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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-723

No. COA22-272

Filed 1 November 2022

Wayne County, No. 21 SPC 50172

IN RE: W.C.F.

Appeal by respondent from involuntary commitment order entered 7 October 2021 by Judge Charles P. Gaylor, III, in Wayne County District Court. Heard in the Court of Appeals 5 October 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Rachel A. Brunswig, for petitioner.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for respondent.

ARROWOOD, Judge.

¶ 1 W.C.F. ("respondent") appeals from an involuntary commitment order committing him to an inpatient facility for a period not to exceed 45 days. For the following reasons, we affirm.

I. Background

¶ 2 On 14 May 2021, District Court Judge Lindsey L. McKee signed an involuntary commitment custody order finding respondent incapable of proceeding to

trial on charges pending in New Hanover County. The court based its order on the forensic evaluation of Dr. Thomas D. Owens conducted on 3 March 2021. Respondent was then held in the New Hanover County Detention Facility from 14 May 2021 until he was transferred to Cherry Hospital on 30 September 2021. Upon arrival at Cherry Hospital, respondent was initially examined and evaluated by Dr. Suneetha Mattegunta and later examined by Dr. Brian Moore ("Dr. Moore") on 5 October 2021. After the examination, Dr. Moore recorded the following:

> [Respondent] is a 52-year-old man with a history of schizoaffective disorder . . . who presented to Cherry Hospital on incapable to proceed status with current legal charges including assault inflicting physical injury on emergency personnel. He is irritable, hyperverbal, and accusing numerous individuals of mistreatment of him. He has poor insight into his illness and need for medication, and is requiring forced medication. He requires inpatient hospitalization for safety, stabilization, management, and capacity restoration.

The form completed by Dr. Moore also stated that based on his evaluation with respondent, respondent was "an individual with a mental illness" and was dangerous to himself as well as a danger to others. Additionally, it was Dr. Moore's medical opinion that respondent suffered from schizoaffective disorder of the bipolar type. Based on his evaluation he recommended respondent be committed to an inpatient facility for 90 days.

¶ 3 On 7 October 2021, a hearing on the involuntary commitment order was held remotely, Judge Gaylor presiding. Dr. Moore and respondent were the only witnesses to testify.

¶ 4 At the conclusion of the hearing, Judge Gaylor issued an amended involuntary commitment order which incorporated by reference the above report, findings, and recommendations of Dr. Moore. The court's order found that respondent has a mental illness and is dangerous to self and others as defined in N.C. Gen. Stat. § 122C-3(11). The order further stated that respondent is to be committed to an inpatient facility for a period not to exceed 45 days. Respondent gave notice of appeal on 19 October 2021.

II. Discussion

¶ 5 This Court has previously explained the standard of review for involuntary commitment orders as follows:

> 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 dangerous[ness] to self or others were supported by the facts recorded in the order . . . . 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) (citations and quotation marks omitted).

A. Findings of Fact

¶ 6 "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." *In re Q.J.*, 278 N.C. App. 452, 2021-NCCOA-346, ¶ 26 (citation omitted). "Findings of mental illness and dangerousness to self [or others] are ultimate findings of fact." *Id.* (citation omitted). Thus, we limit our review to the trial court's ultimate findings. *See In re Moore*, 234 N.C. App. 37, 43, 758 S.E.2d 33, 37-38 (2014).

¶ 7 Additionally,

> the trial court must satisfy two prongs when finding a respondent is a danger to self or others[.] 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. 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.

In re Q.J., ¶ 25 (citations, brackets, and internal quotation marks omitted).

¶ 8 Respondent contends the trial court's commitment order was not supported by competent evidence where it based its ultimate findings of mental illness and danger to self or others solely on the incorporated report of Dr. Moore. Respondent first argues the report by Dr. Moore was not admitted for substantive purposes. However,

this Court does not look beyond the trial court's order. "Whether or not there was sufficient competent evidence presented during the [7 October 2021] hearing . . . we do not determine[.]" *In re Booker*, 193 N.C. App. 433, 437, 667 S.E.2d 302, 304-305 (2008). As it is not the role of this Court to consider evidence of "respondent's mental illness and dangerousness[,]" but to determine whether the trial court's "ultimate findings . . . were supported by the 'facts' recorded in the order." *In re Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74 (citing *In re Underwood*, 38 N.C. App. 344, 347-48, 247 S.E.2d 778, 781 (1978)).

¶ 9 The trial court, in its order, checked the box on the printed form that reads: "[b]ased on the evidence presented, the [c]ourt by clear, cogent, and convincing evidence, finds as facts all matters set out in the commitment examiner's report . . . and the report is incorporated by reference as findings." Dr. Moore's examination of respondent was conducted two days prior. As stated above, it was Dr. Moore's medical opinion that respondent was "irritable, hyperverbal, and accusing numerous individuals of mistreatment of him." Dr. Moore concluded respondent had "poor insight into his illness[,]" required "forced medication[,]" and ultimately needed "inpatient hospitalization for safety, stabilization, management, and capacity restoration."

¶ 10 Dr. Moore also believed respondent's medical condition made him a danger to himself as well as a danger to others. Furthermore, Dr. Moore considered

respondent's condition to be serious enough to recommend a three-month inpatient commitment. As our review is limited to "whether there was *any* competent evidence to support the 'facts' recorded in the commitment order[,]" respondent's argument is overruled. *See In re Collins*, at 246, 271 S.E.2d at 74 (emphasis in original).

