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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-779

Filed: 17 April 2018

Wake County, No. 16 SPC 53126-DAVIDSON

IN THE MATTER OF: R.R.

Appeal by respondent from order entered 30 December 2016 by Judge Ned Mangum in Wake County District Court. Heard in the Court of Appeals 9 January 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General William Walton, for the State.

Parker Poe Adams & Bernstein, LLP, by Matthew W. Wolfe and E. Bahati Mutisya, for petitioner-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for respondent-appellant.

BRYANT, Judge.

Where the trial court's findings of fact do not reflect that there was a reasonable probability of respondent suffering serious physical debilitation within the near future unless adequate treatment was given, the trial court's conclusion that respondent posed a danger to herself is not supported by the findings of fact, and we reverse the involuntary commitment order.

On 23 December 2016, Dr. Lane Smith of Lexington Medical Center filed an Affidavit and Petition for Involuntary Commitment of respondent R.R. Dr. Smith reported that respondent had a "history of schizophrenia and non-compliance," and believed her family was trying to kill her. Dr. Smith also completed an Examination and Recommendation to Determine Necessity for Involuntary Commitment. A custody order was issued that same day for respondent's transport, and she was transported to Holly Hill Hospital in Wake County, North Carolina on 26 November 2016. The following day, respondent was examined at Holly Hill by psychiatrist Dr. Enrique Lopez. After reviewing respondent's medical records and daily staff reports, he reached a diagnosis of respondent of schizoaffective disorder bipolar type.

Thereafter, Dr. Lopez submitted a Request for Hearing and an initial commitment hearing was held on 30 December 2016 before the Honorable Ned Mangum, Judge presiding. Dr. Lopez testified that during respondent's time at Holly Hill, respondent exhibited "severe paranoid ideation, hyperactivity, agitation, poor judgment, [and] poor insight." It was Dr. Lopez's expert opinion that respondent had not been taking her medications before being committed, and she would not continue to take them without supervision. Dr. Lopez testified that respondent needed additional time at Holly Hill and requested an additional thirty-day commitment. He also testified that should respondent be released, "[h]er paranoia would escalate, she's likely to put herself in very dangerous situations where she could be hurt by

others. She's likely to not take medications endangering herself even more[,]" and that "[s]he's likely to not do basic things to take care of herself, such as eating, protecting herself against the cold temperatures, [and] engaging in conversations that could be dangerous with people."

Respondent testified that she would stop taking the anti-psychotic medication prescribed by Dr. Lopez, but that she would take an anti-psychotic medication prescribed from her doctor in her community, but she did not know the name of that drug. She also testified that she would continue to see her community doctor, but stated she intended to move from Lexington to Burlington to live with an aunt if she were released from Holly Hill.

Judge Mangum ordered respondent committed to Holly Hill for thirty days upon finding that she was mentally ill and a danger to herself. On 13 January 2017, respondent filed written notice of appeal.

On appeal, respondent contends the trial court erred by involuntarily committing her where the trial court's findings of fact did not establish that she was a danger to herself. Specifically, respondent argues that nothing in the trial court's findings demonstrates a reasonable probability that respondent would suffer serious physical debilitation within the near future without treatment and, as such, the order involuntarily committing her should be reversed. We agree.

> 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 dangerousness 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) (quoting *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980)).

"To support an inpatient commitment order, the [trial] court shall find by clear, cogent and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. § 122C-3(11)a . . . ." N.C. Gen. Stat. § 122C-268(j) (2017). The trial court must also make findings establishing that the respondent is mentally ill and dangerous to herself or others. N.C. Gen. Stat. § 122C-271(b)(2). Once a trial court has found that an individual meets commitment criteria, "[t]he court shall record the facts that support its findings." N.C.G.S. § 122C-268(j). In this case, the trial court concluded that respondent was dangerous to herself.

An individual demonstrates dangerousness to self if, within the relevant past, that individual has acted in such a way 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[.]

N.C.G.S. § 122C-3(11)(a)(1) (emphasis added). "[T]his Court has held that the evidence must demonstrate 'a reasonable probability' that the health risk will occur in the 'near future,' not simply that it could place the respondent at risk at some future time." *In re W.R.D.*, ___ N.C. App. ___, ___, 790 S.E.2d 344, 348 (2016) (citing *In re Whatley*, 224 N.C. App. at 273, 736 S.E.2d at 531).

In *In re W.R.D.*, this Court concluded that the trial court's commitment order contained insufficient findings to support its ruling committing the respondent. ___ N.C. App. at ___, 790 S.E.2d at 347–48. The trial court found that it was not medically safe for the respondent to live outside an inpatient setting because the respondent (1) believed another doctor was his treating physician and would not be treated by another doctor, (2) was diagnosed with paranoid schizophrenia, for which he refused treatment, (3) had "heart health related issues, for which he [was] not compliant with prescribed medical treatment[,]" and (4) could not maintain his nutrition. *Id.* at ___, 790 S.E.2d at 347. This Court reversed the commitment order in part because the

findings did not demonstrate a risk of serious physical debilitation within the near future. *Id.* at ___, 790 S.E.2d at 348–49. Specifically, this Court held that while the trial court found that the respondent's failure to take heart medication "could be deadly," there was nothing to show that "ceasing that medication would create this serious risk 'within the near future.' " *Id.* at ___, 790 S.E.2d at 348.[1]

In the instant case, respondent's treating physician testified as follows:

> Q. Was she—was she compliant with [her anti-psychotic] medication before coming?
>
> A. I don't believe so. She was so disorganized and so paranoid that I am convinced that she was not taking her medications correctly.
>
> Q. Will [respondent] take the medication without supervision?
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> A. Not as of now.

