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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-616

Filed: 15 May 2018

Wake County, No. 16SPC8520

IN THE MATTER OF: S.P.

Appeal by respondent from order entered 30 December 2016 by Judge Ned Mangum in Wake County District Court. Heard in the Court of Appeals 14 November 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General M. Elizabeth Guzman and Special Deputy Attorney General Scott Stroud, for the State.

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

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

BRYANT, Judge.

Where the evidence was sufficient to establish that respondent was dangerous to others, the trial court had sufficient basis to order that respondent be involuntarily committed due to mental illness. Accordingly, we affirm the trial court's order.

After examining respondent on 24 December 2016 at 10:47 a.m. at WakeMed Hospital in Raleigh, Dr. Anita L'Italien, a physician, submitted an affidavit and petition for involuntary commitment of respondent to Wake County District Court. Dr. L'Italien alleged that respondent was "mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness." Dr. L'Italien further stated

> [Respondent] is a 29 y.o. male who presents for evaluation of abnormal behavior. Sister reports that the patient has a history of schizophrenia and refuses to take his medications. Girlfriend reports that over the past few weeks he has had increasing paranoid delusions. He feels that there is a psychological warefare [sic] going on, that people are after him, that he is living in biblical times. This morning he turned off the power to the entire house because he feels that this is how people are watching him. He put his guns in his robe and left the house, walking down the street. GF says that he expressed suicide ideation today. This patient is recommended for an involuntary admission to an accepting psychiatric facility for further evaluation and treatment to safety and stability.

That same day, the District Court entered a custody order for involuntary commitment. In its order, the court found that the petition presented reasonable grounds to believe the facts alleged and that respondent is probably mentally ill and dangerous to self and others. A hearing on the matter was scheduled for 30 December, in Wake County District Court.

The 30 December 2016 hearing in Wake County District Court was presided over by the Honorable Ned Mangum, Judge. Testimony was heard from Dr. Enrique Lopez, a board certified psychiatrist employed by Holly Hill Hospital, and petitioner's father. Dr. Lopez testified as an expert in the field of psychiatry.

Dr. Lopez testified that he examined respondent on 26 December and each day since. Dr. Lopez also reviewed respondent's medical records and the reports submitted by hospital staff.

> Q. Do you have an opinion as to whether [respondent] is mentally ill?
>
> A. Yes, I do.
>
> Q. And what is that opinion?
>
> A. He has bipolar disorder type one manic with psychosis and cannabis use disorder, and he has other substance abuse disorder in remission.

Dr. Lopez testified that respondent complained of severe insomnia, had displayed extreme anger and threatening behavior, and had repeatedly requested discharge and refused to take psychiatric medication.

> A. He has threatened staff, and I've seen him behave in absolutely out-of-control ways, extremely angry talking to his father on the phone, angry that his father had asked him to stop using marijuana, angry that I prescribed medications, angry that I have not released him. He's been hyperactive. He's been pacing and behaving in very threatening ways. He has walked away from my questioning, and he's been very guarded, evasive, and does not answer my questions.

> And completely uncooperative. I've requested for him to take a couple of medications: Seroquel and Depakote [(which can reduce aggression and reduce psychosis, promote better judgment, and reduces overall anger and depression),] [and Zpyrexa (an anti-psychotic medication and mood stabilizer)], and he has refused to take them.

Dr. Lopez testified that he was "extremely concerned" about respondent's "potential for violence, for acting out, for aggression, for violence. He has been threatening staff, and I've seen that."

> Q. So do you have an opinion that [respondent] is in need of further treatment at Holly Hill?
>
> A. Yes, I do.
>
> Q. And what is that opinion?
>
> A. He should remain in the hospital.
>
> Q. Is it your opinion that outpatient therapy or treatment at a lower level of care would be inadequate?
>
> A. Extremely inadequate at this time. I'm extremely concerned about [respondent].
>
> . . . .
>
> Q. And in your opinion, what do you think would happen if [respondent] was released?
>
> A. He could continue to escalate in his paranoia and be violent.

It was Dr. Lopez's recommendation that respondent remain in the inpatient hospital for sixty days and have an outpatient commitment of thirty days.

Respondent's father was called as a witness and testified that to his observation of respondent, whom he saw regularly. Near the time respondent was involuntarily committed at Holly Hill Hospital, respondent had shown his father a number of internet videos.

> [K]ind of this conspiracy stuff and . . . he seemed to be—my takeaway from it kind of paranoid or a little afraid of things. And it's like he was trying to warn me of this catastrophe or whatever it is that was about to happen and that kind of thing.
>
> . . .
>
> . . . It's just that he was— I guess the best word I have would be a little bit delusional about reality of what was happening or what was about to happen or not happen.

Respondent's father also testified that respondent "is one of—probably one of the heaviest marijuana users I've ever seen in my life" and further testified that respondent would go days without sleeping. When asked about respondent's behavior in the months preceding the involuntary commitment hearing, respondent, respondent's father gave the following testimony.

> A. . . . When we— my son and his girlfriend asked my wife and I if we would be interested in going on vacation with them, and we all went down to Ocrakoke Island. . . .
>
> First thing in the morning, marijuana. All day long, marijuana, and if it wasn't convenient to smoke it, they had these crispy treats where it was cooked into it and eat them. Last thing at night, marijuana, and it's like, "Do you— are you ever,"— my thinking was— is, "Are you guys,"— and this is both him and his girlfriend. "Are you

> guys ever not high?"
>
> . . . [T]his is just, if he's awake and he's breathing, he's high.
>
> . . . .
>
> Q. . . . Did you see more of the delusional behavior, the paranoid behavior that you described earlier?
>
> A. No, but him and his girlfriend fought an awful lot. There was no— no physical violence, but just about as loud— as much loud screaming as you can possibly imagine.

