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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-815

Filed: 20 March 2018

Wake County, No. 16 SPC 8154

IN THE MATTER OF: H.R.M.

Appeal by respondent from order entered 2 February 2017 by Judge Eric Chasse in Wake County District Court. Heard in the Court of Appeals 8 January 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert T. Broughton, for the State and UNC Hospitals at Wakebrook.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily H. Davis, for respondent-appellant.

DAVIS, Judge.

H.R.M. ("Respondent") appeals from the trial court's order recommitting him to UNC Hospitals at Wakebrook ("Wakebrook") for a thirty-day period of inpatient treatment. After a thorough review of the record and applicable law, we affirm.

Factual and Procedural Background

During the time period relevant to this appeal, Respondent was a 60-year-old man with a history of alcohol abuse. In August 2015, Respondent's sister, Celia,

found him wandering alone in the woods in Pender County, North Carolina without shoes or a shirt. He was intoxicated and had sustained visible cuts, scratches, and bruises, and he was referring to Celia by the name of his deceased wife. Celia attempted to commit him to a hospital, but eventually he was released.

In November 2016, Respondent was living in a group home. Shortly after his arrival at the group home, Celia received a phone call informing her that Respondent had purchased beer at a grocery store, drunk the beer in the woods behind the store, fallen down, sustained scratches, and lost his glasses. He was returned to the group home. The following day, Celia went to visit him at the group home but discovered that he had left the home and had wandered into the woods behind the home. When she eventually found him, he was agitated and slurring his speech. He had also sustained scratches and bruises to his face. She returned him to the group home. The following day, Celia learned that Respondent had — for a third time — left the home and become intoxicated.

On 6 December 2016, a staff member of Respondent's group home transported him to Wakebrook, and a licensed psychologist examined him and filed a commitment petition. A hearing was held on 5 January 2017 to determine whether Respondent

should be involuntarily committed. That same day, Respondent was involuntarily committed to Wakebrook for a thirty-day period of inpatient treatment.[1]

While he was committed at Wakebrook, Respondent met with his case manager, Rachel Nolting, and an occupational therapist, Kimberly Godwin. He was also evaluated by Dr. Ted Zarzar, a psychiatrist. Dr. Zarzar diagnosed Respondent with alcohol use disorder and major neurocognitive disorder.

A hearing was held on 2 February 2017 before the Honorable Eric Chasse in Wake County District Court to determine whether Respondent should be recommitted to Wakebrook. Respondent, Celia, Nolting, Godwin, and Dr. Zarzar each testified at the hearing. That same day, the trial court entered an order determining that he was a danger to himself and recommitting Respondent to inpatient treatment for thirty days. Respondent filed a timely notice of appeal.

Analysis

Respondent argues that the trial court's findings of fact do not support its conclusion of law that he was a danger to himself. We disagree.

"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." *In*

[1] Respondent appealed this involuntary commitment, and another panel of this Court affirmed the trial court's 5 January 2017 order. *See In re Medlin*, __ N.C. App. __, 808 S.E.2d 613, 2017 N.C. App. LEXIS 1038 (2017) (unpublished).

re W.R.D., __ N.C. App. __, __, 790 S.E.2d 344, 347 (2016) (citations and quotation marks omitted). N.C. Gen. Stat. § 122C-3 defines "dangerous to himself," in pertinent part, as follows:

> a. "Dangerous to himself" means that within the relevant past:
>
> 1. The individual has acted in such a way as to show:
>
> I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
>
> II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
>
> 2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or

> 3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.
>
> Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

N.C. Gen. Stat. § 122C-3(11)a. (2017).

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 himself is unsupported where the trial court fails to make specific findings of (1) a past threatened or actual harm to himself; *and* (2) a reasonable probability of future dangerous conduct. *See, e.g.*, *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").

Respondent cites *In re Whatley*, 224 N.C. App. 267, 736 S.E.2d 527 (2012), in support of his argument that the trial court failed to make sufficient findings of fact

to establish that he posed a danger to himself. In *Whatley*, the respondent had been diagnosed with bipolar disorder and was refusing to take her medications. She was involuntarily committed to an inpatient facility after it was reported that she had been attempting to care for her two-month-old child. *Id.* at 268, 736 S.E.2d at 528. Upon her commitment to the inpatient facility, a physician determined the respondent was "exhibit[ing] bizarre, psychotic behavior, an inability to care for herself, poor insight, poor impulse control, and a tendency to place herself directly at risk of harm." *Id.* at 269, 736 S.E.2d at 529. Based on this testimony, the trial court entered an order concluding that she was mentally ill and dangerous to herself and others. *Id.* at 269-70, 736 S.E.2d at 529.

On appeal, we reversed the trial court's order due to its failure to make findings that there was a reasonable probability of future harm.

