The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
November 19, 2026

2026 COA 86

No. 26CA1595, *People in Interest of Babb* — Health and Welfare — Care and Treatment of Persons with Mental Health Disorders — Involuntary Administration of Medication — *Medina* Test — Nasogastric Tube

A division of the court of appeals considers whether a request to administer medication to a patient involuntarily through a nasogastric tube presents a distinct question, requiring its own evidentiary support, from the question whether the medication may be administered at all. The division concludes that a court may not approve such a request absent a showing by clear and convincing evidence that administration of the medication through a nasogastric tube satisfies the third element of *People v. Medina*, 705 P.2d 961, 974 (Colo. 1985): "If less intrusive methods are available to effectively redress these concerns, then clearly the court should deny the motion for nonconsensual treatment." Thus, a record

supporting the involuntary administration of a particular medication is not, alone, sufficient to warrant administration of that medication through a nasogastric tube.

In this case, the People did not establish that a nasogastric tube was necessary to administer medication to the patient. For this reason, the division vacates the authorization to involuntarily administer medication by nasogastric tube.

COLORADO COURT OF APPEALS **2026 COA 86**

Court of Appeals No. 26CA1595
Pueblo County District Court No. 26MH30080
Honorable Gregory J. Styduhar, Judge

The People of the State of Colorado,

Petitioner-Appellee,

In the Interest of Dean Perry Babb,

Respondent-Appellant.

ORDER VACATED

Division IV
Opinion by JUDGE LIPINSKY
Harris and Gomez, JJ., concur

Announced November 19, 2026

Brendan Hursh, Interim County Attorney, Kate H. Shaffer, Special Assistant County Attorney, Pueblo, Colorado, for Petitioner-Appellee

Tezak Law, P.C., Mary Tezak, Florence, Colorado, for Respondent-Appellant

¶ 1 The involuntary administration of medication to a nonconsenting person "represents a substantial interference with that person's liberty." *People in Interest of R.F.*, 2019 COA 110, ¶ 9, 451 P.3d 1238, 1241 (quoting *Washington v. Harper*, 494 U.S. 210, 229 (1990)). The interference is particularly severe, and raises due process concerns, when the state seeks to administer psychotropic drugs because those types of medications threaten the patient's mental and bodily integrity. *See id.*

¶ 2 In *People v. Medina*, 705 P.2d 961, 970-73 (Colo. 1985), the Colorado Supreme Court announced a four-element test to determine when the state's "legitimate interest in effectively treating the illnesses of those placed in its charge and . . . in protecting patients and others from dangerous and potentially destructive conduct within [a mental] institution" outweighs the right of "a patient who is not competent to make an informed treatment decision . . . to object to involuntary treatment by antipsychotic medication." "[T]he physician or professional person desiring to administer antipsychotic medication" must satisfy the four elements of the *Medina* test by "clear and convincing evidence." *Id.* at 973. Colorado courts routinely apply *Medina* when a physician or

professional person seeks the judiciary's imprimatur to administer medication to a patient against that patient's will.

¶ 3 This appeal presents a question not squarely addressed in previous Colorado opinions: whether a request to administer medication to a patient involuntarily through a nasogastric tube (NG tube) presents a distinct question, requiring its own evidentiary support, from the question whether the medication may be administered at all.

¶ 4 We hold that it does. Accordingly, a court may not approve a request to administer medication involuntarily by NG tube absent a showing by clear and convincing evidence that such means of administration satisfies the third element of *Medina*: "If less intrusive methods are available to effectively redress these concerns, then clearly the court should deny the motion for nonconsensual treatment." *Id.* at 974.

¶ 5 Dean Perry Babb appeals the district court's order authorizing staff at the Colorado Mental Health Hospital in Pueblo (the hospital) to administer valproic acid, a mood stabilizer, to him involuntarily by NG tube.

¶ 6 We vacate the portion of the order regarding administration of valproic acid by NG tube because the petitioner, the People of the State of Colorado, failed to establish that administration of medication to Babb in this manner satisfied the third *Medina* element.

