take medications voluntarily; that the treatment was in his best interest and there were no less intrusive, effective treatment alternatives; that the state had an important interest in the restoration of Jack’s competence to stand trial; and that the medications were substantially likely to restore his competency without being substantially likely to have side effects that would undermine a fair trial. In so ordering, the probate court noted that it had relied on the judicial notice of both the criminal court’s order for inpatient mental health services and the punishment range for the criminal charge, as well as the testimony from Dr. Shah and Jack.

Discussion

Jack’s first four issues all contest the probate court’s findings under Section 574.106 of the Texas Health and Safety Code. The first issue contests the underlying order necessary to meet the statutory prerequisite under Subsection (a), the second issue

⁶According to his appellate brief, Jack was transported from the hospital back to Tarrant County Jail on March 5, 2025, after his competency was restored.

contests the applicability of the statute to criminal-commitment patients under both Subsections (a) and (a-1), the third issue contests the sufficiency of the evidence under Subsection (a-1)(2), and the fourth issue contests the sufficiency of the evidence as to the best-interest finding under Subsection (b). *See* Tex. Health & Safety Code Ann. § 574.106. Jack’s fifth and sixth issues allege ineffective assistance of counsel and the failure of the probate court judge to rule on a disqualification motion, respectively. We address the issues in the order raised.⁷

Issues One and Two: Statutory Construction

Issue one first appears to be a sufficiency challenge, but substantively, it is a statutory-construction challenge, alleging that an order for inpatient mental health services under Article 46B.073 does not meet the statutory prerequisites under Subsection 574.106(a).

⁷There is a great deal of discussion in the briefs regarding the *Sell* factors and the related proper proceedings under Article 46B.086 of the Texas Code of Criminal Procedure. *See Sell v. U.S.*, 539 U.S. 166, 123 S. Ct. 2174 (2003); Tex. Code Crim. Proc. Ann. art. 46B.086. But much of the argument raised by Jack relates to his proposed limited application of Section 574.106 in the case of criminal-commitment patients. *See* Tex. Health & Safety Code Ann. § 574.106. However, as we will resolve those issues and hold that Section 574.106 is generally applicable to criminal-commitment patients, we do not need to address this argument. Additionally, because we will also conclude that the evidence is sufficient to support the probate court’s findings under Section 574.106, we need not address the applicability or appropriateness of Article 46B.086, as it applies only to a criminal-commitment patient “who, after a hearing held under Section 574.106 . . . has been found not to meet the criteria prescribed by Sections 574.106(a) and (a-1).” Tex. Code Crim. Proc. Ann. art. 46B.086(a)(4).

Issue two is also one of statutory construction—specifically, if the general applicability of Subsections (a) and (a-1) apply to criminal-commitment patients who are receiving inpatient services because of an order from a criminal court under Article 46B.073 of the Texas Code of Criminal Procedure.

Standard of Review

We apply a de novo standard of review in both constitutional and statutory interpretation cases. *City of Fort Worth v. Rylie*, 649 S.W.3d 246, 249 (Tex. App.—Fort Worth 2022, pet. denied). Issues of statutory construction are purely legal determinations. *Pac. Emp. Ins. Co. v. Torres*, 174 S.W.3d 344, 346 (Tex. App.—El Paso 2005, no pet.). “[O]ur primary objective is to ascertain and give effect to legislative intent.” *Id.*; see Tex. Gov’t Code Ann. § 311.023. We look first to the plain and common meaning of the text of the statute, and we consider the statute as a whole. See Tex. Gov’t Code Ann. § 311.011; see also *Tex. Dep’t of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004). “If the statutory language is unambiguous, we must interpret it according to its terms, giving meaning to the language consistent with other provisions.” *Tex. Dep’t of Transp.*, 146 S.W.3d at 642.