> In short, none of the court's findings demonstrate that there was "a reasonable probability of [Respondent] suffering serious physical debilitation within the near future" absent her commitment. Each of the trial court's findings pertain to either Respondent's history of mental illness or her behavior prior to and leading up to the commitment hearing, but they do not indicate that these circumstances rendered Respondent a danger to herself in the future. For instance, the court's findings concerning Respondent's psychotic behavior, history of bipolar disorder, and "manic stage" reflect only the court's ultimate finding of mental illness, which Respondent does not contest. Similarly, the findings that Respondent "remain[ed] paranoid," "exhibit[ed] disorganized thinking," and demonstrated "very poor insight [and] judgment" describe Respondent's condition at the time of the hearing,

> but do not in themselves indicate that Respondent presented a threat of "serious physical debilitation" to herself within the near future. The trial court also found that Respondent needed medication monitoring and that she did not plan to follow up as an outpatient, but, again, there is no finding that connects these concerns with the court's ultimate finding of "dangerous to self" as defined in N.C. Gen. Stat. § 122C-3(11)(a)(1). Simply put, the trial court's findings reflect Respondent's mental illness, but they do not indicate that Respondent's illness or any of her aforementioned symptoms will persist and endanger her within the near future. Accordingly, we cannot uphold the trial court's commitment order on the basis that Respondent was dangerous to herself.

Id. at 273, 736 S.E.2d at 531.

We have since distinguished *Whatley* in cases where the trial court has made findings demonstrating a likelihood that the respondent's dangerousness to himself would persist and result in harm to him within the near future. For example, in *In re Moore*, 234 N.C. App. 37, 758 S.E.2d 33, *disc. review denied*, 367 N.C. 527, 762 S.E.2d 202 (2014), the respondent appealed from the trial court's involuntary commitment order recommitting him for ninety days of inpatient treatment. The respondent had been diagnosed with a schizoaffective disorder and had been "committed to state hospitals approximately twenty-seven times . . . because he would stop taking his medication when he was released." *Id.* at 39, 758 S.E.2d at 35.

Distinguishing *Whatley*, this Court affirmed the trial court's order. We held that "while the trial court did make findings of fact about respondent's past conduct, the trial court also made findings about respondent's likely future conduct." *Id.* at

44, 758 S.E.2d at 38. We determined that the findings stated that respondent was "at a high risk of decompensation if released and without medication" and that "if released, [he] would relapse by the end of football season." *Id.* (quotation marks omitted). Thus, we ruled that the findings of fact "indicate that respondent is a danger to himself in the future." *Id.*

In the present case, Respondent does not contend that the trial court's findings are insufficient to establish that he presented a past threat of harm to himself. Instead, his sole argument is that the trial court's unchallenged findings failed to establish a reasonable probability of future dangerous conduct. We disagree.

The trial court's findings of fact stated that Respondent (1) was unable to satisfy his basic food and shelter needs; (2) had trouble remembering information over any period of time; (3) possessed "little-to-no insight into his own mental illnesses and recent cognitive decline[;]" (4) was suffering from a chronic and progressive disease that could not be reversed or cured; and (5) had no home to return to or alternative placement that was appropriate given his condition. Moreover, the court found that on multiple occasions Respondent was found wandering outside in the woods — while intoxicated — with visible scrapes and bruises and unable to remember how to return home.

From a reading of the 2 February 2017 order, it is clear that the majority of the trial court's findings involved Respondent's past dangerousness to himself.

However, unlike in *Whatley*, the trial court linked these findings of past dangerousness to a likelihood of future danger that Respondent posed to himself within the meaning of N.C. Gen. Stat. § 122C-3. The court found that based on lack of alternative placement, Respondent would be "unable to safely live independently." It determined that "[g]iven the severity of his memory deficits, [his] discharge to a shelter or the streets . . . would be reasonably likely to place the Respondent at risk of serious physical debilitation in the future." Based on his low Independent Living Skills Assessment score, the court stated that Respondent "needs a home environment with significant and consistent supervision and structure to ensure his safety, as well as daily reminders to take prescriptions and to perform other routines of daily life." Finally, the court found that "[i]n light of [his disease's] progressive nature, the Respondent cannot reasonably expect to ever again return to a 'baseline' level of cognitive functioning."

We are satisfied that the trial court's findings — when considered as a whole — adequately support its conclusion that Respondent was a danger to himself within the meaning of N.C. Gen. Stat. § 122C-3. Accordingly, we affirm the court's order recommitting Respondent for inpatient treatment.

Conclusion

For the reasons stated above, we affirm the trial court's 2 February 2017 order.

AFFIRMED.

Chief Judge McGEE and Judge TYSON concur.

Report per Rule 30(e).