I. Background

¶ 7 Babb was admitted to the hospital in 2025 after he was found incompetent to proceed in a criminal case. Dr. Zachary Wickline, Babb's treating psychiatrist at the hospital, diagnosed him with unspecified bipolar disorder with psychotic features. Dr. Wickline reported that Babb's condition was manifested by "pronounced agitation[,] labile affect," as well as "extreme swings of mood and very pronounced anger," "some suggestion of grandiosity," "tangential thought process," and "pressured speech."

¶ 8 In July 2026, the hospital began administering olanzapine (Zyprexa) and valproic acid (Depakote/Depakene) to Babb on an emergency basis after he exhibited aggressive behavior and made threatening statements. (For simplicity, in this opinion, we refer to the medications by their generic names.) The next day, Babb twice punched a staff member who was administering one of the

emergency medications to him by intramuscular injection. Over the next two weeks, he demonstrated verbal aggression, including "name calling and verbal agitation," toward hospital staff.

¶ 9 Later that month, the People filed a petition for the involuntary administration to Babb of up to 40 milligrams of olanzapine by mouth or intramuscular injection daily and up to 4,000 milligrams of valproic acid by mouth or NG tube daily. The People did not explain in their petition why they were seeking authorization to administer valproic acid by NG tube as an alternative to oral administration.

¶ 10 In August 2026, the district court granted the petition at the conclusion of a hearing at which Dr. Wickline and Babb testified. The NG tube was mentioned only twice at the hearing. First, Dr. Wickline confirmed that he was requesting authorization to administer valproic acid to Babb "up to 4[,]000[] mg by mouth or [NG] tube daily." Second, later during the hearing, the court asked Dr. Wickline to confirm his request for involuntary administration of medication to Babb, including administration of valproic acid "up to 4[,]000[] mg by mouth or [NG] tube daily." Dr. Wickline confirmed that was his request.

¶ 11 In addition, Dr. Wickline explained that the primary side effects of valproic acid are hair loss, weight gain, unsteady gait, gastrointestinal upset, increase in liver enzymes, increased ammonia in the blood, tremors, and sweating. He said that, in rare instances, the medication can cause liver injury or inflammation of the pancreas. Dr. Wickline explained how the hospital staff monitors for side effects and that additional medications can neutralize them. On cross-examination, Dr. Wickline said Babb had complained of acid reflux, which was a "possible" but not a "common" side effect of olanzapine and valproic acid, as well as sleepiness, low energy, and "kind of a dulled thinking."

¶ 12 At the hearing, counsel for the People asked Dr. Wickline a single question regarding the third *Medina* element:

> Q. Is there any alternative method of treating [Babb] that would be both effective and less intrusive than the requested medications?
>
> A. No, I don't believe so.

Counsel for the People did not ask Dr. Wickline whether an alternative method of *administering* valproic acid would be effective and less intrusive than administration by NG tube. Nor did counsel

ask Dr. Wickline why he was requesting authorization for administration by NG tube in addition to administration by mouth.

¶ 13 Consistent with *Medina*, the court found that (1) Babb was incompetent to effectively participate in treatment decisions; (2) the requested treatment was necessary to prevent a significant and likely long-term deterioration of Babb's mental condition; (3) a less intrusive treatment alternative was not available; and (4) Babb's need for treatment was sufficiently compelling to override any bona fide and legitimate interest he has in refusing treatment.

¶ 14 In its written order entered following the hearing, the court said that the hospital staff was authorized to administer to Babb

- OLANZAPINE/ZYPREXA up to 40mg orally or intramuscularly daily.
- VALPROIC ACID/DEPAKOTE/ DEPAKENE up to 4000mg orally or by NG tube daily.
- All laboratory work, physical assessments, and appropriate testing necessary to monitor the safe administration of these medications, including any potential side effects.

¶ 15 Babb challenges the sufficiency of the People's evidence supporting the order for administration of valproic acid by NG tube. First, he contends that the People did not establish that

administration by NG tube was the least intrusive available treatment alternative under the third *Medina* element. Second, he argues that, under the fourth *Medina* element, the side effects of valproic acid that Dr. Wickline described "weigh against authorizing an unexplained NG route" for administration of the medication.

¶ 16 We agree with Babb's argument regarding the third *Medina* element and therefore vacate the portion of the district court's order authorizing administration of valproic acid by NG tube.

