IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-923

No. COA22-476

Filed 29 December 2022

Durham County, No. 21 SPC 2564

IN THE MATTER OF:

C.H.

Appeal by Respondent from order entered 10 January 2022 by Judge Pat Evans in Durham County District Court. Heard in the Court of Appeals 15 November 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Hilary R. Ventura, for the State.

Office of the Appellate Defender, by Assistant Appellant Defender Katy Dickinson-Schultz and Appellate Defender Glenn Gerding, for Respondent-Appellant.

INMAN, Judge.

¶ 1 Respondent C.H. appeals from an order involuntarily committing him for 30 days following his second of two recent suicide attempts. On appeal, Respondent argues that the trial court erred in: (1) incorporating the commitment examiner's report into the order without prior notice or affording Respondent the opportunity to cross-examine the examiner; (2) failing to make adequate findings in support of involuntary commitment; and (3) proceeding with the hearing and questioning

witnesses without participation from the State through the local district attorney's office. After careful review, we affirm the trial court's order.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 Respondent was admitted to Duke University Hospital in December 2021 following an attempted suicide by ingestion of 60 Percocet tablets. Dr. Shelby Powers performed a first examination for involuntary commitment on 21 December 2021 and found Respondent suffered from major depressive disorder with psychotic features based on the following observations:

> [Respondent] endorses some premeditation prior to overdose and some intention to repeat overdose if he is discharged from the hospital. He endorses hopelessness and he is certain at some point he will kill himself. He endorses depressed mood, fatigue, and global lack of joy. He lacks insight into the severity of his illness and asks to leave the hospital. Given his acutely elevated risk of harm to self he requires inpatient psychiatric admission for safety and stabilization.

¶ 3 On 23 December 2021, Respondent was examined by Dr. Shi Xun Fang at Duke Regional Hospital. The exam showed that Respondent suffered from unspecified psychosis based on the following:

> [Respondent] states that his "soul has left his body" and that he "feels no emotions." He currently has little insight with regards to his mental health, stating that he is experiencing this because he is "cursed" and that medications would not help him. Considering the severity and lethality of his recent attempt, continued delusions, refusal to engage with treatment, [and] little insight, he is

> at high risk of harm to self and requires inpatient hospitalization.

¶ 4 The trial court conducted an involuntary commitment hearing on 7 January 2022. The local district attorney's office declined to participate and Respondent moved to dismiss the proceedings on that basis. The trial court denied that motion before taking testimony from Dr. Sandra Brown, Respondent's treating psychiatrist at Duke Regional Hospital.

¶ 5 Dr. Brown testified that the involuntary commitment petition stemmed from Respondent's second suicide attempt in six months. The first attempt was less severe than the second, as he had ingested 15—as opposed to 60—Percocet tablets. Dr. Brown further testified that, at the time of the first attempt, Respondent "was expressing a lot of delusional thinking, feeling paranoid that someone was out to get him, reports of feeling like his soul wasn't connected to his body." After Respondent was discharged for the first attempt, "he was lost to follow-up care, stopped taking medication, stopped going into his outpatient appointments, and then came back in with his second, more serious suicide attempt, where he required Narcan for resuscitation, and then an ICU stay for a Narcan drip."

¶ 6 Dr. Brown also testified that the psychiatric symptoms precipitating both suicide attempts were similar, as "[h]e was again reporting feeling like he was—his soul wasn't connected to his body, that . . . he had no emotions." She confirmed that

Respondent was taking medication for his mood disorder and psychiatric illness and had shown some improvement; however, "his parents . . . do not feel like he is completely back to his usual self yet." Dr. Brown testified that the treatment team hoped to prescribe Respondent a long-acting form of his medication and continue after-care treatments like therapy to reduce the risk of discontinuation, as"[h]e's still having trouble connecting emotionally with everything that happened, still having trouble with insight as far as the need to continue treatment, some hesitancy around being allowed to meet with a therapist in the community."

¶ 7 On cross-examination, Dr. Brown confirmed that her principal concerns were:

> Follow-up treatment, further adjustment with the medication, and hoping to build further insight into treatment too, because I think right now if we were to leave, I don't feel confident he would continue to follow through. And given that there was a second suicide attempt, you know, we want to make sure that we do everything we can to put him in the best position going forward.

