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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-72

Filed: 5 July 2017

Wake County, No. 16 SPC 51988

IN THE MATTER OF: H.R.P.A.

Appeal by respondent from order entered 1 September 2016 by Judge Louis Meyer in Wake County District Court. Heard in the Court of Appeals 17 May 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Josephine Tetteh, for the State.*

*Parker Poe Adams & Bernstein LLP, by Matthew W. Wolfe, for petitioner-appellee Holly Hill Hospital.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for respondent-appellant.*

DAVIS, Judge.

H.R.P.A. (“Respondent”) appeals from the trial court’s order involuntarily committing her to Holly Hill Hospital (“Holly Hill”) for a period of inpatient treatment. On appeal, Respondent argues that the trial court erred by ordering her involuntary commitment because its findings of fact failed to establish that (1) Respondent was a danger to herself; or (2) she was a danger to others. After careful review, we affirm.

### **Factual and Procedural Background**

During the time period relevant to this appeal, Respondent was a 59-year-old woman with a history of bipolar disorder. As of 2016, she had been receiving outpatient treatment for four years to stabilize her mental illness. On 21 August 2016, Respondent's husband and son took her to Carolinas Medical Center-Randolph ("CMC-Randolph") in Charlotte, North Carolina because she had threatened to kill her son. That same day, Dr. Jill L. Hendra signed an affidavit and petition requesting that Respondent be committed to a psychiatric facility. The petition stated as follows:

59 year old woman brought by husband and son--known to have bipolar disorder and has been stable out patient [sic] for about 4 years. Now refusing medication // just hospitalized for a week in July 2016 // buying 12 umbrellas at a time--irrational--no sleep--threatened to kill her son. Requires emergent treatment in psychiatric facility for her safety and others.

On 23 August 2016, Respondent was transported to Holly Hill. A hearing was held in Wake County District Court on 1 September 2016 before the Honorable Louis Meyer. The petitioner presented testimony from Dr. Y. Wang, a psychiatrist with Holly Hill. Respondent testified on her own behalf.

That same day, the trial court entered an involuntary commitment form order stating that "by clear, cogent and convincing evidence" the facts "support[ ] involuntary commitment." The trial court made the following findings of fact:

Dr. Y. Wang, contract psychiatrist at Holly Hill Hospital and qualified as expert in psychiatry during hearing,

opined that Respondent . . . (“R.”) [wa]s diagnosed with bi-polar mania disorder. During Dr. Wang’s treatment and observation of R. at Holly Hill Hospital from 8/24/16 through 9/1/16, on a daily basis, R.’s thinking was sporadic and scattered, her emotional level has ranged from unstable, irritable and depressed to happy and grandiose feelings, and her behavior has been unstable and included anger and hitting tables; in addition, R. has gotten little or no sleep at night and has experienced mood elevations and she told Dr. Wang that she (R.) had threatened to kill her son, who is also bi-polar. During the hearing, R. alternatively giggled, exclaimed, or interrupted during Dr. Wang’s testimony and exhibited problems with train of thought during her testimony. Per Dr. Wang, R. needs adjustment in her medication for bi-polar mania to substantially higher dosage but R. refused higher dosage. Per Dr. Wang’s opinion, R. needs additional inpatient treatment for adjustment of medication to better treat and manage her bi-polar mania disorder because R. does not currently have enough insight and judgment and self-control to adequately manage daily responsibilities and social relations and avoid serious debilitation in the near future due to the likely occurrence of manic episodes, including probable altercations with her husband or son, which pose serious risk of harm to R. or others.

Based on these findings of fact, the trial court checked boxes on the form order stating that Respondent was “mentally ill” and “dangerous” to herself and others. The trial court then ordered that Respondent be committed to Holly Hill for a period of time not to exceed 60 days. The court ordered that following discharge from Holly Hill, Respondent would be committed to outpatient commitment under the supervision of a physician “to be determined by Holly Hill Hospital in consultation

with Respondent and her family” for 30 days. Respondent filed a timely notice of appeal.

### **Analysis**

Respondent argues that the trial court’s findings of fact do not support its conclusions of law that Respondent was a danger to herself and others.

On appeal of a commitment order our function is to determine whether there was any competent evidence to support the “facts” recorded in the commitment order and whether the trial court’s ultimate findings of mental illness and dangerous to self or others were supported by the “facts” recorded in the order. We do not consider whether the evidence of respondent’s mental illness and dangerousness was clear, cogent and convincing. It is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof.

*In re Whatley*, 224 N.C. App. 267, 270-71, 736 S.E.2d 527, 530 (2012) (citation omitted).

“To support an involuntary commitment order, the trial court is required to find two distinct facts by clear, cogent, and convincing evidence: first that the respondent is mentally ill, and second, that he is dangerous to himself or others. These two distinct facts are the ultimate findings on which we focus our review.” *In re W.R.D.*, \_\_ N.C. App. \_\_, \_\_, 790 S.E.2d 344, 347 (2016) (internal citations and quotation marks omitted).

