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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-628

No. COA21-240

Filed 16 November 2021

Durham County, No. 20 SPC 1933

IN THE MATTER OF: S.C.J.

Appeal by Respondent from Order entered 20 November 2020 by Judge Pat Evans in Durham County District Court. Heard in the Court of Appeals 6 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth Forrest, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for respondent-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Respondent-Appellant S.C.J. (Respondent) appeals from an Involuntary Commitment Order entered in Durham County District Court declaring Respondent mentally ill, a danger to self, and ordering Respondent be committed to an inpatient

facility for thirty days. The Record reflects the following:

¶ 2 On 9 November 2020, Dr. Nicole Wolfe with the Durham Veterans' Affairs Medical Center (VAMC) signed an Affidavit and Petition for Involuntary Commitment in Durham County District Court alleging Respondent was mentally ill and a danger to himself or others or in "need of treatment in order to prevent further disability or deterioration likely to result in dangerousness." Submitted with this Affidavit was an Examination for Involuntary Commitment report conducted by Dr. Wolfe. In this report, Dr. Wolfe stated Respondent had a long history "of schizophrenia, medication non-compliance, and no insight into need for treatment." According to Dr. Wolfe, Respondent was being treated for heart failure at the VAMC but experienced "numerous paranoid delusions that impair his ability to cooperate with care." For example, Dr. Wolfe's report stated that Respondent stopped attending appointments at the Salisbury Veterans' Affairs Medical Center because he feared being followed by terrorists and "believed his doctor and nurse were 'blown up on the ground.' " Additionally, Respondent expressed "significant concerns that he might be poisoned through his food or medication." Based on these observations, Dr. Wolfe concluded "Respondent lacked the capacity to make medical treatment decisions" and "requires [mental health] treatment and stabilization in an inpatient psych[iatric] unit."

¶ 3 The same evening Dr. Wolfe signed her Affidavit and Petition, 9 November 2020, a magistrate issued a form Findings and Custody Order finding reasonable grounds to believe Respondent was mentally ill and a danger to himself or others, and ordering Respondent to be placed in the custody of VAMC pending a hearing in District Court.[1]

¶ 4 The next day, Respondent underwent a second evaluation, conducted by Dr. Sophie Fourniquet, at VAMC's inpatient unit. Dr. Fourniquet's report stated Respondent has a "history of schizophrenia"; is "unmedicated at this time"; is "[c]urrently grossly disorganized and unable to attend to his numerous medical comorbidities;" has an "[i]nability to cooperate with medical care"; and his "[m]ental illness presents an acute risk to patient's wellbeing."

¶ 5 On 20 November 2020, after a continuance, the trial court heard Respondent's case pursuant to N.C. Gen. Stat. § 122C-268. At the outset, Respondent's counsel objected to the proceedings because there was no representative for the State present. Defense counsel noted the Durham County District Attorney's office believed it was not required to send a representative as did the Attorney General's office. The trial court overruled Respondent's objection and the hearing continued.

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[1] The Petition and magistrate's order were not filed with the Durham County Clerk of Court until the following day: 10 November 2020.

¶ 6 The trial court called Dr. Tracey Holsinger of VAMC as the only witness to testify in support of the Petition. The trial court asked Dr. Holsinger to "tell us why you're here." Dr. Holsinger testified Respondent suffers from congestive heart failure and Chronic Obstructive Pulmonary Disease (COPD) in addition to his schizophrenia, but because of his delusional beliefs about fluid accumulating in his body from medications and being poisoned, refuses to take his medication. Respondent had been living in a storage unit that did not have heat or running water. He had also been smoking, which caused his blood levels to become too low for his schizophrenia medication to be effective. Dr. Holsinger testified "if he continues living the way he has been living then his life expectancy is a matter of months" because his inability to take medication is "not compatible with life, given the delicacy of the heart function right now." According to her testimony:

> If he were able to understand all of the pieces and chose that, then we would have to accept it, but he—because of his schizophrenia, he's not able to grasp either the medical pieces or the reality of the world. So, we are hopeful that he will continue to improve. Since he came up from the medical floor, he's been getting better, he's been taking the diuretic. There are more medications that would be life-sustaining for him that we would like him to take, but he's not able yet, so we're hoping that we'll be able to work with him to get him to take those medications to get as well as possible, and what we would ultimately want is for him to decide what he would like.