II. Analysis

A. Standard of Review

¶ 17 Application of *Medina* involves mixed questions of fact and law. *People v. Marquardt*, 2016 CO 4, ¶ 8, 364 P.3d 499, 502. We defer to the district court's factual findings if they have record support, but we review the court's legal conclusions de novo. *Id.* It is for the district court, as the fact finder, to determine the credibility of witnesses; the sufficiency, probative effect, and weight of the evidence; and the inferences and conclusions to be drawn from the evidence. *People in Interest of R.C.*, 2019 COA 99M, ¶ 7, 451 P.3d 1229, 1231.

B. Substantive Law

¶ 18 Under *Medina*, an order for involuntary administration of medication must be supported by clear and convincing evidence

> (1) that the patient is incompetent to effectively participate in the treatment decision; (2) that treatment by antipsychotic medication is necessary to prevent a significant and likely long-term deterioration in the patient's mental condition or to prevent the likelihood of the patient's causing serious harm to himself or others in the institution; (3) that a less intrusive treatment alternative is not available; and (4) that the patient's need for treatment by antipsychotic medication is sufficiently compelling to override any bona fide and legitimate interest of the patient in refusing treatment.

705 P.2d at 973. Clear and convincing evidence is "stronger than a mere 'preponderance'; it is evidence that is highly probable and free from serious or substantial doubt." *Destination Maternity v. Burren*, 2020 CO 41, ¶ 10, 463 P.3d 266, 271 (quoting *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411, 414 (Colo. App. 1995)). The petitioner bears the burden to prove each element of the *Medina* test. *R.C.*, ¶ 6, 451 P.3d at 1231.

¶ 19 The third *Medina* element focuses on "the existence, feasibility, and efficacy of alternative methods of treating the patient's

condition or of alleviating the danger created by that condition. If less intrusive methods are available to effectively redress these concerns, then clearly the court should deny the motion for nonconsensual treatment." *Medina*, 705 P.2d at 974. A less intrusive alternative "constitutes an available treatment that has less harmful side effects and is at least as effective at alleviating a patient's condition as the proposed treatment." *People in Interest of Strodtman*, 293 P.3d 123, 133 (Colo. App. 2011).

¶ 20 (The test outlined in *Sell v. United States*, 539 U.S. 166, 180-81 (2003), applies to petitions to administer medication involuntarily for the purpose of rendering a defendant competent to stand trial. *See R.F.*, ¶¶ 10-15, ¶ 11 n.1, 451 P.3d at 1241-42, 1241 n.1. But because in this case the state seeks an order authorizing involuntary administration of medication for a different purpose — to prevent Babb's long-term deterioration — the parties agree that *Medina* applies. *See Sell*, 539 U.S. at 181-82 (holding that a court should not apply the *Sell* standard when "forced medication is warranted for a different purpose," including to protect the individual's own interests).)

C. The Third *Medina* Element

¶ 21 We first address Babb's contention that the People presented insufficient evidence that, under the third *Medina* element, there was no less intrusive alternative than administering valproic acid by NG tube. We agree that the record lacks evidence supporting the People's request for authorization to administer valproic acid by NG tube.

1. *Medina*'s Application to the Method of Administering Medications

¶ 22 We reject the People's suggestion that the third *Medina* element does not encompass "the route of administration" of medication. Although *Medina*'s third element "relates to the availability of less intrusive alternatives *to* antipsychotic medication," 705 P.2d at 974 (emphasis added), divisions of this court have interpreted it to encompass not only alternatives *to* a particular medication but also alternative forms of the medication. *See, e.g.*, *R.C.*, ¶ 16, 451 P.3d at 1232 (concluding that, under the third *Medina* element, the continued administration of a single medication was a less intrusive treatment alternative to administering six medications). Likewise, a division of this court,

without significant analysis, reviewed the requested manner of administration of medication through the lens of the third *Medina* element. *See Strodtman*, 293 P.3d at 133 (considering whether the evidence sufficiently supported a finding that oral treatment did not constitute a viable less intrusive alternative to forcible injection).