Then, in response to further questions from the trial court, Dr. Brown testified that she believed Respondent was a danger to himself.

¶ 8 Respondent testified in opposition to the petition. He denied suffering from any mental illness or mood disorder, as "they took blood work from me, to see if I had [an] underlying psychotic disorder or mental illness, and those tests came back negative. So, the notion that I have a mental disorder is very false. . . . I don't have

a mental disorder, nor do I have a mood disorder." He further testified that he would refuse to take any medication for such conditions, as "I have never been diagnosed with those symptoms." Respondent then contradicted himself moments later, testifying that his medications were helping him, that he felt much better as a result, and that he would continue taking them after his release from care.

¶ 9 As to his mental health and suicide attempts, Respondent testified that he attempted suicide because he suffered from sickle cell disease and "I have just been feeling emotionless—I was feeling emotionless . . . . So that's what led to it—you know, not being able to feel connected to my soul, and also dealing with constant pain[.]" He further testified that he did not believe the atmosphere and constraints of his care facility were helpful for his mental health, that he had a successful clothing and visual art business to return to, and that he would be willing to pursue therapy upon release.

¶ 10 At the conclusion of the hearing, the trial court announced its decision to involuntarily commit Respondent for up to 30 days and entered a written order to that effect on 10 January 2022, finding that Respondent was mentally ill and dangerous to himself. The trial court's order incorporated Dr. Fang's commitment report into its findings, and further found that: (1) Respondent was "[b]eing treated for unspecified psychosis and mood disorder[;]" (2) this was his second suicide attempt; (3) he showed "[c]ontinued delusional thinking[;]" (4) he was "[m]edication

non-compliant[;]" and (5) he "denies any mental illness[.]" Respondent gave written notice of appeal on 12 January 2022.

II. ANALYSIS

¶ 11 Respondent argues the trial court committed reversible error in: (1) incorporating Dr. Fang's report into its order in violation of his constitutional confrontation rights; (2) failing to make adequate factual findings to support involuntary commitment; and (3) proceeding with the involuntary commitment hearing and directly questioning witnesses in the State's absence. Because we hold Respondent has waived his constitutional argument, the trial court's findings are adequate to support the involuntary commitment, and Respondent's third argument is precluded by a recent decision of our Supreme Court, we affirm the trial court's order.

A. Standard of Review

¶ 12 Our standard of review on appeal from an involuntary commitment order challenging a finding of dangerousness to self is well-established: "We review the trial court's 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 competent evidence." *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016). We do not address the weight of the evidence on appeal, as "[i]t is for the trier of fact to

determine whether evidence offered in a particular case is clear, cogent, and convincing. Our function on appeal is simply to determine whether there was any competent evidence to support the factual findings made." *In re Underwood*, 38 N.C. App. 344, 347-48, 247 S.E.2d 778, 781 (1978) (citations omitted). Unchallenged findings are binding on appeal. *In re Zollicoffer*, 165 N.C. App. 462, 469, 598 S.E.2d 696, 700 (2004).

B. Admission of Dr. Fang's Report

¶ 13 Respondent first argues that because Dr. Fang did not appear or testify at trial, his report was incorporated into the trial court's order in violation of his constitutional confrontation rights. However, Respondent did not lodge any objection to the trial court's consideration or incorporation of the report into its order during the hearing. Nor did he object to Dr. Brown's testimony about the history recited in the report on the basis that she did not draft it. Under our appellate rules and related caselaw, constitutional arguments must be preserved for appellate review by objection. *See State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001) ("Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal." (citation omitted)). *See also* N.C. R. App. P. 10(a)(1) (2022) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . . ."). And while it is true that the trial court did not discuss the report during the hearing, Respondent nonetheless

had an opportunity to address the issue at the hearing; in fact, Respondent's counsel explicitly mentioned Dr. Fang's report in her questioning on cross-examination. We therefore hold this constitutional argument is waived.