B. N.C. Gen. Stat. § 122C-263(b)

¶ 11 Respondent next contends that a statutory violation occurred when he was kept at the New Hanover County Detention Facility for four months prior to the hearing on the custody order entered by Judge McKee. Specifically, respondent contends it was error for Judge Gaylor to not dismiss the custody order which initiated the commitment proceedings. Thus, respondent argues the only appropriate remedy on appeal is reversal of Judge Gaylor's involuntary commitment order. We disagree.

¶ 12 First, we acknowledge that we review alleged statutory violations *de novo*. *State v. Johnson*, 253 N.C. App. 337, 345, 801 S.E.2d 123, 128 (2017) (citation omitted). "Alleged statutory errors are questions of law," thus, this Court "[considers] the matter anew and freely substitut[es] our own judgment for that of the trial court." *State v. Alexander*, 274 N.C. App. 31, 38, 851 S.E.2d 411, 416-17 (2020) (citation omitted).

¶ 13 Respondent argues that a violation of N.C. Gen. Stat. § 122C-263(b) entitles him to reversal on appeal, however, he fails to provide definitive case law confirming

this principle. Instead, he relies on a separate and distinct subsection of the statute to insist that Judge Gaylor had the authority to dismiss the custody order, release respondent, and terminate the commitment proceedings initiated by Judge McKee. This is incorrect.

¶ 14 Our case law establishes that "one superior court judge may not ordinarily modify, overrule, or change the judgment or order of another superior court judge previously entered in the same case." *In re Royster*, 361 N.C. 560, 563, 648 S.E.2d 837, 840 (2007). This rule also applies to district court judges. *See Town of Sylva v. Gibson*, 51 N.C. App. 545, 548, 277 S.E.2d 115, 117, *appeal dismissed and disc. review denied*, 303 N.C. 319, 281 S.E.2d 659 (1981).

¶ 15 The statute respondent relies on to support his argument in pertinent part provides:

> Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a commitment examiner shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent the initiation of new involuntary commitment proceedings when appropriate.

N.C. Gen. Stat. § 122C-263(d)(2) (2021). As previously stated, respondent offers no case law or general statute to show support for the contention that Judge Gaylor had the authority to dismiss the custody order due to a delay in arriving at Cherry Hospital. Also, he was not being "detained temporarily" awaiting a bed in a 24-hour facility. He was being held pursuant to a lawful order of a district court judge that found him incapable of proceeding to trial on a violent offense. Additionally, respondent was charged with a violent crime and Judge McKee's order stated:

> Criminal charges are still pending against the respondent. If defendant-respondent is released he/she must be released to [New Hanover County Sheriff's Office]. If the defendant-respondent is not charged with a violent crime and no law enforcement agency is specified, you may release him/her to whomever you think appropriate. You *must* examine the defendant-respondent to determine whether he/she has gained the capacity to proceed to trial *prior to releasing* him/her from custody. A report of the examination must be provided to the court pursuant to G.S. 15A-1002.

(emphasis in original). Thus, Judge Gaylor did not err by not terminating the commitment proceedings as it would have "modif[ied], overrule[d], or change[d]" Judge McKee's custody order finding respondent incapable of proceeding to trial. *See In re Royster*, 361 N.C. at 563, 648 S.E.2d at 840. Respondent was properly held, evaluated, and found to still be a danger to himself and others because of his mental illness. The court properly ordered an additional commitment of 45 days.

¶ 16 Respondent further contends it was improper for Judge Gaylor to deny his request to stay at Cherry Hospital for two days. This argument is meritless. Our case law clearly establishes that in commitment proceedings, "[i]t is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof." *In re J.C.D.*, 265 N.C. App. 441, 450, 828 S.E.2d 186, 193 (2019) (citation omitted). As factual findings are weighed by the trial court, "the trial judge must determine which inferences shall be drawn and which shall be rejected." *Id.* (citing *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365-66 (2000)).

¶ 17 On review, it is not this Court's role to consider whether the trier of fact "properly adjudicated all the evidence under the applicable burden of proof and whether its findings of fact support its conclusions." *In re J.C.D.* at 450, 828 S.E.2d at 193. Rather, our function is "to determine whether the ultimate findings . . . support[] the trial court's underlying findings and whether those . . . findings, in turn, are supported by competent evidence." *In re A.J.D.*, 283 N.C. App. 1, 2022-NCCOA-258, ¶ 15 (citation omitted).

¶ 18 As stated previously, Dr. Moore's medical report contained sufficient "clear, cogent, and convincing evidence" to support the trial court's ultimate finding that respondent required inpatient commitment. N.C. Gen. Stat. § 122C-268(j) (2021). The fact that respondent lacks "insight into his illness . . . require[es] forced medication" and needs "inpatient hospitalization for safety, stabilization,

management, and capacity restoration" illustrates the trial court had sufficient evidence to reasonably determine respondent was in need of a 45-day inpatient commitment. Respondent's final argument is overruled.

III. Conclusion

¶ 19 We affirm the trial court's order committing respondent to an inpatient facility for a period not to exceed 45 days.

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).