

IN RE INVOLUNTARY TREATMENT OF S.

Submitted on Briefs June 25, 2020

Decided July 2, 2020

Panel: MEAD, GORMAN, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

S. appeals from a judgment of the Superior Court (Penobscot County, *Anderson, J.*) affirming a judgment of the District Court (Bangor, *Jordan, J.*), which ordered his admission to a progressive treatment program (PTP). *See* 34-B M.R.S. § 3873-A (2020); *see also id.* § 3864(11) (2020); M.R. Civ. P. 76D.

The sole argument S. raises on appeal is that section 3873-A is unconstitutional both on its face and as applied to him. *See* U.S. Const. amend. XIV, § 1; Me. Const. art. I, § 6-A. S. did not raise this issue before the trial court, electing instead to raise it for the first time in his appeal to the Superior Court pursuant to M.R. Civ. P. 76D. In these circumstances, the issue is not properly preserved for appellate review, and we decline to reach the merits.¹

¹ We will consider an unpreserved error if the error is obvious and if “application of the general rule would obviously result in a plain miscarriage of justice.” *In re Christopher H.*, 2011 ME 13, ¶ 15, 12 A.3d 64 (alteration omitted) (quotation marks omitted); *see also In re Anthony R.*, 2010 ME 4, ¶ 9, 987 A.2d 532 (“When an unpreserved error is asserted to implicate constitutional rights, the error may be regarded as ‘obvious’ if it worked a substantial injustice or affected the appellant’s substantial rights.”). As the parties agree, 34-B M.R.S. § 3873-A (2020) does infringe on a fundamental liberty interest, *Washington v. Harper*, 494 U.S. 210, 221-22 (1990); *In re Steven L.*, 2017 ME 5, ¶ 11, 153 A.3d 764, and the State has compelling interests in caring for those who are unable to care for themselves and in protecting the community from persons with mental health conditions who may be dangerous if their condition is not treated, *Addington v. Texas*, 441 U.S. 418, 426 (1979). Because section 3873-A provides adequate protections to ensure that it is not abused

See Foster v. Oral Surgery Assocs., P.A., 2008 ME 21, ¶ 22, 940 A.2d 1102 (“An issue raised for the first time on appeal is not properly preserved,” even where “the issue pertains to an alleged constitutional violation.” (alteration omitted) (quotation marks omitted)); *see also Dobson v. Dep’t of the Sec’y of State*, 2008 ME 137, ¶ 3, 955 A.2d 266; *Teel v. Colson*, 396 A.2d 529, 533-34 (Me. 1979); Alexander, *Maine Appellate Practice* § 402(a) at 310-11 (5th ed. 2018).

The entry is:

Judgment affirmed.

Joseph P. Belisle, Esq., Bangor, for appellant S.

Arrian Stockdell, Esq., Brewer, for appellee Acadia Hospital Corporation

Penobscot County Superior Court docket number AP-2019-15
FOR CLERK REFERENCE ONLY

and that only persons who meet strict requirements are admitted to a PTP, it is narrowly tailored to those compelling governmental interests. On this record, we conclude that the trial court did not commit any obvious error.