IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-21

No. COA20-229

Filed 16 February 2021

Granville County, Nos. 19 SPC 50, 152

IN THE MATTER OF: S.P-H.

Appeal by Respondent from order entered 2 May 2019 by Judge Adam S. Keith in Granville County District Court. Heard in the Court of Appeals on 27 January 2021.

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

Appellate Defender Glenn Gerding, by Assistant Appellant Defender Sterling Rozear, for Respondent-Appellant.

GRIFFIN, Judge.

¶ 1 Respondent S.P.-H.[1] ("Respondent") appeals from a final judgment entered in the Granville County District Court, in which the court involuntarily committed Respondent to a 30-day term of inpatient commitment and a 60-day term of outpatient commitment. Because findings of fact supported a determination that

[1] We use a pseudonym to protect the identity of the respondent and for ease of reading. *See* N.C. R. App. P. 42.

Respondent was dangerous to others, and because the trial court did not make contradictory conclusions of law by ordering both inpatient and outpatient commitments in the same order, we affirm.

I. Factual and Procedural Background

¶ 2 This appeal arises from the trial court's order following an involuntary commitment hearing for Respondent held in Granville County District Court on 2 May 2019. Dr. Stephen Panyko, Respondent's attending psychiatrist for most of her admission, testified for the State. Respondent's current admission to Central Regional Hospital began on 12 April 2019, and she had two prior admissions of about six weeks each. Dr. Panyko had access to the medical and psychiatric records of Respondent's prior stays.

¶ 3 Dr. Panyko opined that Respondent had a history of schizoaffective disorder. He testified as to multiple incidents demonstrating Respondent's symptoms of mania and psychosis, including that she had denied that [S.P-H.] was her name and claimed that actor Denzel Washington was her father. Notably, Dr. Panyko testified that, less than 48 hours before the commitment hearing, Respondent had "repeatedly punched a nurse in the head several times, requiring a manual hold to cease the assault. And then, needed to be secluded and receive I-M medications." He also testified that Respondent had recently "been aggressive towards peers, trying to push a T-V cart onto one peer, and spitting on [the] other peer."

¶ 4 Dr. Panyko testified that, if Respondent were discharged that day, he believed she "would be extremely dangerous to others on the basis of continued serious psychotic symptoms and severe aggression in the very recent past." He opined that "the likelihood of decompensation and further aggression . . . is extremely high" due to her "lack of insight into her mental illness and refusal to take medicines without I-M formulation forced medication protocol being in place." Dr. Panyko testified that Respondent "adamantly denies she has any mental illness" and denied "that she had ever been treated in any psychiatric hospital in the past." He believed that, if Respondent were discharged, she would "[a]lmost certainly not" continue her medications, which were currently Olanzapine (an anti-psychotic medication) and "as-needed medications." Dr. Panyko predicted that the result of Respondent not taking her medications would be a "[r]eturn of aggressive behavior."

¶ 5 The trial court committed Respondent to 30 days in an inpatient facility and 60 days in an outpatient facility, as Dr. Panyko recommended. The court made the following written findings of fact:

> 1. THE RESPONDENT WAS ADMITTED ON APRIL 11, 2019 OR APRIL 12, 20129 [sic].
>
> 2. SHE HAS THE MENTAL ILLNESS OF SCHIZOAFFECTIVE DISORDER.
>
> 3. THE RESPONDENT FAILS THE [sic] ACKNOWLEDGE HER MENTAL ILLNESS AND NEED FOR TREATEMENT [sic].

> 4. SHE HAS A HISTORY OF AGGRESSIVE AND ASSAULTIVE BEHAVIORS.
>
> 5. RESPONDENT HAS SPIT ON A PEER AND HIT A NURSE.
>
> 6. A PREMATURE RELEASE WILL LIKELY RESULT IN DECOMPENSATION.
>
> 7. SHE LACKS THE INSIGHT INTO HER MENTAL ILLNESS AND NEED FOR TREATMENT.

¶ 6 The trial court also incorporated a redacted report from Dr. Panyko, prepared on 26 April 2019, finding as facts all matters therein. The report states that "[t]he patient has a history of schizoaffective d/o with multiple past admissions. She continues to have delusions, poor insight, and to refuse labs and meds. She needs inpatient care." In his report, Dr. Panyko checked the boxes for "mentally ill" and "dangerous to others", but did not check the box for "dangerous to self."

¶ 7 On the commitment order, the trial court checked boxes concluding that Respondent was "mentally ill"; dangerous to herself and to others; "capable of surviving safely in the community with available supervision from family, friends, or others"; and that her "inability to make an informed decision to voluntarily seek and comply with recommended treatment" was caused by her "current mental status." During the commitment hearing, the court made additional findings of fact from the bench that it did not include in the written commitment order.

II. Analysis

¶ 8 Respondent contends that 1) the trial court's written findings of fact were insufficient to establish that Respondent was a danger to herself or others, and 2) the trial court erred by involuntarily committing Respondent based on contradictory conclusions of law. We disagree and affirm.

