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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-733

Filed 06 June 2023

Durham County, No. 22 SPC 567

IN THE MATTER OF: W.J.M.

Appeal by respondent from order entered 1 April 2022 by Judge Pat Evans in Durham County District Court. Heard in the Court of Appeals 9 May 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Farrah R. Raja, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for respondent-appellant.

TYSON, Judge.

W.J.M. (“Respondent”) appeals from an involuntary commitment order, which committed him to thirty (30) days of inpatient treatment. We vacate the trial court’s order and remand for dismissal.

I. Background

Respondent was diagnosed with and has a history of bipolar disorder with psychotic features. Respondent voluntarily presented to the emergency department at Duke Regional Hospital for assistance on 22 March 2022. Respondent complained of “racing thoughts,” including suicidal ideation to shoot himself with one of his

weapons. Respondent also had been perseverating on shooting others, but concluded he would avoid harming others if he shot himself. Respondent further stated people were putting thoughts into his head he cannot handle, and he was unable to sleep even after taking sleep medication.

Phillip Bryce Jones, MD examined Respondent on 22 March 2022 and observed him in a manic state, noted he was a danger to himself and others, and concluded he needed in-patient hospitalization. Dr. Jones filed an affidavit and petition for involuntary commitment on 24 March 2022. Max Schiff, MD conducted Respondent's second examination for involuntary commitment on 25 March 2023. Dr. Schiff indicated Respondent was suffering from mood and psychotic symptoms, including: paranoia, delusions, impulsivity, disorganization, and recent homicidal and suicidal ideation. Dr. Schiff documented concerns for Respondent's safety and his ability to care for himself.

A hearing was held on 1 April 2022 on the matter of Respondent's involuntary commitment. He was represented by counsel.

Tommy Fu, MD, Respondent's attending physician, testified Respondent had been admitted for disorganized thoughts and speech, which were consistent with a manic episode with psychotic features. Dr. Fu further testified, while Respondent's condition had improved since hospitalization, his condition had not fully stabilized and he was still a danger to himself and others. Dr. Fu testified Respondent had engaged in a physical altercation with a security guard on 28 March 2022.

Respondent testified on his own behalf. Respondent's testimony was rambling and at times he was not responsive to his counsel's questions. Respondent responded to his counsel's question about harming himself by asserting he had "too much to live for." When asked about harming others Respondent replied: "If I don't want to harm myself, I don't want to harm nobody else. I do respect blood." When asked to clarify what he meant by "blood," Respondent stated he respects "life."

The trial court filed a written order later that day. The trial court identified Dr. Schiff's commitment examination report in section 4 of its findings, but failed to check the box next to section 4 to indicate it had incorporated Dr. Schiff's written report into its findings of fact. The trial court made the following handwritten findings:

- Continues to exhibit disorganized thoughts and behaviors
- Had a physical altercation with security guard on March 28, 2022
- Not stabilized yet
- Discharge plan in place
- Respondent presented rambling, incoherent testimony

The trial court concluded Respondent was mentally ill and was a danger to others. The trial court ordered Respondent to be committed for thirty (30) days of in-patient treatment. Defendant appeals.

II. Jurisdiction

An appeal of right lies with this Court from a final judgment of involuntary commitment pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2) and 122C-272 (2021). “When a challenged order may form the basis for future commitment or may cause other collateral legal consequences for the respondent, an appeal of that order is not moot.” *In re Webber*, 201 N.C. App. 212, 217, 689 S.E.2d 468, 472-73 (2009). This appeal is properly before this Court “notwithstanding the fact that the period of [Respondent’s] involuntary commitment has ended.” *In re Whatley*, 224 N.C. App. 267, 270, 736 S.E.2d 527, 529 (2012) (citation omitted).

III. Issues

Respondent asserts the trial court’s findings of fact fail to support the conclusions of being dangerous to others. He claims the evidence and findings fail to draw the requisite “nexus between past conduct and future danger” as required to make and sustain such a conclusion. *In re J.P.S.*, 264 N.C. App. 58, 63, 823 S.E.2d 917, 921 (2019) (“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.”) (citation omitted)).

