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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-672

No. COA21-125

Filed 7 December 2021

Durham County, No. 20 SPC 1599

IN THE MATTER OF:

S.S.

Appeal by respondent from order entered 16 October 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 Rachel A. Brunswig, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for respondent-appellant.

DIETZ, Judge.

¶ 1 Respondent appeals from an order involuntarily committing her to an inpatient facility for thirty days. As explained below, the trial court's findings in the commitment order are sufficient to support the court's conclusion of dangerousness to self, and the trial court's questioning of witnesses during the proceeding did not violate Respondent's due process right to an impartial tribunal. We therefore affirm the trial court's order.

Facts and Procedural History

¶ 2 Respondent is a 68-year-old woman with a history of "bipolar disorder with psychotic features" that first presented in her youth. Before her commitment, Respondent lived alone in Durham, although her two daughters lived nearby. Respondent has a history of hospitalizations related to her mental illness but was able to care for herself and maintain a stable life for many years.

¶ 3 Within the past few years, Respondent began to develop a physical sickness and was ultimately diagnosed with end-stage renal disease. This disease requires hemodialysis treatment approximately three times per week. At some point during her treatment, Respondent began "leaving the hemodialysis early or stopping sessions in the middle" of treatment against her care providers' recommendations. In September 2020, Respondent was admitted to the hospital twice to address complications from her lack of medical care.

¶ 4 At the same time, Respondent's mental health began to further deteriorate. The lack of proper medical care exacerbated her mental illness. Eventually, Respondent was admitted for mental health treatment after an EMS team determined she was "suffering from a manic episode" and "confusional state due to changes in her electrolytes from the failure to complete dialysis."

¶ 5 On 23 September 2020, Dr. Tatreau, a psychiatrist at Duke Regional Hospital, examined Respondent and executed an Affidavit and Petition for Involuntary

Commitment. Dr. Tatreau found Respondent to be an "individual with mental illness" who was "dangerous to self."

¶ 6 The next day, Dr. Downie, also a psychiatrist at Duke Regional Hospital, examined Respondent and found her to be an "individual with mental illness" who was "dangerous to self" or "others." In a written report, Dr. Downie diagnosed Respondent with bipolar disorder and manic episode. Dr. Downie described Respondent's situation as "[w]orsening mental state in past 2 weeks . . . . It's gotten to the point where she is not able to take care of herself in the community."

¶ 7 On 16 October 2020, the trial court held an involuntary commitment hearing. At the start of the hearing, Respondent, through counsel, objected to the absence of a representative of the State. Specifically, Respondent asked the court to "put on the record exactly what is going on here in Durham County" and "that [it] is outside the presence of the District Attorney's office." The trial court acknowledged that "the District Attorney's office continues to not be a party to these proceedings of this Honorable Court." The court noted counsel's objection to "holding these hearings," and overruled the objection.

¶ 8 At the hearing, the trial court called to the stand Dr. Schiff, who also treated Respondent at Duke Regional Hospital. The trial court asked Dr. Schiff, "tell me what it is you want me to know about this matter." Dr. Schiff testified that Respondent "has a history of psychiatric illness, specifically bipolar disorder with psychotic

features that has been present for a number of decades since her youth." Dr. Schiff explained that Respondent had "been stable for a number of years previously," but that "over the last few weeks prior to her admission . . . her family and her outpatient psychiatrist had noticed a decompensation in her mental status. [Respondent] was appearing more confused and disorganized, tangential in her thought process, as well as more paranoid and delusional at times. . . . [Respondent] had a noted personality change."

¶ 9 Dr. Schiff also testified about Respondent's end-stage renal disease and the required treatment. Dr. Schiff explained to the court the growing connection of this disease and her mental state—that the "underlying bipolar illness that played a role in her impulsivity and inability to complete these hemodialysis treatments . . . worsened her mental status and then worsened her physical status as well." He further testified that "while we do think there is a medical underpinning to some of her decompensation, we think that's largely been driven by her inability to care for herself appropriately and for her medical needs because of her bipolar illness."

¶ 10 Dr. Schiff also testified that, since admission, Respondent "has continued to show impulsivity, a lack of insight into her condition, and continues to show some irritability, some disorganization, paranoia at times, and generally an impulsive and dysregulated behavior." Dr. Shiff explained that Respondent had "been shouting at staff members, shouting at other patients, has personally threatened me as recently

as yesterday for failure to comply with her needs."

¶ 11 During cross examination by Respondent's counsel, Dr. Schiff testified that, although he did not complete Respondent's first evaluation nor serve as her treating physician, he completed the second evaluation of Respondent. When asked about other members of the treatment team, Dr. Schiff responded, "they do feel that she – based on the records, and my multiple conversations with them, as well as their review of our current records – the medical records or electronic medical records, that they feel that she is not at her baseline and would be concerned were she to discharge at this time."