Texas Health and Safety Code § 574.106(a)

In his first issue, Jack’s argument relies on his purported distinction between orders for inpatient mental-health services under Article 46B.073⁸ of the Texas Code

⁸Article 46B.073 is titled “Commitment for Restoration to Competency,” and permits the commitment of a defendant not released on bail to a mental health facility

of Criminal Procedure and orders for mental health services under the Texas Health and Safety Code.⁹ According to Jack, this distinction is important because he “was admitted to the state hospital based solely on a finding of incompetency,” and not under Article 46B.102¹⁰ or under the Health and Safety Code. Without any reference to caselaw to support this claim, Jack argues that because he was not committed to the facility under Article 46B.102 or Sections 574.034 or 574.035, he was not properly “under an order for inpatient mental health services” as required by Section 574.106(a)(1), and the probate court lacked authority to issue the forced-medication order.

We first look to the plain and common language of the statute, and we disagree with the proposed reading. *See* Tex. Gov’t Code Ann. § 311.011. The Texas Health and Safety Code has identified several circumstances in which a probate court may enter an order authorizing the forced administration of psychoactive medication. *See* Tex. Health & Safety Code Ann. § 574.106. Before the court may issue such an order, it must

“with the specific objective of the defendant attaining competency to stand trial.” *See* Tex. Code Crim. Proc. Ann. art. 46B.073.

⁹Specifically, Jack refers to Sections 574.034 (Order for Temporary Inpatient Mental Health Services) and 574.035 (Order for Temporary Outpatient Mental Health Services). *See* Tex. Health & Safety Code Ann. §§ 574.034, .035.

¹⁰Article 46B.102 (Civil Commitment Hearing: Mental Illness) permits the court to “hold a hearing to determine whether the defendant should be court-ordered to mental health services under” the Health and Safety Code. *See* Tex. Code Crim. Proc. Ann. art. 46B.102.

determine that the patient is either (1) “under a court order to receive inpatient mental health services” or (2) “in custody awaiting trial in a criminal proceeding and [have been] ordered to receive inpatient mental health services in the six months preceding [the] hearing” on the forced-medication issue. *Id.* § 574.106(a). Subsection (a) is the statutory prerequisite for an order under Section 574.106.

There is no evidence that Subsection 574.106(a) intended to exclude orders for inpatient mental health services that originated from a finding of incompetence in a criminal court. *See* Tex. Health & Safety Code Ann. § 574.106(a). The statute does not state that Subsection (a)(1) may be satisfied only by a court order under the Health and Safety Code—as Jack suggests¹¹—or that an order under Article 46B.073 is insufficient to satisfy “a court order to receive inpatient mental health services.” *Id.* § 574.106(a)(1).

Further, pursuant to Section 574.104—which outlines the requirements for an application for an order authorizing psychoactive medication and the eventual hearing under Section 574.106—the patient must be “under an order for inpatient mental health services under this chapter *or other law*.”¹² *Id.* § 574.104(a)(3) (emphasis added). There is

¹¹Jack argues, without supporting legal authority, that because Sections 574.034 and 574.035 require specific findings regarding mental illness and dangerousness and Article 46B.073 does not require the same findings, it is somehow insufficient to meet the required “order for inpatient mental health services” under Subsection (a)(1).

¹²The reply brief argues that if “other law” is relied on, Subsection 574.106(a)(1)(2) must govern. However, this claim is also unsupported by the evidence, and we resolve this question in our analysis of issue three.

nothing that states Article 46B.073¹³ is exempted from the broad “other law” statement. In fact, we have previously also permitted this same type of order to satisfy the statutory prerequisite. *See e.g., In re C.J.*, No. 02-24-00197-CV, 2024 WL 3387348, at *1 (Tex. App.—Fort Worth July 12, 2024, no pet.) (mem. op.); *In re J.B.*, No. 02-20-00118-CV, 2020 WL 3981771, at *1 (Tex. App.—Fort Worth June 5, 2020, no pet.) (mem. op.); *In re N.S.*, No. 02-19-00262-CV, 2019 WL 4122612, at *1 (Tex. App.—Fort Worth Aug. 29, 2019, pet. denied) (mem. op.).

