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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1198

Filed: 5 June 2018

Wake County, No. 17 SPC 2225

IN THE MATTER OF: M.D.

Appeal by respondent from involuntary commitment order entered 15 May 2017 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 18 April 2018.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for respondent.

Attorney General Joshua H. Stein, by Assistant Attorney General John Tillery, for the State.

ARROWOOD, Judge.

M.D. ("respondent") appeals from an involuntary commitment order committing her to an inpatient 24-hour facility for a period of 60 days. For the following reasons, we affirm.

I. Background

Dr. Olly Duckett, respondent's examining physician at WakeMed Raleigh Emergency Department, completed an "Affidavit and Petition for Involuntary Commitment" and an "Examination and Recommendation to Determine Necessity for Involuntary Commitment" on 22 April 2017 regarding respondent. Dr. Duckett recommended involuntary commitment for seven days to an inpatient psychiatric facility for further evaluation and treatment based on his belief that respondent was mentally ill and dangerous to self. Dr. Duckett's belief was founded upon the following facts:

> [Respondent] is a 25 year old female who was brought to WakeMed Raleigh ED last evening by her father for a mental health evaluation. The patient denied having any issues/symptoms and her father, nor any other family were present to provide any collateral information and [respondent] was discharged from the ED. [Respondent] was witnessed not long after pacing the ED waiting area and attempting to sleep. [Respondent] was brought back to the ED for further evaluation when she became agitated and paranoid with nursing staff. [Respondent] reports to staff that she was forced by her father to come to the ED last night and that she had been waiting for her husband Kevin to pick her up. [Respondent] reports today that she was physically and sexually abused by her parents throughout her childhood and that they sold her into sex and drug trade. [Respondent] also reports that at 16 years old she ran away and and [sic] now lives with her husband "who is a very wealthy man." [Respondent] presents now rather agitated with staff and psychotic, cursing at staff and calling female staff "Keira." Mother reports parents are divorced, that [respondent] lives with father, and she's never been abused. Mother reports that [respondent] is not married. Mother reports that [respondent] has a history of psychosis and being diagnosed with Bipolar Disorder.

> [Respondent] has a history of inpatient psychiatric admission at UNC.

That same day, a magistrate issued involuntary commitment findings and custody order and respondent was taken into custody at WakeMed.

On 24 April 2017, respondent was taken to Holly Hill Hospital where Dr. Nadia Meyer performed an examination of respondent on 25 April 2017. Dr. Meyer completed a "Request for Hearing" and an "Examination and Recommendation to Determine Necessity for Involuntary Commitment" and, based on findings that respondent is mentally ill, has untreated bipolar disorder, is delusional and acutely psychotic, is hesitant/reluctant for any treatment, is without insight, has poor judgment, and is eminently dangerous to herself, recommended an additional two days of inpatient commitment.

After two continuances, a hearing for respondent's involuntary commitment was held on 11 May 2017 in Wake County District Court before the Honorable V.A. Davidian, III. During the hearing, Dr. Meyer was the only witness called to testify. Dr. Meyer was qualified as an expert "in the field of psychiatry specializing in the areas of mental illness, and behavior of the mentally ill" and testified about respondent's treatment and observations of her as respondent's treating physician at Holly Hill Hospital. At the conclusion of Dr. Meyer's testimony, respondent moved to dismiss arguing that there was no evidence that she was dangerous to herself or dangerous to others. The trial court denied respondent's motion.

The court then announced its decision to involuntarily commit respondent for a period of 60 days. An involuntary commitment order was filed 15 May 2017. In the written order, the trial court made findings of fact and concluded that respondent was mentally ill and a danger to self and others. Respondent filed notice of appeal on 2 June 2017

II. Discussion

Respondent's sole argument on appeal is that the trial court erred in ordering her involuntarily committed because the court's findings of fact were insufficient to establish that she was dangerous to self or dangerous to others. We disagree.

This Court has explained the standard of review of involuntary commitment orders as follows:

> 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 Collins, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (citations omitted).

Our general statutes provide that, "[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 . . . or dangerous to others . . . . The

court shall record the facts that support its findings." N.C. Gen. Stat. § 122C-268(j) (2017).