¶ 12 During Dr. Schiff's testimony, the trial court directly questioned Dr. Schiff:

> THE COURT: Would you say that [Respondent], in your professional opinion, is a danger to herself?
>
> [WITNESS]: I would.
>
> THE COURT: And what about to others?
>
> [WITNESS]: Well, she's been irritable and threatening verbally at times. She has not been physically threatening. But given her level of irritability, impulsivity is hard for me to predict.
>
> THE COURT: All right. You've mentioned that she threatened you yesterday?
>
> [WITNESS]: Yes.
>
> THE COURT: All right. And what, if anything, did she say or do?

> [WITNESS]: I believe her exact words, that she would kick my ass if I were not to let her discharge.
>
> THE COURT: All right. And how long are you asking me to recommit her?
>
> [WITNESS]: Thirty days.

¶ 13 Respondent testified on her own behalf. When asked if she was aware of her mental illness, Respondent answered "No." Respondent testified that she would take medications and comply with her treatment team's recommendations. Respondent told the court she had not thought about or tried to hurt herself. Respondent expressed concerns about being away from her new apartment and was afraid it would be taken away by the Housing Authority.

¶ 14 After Respondent's closing remarks, the court made oral findings at the hearing that Respondent "does have a mental illness" and "is a danger to herself." The court announced that Respondent would be recommitted for 30 days.

¶ 15 Later that day, the trial court entered its written order committing Respondent to inpatient treatment for 30 days. The written order used the standard form for involuntary commitment, which permits the trial court to check boxes to make various findings of fact and conclusions of law. In the order, the trial court checked the box indicating that it found facts by clear, cogent, and convincing evidence and then listed the following findings:

> Respondent continues to manifest impulsivity, irritability, lack of insight, paranoia; Continues to refuse as-needed medications; Threatened to kick Dr. Schiff's a-- if he did not discharge her; Continues to suffer from presenting symptoms; Unable to care for self or attend to basic needs; Has end stage renal disease – leaves Dialysis early or stop [*sic*] sessions in middle.

¶ 16 The court then checked two boxes in its conclusions of law. The court first checked the box indicating that Respondent "has a mental illness" and then checked the box indicating that Respondent "is dangerous."

¶ 17 Respondent timely appealed the commitment order.

Analysis

I. Challenge to findings of fact

¶ 18 Respondent first argues the trial court's findings were insufficient to support commitment.

¶ 19 This 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." *In re Q.J.*, 2021-NCCOA-346, ¶ 26. To support involuntary commitment based on a danger to self, the trial court must find that 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 that there is "a reasonable probability of the individual's suffering serious physical debilitation within the near future unless adequate treatment is given." N.C. Gen. Stat. § 122C-3(11)(a)(1).

¶ 20 Here, the trial court found that Respondent "continues to manifest impulsivity, irritability, lack of insight, paranoia"; "[c]ontinues to refuse as-needed medications"; "[c]ontinues to suffer from presenting symptoms"; is "unable to care for self or attend to basic needs"; and "[h]as end stage renal disease – leaves Dialysis early or stop [*sic*] sessions in middle."

¶ 21 These findings are sufficient to meet the criteria for involuntary commitment. Specifically, the trial court found that Respondent was unable to care for herself and attend to her needs and that she suffered from end stage renal disease but was unable to complete necessary treatment for her disease because of her mental illness. These findings drew a sufficient "nexus between past conduct and future danger" to support a legal conclusion of danger to self. *In re Q.J.*, ¶ 25.[1]

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[1] In its conclusions of law on the standard commitment form, the trial court checked the box indicating that Respondent "is dangerous." But following the box containing the conclusion that Respondent is dangerous, there are two additional boxes, one indicating "to self" and one indicating "to others." The trial court did not check either of those boxes. On appeal, Respondent does not challenge the trial court's failure to check the box indicating "to self" and acknowledges that the trial court's order addressed her dangerousness to herself. Accordingly, any challenge to the trial court's failure to check the box indicating Respondent's danger "to self" is abandoned. N.C. R. App. P. 28(b)(6).

II. Right to an impartial tribunal

¶ 22 Respondent next argues that the trial court violated her right to an impartial tribunal when the State failed to appear to prosecute the case and, in Respondent's view, the trial court thus assumed the role of the prosecutor.[2] This argument is precluded by a series of recent decisions from this Court. Those cases hold that there is no requirement that the State appear and prosecute an involuntary commitment proceeding and that, in the absence of a prosecuting attorney, the trial court may "preside at an involuntary commitment hearing and also question witnesses at the same proceeding" without violating the respondent's due process rights to an impartial tribunal, so long as the trial court does not advocate for a particular party in the proceeding. *In re A.S.*, 2021-NCCOA-585, ¶¶ 15–16. Here, as in those cases, "there is nothing from the transcript that indicates the trial court, while asking questions of witnesses, was advocating or intending to advocate for either party." *Id.* ¶ 18. Accordingly, we reject Respondent's due process argument.

Conclusion

¶ 23 We affirm the trial court's order.

AFFIRMED.

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[2] On appeal, the State contends that this issue is not preserved for appellate review. At the beginning of the hearing, Respondent objected to the proceedings being held "outside the presence of the District Attorney's office." The court noted the objection and denied it. This is sufficient to preserve the issue for review by this Court.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).