Because the statutory language clearly intended to encompass a broad range of orders for inpatient mental health services and did not specifically exclude those made under Article 46B.073—and in light of our prior decisions—we hold that the plain and common language of the statute does not prevent an Article 46B.073 order for inpatient mental health services from satisfying the statutory prerequisite under Subsection (a)(1).¹⁴ *See* Tex. Gov’t Code Ann. § 311.011; *Tex. Dep’t of Transp.*, 146 S.W.3d at 642.

¹³Article 46B.073(d) orders a defendant who has been found to be incompetent to stand trial to be committed “to a mental health facility or residential care facility determined to be appropriate by the local mental health authority.” Tex. Code Crim. Proc. Ann. art. 46B.073(d).

¹⁴In his first issue, Jack makes an unsupported statement that, because the order in this case is named “Order for Transfer to a State Mental Health Facility,” (Order) it is somehow unable to meet either of the statutory prerequisites set forth in Subsection (a). Although there was no objection made at the hearing as to the content of the underlying Order, to the extent that Jack did intend to challenge the sufficiency of the Order because of its title, that is also overruled. Despite the title stating it was a transfer order, the Order states that the “Sheriff of Tarrant County [is ordered to] transport the Defendant to a state mental health facility designated by the Texas Health and Human Services Commission, under Texas Code of Criminal Procedure, Article 46B.073, for

We overrule issue one.

Texas Health and Safety Code § 574.106: General Applicability

In his second issue, Jack contends that the probate court erroneously relied upon the general provisions of Section 574.106 for its forced-medication order when, according to him, it was limited to Subsections (a)(2) and (a-1)(2) because the underlying order arose from a criminal context. We again start by considering the plain and common language of the statute to make such a determination. *See* Tex. Gov't Code Ann. § 311.011.

In addition to the statutory prerequisite under Subsection (a), the statute also requires the probate court to find by clear and convincing evidence that “the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient.” Tex. Health & Safety Code Ann. § 574.106(a-1)(1). Alternatively, the probate court may issue an order under this Section if, by clear and convincing evidence, it finds that “the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is

appropriate treatment for a period of not more than 120 days.” In addition to our holding that orders under 46B.073 are permitted under the statute and may satisfy the requirement in Subsection (a)(1), the plain language contained in the Order that directs Jack’s transport to a mental health facility for appropriate treatment satisfies these requirements as well.

in the best interest of the patient,” and that at least one of two conditions (regarding the patient’s presenting a danger to himself or others) is satisfied. *Id.* § 574.106(a-1)(2).

Although Subsection (a-1)(2) has language specific to those patients who have been ordered to receive inpatient mental health services by a criminal court, it does not state it is the only applicable subsection for criminal-commitment patients, and there is no language in Subsection (a-1)(1) that indicates its applicability is limited in any way. In fact, it appears to indicate the opposite of Jack’s proposed reading: that if *any* patient lacks the capacity to make a decision regarding the proposed medication and treatment with the same medication is in the patient’s best interest, it is permissible for the trial court to order the administration of psychoactive medication. *See id.* § 574.106(a-1)(1). However, if there is not clear and convincing evidence that the patient lacks the capacity to make such decisions, the court cannot order the administration of the medication *unless* the patient was ordered to receive inpatient mental health services by a criminal court *and* there is a finding of dangerousness.¹⁵ *Id.* § 574.106(a-1)(2). The plain language indicates only that a finding of dangerousness is permitted when the finding concerns a patient receiving treatment because of an order from a criminal court, but the lack of capacity finding is not so restricted. *Id.* § 574.106(a-1).

¹⁵Both Subsections (a-1)(1) and (a-1)(2) require a best-interest finding as defined in Subsection (b). *See id.* § 574.106(a-1), (b).

