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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-571

No. COA21-739

Filed 16 August 2022

Granville County, No. 12 SPC 337

IN THE MATTER OF: H.K.Q.

Appeal by Respondent from order entered 11 March 2021 by Judge Orlando F. Hudson, Jr., in Granville County Superior 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 John F. Carella, for Respondent.

GRIFFIN, Judge.

¶ 1 H.K.Q. ("Respondent") appeals from the trial court's order recommitting him to the forensic unit at Central Regional Hospital for an additional year. On appeal, Respondent argues that the trial court failed to make adequate findings of fact to establish that he is still a danger to others, and that the court's findings are not supported by the record. We affirm.

I. Factual and Procedural History

¶ 2 In December 2011, Respondent was under the influence of synthetic marijuana when he approached a woman sitting in her car in her driveway. Respondent, believing that the woman was a demon, attacked the woman and pulled her out of her car. Respondent was charged with two counts of kidnapping, two counts of assault on a female, felony attempted larceny, and felonious restraint. In August 2012, after being found not guilty by reason of insanity, Respondent was involuntarily committed to Central Regional Hospital, where he has remained since.

¶ 3 During Respondent's most recent recommitment hearing, on 29 January 2021, the court heard evidence as follows:

¶ 4 Dr. Reem Utterback, the hospital's attending psychiatrist, testified that Respondent has a long history of mental illness. Namely, Respondent has been diagnosed with schizophrenia. He further testified that Respondent would likely be a danger to others if released considering "it is highly likely that he will use substances again and stop taking his medication." In support of this contention, Dr. Utterback cited Respondent's history of violence prior to hospitalization as well as various infractions during Respondent's hospitalization.

¶ 5 During his treatment, Respondent was found to have smuggled synthetic marijuana into the hospital and to have engaged in a sexual relationship with a female patient in violation of hospital rules. Based on Respondent's mental illness,

history of violence, and recorded infractions at the hospital, Dr. Utterback recommended that Respondent be recommitted for another year.

¶ 6 Respondent's mother testified that Respondent had a strong support system available to him at home. If released, Respondent would be permitted to live with his parents under their supervision. Respondent's mother further testified that she would ensure Respondent was receiving appropriate medical attention and care. Respondent, echoing his mother's testimony, testified that he was committed to taking his medication and abiding by the necessary rules of his treatment at home.

¶ 7 On 29 January 2021, the trial court ordered in open court that Respondent would be recommitted to the hospital for another term. On 11 March 2021, the trial court entered a written order (the "Commitment Order"), finding that Respondent's history of violent acts and substance abuse, violations of hospital rules, and continued symptoms of schizophrenia supported further involuntary commitment. Based on these findings of fact, the trial court concluded that Respondent had failed to show by a preponderance of the evidence that he no longer suffered from a mental illness or that he was no longer dangerous to others. Accordingly, the trial court ordered that Respondent be recommitted to the forensic unit at Central Regional Hospital for an additional year. Respondent appeals.

II. Analysis

¶ 8 Respondent argues that the Commitment Order did not contain adequate

findings of fact to establish that he is still a danger to others, and that the court's findings are not supported by the record. We disagree.

A. Mootness

¶ 9 We first note that, even though the term of commitment ordered by the Commitment Order expired on 29 January 2022, Respondent's appeal is not moot. The Supreme Court of North Carolina has held that an appeal from a commitment order is not moot, even though the term of commitment has expired, due to "[t]he possibility that [the] respondent's commitment in this case might likewise form the basis for a future commitment, along with other obvious collateral legal consequences[.]" *In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977).

B. Standard of Commitment

¶ 10 At least fifteen days prior to the expiration of a term of involuntary commitment, a respondent who was committed as an insanity acquittee must receive a recommitment hearing. N.C. Gen. Stat. § 122C-276.1 (2021). During a recommitment hearing, "[t]he respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness . . . or (ii) is no longer dangerous to others[.]" *Id.* § 122C-276.1(c). The trial court is required to enter a written order recording its ultimate findings of mental illness and dangerousness to others, as well its findings of fact on which those ultimate findings are based. *See In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016).

¶ 11 "On appeal of a commitment order our function is to determine whether there was any competent evidence to support the 'facts' recorded in the commitment order and whether the trial court's ultimate findings of mental illness and danger[] to self or others were supported by the 'facts' recorded in the order." *Matter of Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (citation omitted). "It is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof." *Id.*

¶ 12 Respondent does not contest the trial court's findings regarding his mental illness or the trial court's conclusion that Respondent did not prove that he was no longer mentally ill. Therefore, those findings are binding on appeal, and support the trial court's conclusion. *See In re Zollicoffer*, 165 N.C. App. 462, 469, 598 S.E.2d 696, 700 (2004). Accordingly, we review only whether the trial court's written findings of fact supported its finding that Respondent was dangerous to himself or others.