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[1] In an unpublished opinion, *In re McCray*, No. COA09-1623, 2010 WL 2651625 (N.C. Ct. App. July 6, 2010), this Court held that the trial court's order could not be upheld on the basis of the respondent's dangerousness to self:

> A danger that may not manifest itself for several years does not meet the statutory requirement of a serious risk "within the near future." Although there was some evidence that Respondent was resistant to taking her psychotropic medication, there is no evidence in the record, *nor do the trial court's findings reflect*, that Respondent's failure to take such medication would create any probability of physical debilitation within the near future.
>
> In sum, there is no evidence, nor do the trial court's findings reflect, "a reasonable probability of [Respondent's] suffering serious physical debilitation within the near future." The trial court's order can not [sic] therefore be upheld on the basis of dangerousness to self. Accordingly, we hold that the trial court's conclusions of law that Respondent posed a danger to others or to herself are not supported by its findings of fact.

Id. at *6 (emphasis added) (alteration in original) (internal citations omitted).

> Q. Okay. And what does—what would happen if she were to stop taking her medications?
>
> A. I think the symptoms that she had before coming to the hospital would only worsen.
>
> . . . .
>
> Q. In your opinion, what would happen if [respondent] was released today?
>
> A. Her paranoia would escalate, and she's likely to put herself in very dangerous situations where she could be hurt by others. She's likely to not take medications, endangering herself even more.
>
> Q. And could you elaborate on why you think that she would be a danger to herself or she could be—or others in danger?
>
> A. Her paranoia is a symptom of psychosis, and a state of psychosis—it's unpredictable what she could do. But she's likely to not do basic things to take care of herself, such as eating, protecting herself against the cold temperatures, engaging in conversations that could be dangerous with people.
>
> In other words, her poor judgment could put her at very high risk.

Based on this and other evidence, the trial court made the following findings of fact in support of its conclusion of law that respondent was a danger to herself:

> Based on the credible expert testimony of Dr. Enrique Lopez, the Respondent's treating psychiatrist, the Court finds that the Respondent is mentally ill in that the Respondent suffers from Schizo Affective Disorder, bipolar type. This is based on the Respondents [sic] symptoms of severe paranoid ideations[,] hyperinsomnia[,]

hyperactivity, poor judgment & insight. These symptoms are clear in that Respondent does not believe she is mentally ill, that the Dr. & the Respondent's mother are conspiring against her & that the Respondent does not know the name of her anti-psychotic medication that she was previously prescribed by her "Dr. G." Respondent states that she takes Percocet, [A]mbien, & [V]alium. Respondent states that she does not intend to take Depakote as proscribed by her treating physician.

The Court further finds that she is a danger to herself & in need of further hospitalization based on the statements of the Respondent & the credible testimony of Dr. Lopez. Dr. Lopez testified that the patient was not taking proper medication prior to her commitment & that without supervision her condition would worsen in that he fears her paranoia would escalate & that she would likely put herself in danger from others. This is supported by the Respondent's statement that she would not take her medicine as proscribed by the [D]r. It is further supported by the Respondent's rambling statements about building a business & using a large amount of money that appear to be disorganized thought.

It is also supported by the fact that the evidence shows & the Dr[.] believes that the patient was non[-]compliant with her medication prior to hospitalization & her apparent belief that she does not have a mental illness.

The Court is further concerned about the respondent's dangerousness to herself by Respondent's statement that her mother is conspiring with the hospital to take her money when it appears that the respondent's mother helped respondent get housing & was concerned about her daughter's well being to seek an IVC to get her help. Respondent states she intends to leave Lexington & live in Burlington with her aunt. The court does not believe this Respondent that she would receive any mental health care in Burlington.

What is missing from the trial court's order involuntarily committing respondent to Holly Hill Hospital is some reflection in the trial court's findings that respondent's failure to take her medication (among other things) would create "a reasonable probability of [her] suffering serious physical debilitation within the near future . . . ." N.C.G.S. § 122C-3(11)(a)(1)(I); *see also supra* note 1. Indeed, neither the evidence nor the trial court's findings reflect the reasonable probability of harm to respondent *in the near future*. Dr. Lopez testified generally about respondent being "likely to put herself in very dangerous situations where she could be hurt by others[,]" and "likely to not take medications, endangering herself even more." But fatally absent from the trial court's findings is an explicit finding on the reasonable probability of respondent coming to harm "within the near future unless adequate treatment is given . . . ." N.C.G.S. § 122C-3(11)(a)(1)(II).

Accordingly, we hold that the trial court's conclusion of law that respondent posed a danger to herself is not supported by its findings of fact, and the trial court's order is

REVERSED.

Judges BERGER and MURPHY concur.

Report per Rule 30(e).