Further, this court has repeatedly held that the generally applicable statutory provisions are adequate to uphold forced-medication orders involving criminal-commitment patients—including when the trial court makes a finding that the patient lacks the capacity to make a decision regarding his treatment with the proposed medication. *See C.J.*, 2024 WL 3387348, at *4 (collecting cases). Instead of addressing or distinguishing the findings of lack of capacity in these cases from his own,¹⁶ Jack maintains that the only permissible way an order can be issued for a criminal-commitment patient is if there is a finding of dangerousness. Finding no evidence here to contradict our prior interpretations of the statute, nor any distinguishable circumstances here that would persuade us to deviate from our prior decisions, we hold that a lower court may, with clear and convincing evidence, order the administration of psychoactive medication for criminal-commitment patients under either part of Subsection (a-1). *See* Tex. Health & Safety Code Ann. § 574.106(a-1).

We overrule issue two.

Issues Three and Four: Sufficiency

In his third issue, Jack argues that the evidence is insufficient to support the probate court's finding of dangerousness under Subsection (a-1)(2), making the order

¹⁶Jack addresses this collection of cases only to say that the cases assume, without deciding, that competency-restoration orders satisfy the statutory prerequisite under Subsection (a). However, we have already stated these orders are able to satisfy the statutory prerequisite.

for the administration of psychoactive medication invalid. However, Jack does not challenge the probate court’s capacity finding under Subsection (a-1)(1).¹⁷ Because we will conclude that there is legally and factually sufficient evidence to support the probate court’s finding that Jack lacks the capacity to make a decision regarding the administration of the proposed medication—and because proof of either Subsection 574.106(a-1)(1) or Subsection 574.106(a-1)(2) alone is sufficient to authorize administration of psychoactive medication—we need not address the dangerousness finding. *See J.B.*, 2020 WL 3981771, at *3–4; *In re A.S.K.*, No. 02-13-00129-CV, 2013 WL 3771348, at *3 (Tex. App.—Fort Worth July 18, 2013, no pet.) (mem. op.).

In his fourth issue, Jack complains that there was also insufficient evidence to support a best-interest finding. Because both Subsections 574.106(a-1)(1) and (a-1)(2) require a finding of best interest, we will address this challenge. However, we will also conclude that there is legally and factually sufficient evidence to support the probate court’s finding that the administration of psychoactive medication was in Jack’s best interest.

¹⁷The sufficiency argument is focused exclusively on the finding of dangerousness under Subsection 574.106(a-1)(2) based on the trial court’s consideration of the factors listed in Section 574.1065. *See* Tex. Health & Safety Code Ann. §§ 574.106(a-1)(2), 574.1065.

Standard of Review

There must be clear and convincing evidence to support a finding under either Subsection 574.106(a-1)(1) or Subsection 574.106(a-1)(2). *See* Tex. Health & Safety Code Ann. § 574.106. Clear and convincing evidence is more than the mere greater weight of any credible evidence but does not have to be unequivocal or undisputed. *See J.B.*, 2020 WL 3981771, at *3 (citing *In re S.P.*, 444 S.W.3d 299, 302 (Tex. App.—Fort Worth 2014, no pet.)). In reviewing the evidence for legal or factual sufficiency, we must “determine if the factfinder could form a firm belief or conviction that the challenged finding was true.” *Id.* (citing *In re M.T.*, Nos. 02-17-00011-CV, 02-17-00012-CV, 2017 WL 1018596, at *5 (Tex. App.—Fort Worth Mar. 16, 2017, no pet.) (per curiam) (mem. op.); *S.P.*, 444 S.W.3d at 302).

In the case of a legal sufficiency challenge, we consider the evidence in the light most favorable to the finding. *See S.P.*, 444 S.W.3d at 302. If there is a factual sufficiency challenge, we look to the entire record and consider evidence that the factfinder could reasonably have found to be clear and convincing. *In re K.S.*, No. 11-19-00064-CV, 2019 WL 1841894, at *2 (Tex. App.—Eastland Apr. 25, 2019, no pet.) (mem. op.) (citing *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). The factfinder is the sole arbiter of credibility and the weight of the evidence, and we are not permitted to second-guess. *J.B.*, 2020 WL 3981771, at *3 (citing *S.P.*, 444 S.W.3d at 302).