N.C. Gen. Stat. § 122C-3(11) defines “dangerous to others,” in pertinent part, as follows:

“Dangerous to others” means that within the relevant past, the individual has inflicted or attempted to inflict or *threatened to inflict serious bodily harm on another*, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; *and that there is a reasonable probability that this conduct will be repeated*. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.

N.C. Gen. Stat. § 122C-3(11)b. (2015) (emphasis added).

It is well established that the trial court’s “ultimate findings, standing alone, are insufficient to support the order; the involuntary commitment statute expressly requires the trial court also to record the facts upon which its ultimate findings are based.” *W.R.D.*, \_\_ N.C. App. at \_\_, 790 S.E.2d at 347 (citation and quotation marks omitted). We have previously held that a trial court’s conclusion of law that an individual is dangerous to herself or others is unsupported where the trial court fails to make specific findings of (1) a past threatened or actual harm to herself or others *and* (2) a reasonable probability of future dangerous conduct. *See, e.g., Whatley*, 224 N.C. App. at 274, 736 S.E.2d at 531 (reversing commitment order based on “dangerous to others” determination where court’s findings merely stated that “Respondent was exhibiting psychotic behavior that endangered . . . her newborn child” and “Respondent had been admitted [with] psychosis while taking care of her

two month old son” (quotation marks omitted)); *In re Monroe*, 49 N.C. App. 23, 29, 270 S.E.2d 537, 540 (1980) (holding that evidence of individual not meeting his nutritional needs by fasting or consuming copious amounts of sugar did not forecast “a reasonable probability of serious physical debilitation to him within the near future”).

In the present case, however, the trial court made specific findings of fact — that are unchallenged on appeal<sup>1</sup> — stating, in relevant part, that Respondent’s “behavior has been unstable and included anger and hitting tables . . . and she told Dr. Wang that *she . . . had threatened to kill her son*, who is also bi-polar.” (Emphasis added.) The trial court also found that Respondent “does not currently have enough insight and judgment and self-control to adequately manage daily responsibilities and social relations and avoid serious debilitation in the near future due to the likely occurrence of manic episodes, including probable altercations with her husband or son, which pose serious risk of harm to [Respondent] or others.”

Respondent argues that the word “altercations” as used by the trial court does not imply *physical* confrontations and thus cannot meet the requirements of N.C. Gen. Stat. § 122C-3(11). In its order, the trial court used the phrase “probable altercations” and then stated that these altercations “pose serious risk of harm to

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<sup>1</sup> Where an appellant “does not challenge any of the trial court’s findings of fact,” they are “binding on appeal.” *Whatley*, 224 N.C. App. at 271, 736 S.E.2d at 530 (citation omitted).

[Respondent] or others.” From the context of its order, we interpret the trial court’s findings as indicating that a physical altercation was reasonably probable.

Moreover, a careful reading of the statute shows that N.C. Gen. Stat. § 122C-3(11) does not require that the trial court make an express finding as to a reasonable probability of future physical harm. Instead, the statutory language is satisfied if a respondent “threaten[s] to inflict serious bodily harm” and “there is a reasonable probability that this conduct will be repeated.” N.C. Gen. Stat. § 122C-3(11)b. Here, the trial court’s findings clearly identify both a past threat to inflict harm and a reasonable probability of future harm. Thus, the trial court’s findings support its conclusion that Respondent was dangerous to others. *See Monroe*, 49 N.C. App. at 31, 270 S.E.2d at 541 (holding that respondent was a danger to others where he stated, “I’m gonna get you all yet” to his mother, was suspicious of his family, believed his relatives were against him, and was “ready to fight”).<sup>2</sup>

### **Conclusion**

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<sup>2</sup> Because we hold that the trial court did not err in determining that Respondent was a danger to others, we need not address her argument that the trial court’s findings failed to support its conclusion of law that she was a danger to herself. *See In re Moore*, 234 N.C. App. 37, 45, 758 S.E.2d 33, 38 (“We do not need to consider respondent’s argument that he is not a danger to others because N.C.G.S. § 122C-276(e) in conjunction with N.C.G.S. § 122C-271(b)(2) only requires that the trial court find that a respondent is a danger to himself or others.” (emphasis added)), *disc. review denied*, 367 N.C. 527, 762 S.E.2d 202 (2014); *Monroe*, 49 N.C. App. at 31-32, 270 S.E.2d at 541 (trial court did not err in ordering involuntary commitment where findings of fact did not support determination that respondent was danger to himself but did support conclusion that respondent was dangerous to others).

IN RE H.R.P.A.

*Opinion of the Court*

For the reasons stated above, we affirm the trial court's 1 September 2016 order.

AFFIRMED.

Judges HUNTER, JR. and MURPHY concur.

Report per Rule 30(e).