IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-784

Filed: 19 December 2017

Wake County, No. 16 SPC 8154

IN THE MATTER OF: HORACE MEDLIN

Appeal by respondent from order entered 5 January 2017 by Judge Dan Nagle in Wake County District Court. Heard in the Court of Appeals 29 November 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert T. Broughton, for the State.

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

ARROWOOD, Judge.

Horace Medlin ("respondent") appeals from an involuntary commitment order ordering him to be involuntarily committed to an inpatient facility for a period of 30 days. For the following reasons, we affirm.

I. Background

An affidavit and petition for the involuntary commitment of respondent was executed on 6 December 2016 and later filed on 13 December 2016. As a result of the

petition, respondent was taken into custody, examined, and delivered to a 24-hour facility.

After several continuances, respondent's commitment hearing was held in Wake County District Court before the Honorable Dan Nagle on 5 January 2017. That same day, the trial court filed an order involuntarily committing respondent to an inpatient 24-hour facility for a period of 30 days on grounds that respondent "is mentally ill" and "is dangerous to self[.]" The determinations that respondent was mentally ill and dangerous to self were based on the following facts found by the trial court:

> Respondent has a historical diagnosis and current diagnosis of major neuro-cognitive disorder, a chronic, progressive, and degenerative disorder.
>
> Because of respondent's condition, he is unable due to severely impaired insight and judgment to care for himself without adequate structure and supervision.
>
> Respondent is unable to care for himself. Adequate care and supervision is not available from his family or from his prior placement. Respondent does not recognize his cognitive limitations. Without adequate care and supervision, respondent[] leaves his safe environment and becomes intoxicated, injures himself, and lives in the woods exposed to the elements.

Medlin filed notice of appeal on 27 January 2017.

II. Discussion

This Court has explained that

> "[o]n 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 to self or others were supported by the 'facts' recorded in the order. We 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 Whatley, 224 N.C. App. 267, 270-71, 736 S.E.2d 527, 530 (2012) (quoting *In re Collins*, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980) (citations omitted)).

In the present case, respondent does not challenge any of the trial court's findings of fact, but instead contends the trial court did not make sufficient findings of fact to support its conclusion, or the ultimate fact, *see In re Moore*, 234 N.C. App. 37, 43, 758 S.E.2d 33, 37 (defining ultimate facts), *disc. review denied*, 367 N.C. 527, 762 S.E.2d 202 (2014), that respondent "is dangerous to self." *See* N.C. Gen. Stat. § 122C-268(j) (2015) ("The court shall record the facts that support its findings."). Therefore, respondent claims the involuntary commitment order must be vacated. We are not convinced.

As this Court did in *In re Whatley*,

> [p]reliminarily, we note that [r]espondent's appeal is properly before us, notwithstanding the fact that the period of [his] involuntary commitment has ended. *In re Mackie*, 36 N.C. App. 638, 639, 244 S.E.2d 450, 451 (1978) (explaining that "a prior discharge will not render questions challenging the involuntary commitment proceeding moot"); *see also In re Webber*, 201 N.C. App. 212, 217, 689 S.E.2d 468, 472-73 (2009) (providing that "[w]hen

> the 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 Whatley, 224 N.C. App. at 270, 736 S.E.2d at 529. Thus, we proceed to review the merits of respondent's argument that the trial court failed to comply with the mandatory fact-finding provision of N.C. Gen. Stat. § 122C-268(j).

N.C. Gen. Stat. § 122C-268 governs inpatient commitment hearings in district court. The portion of the statute pertinent to this case provides as follows:

> (j) 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, as defined in [N.C. Gen. Stat. §] 122C-3(11)a., or dangerous to others, as defined in [N.C. Gen. Stat. §] 122C-3(11)b. The court shall record the facts that support its findings.

N.C. Gen. Stat. § 122C-268(j) (2015). Dangerous to self is defined in N.C. Gen. Stat. § 122C-3(11)(a) as follows:

> "Dangerous to himself" means that within the relevant past:
>
> 1. The individual has acted in such a way as to show:
>
> I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

> II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
>
> 2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
>
> 3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.
>
> Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

N.C. Gen. Stat. § 122C-3(11)(a) (2015).

There is no evidence and no findings of fact that respondent has attempted suicide or threatened suicide, or has mutilated himself or attempted to mutilate himself. Thus, our review of the trial court's findings is strictly limited to "dangerous to self" as defined in N.C. Gen. Stat. § 122C-3(11)(a)(1).

In arguing the trial court's findings were insufficient in this case, respondent primarily relies on this Court's decision in *In re Whatley*. In that case, the respondent

was involuntarily committed on grounds that she was mentally ill and dangerous to herself and others. *In re Whatley*, 224 N.C. App. at 270, 736 S.E.2d at 529. On appeal, this Court agreed with the respondent's argument "that the trial court erred in failing to record sufficient findings of fact in its order for involuntary commitment to support its conclusions that [r]espondent was dangerous to herself and others." *Id.* The facts found by the trial court in *In re Whatley* were as follows:

> Respondent was exhibiting psychotic behavior that endangered her and her newborn child. She is bipolar and was experiencing a manic stage. She was initially noncompliant in taking her medications but has been compliant over the past 7 days. Respondent continues to exhibit disorganized thinking that causes her not to be able to properly care for herself. She continues to need medication monitoring. Respondent has been previously involuntarily committed.