Texas Health and Safety Code § 547.106(a-1)(1): Capacity

Section 574.101 of the Texas Health and Safety Code defines capacity as an ability to “understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment” and to “make a decision whether to undergo the proposed treatment.” Tex. Health & Safety Code Ann. § 574.101(1). Jack was diagnosed with delusional disorder. In Dr. Shah’s application for administration of psychoactive medication, he noted that Jack “has a history of mental illness with current symptoms of persecutory and grandiose delusions, disorganization in thought process with rapid and pressured speech[,] and preoccupations with somatic symptoms.” The application also stated that Jack had not been attending competency classes, had been refusing to meet with the treatment team, and had been unable to “recognize [the] benefit of medications which reflects very poor insight towards his mental illness and medications.” According to Dr. Shah’s note in the application, Jack had said, “I will not take medications.”

Dr. Shah testified that the administration of psychoactive medication is the proper and customary course of treatment for Jack to help prevent other medical illness and issues. He also testified that there are no other effective alternative treatments for Jack at this time. Jack’s testimony did not refute this evidence. Instead, Jack testified about the various grievances he had against the medical staff, his belief that he did not have a mental illness, the conspiracy to “put” him in the hospital, and his belief that he was being denied the medication and supplements that he needed. Jack later conceded

that he was receiving the vitamin D supplement he needed, and Dr. Shah testified that he was receiving both the vitamin D and medication for his thyroid. Jack was also disruptive during the hearing—frequently interrupting Dr. Shah’s testimony—and had difficulty answering his attorney’s questions.

Deferring to the probate court’s credibility determinations and considering the evidence in the appropriate light, we conclude the evidence was legally and factually sufficient to allow the trial court to have formed a firm belief or conviction that Jack did not have the capacity to make a decision regarding the administration of the proposed medication. *See e.g., J.B.*, 2020 WL 3981771, at *3; *S.P.*, 444 S.W.3d at 305; *In re C.S.*, 208 S.W.3d 77, 84 (Tex. App.—Fort Worth 2006, pet. denied).

We overrule issue three.

Texas Health and Safety Code § 574.106(b)

In his fourth issue, Jack challenges the sufficiency of the evidence under best interest, claiming that the testimony was too focused on restoring his competency to stand trial. The statute identifies seven factors that a court must consider for best interest, and because of the alleged focus on the restoration of Jack’s competency, he argues that the evidence is insufficient as to two of the seven factors. He does not challenge the sufficiency of the evidence as to the other five factors; however, we conduct a review of all seven factors below.

The seven factors the lower court is required to consider in making a best-interest finding are:

(1) the patient’s expressed preferences regarding treatment with psychoactive medication;

(2) the patient’s religious beliefs;

(3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient’s agreement to take the psychoactive medication.

Tex. Health & Safety Code Ann. § 574.106(b). Jack contends the evidence is insufficient to support a finding under factors four and five.

Beginning with the two challenged factors on appeal, there was testimony from Dr. Shah that the symptoms of Jack’s mental illness were impacting his function and judgment, and that—left untreated—could put him at risk for other medical consequences due to lack of sleep. Dr. Shah also testified that Jack may even experience an increase in the severity of his delusions. Contrary to Jack’s argument, this testimony does consider Jack’s “own health, functioning, or safety apart from [his] competency restoration,” and we find that factor four weighs in favor of the probate court’s best-interest finding.

Further, Dr. Shah’s testimony about Jack’s engagement with the treatment team and eventual restoration of competency is not prohibited by the best-interest analysis—but there must also be consideration of forced medication for a purpose other than competency restoration under the best-interest factors. *See e.g., N.S.*, 2019 WL 4122612, at *6.¹⁸ Considering factor five, Dr. Shah also testified that the recommended medications were necessary to treat Jack’s mental illness and would allow him to engage with the treatment team—which he was not doing at the time of the hearing. Thus, factor five had evidence related to Jack’s future engagement with the treatment team and management of his symptoms and weighs in favor of the probate court’s best-interest finding. *See In re M.R.*, No. 02-18-00313-CV, 2019 WL 91921, at *4 (Tex. App.—Fort Worth Jan. 3, 2019, no pet.) (mem. op.).

