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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-411

Filed: 17 March 2020

Wake County, No. 18 SPC 5812

IN THE MATTER OF: B.H.

Appeal by Respondent-Appellant from order entered 25 October 2018 by Judge Eric Chasse in Wake County District Court. Heard in the Court of Appeals 8 January 2020.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for Respondent-Appellant.

DILLON, Judge.

Respondent B.H.¹ appeals from an order concluding that B.H. “is mentally ill . . . [and] is dangerous to [him]self” and ordering that he “be committed[] to an inpatient 24-hour facility” for 30 days. After careful review, we affirm.

I. Background

¹ The parties have agreed to use Respondent’s initials to protect his identity.

On 14 October 2018, B.H. was admitted to the crisis and assessment unit at UNC Wakebrook Psychiatric Services (“Wakebrook”). A Licensed Clinical Social Worker, T. Claire Seibert, examined B.H. and recommended inpatient commitment. Ms. Seibert’s examination report notes that B.H. presented to Wakebrook with law enforcement after calling 911, had a history of holding a knife to his throat, threatening his mother, knowing “the truth,” and believing he was “God.” Ms. Seibert’s report noted that B.H. suffered from bipolar disorder. Ms. Seibert also completed an Affidavit and Petition for Involuntary Commitment of B.H., stating the same findings from her examination report.

After his admission to Wakebrook, B.H. was examined by Psychiatrist J. Winfield Tan, M.D., who also found that B.H. was mentally ill and dangerous to himself and others. Dr. Tan’s examination report notes that B.H. had engaged in “physical violence and verbal threats towards female members of his family.” Dr. Tan believed that B.H. required involuntary treatment for depression.

B.H. received treatment at Wakebrook from Psychiatric Nurse Practitioner Abigail Coffin (“Nurse Coffin”). Nurse Coffin testified as an expert witness at B.H.’s involuntary commitment hearing. Part of her testimony included matters she had learned from B.H.’s mother, who did not testify at the hearing.

At the conclusion of Respondent’s involuntary commitment hearing, the trial court concluded that B.H. was mentally ill and dangerous to himself. The court

ordered that he be committed to an inpatient 24-hour facility for a period not to exceed 30 days followed by outpatient treatment for a period not to exceed 60 days. The trial court entered supplemental pages of findings in support of its involuntary commitment order.

II. Analysis

Respondent argues the trial court erred by concluding that he was dangerous to himself in its involuntary commitment order because its findings of fact were not supported by competent evidence. Respondent also argues that his statutory right to confront and cross-examine witnesses was denied at the involuntary commitment hearing. We address each argument in turn.²

A. Involuntary Commitment Order

Respondent first argues that “the trial court erred by concluding that B.H. was dangerous to himself without sufficient findings of fact supported by competent evidence.” We disagree.

We review an involuntary 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.*, 248 N.C. App. 512, 515, 790 S.E.2d

² We acknowledge that B.H.’s period of involuntary commitment has terminated. However, the present appeal is still properly before our Court. See *In re Whatley*, 224 N.C. App. 267, 270, 736 S.E.2d 527, 529 (2012) (holding that prior discharge from contested involuntary commitment does not render an appeal moot).

344, 347 (2016). Findings concerning the respondent’s mental illness and dangerousness to self or others are considered the trial court’s ultimate findings. *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980).

According to Chapter 122C of our General Statutes, “[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[.]” N.C. Gen. Stat. § 122C-268(j) (2017).

However, our Court does 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.” *Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74. Further, a trial judge determines the reasonable inferences to be drawn from the testimony offered during the hearing. *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985).

An individual is dangerous to himself if, “[w]ithin the relevant past,” he 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

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) (emphasis added).³

The first element of the statute is a past-focused element, while the second element of the statute is a future-focused element. *In re Moore*, 234 N.C. App. 37, 44, 758 S.E.2d 33, 38 (2014). In order to satisfy the second statutory element, “[a]lthough the trial court need not say the magic words ‘reasonable probability of future harm,’ it must draw a nexus between past conduct and future danger.” *In re J.P.S.*, ___ N.C. App. ___, ___, 823 S.E.2d 917, 921 (2019).

