IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-466

No. COA22-54

Filed 5 July 2022

Granville County, No. 21 SPC 50,503

IN THE MATTER OF: L.L.

Appeal by respondent from order entered 11 March 2021 by Judge John W. Davis in Granville County District Court. Heard in the Court of Appeals 7 June 2022.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for respondent-appellant.

ARROWOOD, Judge.

¶ 1 Respondent appeals from the trial court's involuntary commitment order. Respondent contends the trial court's findings of fact did not establish that he was dangerous to others. Respondent has additionally filed a petition for *writ of certiorari* requesting review. For the following reasons, we grant the petition and affirm the trial court's order.

I. Background

¶ 2 In August 2020, a Guilford County grand jury charged respondent with first-

degree murder and armed robbery. On 8 December 2020, Judge Lora Cubbage found that respondent was incapable to proceed and initiated commitment proceedings against him with a custody order. An initial commitment hearing was conducted in Granville County District Court on 31 December 2020, Judge Adam S. Keith presiding. Judge Keith concluded that respondent had a mental illness and was dangerous to himself and others, and committed respondent for a period of 60 days to Central Regional Hospital.

¶ 3 On 6 January 2021, Dr. James Byrne requested a re-hearing for respondent. The matter was heard in Granville County District Court on 11 March 2021, Judge Davis presiding.

¶ 4 At the hearing, Dr. Mark Snyder ("Dr. Snyder") testified that respondent had been diagnosed with schizophrenia and, in Dr. Snyder's opinion, was a danger to others at the time of the hearing. Dr. Snyder stated that respondent had a long history of mental illness, dating back to 2004, "characterized by disorganized thinking, hallucinations, and significant aggressive behavior including multiple staff assaults over the years." Dr. Snyder also stated that respondent had been detained multiple times by the Greensboro Police Department "and, on one occasion, the U.S. Marshalls [sic] after carrying a sword on the streets of Greensboro. His explanation at the time was that he was out there trying to kill demons, and he explained further that demons are other people." Dr. Snyder stated that, "without adequate medication

treatment, [respondent] . . . has shown a significant aggression here, and that is extremely likely to reoccur. That has been his pattern."

¶ 5 Regarding respondent's initial commitment period, Dr. Snyder testified that respondent initially responded well but began refusing treatment on 15 February 2021; he had no incidents for the following fourteen days, but experienced a "marked decompensation" on 1 March 2021. Dr. Snyder stated that respondent "became agitated, combative, and required manual holds and seclusion" during a forced medication administration, which Dr. Snyder acknowledged went against respondent's religious beliefs.

¶ 6 Respondent began his testimony by stating that he "[did] not have any mental health issues." Regarding the forced medication, respondent stated that Dr. Snyder told him "that Dr. Maddox ha[d] ordered him to give [respondent] a forced medication that morning before court[,]" and that when they forced the medicines on him, he submitted to the medication and asked to speak with Dr. Maddox in the morning. Respondent testified that when staff members arrived to force-medicate him again the following morning, they "surrounded [him] like a gang[,]" and respondent "defended [him]self." Respondent stated that when he pushed one of the staff members away, several other staff members grabbed his arms and legs, forced him to the ground, and injected the medication. Respondent testified that he told the head nurse that he was not going to fight anymore " [']because I cannot defeat eight men

forcing medicines on me.' "

¶ 7 At the conclusion of the hearing, the trial court re-committed respondent. The trial court made the following oral findings of fact:

> [Respondent] is refusing further stay at the facility.
>
> He is at the facility, among other reasons, as being found incapable to proceed with regards to criminal matters pending in, it looks like, Guilford County possibly. And he has been diagnosed with a mental illness, the same being schizophrenia.
>
> The Respondent adamantly denies that he has schizophrenia and that such a diagnosis infringes upon his constitutional rights and is a slander of his being. He denies having any type of mental illness.
>
> While in the facility, most recently . . . on or around February 15th of this year, the Respondent began refusing medications. Subsequently to that, based on an order either of Dr. Snyder or Dr. Maddox, according to the Respondent, forced meds were employed by – attempted to be employed by hospital staff. During that period when [respondent] was told that and when staff members approached him, there was . . . evidently a large tussle, and Respondent assaulted or attempted to assault several staff members during the injection implementation.
>
> That occurred last week, and [respondent] pushed staff members, and at least three to four, according to what I heard during the testimony of Dr. Snyder – possibly up to eight as I heard [respondent]'s testimony – staff members were required to restrain him.
>
> . . . .
>
> Additionally, in another incident while not in the facility, [respondent] was found walking in public with a sword,

> brandishing a sword and indicating that he was slaying demons.
>
> Based on all these factors, the Court finds that the grounds for continued inpatient commitment have been met, that he's a danger to others, and further stay at the facility is appropriate for up to 90 days.