Id. at 271, 736 S.E.2d at 530. This Court further noted that "[t]he trial court also checked a box in its order indicating its intention to find 'as facts all matters set out in the physician's/eligible psychologist's report, specified below[.]' " *Id.* Although the trial court failed to specify the report incorporated, this Court assumed it was the most recent report, which included the following additional findings:

> Patient admitted [with] psychosis while taking care of her two month old son. She has a [history of] Bipolar [disorder]. She remains paranoid, disorganized, intrusive. She tells me that she does not plan to follow up as an outpatient. She has very poor insight [and] judgment and needs continued stabilization.

Id. at 272, 736 S.E.2d at 530.

Upon review of these findings, this Court addressed the trial court's ultimate finding that the respondent was dangerous to herself and held the findings were insufficient. This Court explained as follows:

> Our review of the trial court's findings, which we assume *arguendo* included the findings set out in [the] report, indicates that the second prong of the "dangerous to self" inquiry is not satisfied. In short, none of the court's findings demonstrate that there was "a reasonable probability of [respondent] suffering serious physical debilitation within the near future" absent her commitment. Each of the trial court's findings pertain to either [r]espondent's history of mental illness or her behavior prior to and leading up to the commitment hearing, but they do not indicate that these circumstances rendered [r]espondent a danger to herself in the future. For instance, the court's findings concerning [r]espondent's psychotic behavior, history of bipolar disorder, and "manic stage" reflect only the court's ultimate finding of mental illness, which [r]espondent does not contest. Similarly, the findings that [r]espondent "remain[ed] paranoid," "exhibit[ed] disorganized thinking," and demonstrated "very poor insight [and] judgment" describe [r]espondent's condition at the time of the hearing, but do not in themselves indicate that [r]espondent presented a threat of "serious physical debilitation" to herself within the near future. The trial court also found that [r]espondent needed medication monitoring and that she did not plan to follow up as an outpatient, but, again, there is no finding that connects these concerns with the court's ultimate finding of "dangerous to self" as defined in N.C. Gen. Stat. § 122C–3 (11)(a)(1). Simply put, the trial court's findings reflect [r]espondent's mental illness, but they do not indicate that [r]espondent's illness or any of her aforementioned symptoms will persist and endanger her within the near future. . . .

Id. at 272-73, 736 S.E.2d at 531.

Respondent specifically contends that, like in *In re Whatley*, there were no findings in this case establishing that absent commitment, there is a reasonable probability of respondent suffering serious physical debilitation in the near future, as required by N.C. Gen. Stat. § 122C-3(11)(a)(1). While there is no explicit finding that respondent would suffer serious physical debilitation in the near future, we hold the findings in this case are sufficient to support the trial court's ultimate finding that respondent is dangerous to self.

In *In re Moore*, this Court upheld an involuntary commitment order despite the trial court's failure to explicitly find that there was a reasonable probability of the respondent suffering serious physical debilitation in the near future. 234 N.C. App. at 44-45, 758 S.E.2d at 38. In doing so, this Court distinguished the facts from those in *In re Whatley*, explaining as follows:

> The *Whatley* court was concerned that the trial court's findings of fact were all focused on the respondent's past conduct and not about the respondent's potential future conduct. The facts before us are distinguishable from *Whatley* because, while the trial court did make findings of fact about respondent's past conduct, the trial court also made findings about respondent's likely future conduct. The trial court found that respondent "is at a high risk of decompensation if released and without medication," and that [the doctor] thought respondent, if released, would "relapse by the end of football season." As a result, the trial court's findings of fact indicate that respondent is a danger to himself in the future.

Id. at 44, 758 S.E.2d at 38 (citations omitted).

The trial court's findings in the present case are similarly distinguishable from *In re Whatley* and show that respondent's condition is likely to continue into the future and result in debilitative harm to respondent. First, the trial court indicated that respondent's diagnosed neuro-cognitive disorder was "a chronic, progressive, and degenerative disorder[,]" signifying respondent's condition will continue to deteriorate in the future. The court's findings further indicate that respondent is unable to care for himself because of his disorder, respondent does not have adequate care and supervision available, and absent adequate care and supervision, respondent "leaves his safe environment and becomes intoxicated, injures himself, and lives in the woods exposed to the elements." Considering these findings in combination, it is evident that respondent will continue to suffer from his major neuro-cognitive disorder and is likely to repeat his harmful actions without care and supervision, which are not available to him absent involuntary commitment.

The trial court's findings demonstrate that there is a reasonable probability that respondent will likely suffer serious physical debilitation absent commitment. Thus, we hold the trial court's findings are sufficient to support its ultimate finding that respondent is dangerous to himself.

III. Conclusion

For the reasons discussed above, we hold the trial court did not err in ordering respondent to be involuntarily committed.

AFFIRMED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).