C. Dangerous to Others

¶ 13 Respondent argues that the trial court failed to make adequate findings of fact to establish that he is still dangerous to others, and that the court's findings are not supported by the record.

¶ 14 N.C. Gen. Stat. § 122C-3 defines "[d]angerous to others" to mean:

> [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) (2021). "Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct." *Id.*

¶ 15 Respondent challenges findings of fact 4 and 5 of the Commitment Order, which found:

> 4. Respondent was found not guilty by reason of insanity following an incident where Respondent had a mental break and Respondent pulled a citizen who was in her vehicle out of the citizen's car. The citizen was in her driveway at the time. At the time of the incident, Respondent believed the citizen was a demon. This Court finds this incident to have occurred in the relevant past.
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> 5. Respondent has a history of substance abuse. Respondent has had several infractions while on the Forensic Unit for various violations. As a result, there is a reasonable question as to whether Respondent would take his medication in a setting that lacks the structure of the Forensic Unit. If Respondent stopped taking his medication, his symptoms would likely return. Moreover, given Respondent's history of violence there is a reasonable probability that he would inflict, attempt to inflict, or threaten to inflict serious bodily harm on another in the near future if discharged or conditionally released at this time.

¶ 16 Finding of Fact 4 is supported by competent evidence. Evidence produced at Respondent's rehearing demonstrates that Respondent has previously engaged in

violent acts. Namely, the 2011 incident, in which Respondent attacked a woman in her driveway while under the influence of synthetic marijuana. During this incident, Respondent believed the woman was a demon and forcibly removed her from her car.

¶ 17 Respondent contends that this incident is not "in the relevant past" and it was therefore inappropriate for the trial court to consider the incident when assessing future dangerousness. In support of this contention, Respondent cites *Davis v. N.C. Dep't of Human Res.,* 121 N.C. App. 105, 115, 465 S.E.2d 2, 8 (1995). However, Respondent's reliance on this case is misplaced. In *Davis*, the Court noted that "[w]e do not attempt to define the term ["relevant"] with any greater degree of preciseness and each case must be viewed on its own facts in determining whether violent acts are relevant to the inquiry of involuntary commitment." *Id.* What is in the "relevant past" is not bound by any particular span of time, but depends instead on the specific facts of each case.

¶ 18 Here, the incident in question is relevant because it resulted in severe injury to another person and occurred when Respondent was abusing the same substance he has abused during his period of commitment in the hospital. Those facts have probative value on whether a reasonable probability exists that Respondent will engage in future violent behavior if released without supervision. The 2011 incident is relevant to the inquiry of involuntary commitment when viewing the incident in conjunction with Respondent's present mental illness and conduct since admission to

the hospital. Viewing this case on its own facts, Finding of Fact 4 is supported by competent evidence from which the trial court could conclude that the 2011 incident was within the relevant past.

¶ 19 Finding of Fact 5 is also supported by competent evidence. The evidence produced at Respondent's rehearing demonstrates that Respondent has a history of substance abuse and misconduct. Respondent was under the influence of synthetic marijuana when he attacked a woman in her driveway. The evidence produced at the rehearing demonstrated that Respondent has continued his use of synthetic marijuana while in treatment. This evidence supports the trial court's finding that a relapse could result in Respondent engaging in future dangerous conduct.

¶ 20 Furthermore, several medical professionals testified that Respondent has ongoing issues with mental illness and could in fact be a danger to members of the community. In particular, Dr. Utterback testified that "it is highly likely that [Respondent] will use substances again and stop his medication." Dr. Utterback further testified that it is his recommendation that Respondent continue treatment for another year. This evidence is also sufficient to support the trial court's Finding of Fact 5. We hold that both challenged findings are supported by competent evidence.

D. Unresolved Evidence

¶ 21 Respondent's second argument contends that the trial court failed to resolve

all disputed evidence and therefore did not make sufficient findings of fact to support its conclusions of law. We disagree.

¶ 22 "The trial court is not required to make a finding as to every fact that arises from the evidence but only to those facts which are material to the resolution of the dispute." *Church v. Church*, 119 N.C. App. 436, 438, 458 S.E.2d 732, 734 (1995) (citation omitted). Here, all material evidence presented at trial is adequately reflected in the Commitment Order's findings of fact and is sufficient to support the trial court's conclusions that Respondent failed to show he was no longer mentally ill or dangerous to others, and that one more year of involuntary commitment was warranted. Although Respondent contends that his evidence should have been given greater weight and reflected in the Commitment Order, this Court will not re-weigh the evidence produced at the rehearing. That duty is for the trier of fact alone. *Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74; *see Matter of Underwood,* 38 N.C. App. 344, 347–48, 247 S.E.2d 778, 780–81 (1978).

III. Conclusion

¶ 23 For the forgoing reasons, the trial court's involuntary commitment order is affirmed.

AFFIRMED.

Judges INMAN and HAMPSON concur.

Report per Rule 30(e).