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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-183

Filed: 6 November 2018

Avery County, No. 13 SPC 68

IN THE MATTER OF

E.W.P.

Appeal by E.W.P. from order entered 3 July 2017 by Judge Marvin P. Pope, Jr., in Avery County Superior Court. Heard in the Court of Appeals 17 September 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert T. Broughton, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for appellant.

CALABRIA, Judge.

Where evidence supported the trial court's determination, the trial court did not abuse its discretion in denying E.W.P. additional privileges.

I. Factual and Procedural Background

E.W.P.[1] had been indicted for first-degree murder, attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, and two other felonies. On 14 October 2013, the trial court entered a written order, finding that E.W.P. was insane at the time of the offenses, dismissing the charges against him, and ordering his involuntary commitment. Over the following years, the trial court entered multiple recommitment orders.

On 3 July 2017, the trial court entered its most recent order, an amended order of recommitment. In this order, the trial court found that E.W.P. remains mentally ill, and suffers from a "delusional disorder" which renders him "dangerous to others as defined by statute[.]" The trial court noted that E.W.P. argued for "conditional discharge and/or release," which the trial court denied. The trial court further noted that E.W.P. had requested three increases to his privileges: (1) an increase from two hours to four hours of daily campus ground passes; (2) an increase of the staff-to-patient ratio from one-to-five to one-to-ten; and (3) quarterly, two-hour family supervised passes within thirty miles of the hospital campus. The trial court denied all of these requests, and ordered E.W.P.'s recommitment.

E.W.P. appeals.

II. Recommitment Order

[1] Pseudonym is used to protect the privacy of appellant.

In his sole argument on appeal, E.W.P. contends that the trial court's order on recommitment must be vacated because the court's findings of fact were not supported by the evidence. We disagree.

A. Standard of Review

Our standard of review for an order of recommitment is the same as one for an initial commitment order; "we must determine whether there is competent evidence to support the trial court's factual findings and whether these findings support the court's ultimate conclusion that respondent still has a mental illness and is dangerous to others." *In re Hayes*, 151 N.C. App. 27, 29-30, 564 S.E.2d 305, 307 (2002).

"[This Court's] only function on appeal from [a] commitment order is to determine if the trial court's ultimate findings on the issues of [an] acquittee's mental illness and dangerousness were supported by competent evidence set out in the order[.]" *In re Hayes*, 139 N.C. App. 114, 121, 532 S.E.2d 553, 558 (2000) (citing *In re Collins,* 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980)).

Whether a patient committed for mental illness may receive passes to leave hospital campus is "solely within the trial court's determination[.]" *In re Williamson*, 151 N.C. App. 260, 266, 564 S.E.2d 915, 919 (2002). Where a decision is vested in the trial court's discretion, it will not be overturned absent an abuse of that discretion. *See Little v. Penn Ventilator Co.*, 317 N.C. 206, 218, 345 S.E.2d 204, 212 (1986).

B. Analysis

As a preliminary matter, we note that the order entered 3 July 2017 explicitly stated that it would expire on 27 June 2018. That date has passed, and the order from which E.W.P. appeals has expired. Ordinarily, "[a] case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison Cty. Realtors Ass'n, Inc.*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996). "If the issues before a court or administrative body become moot at any time during the course of the proceedings, the usual response should be to dismiss the action." *In re Peoples*, 296 N.C. 109, 148, 250 S.E.2d 890, 912 (1978). However, where an order may have collateral legal consequences, such as a patient's continued commitment, the issue is not moot. *See In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 634-35 (1977). Because the trial court's decision whether to grant E.W.P. additional privileges may impact future requests for privileges, thus creating collateral legal consequences, we hold that this issue is not moot.

With respect to E.W.P.'s arguments, we note that he does not challenge the trial court's findings "that he was mentally ill and dangerous to others[.]" These unchallenged findings are binding upon this Court. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The only findings challenged by E.W.P. are the trial court's "ultimate findings" on the issue of privileges. However, notwithstanding E.W.P.'s contentions, these determinations are "solely within the trial court's

determination[.]" *Williamson*, 151 N.C. App. at 266, 564 S.E.2d at 919. Accordingly, we review the trial court's decision only for an abuse of discretion.

E.W.P. cannot prevail on his appeal. E.W.P. essentially argues that the trial court failed to properly weigh the testimony of E.W.P.'s witness. However, "it is not for an appellate court to determine *de novo* the weight and credibility to be given to evidence disclosed by the record on appeal." *Coble v. Coble*, 300 N.C. 708, 712-13, 268 S.E.2d 185, 189 (1980). We decline to rule that the trial court should have given more weight to the testimony of E.W.P.'s witness.

Moreover, this is not our standard of review. The question is not whether E.W.P. presented evidence to contradict the trial court's findings, nor whether the trial court properly examined said evidence, but whether the trial court abused its discretion in entering its findings. The evidence showed that despite ongoing therapy, E.W.P. demonstrated no comprehension of his actions. The evidence further showed that the grounds of the hospital lacked a security gate. The trial court therefore did not abuse its discretion in determining that these additional privileges would not improve E.W.P.'s therapy, and might actually pose a security risk. We hold that the trial court did not abuse its discretion, and accordingly affirm its order.

AFFIRMED.

Chief Judge McGEE and Judge DIETZ concur.

Report per Rule 30(e).