All parties agree that the relevant findings of fact in this case are as follows:

> C. [Respondent] has a mental illness. Dr. Meyer has diagnosed [respondent] with bipolar mixed-phase disorder with sever psychotic features. [Respondent] is delusional and paranoid and exhibits verbal and physical aggression. [Respondent] has physically charged Dr. Meyer and other Hospital staff, grabbed another patient, barricaded herself and another patient in a room, and threw food at the staff members. [Respondent] has been disruptive in the unit several times to the point that the hospital had to issue a code to secure [respondent]. [Respondent] called Dr. Meyer a "bitch" during the hearing. [Respondent] has not been sleeping, has been responding to internal stimuli, and has tried to escape from the unit.
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> D. Dr. Meyer prescribed medication including thorazine, an anti-psychotic and mood stabilizer. [Respondent] initially refused medication, and Dr. Meyer had to order forced medication. [Respondent] takes her pills sometimes, but is still noncompliant at times. The medication regimen has not yet been stabilized. [Respondent] has not been compliant with individual or group therapy. If discharged, [respondent] is likely to regress and not take her medication.
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> E. [Respondent] presents a danger to herself as shown by her inability to address basic needs (e.g., sleep), low probability of taking medication if discharged, attempt to escape from the unit, and agitation of other patients, which would be likely to incite others to hurt her. [Respondent] is unable to exercise self-control, judgment, and discretion in the conduct of her daily responsibilities and social relations, and to satisfy her need for personal and medical care, shelter, and self-

> protection and safety; there is a reasonable probability of her suffering serious physical debilitation within the near future unless adequate treatment is given.
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> F. [Respondent] presents a danger to others by acting in a way as to create a substantial risk of serious bodily harm to others as evidenced by the behavior described in Finding C. There is a reasonable probability that this conduct will be repeated given that [respondent] is not compliant with her medication and her medication regiment is unstable.

There is also a handwritten note, signed by the judge, in the margin of the order which states, "[respondent] was only recently able to be alone with Dr. Meyer due to [her] physical aggression towards Dr. Meyer."

Respondent does not challenge the trial court's findings of fact and, therefore, the findings are binding on appeal. *In re Whatley*, 224 N.C. App. 267, 271, 736 S.E.2d 527, 530 (2012). Instead, respondent's argument is that the trial court's findings of fact do not support its conclusions that defendant is dangerous to self or dangerous to others. Respondent does not contest the conclusion that she is mentally ill.

Dangerous to Self

Because there is no evidence that respondent has intentionally harmed herself or attempted or threatened to harm herself, *see* N.C. Gen. Stat. § 122C-3(11)(a)(2) and (3) (2017) (defining dangerous to self to include attempted suicide, threatened suicide, self-mutilation, and attempted self-mutilation), pertinent to this case, dangerous to self is defined to mean that within the relevant past:

> 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
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> 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. Gen. Stat. § 122C-3(11)(a)(1). The statute further provides that "[p]revious 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).

Here, respondent recognizes that "the trial court's findings do include a verbatim recitation of the necessary showings of N.C. Gen. Stat. § 122C-3(11)(a)," but contends the findings identifying respondent's symptoms do not rise to the level of showing a reasonable probability of imminent serious physical debilitation. Respondent compares this case to *In re Whatley*, in which this Court held the trial court's order was insufficient to support the respondent's involuntary commitment.

224 N.C. App. at 272-74, 736 S.E.2d at 530-32. We are not convinced by the comparison.

In *In re Whatley*, the trial court found the following facts in its involuntary commitment order:

> Respondent was exhibiting psychotic behavior that endangered her and her newborn child. She is bipolar and was experiencing a manic stage. She was initially noncompliant in taking her medications but has been compliant over the past 7 days. Respondent continues to exhibit disorganized thinking that causes her not to be able to properly care for herself. She continues to need medication monitoring. Respondent has been previously involuntarily committed.

Id. at 271, 736 S.E.2d at 530. This Court assumed that the trial court had also incorporated the following findings from a physician's report in the involuntary commitment order:

> Patient admitted [with] psychosis while taking care of her two month old son. She has a [history of] Bipolar [disorder]. She remains paranoid, disorganized, intrusive. She tells me that she does not plan to follow up as an outpatient. She has very poor insight [and] judgment and needs continued stabilization.

