An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-352

Filed: 5 June 2018

Buncombe County, No. 16-SPC-1159

In re: C.D.W.

Appeal by respondent from order entered 4 August 2016 by Judge Kyle D. Austin in District Court, Buncombe County. Heard in the Court of Appeals 1 November 2017.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Hannah H. Love, for respondent-appellant.

STROUD, Judge.

Respondent appeals an order of involuntary commitment. Because the trial court made sufficient findings of fact which support its conclusions of law that defendant is mentally ill and a danger to others, we affirm.

I. Background

In July 2016, respondent's brother petitioned to have him involuntarily committed based on mental illness, alleging that after a home invasion and a cousin's death respondent had become "increasingly delusional[,]" including thinking he was a prince with millions of dollars. On 4 August 2016, the trial court entered an involuntary commitment order on the basis of mental illness and danger to others. Respondent appeals.

II. Commitment Order

On appeal, respondent contends the findings of fact were inadequate to support a conclusion of involuntary commitment. Respondent challenges only one finding of fact in the order, the finding that there "is a reasonable probability that, if the Respondent were released, he would again engage in violent behavior like that which led to the present commitment." Respondent argues the "reasonable probability" finding "is not supported by competent evidence and is insufficient to support the conclusion that [respondent] is dangerous to others."

> 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. But unlike many other orders from the trial court, these 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.

> 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) (citations and quotation marks omitted). Furthermore, "unchallenged findings of facts are binding on appeal." *N.C. State Bar v. Key*, 189 N.C. App. 80, 87, 658 S.E.2d 493, 498 (2008).

The trial court found that Dr. Suzanne Collier was qualified as an "expert in the field of general psychiatry[,]" most of the findings are based upon Dr. Collier's testimony, and the trial court noted specifically several times that it found Dr. Collier's testimony to be "competent evidence[.]" "[R]espondent was brought to the hospital for treatment after being involved in a physical altercation with his mother," and both he and his mother required sutures to close wounds from that altercation. Respondent had a diagnosis of schizophrenia and suffered from paranoid delusions. Respondent was being treated with Risperdal but had to be given liquid medication because he would hide pills in his mouth and spit them out; when taking his liquid medication, his condition improved, but when he did not take his medication, it again deteriorated. Dr. Collier noted that defendant had "no insight into his condition" "and did not believe he has a mental illness," and therefore would not take his medication if released.

Although respondent does not specifically argue that the unchallenged findings are not supported by the evidence, he does argue that the findings of fact are "insufficient to support the conclusion that [respondent] is dangerous to others." "Dangerous to others" for purposes of involuntary commitment under North Carolina General Statute § 122C-268(j)

> 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. 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. (2015); *see* N.C. Gen. Stat. § 122C-268(j) (2015). Respondent notes that there was no evidence he committed a homicide or "engaged in extreme destruction of property" but these are not the portions of the definition of "dangerous to others" alleged or found by the trial court. *Id.* The relevant portion of the definition in this case is that respondent "inflicted or attempted to inflict or threatened to inflict serious bodily harm on another or acted in such a way as to create a substantial risk of serious bodily harm to another[.]" *Id.* The trial court found serious bodily harm based upon the injuries which required sutures which he and his mother sustained during their altercation.

Respondent does not challenge the findings about the altercation or injury; his real contention is that the trial court should have made a different interpretation of events than he did. Respondent testified he was acting in self-defense after his mother had attacked him. But while the trial court did note respondent's testimony, it did not find it was "competent evidence" as it did with the other findings based upon Dr. Collier's testimony. We agree that the order could be worded more carefully, but if we take all of the findings in context, it is apparent that the trial court determined that the altercation was caused by respondent, and it arose from his mental illness, even if because of his delusions, respondent sincerely believed that he was defending himself. In other words, respondent's own testimony actually *supports* the trial court's findings and is consistent with Dr. Collier's testimony: he did not have "insight" into his own condition and was suffering from delusions when he believed his mother attacked him, and thus he needed to protect himself. Respondent also briefly contends that *he* did not cut his mother's leg, but that it was cut by a "broken piece of plastic on the seat" in the car where the altercation occurred. But the court did not need to find respondent intentionally cut his mother; the court found that he engaged in a physical fight with his mother in the car due to his mental condition, and both were injured badly enough to need sutures.[1]

As to the one finding of fact respondent does challenge as not supported by the

[1] Dr. Collier testified respondent reported that his mother and uncle had kidnapped him.

evidence regarding the "reasonable probability" of future violent behavior, respondent argues his one incident is not enough evidence to support this finding of fact. But there is no requirement that a person commit more than one violent act before a court can conclude that there is a reasonable probability that he may engage in violent behavior again. In fact, no "overt act" is required for a finding of dangerousness. *See In re Monroe*, 49 N.C. App. 23, 31, 270 S.E.2d 537, 541 (1980) ("This Court has not required 'overt acts' under the former standard of 'imminent' danger and the present statutory definition of 'dangerous to others' does not require a finding of 'overt acts.'" (citations omitted)). Furthermore, the trial court based its finding regarding a reasonable probability that respondent would engage in violent behavior again on several unchallenged factors in addition to the altercation with his mother, including his diagnosis of schizophrenia; his paranoid delusions; his past refusal to take medication; his belief that he had no mental illness; his refusal to again take medication though he had improved on it; and the deterioration of his condition when not on medication. *See generally In re Zollicoffer*, 165 N.C. App. 462, 468–69, 598 S.E.2d 696, 700 (2004) ("Respondent does not contest the conclusion that he is mentally ill, he only contests the conclusion that he presents a danger to himself. Judge Senter's involuntary commitment order incorporates Dr. Soriano's examination and recommendation of 3 June 2003 in his findings of fact. In Dr. Soriano's recommendation she states that respondent has a history of chronic

paranoid schizophrenia, that respondent admits to medicinal non-compliance which puts him 'at high risk for mental deterioration,' that respondent does not cooperate with his treatment team, and that he 'requires inpatient rehabilitation to educate him about his illness and prevent mental decline.'")

Dr. Collier testified, based upon her expertise as a psychiatrist, her knowledge of respondent's particular conditions, and her experience with respondent, that he probably would stop taking his medication if released, and his condition would deteriorate, which would put him right back in the same position as he was prior to this hospitalization. The evidence supports the trial court's finding that there was a "reasonable probability" of future "violent behavior like that which led to the present commitment." In addition, the findings support the trial court's conclusion that defendant was dangerous to others. *See* N.C. Gen. Stat. § 122C-3(11)a.-b. This argument is overruled.

III. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Judges HUNTER and TYSON concur.

Report per Rule 30(e).