The first factor regarding Jack’s preferences weighs against the best-interest finding. Jack expressed that he did not want to take the medication because it was for schizophrenia, and he did not believe he had a mental illness. Jack’s preference not to take the prescribed medication because of his beliefs about his mental illness weighs

¹⁸The *Sell* test applies when a court seeks to administer involuntary drugs because it is significantly necessary to further a particular government interest—like the restoration of competency in criminal cases. *N.S.*, 2019 WL 4122612, at *6 (citing *Sell*, 539 U.S. at 181-82, 123 S. Ct. at 2185). However, where there are “strong reasons for a court to determine [that] forced medication of drugs can be justified on these alternative grounds,” before considering the ground of competence to stand trial, it is permitted to consider those alternative reasons alone—like the consideration of the best-interest factors under Section 574.106(b). *Id.*

against the trial court's best-interest finding. *See In re T.C.*, No. 02-17-00201-CV, 2017 WL 2838174, at *6 (Tex. App.—Fort Worth July 3, 2017, no pet.) (mem. op.).

There was no evidence presented as to the second factor; thus, this factor is neutral, and it does not weigh in favor of or against a finding that the administration of psychoactive medication was in Jack's best interest. *See M.R.*, 2019 WL 91921, at *2.

The third factor also weighs in favor of the probate court's finding. Dr. Shah testified that Jack was not able to process the benefits and risks of the proposed medication for himself. He testified that the benefit was to help with Jack's delusional symptoms, and the risks included weight gain and akathisia—feelings of restlessness or tremors. Dr. Shah testified that he was recommending a lower dose of the medication and that there were other medications that could mitigate the side effects. He shared that he was willing to work with Jack to “rectify” any side effects.

This evidence supports a conclusion that the benefits of administering the medication were substantial and the risks minimal—because of this, we conclude that this factor weighs in favor of the probate court's best-interest finding. *See id.*

The sixth factor, consideration of alternative, less intrusive treatment options, weighs in favor of the trial court's finding. Dr. Shah testified that there are no alternative treatments available to treat Jack's diagnosis.

There was no direct testimony about the seventh factor: whether there is any less intrusive treatment option to secure Jack's agreement to take the psychoactive medication. However, there was testimony from Dr. Shah that Jack has previously

communicated that he flat out “will not take medications.” Dr. Shah testified that he did not believe Jack had rational reasons for this refusal and suggested that the symptoms of Jack’s mental illness were affecting his function and blurring his judgment. This evidence weighs slightly in favor of the best-interest finding.¹⁹

Our review of the entire record in relation to the best-interest factors reveals that only one factor—Jack’s expressed preferences—weighs against the trial court’s finding. *See* Tex. Health & Safety Code Ann. § 574.106(b)(1). There is also one factor—Jack’s religious beliefs—that is neutral and does not weigh in favor of or against that finding. *See id.* § 574.106(b)(2). The remaining five factors weigh in favor of the finding. *See id.* § 574.106(b)(3)–(7). Having reviewed the entire record, we conclude that the trial court could have reasonably formed a firm belief or conviction that treatment with the proposed psychoactive medication was in Jack’s best interest. *See M.R.*, 2019 WL 91921, at *4 (collecting cases).

We overrule issue four.

¹⁹Jack made several statements during the hearing that he was “not 100 percent there,” “loopy,” and “not all there, medically speaking”—attributing this mental instability to his vitamin-D deficiency and thyroid problems that were being “recklessly ignored.” However, Dr. Shah testified that Jack was receiving supplements and treatment for both conditions. Thus, even receiving treatment for his self-identified conditions, Jack was still unwilling to take the prescribed psychoactive medication.

Issue Five: Assistance of Counsel

In his fifth issue, Jack alleges that Robert Fitzgerald, his appointed counsel, failed to conduct a sufficient review of the facts prior to the hearing, that he failed to object to the testimony, and that he failed to dispute the evidence presented by the State. In his reply brief, Jack additionally alleged that counsel did not make meaningful challenges to the statutory prerequisites, did not engage with the jurisdictional or interpretive defects raised on appeal, and did not provide any “record-based explanation reflecting compliance with the attorney statutory duties” under Section 574.004²⁰ of the Texas Health and Safety Code.