¶ 7 On cross-examination by counsel for Respondent, Dr. Holsinger testified since being in the facility Respondent had been taking his anti-psychotic medication and his communication had improved, but his paranoid delusions remained fixed. When asked whether Respondent had shown any aggression or threats to harm himself, Dr. Holsinger responded that he had not made any direct threats to harm himself; however, he had said, "I'm not gonna take my Furosemide and then my heart stops working." Dr. Holsinger explained that their goal is for Respondent to "understand enough of his medical conditions that he can weigh out the pros and cons of different living situations and decide which is—which one he wants that is worth the risk." She also stated that "he's never felt the need to have good follow-up, which is one of the other things that we want to try and negotiate what he's willing to accept."

¶ 8 After Dr. Holsinger testified, Respondent took the stand. When asked whether he was aware that he had medication to take, Respondent testified "I won't know the prohibited medication given to me. Prohibited medication made me sick. . . . I took the pill and became sick." Respondent's counsel then asked Respondent if he would continue to take his medication if he was released from the hospital, Respondent testified:

> A: Oh, I was forced into the room.
>
> Q: You said —

> A: I was forced into mental health. I did not want to go into that mental health room because I could go downstairs to the ground floor and see mental health. There are two places you can see mental health in the hospital.
> . . .
>
> Q: And I understand, I was just—I was asking, once you leave the hospital, if there is medication that you're supposed to take—
>
> A: Excuse me?
>
> Q: —would you take it? If there's medication that you're supposed to take when you leave the hospital—
>
> A: It's prescribed medication.
>
> Q: Right. Will you take it?
>
> A: Perhaps prescribed medication is the medication is the medication they give you to try and help you handle the overload inside your mind. When you see it, you see images which we call delusions, all right? Because the images of the people and animals and clouds and rain, delusions. When you have these delusions they're visi—so far, the medication did one thing for me. Excuse me. Where I'd be stumbling over the words, but I'm going through losing my teeth. I got four left. So, I pronounce words kind of hard sometimes.

Throughout his testimony, Respondent continued to refuse to affirm that he would take his medication if he was released and continued to express beliefs about fluid accumulation from medications and poisoning.

¶ 9 The same day, the trial court entered a written Order. The trial court found "by clear, cogent, and convincing evidence" Respondent was:

> Unable to care for self[;] still delusional[;] [had] significant cognitive heart failure [and] COPD[;] [did] not understand the severity of medical issues; [that his] estimated life expectancy would be [a] matter of months if medication non-compliant[;] [and] [b]ecause of diagnosis, [he was] unable to grasp medical condition or reality[.]

The trial court's Order also identified Dr. Fourniquet's Examination report; however, although the trial court listed the report, it did not check the box expressly incorporating the report as findings of fact. The trial court concluded Respondent was mentally ill and a danger to himself. Accordingly, the trial court ordered Respondent committed involuntarily for thirty days. Respondent filed Notice of Appeal from the trial court's Order on 24 November 2020.

Appellate Jurisdiction

¶ 10 Respondents in involuntary commitment actions have a statutory right to appeal a trial court's order. N.C. Gen. Stat. § 122C-272 (2019) ("Judgment of the district court [in involuntary commitment cases] is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases."). Rule 3 of our Rules of Appellate Procedure requires a party to file written notice of appeal thirty days after the entry of an order of a superior or district court rendered in a civil action or special proceeding. N.C.R. App. P. 3(a), (c) (2021).

¶ 11 In this case, Respondent filed written notice of appeal on 24 November 2020 well within the thirty-day period following the entry of the Order on 20 November 2020. Furthermore, although the commitment period has expired, the appeal is not moot because the challenged order may have collateral legal consequence. *See In re Moore*, 234 N.C. App. 37, 41, 758 S.E.2d 33, 36 (2014) ("The possibility that respondent's commitment in this case might likewise form the basis for a future commitment, along with other obvious collateral legal consequence, convinces us that this appeal is not moot."). Accordingly, Respondent's appeal is properly before this Court.

Issues

¶ 12 The issues on appeal are whether: (I) the trial court's underlying Findings of Fact supported its ultimate Finding Respondent was a danger to himself; and (II) the trial court violated Respondent's due process right to an impartial tribunal by calling and examining a witness in order to elicit evidence, in the absence of any representative of the State.