¶ 23 In *People in Interest of C.J.R.*, 2016 COA 133, 409 P.3d 536, a division of this court addressed a civilly committed patient's challenge to the involuntary administration of a drug and the use of an NG tube to administer other medications. In a footnote, the division said, again without significant analysis, that *Medina* governed the patient's challenge to the portion of the order authorizing the administration of medication through the NG tube. *C.J.R.*, ¶ 44 n.10, 409 P.3d at 543 n.10. It reversed the part of the district court's order authorizing the involuntary administration of a specific medication but affirmed the part of the order authorizing the administration of other medications by NG tube. *Id.* at ¶ 45, 409 P.3d at 544.

¶ 24 Although the record lacks evidence regarding the intrusiveness or effects of the involuntary insertion of an NG tube, Justice Sandra Day O'Connor addressed that issue in *Cruzan v. Director, Missouri*

Department of Health, 497 U.S. 261, 288-89 (1990) (O'Connor, J., concurring). In a case involving forcible insertion of an NG feeding tube, she wrote that "pass[ing] a long flexible tube through the patient's nose, throat, and esophagus and into the stomach" causes such discomfort that many patients must be forcibly restrained and their hands must be placed in large mittens to prevent them from removing the tube. *Id.* She observed that such a procedure "burdens the patient's liberty, dignity, and freedom to determine the course of [the patient's] own treatment." *Id.* at 289.

¶ 25 Justice O'Connor's opinion reinforces that the insertion of an NG tube, through the patient's nostril and into the stomach, is an invasive procedure that implicates the patient's bodily integrity independently of the nutrients or medication it delivers. Thus, administration of medication by NG tube carries its own risks, discomforts, and potential for harm. The intrusion worked by forcing a tube into a resisting patient is distinct in kind from the intrusion worked by the drug itself. For these reasons, the authorization of an NG tube must be analyzed as a separate question from the authorization to involuntarily administer a particular medication.

¶ 26 We expressly hold that a request for authorization to administer medication through an NG tube requires its own *Medina* analysis supported by clear and convincing evidence. A record sufficient to support the involuntary administration of a particular medication is not, by that fact alone, sufficient to justify *administration of the medication* by NG tube.

¶ 27 Persuasive authority from other jurisdictions, while not controlling, supports our conclusion. Courts that have confronted the question have consistently subjected to independent scrutiny requests to administer medication involuntarily by NG tube. In *United States v. Evans*, a federal district court, applying *Sell*, found that the government had presented sufficient evidence to support its request for the involuntary administration of an antipsychotic medication, but that it had not carried its burden as to the administration of the medication by NG tube. 427 F. Supp. 2d 696, 705 (W.D. Va. 2006). The court said that the government had not presented clear and convincing evidence to support its request to administer the medication through an NG tube. *Id.* The court found that the risks of inserting an NG tube into an uncooperative patient outweighed its benefits and that a soluble tablet form of the

medication was available as a less intrusive means of delivery. *Id.* *Evans* demonstrates that a court may approve the involuntary administration of medication and still decline to authorize administration of the medication by NG tube because the two questions are distinct.

¶ 28 The Illinois Appellate Court reached the same result when applying a statutory analogue to *Medina*'s third element. Under Illinois law, the state must prove by clear and convincing evidence that a procedure such as administration of a medication by NG tube is essential for the safe and effective administration of the medication, and the state must present specific testimony about the procedure rather than merely reciting its necessity in a petition. *In re Steven T.*, 2014 IL App (5th) 130328, 18 N.E.3d 284. The Illinois court held that the state failed to meet its burden to obtain authorization to administer the medication by NG tube:

> [T]he State did not present evidence about the necessity of the requested testing or procedures. [The respondent's treating psychiatrist] simply testified that the testing would be conducted at regular intervals and would be done within a month of starting the medication. Further, the petition mentioned [an NG] tube, yet no information about that procedure was given at the hearing, and the

> information in the petition simply stated that the testing and procedures were essential for the safe and effective administration of the medication. The State did not present any evidence to support this claim.