A claim for ineffective assistance of counsel requires satisfaction of the *Strickland* prongs: (1) that counsel’s representation fell below an objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687–88, 694, 104 S. Ct. 2052, 2064, 2068 (1984).²¹

²⁰Section 574.004 outlines the duties of an attorney who is representing a proposed patient—including what must be discussed with the patient and what steps must be taken prior to a hearing. *See* Tex. Health & Safety Code Ann. § 574.004.

²¹We note that the right to effective assistance of counsel has been upheld in circumstances beyond the criminal context, where a statutory right to appointed counsel also exists. *See In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003) (“[W]e believe that it would seem a useless gesture on the one hand to recognize the importance of counsel in termination proceedings, as evidenced by the statutory right to appointed counsel, and, on the other hand, not require that counsel perform effectively.”) (citation and quotation marks omitted). As relevant here, the Texas Health and Safety Code specifies that “[a] patient for whom an application for an order to authorize the administration

“It is not sufficient that the appellant show, with the benefit of hindsight, that his counsel’s actions or omissions during trial were merely of questionable competence. Rather, the record must affirmatively demonstrate trial counsel’s alleged ineffectiveness.” *Mata v. State*, 226 S.W.3d 425, 430 (Tex. Crim. App. 2007).

Even if there was deficient performance, *Strickland* requires a strong showing of prejudice. *See Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068. “The mere possibility of a different outcome is not sufficient” to establish prejudice. *Johnson v. Cockrell*, 301 F.3d 234, 239 (5th Cir. 2002) (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068). The defendant must establish that the prejudice resulted in a fundamentally unfair or unreliable outcome. *Id.* (citing *Lockhart v. Fretwell*, 506 U.S. 364, 369, 113 S. Ct. 838, 842 (1993)).

Here, there is nothing in the record to support that Fitzgerald’s representation fell below an objective standard of reasonableness, nor was there any opportunity for Fitzgerald to explain his actions or omissions. *See Mata*, 226 S.W.3d at 430.

Addressing the allegations in two groups—preparation for the hearing and strategy during the hearing—we begin with Jack’s claim that counsel failed to conduct a sufficient review of the facts before the hearing. Jack concedes that the record is silent

of a psychoactive medication is filed is entitled to,” among other things, “representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing.” Tex. Health & Safety Code Ann. § 574.105(1). There was no allegation at the hearing or on appeal that Jack’s appointed counsel was not knowledgeable about the issues to be adjudicated during the hearing.

as to how Fitzgerald prepared for the hearing but contends that nevertheless “no reasonable strategy can be imagined.” “A silent record that provides no explanation for counsel’s actions will not overcome the strong presumption of reasonable assistance.” *Johnson v. State*, 624 S.W.3d 579, 586 (Tex. Crim. App. 2021) (citing *Rylander v. State*, 101 S.W.3d 107, 110–11 (Tex. Crim. App. 2003)). Jack’s supporting proof of counsel’s deficient performance in preparing for the hearing is the \$250 attorney’s fees granted by the probate court. However, the fee does not appear to calculate hours worked, only number of cases, at a fee of \$250.00 per case. Thus, considering the silent record before us, we do not find this to be persuasive for finding deficient performance, or informative of counsel’s actions prior to the hearing.

Jack also raises a plethora of complaints about the strategy used during the hearing—when to object or to ask questions. Despite allegations that he should have objected more frequently or asked more questions, we note the record is again silent on counsel’s strategy for these issues. When a record does not contain affirmative evidence of trial counsel’s reasoning or strategy, we presume counsel’s performance was not deficient. *Id.* Mere disagreement with trial strategy is not evidence of deficient performance, and we may not make inferences from a silent record. *Cockrell*, 301 F.3d at 239 (citing *Crane v. Johnson*, 178 F.3d 309, 312 (5th Cir. 1999)). We are left only to suppose or guess at counsel’s strategy—not the least of which could have been to avoid unnecessary objections following his client’s numerous objections and persistent interruptions during Dr. Shah’s testimony—and thus, we do not find this purported

lack of action to fall below the objective standard of reasonableness. *See Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068.