Id. at 272, 736 S.E.2d at 530. Upon review, this Court held these findings did not satisfy the second prong of the "dangerous to self" inquiry because "none of the court's findings demonstrate that there was a reasonable probability of the [Respondent] suffering physical debilitation within the near future absent her commitment." *Id*. at 272-73, 736 S.E.2d at 531 (internal quotation marks omitted). Explaining further,

this Court stated that, "[s]imply put, the trial court's findings reflect [the r]espondent's mental illness, but they do not indicate that [the r]espondent's illness or any of her aforementioned symptoms will persist and endanger her within the near future." *Id.* at 273, 736 S.E.2d at 531.

A review of the findings in the present case show that the trial court went further in making findings to support its determination that respondent is dangerous to self than the trial court did in *In re Whatley*. In addition to findings regarding respondent's mental illness, the trial courts findings in this case, set forth in full above, show that respondent is "likely to regress and not take her medication" if discharged, "[is unable] to address basic needs (e.g., sleep)," "is unable to exercise self-control, judgment, and discretion in the conduct of her daily responsibilities and social relations," and is unable "to satisfy her need for personal and medical care, shelter, and self-protection and safety[.]" The trial court also found that respondent agitates other patients which is likely to incite others to hurt her. Based on these symptoms, the trial court made the specific finding that "there is a reasonable probability of her suffering serious physical debilitation within the near future unless adequate treatment is given."

We hold these findings highlighting respondent's inability to address basic necessities and the likelihood of respondent's regression support the trial court's

finding of a reasonable probability of imminent serious physical debilitation and the trial court's conclusion that respondent was dangerous to self.

Dangerous to Others

Dangerous to others is also defined in our general statutes. It too has both past and future components.

> "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.

N.C. Gen. Stat. § 122C-3(11)(b). The statute allows for previous episodes of dangerousness to others to be considered when determining if there is a reasonable probability of future dangerous conduct. *Id.*

Here, respondent acknowledges that the trial court's findings show she exhibited aggressive behavior. Nevertheless, respondent argues the findings do not demonstrate her actions were "dangerous to others" as defined in N.C. Gen. Stat. § 122C-3(11)(b). Respondent further argues the trial court's finding that there is a reasonable probability that respondent's conduct will be repeated is not supported by the evidence because the evidence was that respondent has recently begun voluntarily taking her medication and respondent's aggression has begun to decrease. We are not convinced the trial court erred.

Defendant asserts that her aggressive behavior did not rise to the level of actual, attempted, or threatened serious bodily harm to others. The trial court, however, found that "[respondent] presents a danger to others by acting in a way as to create substantial risk of serious bodily harm to others[.]" The trial court specifically identified the behaviors described in Finding C, set forth above. In addition to establishing respondent's mental illness, Finding C indicates that respondent exhibits verbal and physical aggression, she has charged Dr. Meyer and other hospital staff, grabbed another patient and barricaded herself and the other patient in a room, threw food, and acted in a manner disruptive to the unit requiring hospital staff to issue a code to secure respondent. We hold these findings are sufficient to support the court's finding that respondent presents a danger to others by acting in a way as to create a substantial risk of serious bodily harm to others.

The trial court also explicitly found that "[t]here is a reasonable probability that this conduct will be repeated given that [respondent] is not compliant with her medication and her medication regiment is unstable." Respondent contends that this finding is not supported by the evidence because the evidence is that she has shown improvement in that she has begun to take medication voluntarily and was less aggressive, as indicated by the court's note that she was recently able to be alone with Dr. Meyer. While we agree the evidence shows recent improvement, the evidence supports that trial court's finding that she was not compliant with her medication

and her medication regiment is unstable. Furthermore, Dr. Meyer testified, and the trial court found, that if respondent was discharged, it was likely respondent would regress and not take her medicine. Dr. Meyer specifically testified respondent was still aggressive and opined that respondent would "absolutely not" take her medication if she was not supervised.

Overall, the trial court's findings are supported by the evidence and support the conclusions that respondent was dangerous to self and dangerous to others.

III. Conclusion

For the reasons discussed, we hold the trial court did not err in ordering respondent's involuntary commitment.

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).