IV. Standard of Review

Respondent, like all individuals before the district court and this Court, is presumed to be sane and competent and is entitled to his liberty and right to be free of restraint. See N.C. Const. art. I, § 19 (“No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any

manner *deprived of his life, liberty, or property, but by the law of the land.*") (emphasis supplied); *Olmstead v. United States*, 277 U.S. 438, 478, 72 L. Ed. 944, 956 (1928) (Brandis, J., dissenting) (The founders "conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.").

The State's burden of proof to involuntarily deprive Respondent of his liberty demands competent and relevant evidence and findings of fact to be based upon clear, cogent, and convincing evidence at the involuntary commitment hearing. This Court reviews an involuntary commitment order "to determine whether the ultimate finding concerning the respondent's danger to self or others is supported by the court's underlying findings, and whether those underlying findings, in turn, are supported by [relevant, material, and] competent evidence." *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016) (citation omitted).

On issues of admission and credibility of the evidence, this Court does "not consider whether the evidence of respondent's mental illness and dangerousness was clear, cogent and convincing," *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980), as credibility "is for the trier of fact to determine." *In re Underwood*, 38 N.C. App. 344, 347, 247 S.E.2d 778, 781 (1978).

The trial court's conclusions of law to involuntarily commit and deprive Respondent of his liberty must be supported by its findings of fact and supporting evidence on each required statutory element and those conclusions are reviewed *de*

novo on appeal. *Id.* The State’s *quantum* of evidence must meet and sustain its clear, convincing, and competent burden of proof. *See* N.C. Gen. Stat. § 122C-268(j) (2021); *Woodard v. Mordecai*, 234 N.C. 463, 472, 67 S.E.2d 639, 645 (1951) (“Whether a statement is an ultimate fact or a conclusion of law depends upon whether it is reached by natural reasoning or by an application of fixed rules of law.”) (citations omitted)).

V. Dangerous to Others

An individual is “dangerous to others” when:

Within 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).

In order to conclude Respondent is dangerous to others, the trial court must find three elements and sub-elements:

- (1) within the [relevant] past
- (2) Respondent has
 - (a) inflicted serious bodily harm on another, *or*
 - (b) attempted to inflict serious bodily harm on another, *or*
 - (c) threatened to inflict serious bodily harm on another,

or

(d) has acted in such a manner as to create a substantial risk of serious bodily harm to another

(e) has engaged in extreme destruction of property, *and*

(3) There is a reasonable probability that such conduct will occur again.

In re Monroe, 49 N.C. App. 23, 30-31, 270 S.E.2d 537, 541 (1980) (emphasis supplied).

No finding of an overt act is required to support a conclusion that an individual is dangerous to others. *Id.* at 31, 270 S.E.2d at 541.

This Court has held a trial court may incorporate a physician's report into its findings of fact, but the district court here failed to do so. *In re Zollicoffer*, 165 N.C. App. 462, 468-69, 598 S.E.2d 696, 700 (2004). In this case, the only finding of fact relevant to the conclusion is: "Had a physical altercation with security guard on March 28, 2022." The order contains no explicit finding of Respondent's past conduct nor any reasonable finding of a probability of future harm to others, or "attempt[] to inflict or threat[] to inflict serious bodily harm on another." N.C. Gen. Stat. § 122C-3(11)(b).

The trial court's findings fail to support its conclusion Respondent was a danger to others absent involuntary commitment. The order must be vacated.

VI. Conclusion

The trial court's order does not sufficiently show Respondent will be a danger to others if released to support involuntarily depriving him of his liberty. N.C. Const.

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art. I, § 19; *In re Whatley*, 224 N.C. App. at 273, 736 S.E.2d at 531. The trial court's findings are insufficient to support the conclusion to involuntarily commit Respondent.

The involuntary commitment order is vacated. This matter is remanded to the trial court for dismissal. *It is so ordered.*

VACATED AND REMANDED.

Judges ARROWOOD and RIGGS concur.

Report per Rule 30(e).