Analysis

I. Sufficiency of the Findings of Fact

¶ 13 Respondent argues the trial court's underlying Findings were insufficient to support its ultimate Finding Respondent was a danger to himself. "To 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 . . ." N.C. Gen. Stat. § 122C-268(j) (2019). The term "dangerous to self" is defined by statute as:

> a. Dangerous to self.—Within the relevant past, the individual has done any of the following:
>
> 1. The individual has acted in such a way as to show all of the following:
>
> 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.
>
> 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.
>
> 2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter.
>
> 3. The individual has mutilated himself or herself or has attempted to mutilate himself or herself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

> Previous 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) (2019).

¶ 14 Thus, a trial court's order must satisfy two prongs when finding a respondent is a danger to self or others on any of the bases above: "A trial court's involuntary commitment of a person cannot be based solely on findings of the individual's 'history of mental illness or . . . behavior prior to and leading up to the commitment hearing,' but must [also] include findings of 'a reasonable probability' of some future harm absent treatment[.]" *In re J.P.S.*, 264 N.C. App. 58, 62, 823 S.E.2d 917, 921 (2019) (citing *In re Whatley*, 224 N.C. App. 267, 273, 736 S.E.2d 527, 531 (2012)). "Although 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." *Id.* at 63, 823 S.E.2d at 921.

¶ 15 It is the role of the trial court to determine whether the evidence of a respondent's mental illness and danger to self or others rises to the level of clear, cogent, and convincing. *Whatley*, 224 N.C. App. at 270-71, 736 S.E.2d at 530 (citation omitted). "Findings of mental illness and dangerousness to self are ultimate findings of fact." *In re B.S.*, 270 N.C. App. 414, 417, 840 S.E.2d 308, 310 (2020) (citing *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980)). On appeal, "[t]his Court

reviews an involuntary commitment order to determine whether the ultimate findings of fact are supported by the trial court's underlying findings of fact and whether those underlying findings, in turn, are supported by competent evidence." *B.S.*, 270 N.C. App. at 417, 840 S.E.2d at 310 (citing *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016)). As such, the trial court must also record the facts that support its "ultimate findings[.]" *Whatley*, 224 N.C. App. at 271, 736 S.E.2d at 530. "If a respondent does not challenge a finding of fact, however, it is presumed to be supported by competent evidence and [is] binding on appeal." *Moore*, 234 N.C. App. at 43, 758 S.E.2d at 37 (citation and quotation marks omitted).

¶ 16 Here, Respondent does not challenge the trial court's ultimate Finding he was mentally ill. Instead, Respondent challenges the trial court's ultimate Finding he was a danger to himself. Specifically, Respondent argues the trial court's underlying Finding Respondent's "estimated life expectancy would be a matter of months if medication non-compliant" is insufficient to support its ultimate finding because the trial court did not also expressly find there was a reasonable probability Respondent would be medication non-compliant in the future.

¶ 17 In support of his argument, Respondent attempts to analogize this case to *In re Whatley*. There, the trial court made the following findings of fact:

> 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.

Whatley, 224 N.C. App. at 271, 736 S.E.2d at 530. This Court reversed the commitment order because "each of the trial court's findings pertain to either [r]espondent's history of mental illness or her behavior prior to and leading up to the commitment hearing, but they do not indicate that these circumstances rendered [r]espondent a danger to herself in the future." *Id.* at 273, 736 S.E.2d at 531.

¶ 18 Here, in its written Order, the trial court checked box number five, by which it found by "clear, cogent, and convincing evidence" Respondent was:

> Unable to care for self. Still delusional. [Has] significant cognitive heart failure [and] COPD. Does not understand severity of medical issues; estimated life expectancy would be [a] matter of months if medication non-compliant. Because of diagnosis, unable to grasp medical condition or reality.[2]

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[2] The State also contends the trial court incorporated Dr. Fourniquet's medical report as Findings of Fact. While the trial court did list this report on the form Order, it did not check the box indicating it was incorporating the report in its Order. Indeed, in rendering its Order the trial court also made no reference to Dr. Fourniquet's report. Respondent argues, then, the trial court did not incorporate the report in its Order. As the parties do not agree on this issue and there is no other indication the trial court intended to incorporate the report, we presume the trial court did not intend to incorporate the report. *But see In re Q.J.*, 2021-NCCOA-346 ¶¶ 13, 29 n. 4 (both respondent and the state agreed the trial court

