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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-274

No. COA21-342

Filed 19 April 2022

Mecklenburg County, No. 20 SPC 51891

IN THE MATTER OF: T.S.

Appeal by Respondent from order entered 7 January 2021 by Judge Kimberly Y. Best in Mecklenburg County District Court. Heard in the Court of Appeals 12 January 2022.

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

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

DILLON, Judge.

¶ 1 Respondent T.S. appeals from the Involuntary Commitment Order ("Order") entered 7 January 2021 committing her to an inpatient facility for a period not to exceed fourteen (14) days.

I. Background

¶ 2 On 29 December 2020, Respondent's Mother filed an affidavit and petition

alleging that Respondent was mentally ill and dangerous to self or others. Respondent was taken into custody pending an involuntary commitment hearing. At the hearing on 6 January 2021, no representative appeared on behalf of the State. Respondent's attorney did not object to proceeding without counsel for the State.[1]

¶ 3 The trial court called Respondent's psychiatrist who was in attendance as a witness. The psychiatrist testified about Respondent's behavior at the hospital and his personal treatment of Respondent. He diagnosed Respondent with schizo-effective disorder (bipolar type) and thought she could be a potential danger to herself or others with an inability to care for herself as a result of refusing to take medication. The psychiatrist also testified that Respondent was "hyper-verbal," "screaming and cussing and yelling" at him, threatened to sue him, and refused to take a COVID-19 test during "an outbreak on the unit." Respondent also testified in her defense.

¶ 4 The trial court found that Respondent had a mental illness, was dangerous to others (making no finding that she was a danger to herself), and committed her to an inpatient facility for a period not to exceed fourteen (14) days. In its Order, the trial court incorporated a previous psychiatric report filed on 4 January 2021. Respondent appealed to our Court.

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[1] However, the trial court's Order denies a motion to dismiss apparently made by Respondent's counsel.

II. Analysis

¶ 5 Respondent makes several arguments on appeal.[2] Because we conclude Respondent's first issue warrants the vacation of the Order, as explained below, we will not address Respondent's other arguments.

¶ 6 Respondent argues that the trial court erred by involuntarily committing her when the court's findings of fact did not establish that she was dangerous to others. We agree.

¶ 7 Our Court reviews an involuntary commitment order "to determine whether there was *any* competent evidence to support the facts recorded in the . . . order and whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the facts recorded in the order." *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (emphasis in original) (internal quotation marks and citation omitted).

¶ 8 Here, the trial court found that Respondent was mentally ill *and* dangerous to others. Respondent only challenges the portion of the finding that she is a danger to others. Our General Statutes define "dangerous to others" as:

> Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict *serious bodily*

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[2] We note that Respondent's appeal is not moot despite the expiration of her period of involuntary commitment. *See In re Whatley*, 224 N.C. App. 267, 270, 736 S.E.2d 527, 529 (2012) (holding that prior discharge from involuntary commitment does not render an appeal moot).

> *harm* on another, or has acted in such a way as to create a substantial risk of *serious bodily harm* to another, or has engaged in extreme destruction of property; and that there is a *reasonable probability that this conduct will be repeated*. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

N.C. Gen. Stat. § 122C-3(11)(b) (2020) (emphasis added).

¶ 9 This case is similar to a recent case from our Court: *In re A.S.*, 2021-NCCOA-585, 866 S.E.2d 904. In that case, the respondent also refused medication, was verbally abusive to medical staff, and threatened to sue a psychiatrist. *Id.* at ¶ 32. However, the trial court also heard evidence that he had burned furniture and assaulted his mother before being admitted to the hospital and was being sequestered from other patients on the unit. *Id.* at ¶ 2, 32. The trial court considered this evidence in finding that the respondent was a current and future danger to others. *Id.* at ¶ 34.

¶ 10 Here, the trial court's findings fail to establish that Respondent was (1) currently a danger to others or (2) that there was a reasonable probability that she would be a danger to others in the future. Section 122C-3(11)(b) requires both elements to be satisfied. If we consider that the only evidence of "dangerousness to others" was Respondent's "screaming and cussing and yelling" and refusing to take a COVID-19 test while there was an outbreak on the unit, these actions fall short of

what is required.

¶ 11 Similarly, Respondent's threat to sue her psychiatrist is not "a substantial risk of serious *bodily* harm[.]" N.C. Gen. Stat. § 122C-3(11)(b) (emphasis added). We further note that refusal to take medication does not support a dangerousness to others finding. *See In re McCray*, COA09-1623, 2010 N.C. App. LEXIS 1086 at *10 (N.C. Ct. App. July 6, 2010) (unpublished) ("We are directed to no authority for the proposition that refusal of medical treatment constitutes a danger *to others* sufficient to satisfy the statute.").

¶ 12 The State argues that refusing to take a COVID-19 test in the middle of an outbreak on a patient's unit "on its own, consists of being dangerous to others." The State does not cite any authority for this contention, perhaps in part because legal issues from the COVID-19 pandemic are just starting to travel to our appellate courts. However, we decline to subscribe to a bright-line rule without further evidence that Respondent was creating a substantial risk of bodily harm to people around her.

¶ 13 At any rate, the trial court also failed to indicate in its findings that any "dangerous to others" behavior was likely to be repeated in the future. For these reasons, we vacate the trial court's Order.

III. Conclusion

¶ 14 There might be sufficient evidence from which the trial court could have concluded that Respondent needed to be involuntarily committed. However, the trial

court's findings regarding Respondent's dangerousness to others *do not* support this conclusion. Therefore, we vacate and remand the Involuntary Commitment Order to the trial court for further proceedings. On remand, the trial court may make findings of fact to support its conclusion of law or make other conclusions of law or may conduct a new hearing.

VACATED AND REMANDED.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).