Respondent's father also stated that he was concerned about respondent's ownership of a number of firearms: "a shotgun, a 9mm pistol, a[n] AR, and a little .22 caliber rifle." In response to that circumstance, respondent's sister had taken possession of respondent's firearms and delivered them to their father's house. Respondent's girlfriend, with whom he cohabitates, also surrendered her 9mm pistol to respondent's father. During the hearing, respondent interjected during his father's testimony and asked that his father sell his guns. Over sustained objection, respondent's father testified that he believed respondent told his girlfriend that respondent wanted to kill himself. Respondent's father had seen his son around ten times over the past few months and had visited and communicated with him by phone during his commitment.

Following the hearing, the trial court entered an order that respondent be committed to Holly Hill Hospital's inpatient, twenty-four hour facility for a period not to exceed sixty days and then be treated on an outpatient basis for a period of thirty

days. Respondent appeals.

Respondent argues that the trial court erred by ordering that he be involuntarily committed where the court's findings of fact were insufficient to support the ultimate conclusion that respondent was a danger to himself and others. We disagree.

"We review the trial court's commitment order to determine whether the ultimate finding concerning the respondent's danger to self or others is supported by the court's underlying findings, and whether those underlying findings, in turn, are supported by competent evidence." *In re W.R.D.*, ___ N.C. App. ___, ___, 790 S.E.2d 344, 347 (2016) (citation omitted).

Pursuant to our General Statutes, section 122C-268,

> [t]o support an inpatient commitment order, the 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., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings.

N.C. Gen. Stat. § 122C-268(j) (2017).

Respondent argues that (1) findings of fact presented in the trial court's order should be struck as simple recitations of testimony, and that the trial court's findings of fact fail to establish respondent was (2) dangerous to himself or (3) dangerous to others. We address arguments (1) and (3), and we affirm the trial court.

Recitation of Testimony

Respondent contends that the trial court's findings of fact merely recite witness testimony and as a result, this Court should not consider those findings in support of the trial court's conclusion that respondent is dangerous to himself or to others.

In his brief to this Court, respondent asserts that "mere recitations of witness testimony 'are not actually factual findings at all.' " (quoting *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000)). However, the rule does not appear to be quite so broad. In *Gleisner*, the Court remanded the matter after observing that the trial court's findings of fact merely recited conflicting testimony from separate witnesses. The Court reasoned that a non-jury trial,

> [i]f different inferences may be drawn from the evidence, the trial judge must determine which inferences shall be drawn and which shall be rejected. Where there is directly conflicting evidence on key issues, it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show.

Gleisner, 141 N.C. App. at 480, 539 S.E.2d at 365–66 (citing *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968); *Davis v. Davis*, 11 N.C. App. 115, 117, 180 S.E.2d 374, 375 (1971)).

Here, on appeal, respondent argues that the trial court's findings of fact merely recite testimony provided during the involuntary commitment hearing; however,

respondent does not contend that different inferences may be drawn. Further we do not observe a conflict in the following challenged findings of fact.

> Dr. Lopez testified he was "extremely concerned" about Respondent's propensity for violent behavior. Dr. Lopez as testified that Respondent does not have insight into his mental illness & [sic] refuses to participate in treatment, take proscribed meds [sic] while in the hospital, & [sic] Respondent refuses to answer questions from Doctor about Respondent's girlfriend allegations that he is walking around with guns & [sic] living in biblical times[.]
>
> Dr [sic] has testified he has personally seen Respondent act [out] and threaten staff w/a [sic] coffee thermos aggressively[,] including slamming a phone down & [sic] seen Respondent's cursing & [sic] name calling to Doctor for no justifiable reason. Dr [sic] further credibly testified that lower care is "extremely inadequate." If released Dr. [sic] is concerned that Respondent's mental illness [and] paranoia would worsen . . . .
>
> Respondent's father testified that he took 5 guns including an assault rifle from Girlfriend of Respondent that came from Respondent's home & [sic] his concerns about his son.

We overrule respondent's argument challenging the trial court's findings of fact.

Dangerous to Others

We next address respondent's argument challenging whether the trial court's findings of fact supported the conclusion that respondent was "Dangerous to others," as defined by section 122C-3.

> [M]ean[ing] 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. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

N.C. Gen. Stat. § 122C-3(11)b.

Here, the trial court's 30 December 2016 order includes findings that respondent suffers from "bi-polar disorder with mania and psychosis," that his mental illness causes respondent to have severe insomnia, paranoia, extreme anger and threatening behavior. Dr. Lopez was "extremely concerned" about "*respondent's propensity for violent behavior*." (Emphasis added).

> Dr. Lopez has testified that Respondent does not have insight into his mental illness & [sic] refuses to participate in treatment, take proscribed meds [sic] while in the hospital, & [sic] Respondent refuses to answer questions from Doctor about Respondent's girlfriend['s] allegations that he is walking around with guns & [sic] living in biblical times[.] Dr [sic] has . . . personally seen Respondent act out and threaten staff . . . [, and act] aggressively . . . ."

Out of concern, respondent's father removed firearms from respondent's home, including: "a shotgun, a 9mm pistol, a[n] AR, and a little .22 caliber rifle."

We hold the evidence indicates that within the relevant past, respondent "has acted in such a way as to create a substantial risk of serious bodily harm to another."

Id. Therefore, the evidence satisfies the statutory definition of "dangerous to others" as defined by section 122C-3(11)b. Accordingly, we affirm the trial court's conclusion that respondent is "dangerous to others." And thus, the trial court's 30 December 2016 involuntary commitment order—mentally ill is affirmed.

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).