¶ 8 The trial court made similar findings in its written involuntary commitment order. In its conclusions of law, the trial court checked boxes indicating that respondent had a mental illness and was dangerous to himself; this appears to be a clerical error, as the trial court's oral findings were directed toward respondent's danger to others.

¶ 9 Respondent filed notice of appeal on 18 March 2021. Although respondent's attorney signed the notice of appeal, the attorney did not sign the certificate of service. In light of this defect, respondent filed a petition for *writ of certiorari* on 14 February 2022.

II. Discussion

¶ 10 Respondent contends the trial court erred in involuntarily committing him because the trial court's findings of fact did not establish that he was dangerous to others. We must first address the issue of appellate jurisdiction and respondent's petition for *writ of certiorari*.

A. Appellate Jurisdiction

¶ 11 Under the Rules of Appellate Procedure, a notice of appeal "shall specify the

party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal[.]" N.C.R. App. P. 3(d). However, "writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C.R. App. P. 21(a)(1). Additionally, "a party upon whom service of notice of appeal is required may waive the failure of service by not raising the issue by motion or otherwise and by participating without objection in the appeal[.]" *Hale v. Afro-Am. Arts Int'l, Inc.*, 335 N.C. 231, 232, 436 S.E.2d 588, 589 (1993).

¶ 12 In this case, the certificate of service for respondent's notice of appeal did not contain his attorney's signature, and accordingly does not comply with Rule 3. However, the State has had several opportunities to object to inadequate notice of appeal but has not done so. In response to the petition, the State contends the jurisdictional default requires dismissal of the appeal but that the decision to allow the petition is in this Court's discretion. Based on the circumstances, we grant respondent's petition for *writ of certiorari* and proceed to the merits of his appeal.

B. Involuntary Commitment

¶ 13 Respondent contends the trial court's findings of fact did not establish that he was dangerous to others. We disagree.

¶ 14 "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 B.S.*, 270 N.C. App. 414, 417, 840 S.E.2d 308, 310 (2020) (citations omitted).

¶ 15 "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 . . . or dangerous to others . . . ." N.C. Gen. Stat. § 122C-268(j) (2021). Unchallenged findings of fact are "presumed to be supported by competent evidence and [are] binding on appeal." *In re Moore*, 234 N.C. App. 37, 43, 758 S.E.2d 33, 37 (2014) (citation and quotation marks omitted). On appeal, "[w]e do 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." *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (citation omitted).

¶ 16 A respondent is dangerous to others if,

> [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, 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.

N.C. Gen. Stat. § 122C-3(11)(b) (2021).

¶ 17 Respondent argues "the trial court failed to make any findings demonstrating" that he met the statutory definition for dangerousness to others. Respondent emphasizes that he pushed hospital staff members to defend himself during a forced medication but did not threaten, attempt, or actually inflict serious bodily harm or create a substantial risk of the same.

¶ 18 In support of a conclusion that respondent was dangerous to others, the trial court found that respondent had physically assaulted several staff members and needed to be physically restrained by several other staff members. At the hearing, Dr. Snyder testified that respondent had become agitated, assaulted multiple hospital staff during a forced medication administration, and expressed his desire to not be force-medicated. Dr. Snyder also stated that if respondent did not receive adequate medical treatment, respondent's violent behavior was "extremely likely to reoccur."

¶ 19 Although respondent's argument focuses on the lesser harms that occurred during the forced medication administration, the trial court heard Dr. Snyder's testimony, as well as previous episodes where law enforcement officers encountered respondent in the street with a sword, apparently trying to "slay demons," which

respondent explained were people. This behavior presents a substantial risk of serious bodily harm, and evidence of respondent's refusal to accept medication and denial of his diagnosed mental illness also indicate a reasonable probability that this conduct will be repeated. Accordingly, the trial court's findings were sufficient to support the involuntary commitment order.

III. Conclusion

¶ 20 For the foregoing reasons, we affirm the trial court's order.

AFFIRMED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).