A. Mootness

¶ 9 Although Respondent's commitment periods have expired, Respondent's appeal is not moot. "The possibility that Respondent's commitment might 'form the basis for a future commitment, along with other obvious collateral legal consequences,' preserves [her] right to appellate review despite the expiration of [her] commitment period." *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016) (quoting *In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977)).

B. Findings of Fact

¶ 10 To support an involuntary commitment order, a trial court must find "by clear, cogent, and convincing evidence" that the respondent is (1) mentally ill, and (2) dangerous to himself or others. N.C. Gen. Stat. § 122C-268(j) (2019). The trial court also must "record the facts upon which its ultimate findings are based." *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (citations omitted); N.C. Gen. Stat. § 122C-268(j).

¶ 11 On appeal, we simply "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." *W.R.D.*, 248 N.C. App. at 515, 790 S.E.2d at 347 (citation omitted). We do not consider whether the evidence was "clear, cogent, and convincing," as that responsibility rests with the trial court. *In re Underwood*, 38 N.C. App. 344, 347, 247 S.E. 2d 778, 781 (1978)).

¶ 12 Respondent does not challenge the trial court's determination that she was mentally ill. In addition, Respondent does not challenge the trial court's written findings of fact; therefore, these findings are binding on appeal. *See In re Zollicoffer*, 165 N.C. App. 462, 469, 598 S.E.2d 696, 700 (2004).

¶ 13 Accordingly, we review whether the trial court's written findings of fact supported its ultimate findings that Respondent was dangerous to herself and dangerous to others.

1. Dangerous to Self

¶ 14 Respondent alleges that the trial court's findings of fact did not establish that Respondent is dangerous to herself. Our review indicates that the statutory test for "dangerous to self" was not satisfied.

¶ 15 N.C. Gen. Stat. § 122C-3 defines "dangerous to self", as pertinent to this case, to mean that within the relevant past, the individual's actions have shown that

I. The individual 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 the individual's daily responsibilities and social relations, or to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety[, and]
>
> II. There is a reasonable probability of the individual's 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 or herself.

N.C. Gen. Stat. § 122C-3(11)(a)(1) (2019).

¶ 16 The trial court made written findings of fact which could be construed as supporting an ultimate finding that Respondent was dangerous to herself. The court found that Respondent has schizoaffective disorder; that she fails to acknowledge, and lacks insight into, her mental illness and need for treatment; and that a premature release would likely result in decompensation. *See In re Moore*, 234 N.C. App. 37, 44-45, 758 S.E.2d 33, 38 (2014) (holding finding of dangerousness to self was supported by factual findings that the respondent was "at a high risk of decompensation if released and without medication" and that doctor thought the respondent would "relapse by the end of football season" if released).

¶ 17 However, the written findings do not support an ultimate finding that there

was a reasonable probability that Respondent would suffer "serious physical debilitation *within the near future*." *See* N.C. Gen. Stat. § 122C-3(11)(a)(1)(II) (emphasis added); *see also In re Whatley*, 224 N.C. App. 267, 273, 736 S.E.2d 527, 531 (2012) (holding trial court's conclusion that the respondent was dangerous to herself was insufficiently supported where "the trial court's findings [of fact] . . . do not indicate that [the respondent's] illness or any of her aforementioned symptoms will persist and endanger her within the near future"). Here, the court found that premature release would likely result in decompensation, but did not reference any time frame.

¶ 18 The trial court did find, in open court, that Respondent "would be unable to care for her general needs, provide for her independent daily maintenance," due to her lack of insight; and that she would "likely rapidly decompensate" if released that day. However, the factual findings in support of an ultimate finding of dangerousness must be recorded in the commitment order. *See* N.C.G.S. § 122C-268(j); *see also Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74. Here, the court did not incorporate these oral findings of fact into its written order.

¶ 19 Because the trial court did not make written findings to support that Respondent would suffer "serious physical debilitation *within the near future*," *see* N.C. Gen. Stat. § 122C-3(11)(a)(1)(II) (emphasis added), the trial court erred in finding that Respondent was dangerous to herself. Next, we consider whether any

competent evidence supported a finding that Respondent was dangerous to others.

2. Dangerous to Others

¶ 20 Respondent argues that the trial court's written findings of fact were insufficient to establish that she was dangerous to others. After careful review, we disagree.

¶ 21 N.C. Gen. Stat. § 122C-3 defines "dangerous to others" to mean that

> [w]ithin 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, . . . and that there is a reasonable probability that this conduct will be repeated.