This case is similar to *Moore*, in which our Court concluded that the trial court’s involuntary commitment order was adequately supported by its findings of fact. *Moore*, 234 N.C. App. at 44-45, 758 S.E.2d at 38. In that case, the respondent suffered from bipolar disorder, and the trial court found that he was “at high risk of decompensation if released” and would “relapse by the end of football season.” *Id.*

The respondent in *Moore* argued the trial court’s ultimate finding that the respondent was dangerous to himself was unsupported by its underlying findings. *Id.* at 44, 758 S.E.2d at 38. In concluding the trial court’s ultimate finding was

³ Subsection 11(a) was amended effective 1 October 2019 to alter pronouns and word choice. 2019 N.C. Sess. Laws ch. 76, § 1. We use the 2017 version here, as it was the version in effect at the time of Respondent’s involuntary commitment hearing.

sufficiently supported, our Court noted the trial court had satisfied the second future-focused element of § 122C-3(11)(a)(1) by making findings about the respondent's "likely future conduct." *Id.*

Here, Respondent specifically challenges the following five findings of fact on appeal as unsupported by competent evidence:

- That, in the "weeks" prior to B.H.'s admission at Wakebrook, B.H.'s mental state had deteriorated. ("Weeks Finding"/Finding I.5)
- That B.H. had displayed an "increased usage of marijuana." ("Marijuana Finding"/Finding I.5.vi)
- That B.H. had displayed an "increase in passive suicidality." ("Suicidality Finding"/Finding I.5.vii)
- That, while at Wakebrook, B.H. "has been irritable, angry, and hostile towards Wakebrook staff including his treating clinician NP Coffin." ("Irritability Finding"/Finding II.4)
- That B.H.'s manic state would resolve only with inpatient treatment. ("Manic State Finding"/Finding II.5)

As the remaining findings of fact were left unchallenged, they are binding on appeal.

Koufman v. Koufman, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

As to the Weeks Finding, Respondent argues that the finding is unsupported because B.H. was visiting family for six weeks before he presented to Wakebrook. The State responds that a reasonable inference could be drawn from Nurse Coffin's testimony that (1) manic episodes can last for "weeks or months" and (2) B.H.'s mother observed B.H.'s manic behavior both before and after his trip. Because the trial judge is entitled to draw reasonable inferences from testimony offered at trial, we agree with the State that this finding of fact is supported by competent evidence.

As to the Marijuana Finding, Respondent argues that the finding is unsupported because a positive test for marijuana use does not necessarily indicate increased use of marijuana. The State responds that a reasonable inference could be drawn from Nurse Coffin's testimony that (1) B.H.'s urine toxicology report was positive for marijuana, (2) marijuana remains in the body for approximately thirty days after use, and (3) B.H. admitted to using marijuana. Because the trial judge is entitled to draw reasonable inferences from testimony offered at trial, we agree with the State that this finding of fact is supported by competent evidence. However, even if this finding is unsupported as Respondent claims, it would not change our conclusion that the trial court's order was adequately supported.

As to the Suicidality Finding, Respondent argues that the finding is unsupported because suicidal statements made while at Wakebrook did not indicate an increase in passive suicidality in the weeks prior to admission at the facility. The State responds that the suicidal statements made at Wakebrook were competent evidence to support this finding. Because Nurse Coffin specifically testified that she was not aware of any of Respondent's past suicidal tendencies or behaviors, this was not a reasonable inference for the trial court to make and this finding is unsupported by competent evidence.

As to the Irritability Finding, Respondent argues that the finding is unsupported because "Nurse Coffin testified that B.H. got along with the nursing

staff and other patients.” The State responds that Nurse Coffin’s testimony that B.H.’s manic symptoms included irritability, agitation, and anger was sufficient to support this finding. However, Nurse Coffin testified that B.H. got along “fairly well” with other nursing staff and patients. Thus, this was not a reasonable inference for the trial court to make and this finding is unsupported by competent evidence.

As to the Manic State Finding, Respondent argues that the finding is unsupported because Nurse Coffin testified that a manic state can eventually resolve on its own without treatment, but it will take a longer period of time. The State responds that Nurse Coffin’s testimony that B.H. would continue to experience “continued mania and exacerbation” supports this finding. We agree with the State that this finding is supported by competent evidence including Nurse Coffin’s testimony and reasonable inferences that the trial judge was entitled to make.

As to the second future-focused element of § 122C-3(11)(a)(1), the trial court made the additional sufficient findings of fact:

If released from Wakebrook in his current condition, Respondent’s manic state **makes it reasonably probable that he will suffer serious physical debilitation within the near future.**

...