Id. at ¶ 17, 18 N.E.3d at 288. The court concluded that "[w]ithout more than a mere conclusion that the requested testing and [NG] tube were necessary, the State failed to provide the clear and convincing evidence required . . . to administer tests, and potentially the [NG] tube, without the respondent's consent." *Id.*

¶ 29 In contrast, in *In re Martin*, the Minnesota Court of Appeals affirmed a trial court's order authorizing the involuntary administration of a neuroleptic medication by NG tube, if necessary. 527 N.W.2d 170, 173 (Minn. Ct. App. 1995). The court cited the expert testimony supporting the state's request to administer the medication by NG tube: "[E]xperts testified that Clozaril was necessary to treat [the patient's] illness and that other neuroleptics, including Haldol, were not effective." *Id.* at 173. Based on the expert's testimony, the court said that, if the patient "refuses to take Clozaril voluntarily, *the only alternative means of administration is by [NG] tube*." *Id.* (emphasis added). The court explained that "[i]f the medication is medically necessary," the state

must establish that the "means to administer it [are] medically necessary as well." *Id.*

¶ 30 These cases underscore the governing principle that a petitioner must support its request to administer medication involuntarily by NG tube through evidence establishing that such form of administration satisfies the applicable legal standard and not solely by pointing to evidence of the need for involuntary administration of the medication itself. Thus, under *Medina*, the authorization of NG tube administration is a distinct question requiring independent evidentiary support.

2. Application

¶ 31 As explained above, the People presented no evidence, and the court made no findings, as to why administration of valproic acid by NG tube was needed in addition to oral administration of the medication. As noted above, the hearing transcript contains only two references to, and no substantive discussion regarding, the NG tube. Nor did the People argue that "a less intrusive treatment alternative" than administering valproic acid by NG tube was unavailable. *Medina*, 705 P.2d at 973.

¶ 32 Although both Dr. Wickline and Babb testified about Babb's history of refusing medication and exhibiting violent behavior during the administration of medication, Dr. Wickline did not link these facts to the request for authorization to administer valproic acid by NG tube. Nor did Dr. Wickline say whether administration by NG tube would have any impact on the possible side effects of valproic acid or the acid reflux that Babb reported.

¶ 33 In their answer brief, the People argue that, "logically[,] . . . administering Depakote by [NG] tube would be a last resort method of administration." But no evidence in the record supports this assertion. While the statement may be true, we disregard it in the absence of record support. *See Smith v. State Farm Mut. Auto. Ins. Co.*, 2017 COA 6, ¶ 29, 399 P.3d 771, 777.

¶ 34 We also disregard the People's assertion that Babb's appellate counsel improperly relied on her own general knowledge in discussing the intrusiveness of insertion and use of an NG tube. Although the intrusiveness of forcing a tube through an unwilling patient's nostril to the patient's stomach cannot be disputed, our decision does not ultimately rest on the facts surrounding use of NG tubes. Rather, the issue before us is whether the People

satisfied their burden under the third *Medina* element to establish that there was no "less intrusive treatment alternative" than administering valproic acid to Babb by NG tube. 705 P.2d at 973. As explained above, the People failed to do so.

¶ 35 For these reasons, we conclude that the evidence did not clearly and convincingly support a conclusion that the involuntary administration of valproic acid to Babb by NG tube satisfied the less intrusive requirement under the third *Medina* element. Thus, we vacate the portion of the district court's order authorizing involuntary NG tube administration of valproic acid.

D. The Fourth *Medina* Element

¶ 36 Babb further contends that the portion of the order authorizing use of the NG tube also lacks support under the fourth *Medina* element — "that the patient's need for treatment by antipsychotic medication is sufficiently compelling to override any bona fide and legitimate interest of the patient in refusing treatment." 705 P.2d at 973. He specifically argues that the side effects he reported "reinforce why the treatment authorized should be no broader or more intrusive than the evidence supports" and specifically "weigh against authorizing an unexplained NG route for

the same medication that was already causing significant gastrointestinal complaints."

¶ 37 Because we agree with Babb that the evidence does not support the court's order authorizing administration of valproic acid by NG tube under the third *Medina* element, we decline to address Babb's argument under the fourth *Medina* element.

III. Disposition

¶ 38 The portion of the order authorizing the involuntary administration of valproic acid by NG tube is vacated. This disposition does not affect the remainder of the order.

JUDGE HARRIS and JUDGE GOMEZ concur.