N.C. Gen. Stat. § 122C-3(11)(b) (2019). "Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct." *Id.*

¶ 22 The trial court's written findings of fact supported its ultimate finding that Respondent was dangerous to others. Respondent's "history of aggressive and assaultive behaviors," could show a reasonable probability of future dangerous conduct. *See id.* The fact that "Respondent has spit on a peer and hit a nurse," could show that Respondent had "attempted to inflict . . . serious bodily harm on another, or ha[d] acted in such a way as to create a substantial risk of serious bodily harm to another." *See id.*

¶ 23 On appeal, Respondent argues that the findings do not indicate that she inflicted, attempted to inflict, or created a substantial risk of "serious bodily harm" to others. The statutes do not define "serious bodily harm" for the purpose of section 122C-3. However, this Court has upheld trial court findings of dangerousness to others on facts analogous to this case. *See, e.g.*, *In re M.D.*, 2018 WL 2643054, *4-*5, 259 N.C. App. 937, 814 S.E.2d 628 (2018) (unpublished) (holding conclusion of dangerousness to others supported by findings that the respondent exhibited verbal and physical aggression; charged at doctor and hospital staff; threw food; and acted in manner disruptive to unit requiring that staff secure the respondent); *see also In re E.L.*, 2019 WL 5726811, *2, 268 N.C. App. 323, 834 S.E.2d 189 (2019) (unpublished) (holding conclusion of dangerousness to others supported by the respondent's altercation with flight attendant).

¶ 24 The trial court's written findings of fact supported its ultimate finding that Respondent was dangerous to others. The involuntary commitment order was properly supported on the basis that Respondent was dangerous to others.

C. Split Commitment Order

¶ 25 Respondent also argues that her commitment order must be reversed because it is based on inconsistent and irreconcilable conclusions of law. On its written order, the trial court marked boxes concluding that Respondent was "mentally ill"; dangerous to herself and to others; "capable of surviving safely in the community with

available supervision from family, friends, or others"; and that her "inability to make an informed decision to voluntarily seek and comply with recommended treatment" was caused by her "current mental status." Respondent argues that these conclusions contradict each other and that therefore the trial court erred.

¶ 26 Alleged errors of law are reviewed *de novo*. *Morris Commc'ns Corp. v. City of Bessemer*, 365 N.C. 152, 155, 712 S.E.2d 868, 870 (2011) (citations omitted). "'Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation omitted).

¶ 27 This Court has found only one prior appellate decision, *In re Richardson*, 2012 WL 944876, 219 N.C. App. 647, 722 S.E.2d 797 (2012) (unpublished), addressing this issue in the involuntary commitment context. Although unpublished and therefore not binding precedent, *see State v. Campbell*, 257 N.C. App. 739, 751 n.1, 810 S.E.2d 803, 810 n.1 (2018) (noting that unpublished cases "do not constitute controlling legal authority"), the *Richardson* analysis of a nearly identical scenario is persuasive, and we apply the same reasoning.

¶ 28 In *Richardson*, "the district court ordered a split commitment, requiring respondent to receive both inpatient and outpatient care." *Richardson*, 2012 WL 944876, *4. On the written order, the trial judge marked boxes to the effect of stating that the respondent was mentally ill, dangerous to others, dangerous to himself, and

was capable of surviving safely in the community with supervision. *Id.* at *2-*3. Upon review, the *Richardson* Court noted that "it is clear" that the "mentally ill, dangerous to self, and dangerous to others" checkboxes supported the inpatient commitment, and that the "capable of surviving safely in the community with available community supervision" checkbox supported the outpatient treatment. *Id.* at *4-*5. The *Richardson* Court affirmed the trial court's order, stating that in light of the split commitment, "concluding that [the] respondent is dangerous to himself and dangerous to others, as well as capable of surviving safely in the community with available supervision is appropriate." *Id.* at *4.

¶ 29 On appeal, Respondent cites cases where this Court overturned inconsistent findings of trial courts in workers' compensation cases, *Winders v. Edgecombe Cty. Home Health Care,* 187 N.C. App. 668, 675-76, 653 S.E.2d 575, 580 (2007); *Neal v. Leslie Fay, Inc.*, 78 N.C. App. 117, 121, 336 S.E.2d 628, 631 (1985); termination of parental rights, *In re A.B.*, 239 N.C. App. 157, 172, 768 S.E.2d 573, 581 (2015); and a dismissal of a complaint alleging breach of contract, unfair and deceptive trade practices, and fraud, *Novak v. Daigle, Inc.*, 226 N.C. App. 253, 255, 741 S.E.2d 890, 892 (2013). These cases do not address the unique situation presented by a split commitment, and thus are inapplicable to this matter. *See Richardson*, 2012 WL 944876, *4 (distinguishing *Winders* on basis that "involuntary commitment presents a unique situation").

¶ 30 As in *Richardson*, here Respondent was committed to inpatient care to be followed by outpatient care. Likewise, here the checkboxes to the effect that Respondent was mentally ill and dangerous to others supported the inpatient commitment, whereas the other checkboxes supported the outpatient commitment. The trial court did not err by ordering both inpatient and outpatient commitments in the same order, and by marking the respective boxes to that effect.

III. Conclusion

¶ 31 For the foregoing reasons, the trial court's involuntary commitment order is affirmed.

AFFIRMED.

Judges INMAN and COLLINS concur.

Report per Rule 30(e).