Even if we assume, *arguendo*, that counsel's performance was deficient, a *Strickland* claim may not be sustained without a strong showing of prejudice. *See id.* To establish this, there must be a showing of a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *See id.* In light of Jack's own incoherent and rambling testimony, Dr. Shah's testimony about Jack's mental illness and the necessity of the proposed treatment, and our holding under the first four issues, it is highly unlikely that the result of the proceeding would have differed if counsel's strategy had differed. *See Cockrell*, 301 F.3d at 239.

We overrule issue five.

Issue Six: Recusal or Disqualification

In his sixth issue, Jack claims that the probate judge failed to rule on his oral motion to disqualify her. However, this argument fails because there was no request—oral or written—for disqualification or recusal of the probate judge.

Rule 18a of the Texas Rules of Civil Procedure governs the disqualification of a judge. *See* Tex. R. Civ. P. 18a. Pursuant to Rule 18a, a party seeking recusal must file a verified motion stating with particularity why the judge should not hear the case. Tex. R. Civ. P. 18a(a). To be timely, a motion to recuse must be filed “as soon as practicable after the movant knows of the ground stated in the motion.” Tex. R. Civ. P. 18a(b)(1)(A). When a party fails to comply with these mandatory requirements, he

waives the right to complain of the trial judge’s refusal to recuse herself. *See Hale v. Hale*, No. 02-23-00234-CV, 2024 WL 4510195, at *10 (Tex. App.—Fort Worth Oct. 17, 2024, pet. denied) (mem. op.) (citing *Franklin v. City of Fort Worth*, No. 02-12-00453-CV, 2014 WL 3696092, at *4 (Tex. App.—Fort Worth July 24, 2014, no pet.) (mem. op.); and *In re Guardianship of Jordan*, 348 S.W.3d 401, 415 (Tex. App.—Beaumont 2011, no pet.)). Further, the rule requires that the movant includes in the motion “detail[s] and particularity facts” that, if true, would justify the disqualification under the rule. *See* Tex. R. Civ. P. 18a(2), (4); *see also* Tex. R. Civ. P. 18b. The motion must not be based solely on the judge’s prior rulings in the case. Tex. R. Civ. P. 18a(3).

Because Jack did not file a written motion, nor did he present an oral motion that included the requisite details, there was nothing for the probate judge to rule on; thus, he waived his complaint on appeal. *See Hale*, 2024 WL 4510195, at *10 (collecting cases holding the same).

Jack argues that we should ignore the requirements of Rule 18a, and construe as a motion to disqualify, his oral observation during the hearing that, as the probate judge was elected, he had the “right under Article 5, Section 11 [of the Texas Constitution] to have [her] disqualified.” At no point after this statement did he assert any of the grounds outlined in Rule 18b, nor did he provide facts that would justify the judge’s recusal or disqualification, only that he *could* do so.

Jack’s brief implies that the probate judge should have recognized that this constitutional provision was meant to be an argument under Section 25.00255 of the

Texas Government Code. We find this inconsistent with both the record before the probate court and the provisions of Section 25.00255. *See* Tex. Gov’t Code Ann. § 25.00255 (“Notwithstanding any conflicting provision in the Texas Rules of Civil Procedure, *Rules 18a and 18b*, Texas Rules of Civil Procedure, *apply to the recusal and disqualification of a statutory probate court judge* except as otherwise provided by this section or another provision of this subchapter.” (emphasis added)).

We overrule issue six.

Conclusion

Having overruled all six of Jack’s challenges, we affirm the probate court’s forced medication order.²² *See* Tex. R. App. P. 43.2(a).

/s/ Mike Wallach
Mike Wallach
Justice

Delivered: November 13, 2025

²²Any pending motions in this court that have not been disposed of are denied.