¶ 19 These findings are supported by Dr. Holsinger's testimony that, while under Dr. Holsinger's care, Respondent had only taken one of his medications in the ten days he had been in the Durham VAMC's care; had significant trouble attending follow-up appointments; continued to suffer from delusional beliefs that fluid accumulates in his body from medications and that he is being poisoned; and if released, would resume smoking thus reducing his blood level and rendering his anti-psychotic medication ineffective. Dr. Holsinger testified Respondent's delusional beliefs resulted in his refusal to take certain medications and his inability to take medication is "not compatible with life, given the delicacy of the heart function right now." Thus, these underlying Findings satisfied the first prong requiring the trial court find Respondent was unable to care for himself.

¶ 20 Furthermore, while the trial court's Findings are minimal, when taken together in context they demonstrate not just a past history prior to and leading up to the hearing, but reflect a continuing danger. The trial court's Findings reflect Respondent remains delusional and will remain medication non-compliant in the future because his delusions render him "unable to grasp [his] medical condition or reality." This creates a danger of future harm because, as the trial court found,

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intended to incorporate a report as part of its findings). As such, our analysis of the sufficiency of the trial court's findings does not consider the report.

without his medication, Respondent's life expectancy would be a matter of months. *See In re Zollicoffer*, 165 N.C. App. 462, 469, 598 S.E.2d 696, 700 (2004) (holding respondent was a danger to himself when the trial court found respondent was medication non-compliant which put him at high risk of mental deterioration). As such, these Findings show a nexus between Respondent's mental illness and future harm to himself. Thus, the trial court's Findings are adequate to satisfy the requirement the trial court make findings supporting a reasonable probability of future harm absent treatment. Therefore, these findings are, in turn, adequate to support the trial court's ultimate Finding Respondent posed a danger to self.

II. Impartial Tribunal

¶ 21 Respondent also argues the trial court violated his due process right to an impartial tribunal because the State was not represented by counsel and the trial court elicited evidence in favor of committing Respondent. We recently addressed this issue in two companion cases, *In re Q.J.* and *In re C.G.*, both filed on 20 July 2021. *In re Q.J.*, 2021-NCCOA-346, ¶ 21-22; *In re C.G.*, 2021-NCCOA-344, ¶ 22. There, this Court, relying on binding precedent in *In re Perkins* and *In re Jackson*, held the trial court does not violate Respondent's right to an impartial tribunal by questioning witnesses and eliciting evidence in an involuntary commitment case where the State has not appeared so long as the trial court does not ask questions

meant to prejudice either party or impeach any witness. *Id.*; *see In re Perkins*, 60 N.C. App. 592, 594, 299 S.E.2d 675, 677 (1983) ("We are aware of no per se constitutional right to opposing counsel. Nothing in the record indicates language or conduct by the court which conceivably could be construed as advocacy in relation to petitioner or as adversative in relation to respondent.").

¶ 22 In this case, as in *Perkins, Q.J.*, and *C.G.*, the Record does not evince language or conduct by the trial court that could be construed as advocacy for or against either Petitioner or Respondent. Here, the trial court called Dr. Holsinger to testify. The trial court's only questions of Dr. Holsinger on direct examination were: "tell us why you're here"; "I want to know about whatever it is you want to tell me"; "All right. Anything else?"; "All right. Is he a danger to himself?"; "And why do you say that?"; "Do you want to elaborate on that?"; and "All right. And how much more time are you requesting?"

¶ 23 During Respondent's testimony the trial court asked the following questions and made the following statements: "If you so desire, sir"; "I'm sorry, sir. What'd you say?"; and "That is wonderful. Did you want your sister to testify on your behalf?" The trial court did not ask questions meant to prejudice either party or impeach any witness but merely sought to elicit information it deemed helpful to its decision. Accordingly, the trial court did not violate Respondent's right to an impartial

tribunal.

Conclusion

¶ 24 For the foregoing reasons, we affirm the trial court's Order.

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).