Further, it is the opinion of NP Coffin that Respondent currently possesses poor self-control, very poor frustration tolerance, and a limited ability to make reasoned decisions in the course of his daily affairs. ... If released from Wakebrook in his current condition, Respondent’s deficits **make it reasonably probable that [he] will suffer**

serious physical debilitation within the near future.

...

If released in his current condition, Respondent will fail to take his prescribed psychiatric medications. It is reasonably probable that such a failure would in the near future **lead to a rapid decline in the condition of Respondent's mental illness**, with a reemergence in the manic symptoms that caused him to present to Wakebrook on 14 October 2018. In turn, the reemergence of these symptoms would **make it reasonably probable that Respondent will suffer serious physical debilitation within the near future.**

...As of the time of this hearing Respondent possesses severely impaired insight and judgment. ... As a result of this deficit, this Court infers that Respondent is currently unable to care for himself now and will continue to be unable to do so in the near future. If released from Wakebrook in his current condition, this deficit of insight **makes it reasonably probable that Respondent will suffer serious physical debilitation within the near future.**

(Emphasis added).

As in *In re Moore*, 234 N.C. App. 37, 758 S.E.2d 33 (2014), the trial court explained the nexus between Respondent's past mental state and his future prognosis of physical debilitation in its findings. The trial court's findings adequately linked Respondent's past and current mental illness with the likelihood of mental and physical debilitation in "the near future," satisfying the second future-focused element of the statute. Thus, the conclusions in the trial court's involuntary commitment order are sufficiently supported by its findings of fact.

B. Right to Confront and Cross Examine Witnesses

Respondent next argues that the trial court denied his “statutory right to confront and cross-examine witnesses when it admitted and used hearsay testimony as the basis for commitment.” We disagree.

Section 122C of our General Statutes provides that a “respondent’s right to confront and cross-examine witnesses may not be denied.” N.C. Gen. Stat. § 122C-268(f). Respondent argues that although his counsel did not object to the testimony by Nurse Coffin concerning the mother’s out-of-court statements to her, the trial judge had a duty to intervene *sua sponte*.

In general, “[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1).

Respondent seeks to invoke an exception to this preservation requirement by arguing that this is a statutory mandate. “It is well established that ‘when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding defendant’s failure to object at trial.’ ” *In re E.D.*, 372 N.C. 111, 116, 827 S.E.2d 450, 454 (2019) (quoting *State v. Davis*, 364 N.C. 297, 301, 698 S.E.2d 65, 67 (2010)).

“When a statute ‘is clearly mandatory, and its mandate is directed to the trial court,’ the statute automatically preserves statutory violations as issues for appellate

review.” *Id.* at 117, 827 S.E.2d at 454. A mandate is directed to the trial court either: “(1) by requiring a specific act by the trial judge ... or (2) by requiring specific courtroom proceedings that the trial judge has authority to direct[.]” *Id.* at 119, 827 S.E.2d at 456. However, where “the responsibility is squarely on” a party to take some action under a statute to preserve a right, appellate review can be waived by failing to take that action. *Id.* at 120, 827 S.E.2d at 456.

Here, there was no mandate directed to the trial court; the responsibility was “squarely on” Respondent’s attorney to object to alleged hearsay testimony. *See id.* Unlike in *State v. Ashe*, where there was “no doubt that the legislature intended to place [the] responsibility on the judge presiding at the trial[.]” 314 N.C. 28, 35, 331 S.E.2d 652, 657 (1985), this statute does not contain the same clear statutory mandate. In this case, it was not the trial judge’s responsibility to intervene when Respondent’s attorney failed to object to the alleged hearsay testimony.

Further, our Court in *In re J.C.D.* specifically notes that the right to object to hearsay testimony during an involuntary commitment hearing is a waivable right. ___ N.C. App. ___, ___, 828 S.E.2d 186, 190 (2019) (noting that the respondent “had a right to object to admission of the report” but “waived this right by her failure to object.”). As noted in the State’s brief and at oral argument, there may very well be strategic reasons for respondents’ attorneys to waive objection to hearsay testimony during involuntary commitment hearings as part of trial strategy. Therefore, we

decline to place the burden on the trial judge to intervene *sua sponte* when a respondent's counsel fails to object to hearsay testimony.

III. Conclusion

We hold that the trial court's findings of fact in its order are sufficient to support its conclusion that B.H. was a danger to himself. Further, we hold that B.H.'s statutory right to confront and cross-examine witnesses was not violated. Accordingly, we affirm the trial court's involuntary commitment order.

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).