¶ 14 Respondent seeks to apply an exception to this rule from *In re R.P.*, 252 N.C. App. 301, 798 S.E.2d 428 (2017), a juvenile abuse, neglect, and dependency proceeding. There, we noted the general rule regarding preservation of constitutional issues and our caselaw establishing that "a parent's right to findings regarding her constitutionally protected status is waived if the parent does not raise the issue before the trial court." *Id.* at 304, 798 S.E.2d at 430-31 (citation omitted). We ultimately declined to find a waiver, however, because the trial court in that case never held a proper hearing at which an objection could be lodged. *Id.* at 305, 798 S.E.2d at 431. That case is thus inapposite to the matter before us, which involves an entirely different area of law and a full hearing at which Respondent had an opportunity to raise his constitutional concern.

C. Adequacy of Underlying Findings of Fact

¶ 15 An individual may be involuntarily committed if the trial court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self or others. N.C. Gen. Stat. § 122C-271 (2021). Mental illness and dangerousness are "ultimate findings" that must be supported by adequate underlying findings of fact. *In re Whatley*, 224 N.C. App. 267, 271, 736 S.E.2d 527, 530 (2012). A respondent

is dangerous to self if "[w]ithin the relevant past, . . . the individual has attempted or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given." N.C. Gen. Stat. § 122C-3(11)(a)(2) (2021). In making such an ultimate finding, "[p]revious 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) (2021).

¶ 16 Respondent argues that the trial court's factual findings do not adequately "draw a nexus between past conduct and future danger." *In re J.P.S.*, 264 N.C. App. 58, 63, 823 S.E.2d 917, 921 (2019). We disagree. The trial court expressly found that this was his second suicide attempt and the other findings demonstrate Respondent continued to suffer from the same symptoms that precipitated both attempts.

¶ 17 The trial court's order includes an explicit finding that Respondent's "second suicide attempt" was a "fact[] supporting involuntary commitment." While Respondent asserts that this finding is inadequate because it fails to state exactly when the suicide attempts occurred, all the evidence establishes that the first and second attempts occurred within six months and three weeks of the hearing, respectively. Respondent did not introduce any evidence to the contrary, and admitted to the most recent attempt in his testimony. Thus, the trial court's finding could only refer to the attempts occurring in July and December 2021. Additionally, Dr. Fang's report referred to the second suicide attempt as "recent." Because the trial

court found as a fact that the two suicide attempts occurred and the uncontradicted evidence conclusively confirms the timeframe for those attempts, we have no difficulty holding that the trial court's findings establish two suicide attempts "within the relevant past" as provided by statute. N.C. Gen. Stat. § 122C-3(11)(a).

¶ 18 We further hold that the remaining findings are sufficient to demonstrate that "there is a reasonable probability of suicide unless adequate treatment is given." *Id.* Again, the trial court found that Respondent continued to suffer from "[d]elusional thinking ('soul not connected to body; others out to get him, etc.')," and was non-compliant with medication. Both Dr. Brown and Respondent testified that these thoughts and his prior lack of effective medication are what drove him to attempt suicide. The trial court's findings, viewed in light of the uncontradicted evidence and admitted facts that underly the findings, demonstrate and support the trial court's ultimate findings that Respondent was dangerous to himself given his recent past suicide attempts and the continuation of those circumstances that led to the attempts. Further, Dr. Fang's report stated that Respondent's continued delusions and refusal to engage in treatment, when considered alongside "the severity and lethality of [Respondent's] recent [suicide] attempt," placed him "at high risk of harm to self." As such, this case is distinguishable from those cases where neither the findings nor the evidence showed any relation between the respondent's condition at the hearing and a risk of future harm. *See, e.g., In re Whatley*, 224 N.C. App. at 273, 736 S.E.2d at

531 (holding findings merely "describ[ing] Respondent's condition at the time of the hearing" were inadequate to support ultimate finding of dangerousness to self when there were no findings "indicat[ing] that Respondent presented a threat . . . to herself within the near future").

D. State's Failure to Participate in the Hearing

¶ 19 Respondent's third argument, that the trial court violated his rights by proceeding with the hearing and questioning witnesses in the absence of participation by the State, was recently rejected by our Supreme Court under like circumstances in *In re J.R.*, 2022-NCSC-127. There, the trial court proceeded with an involuntary commitment proceeding absent participation from the State by calling a witness from the treating facility and asking neutral questions intended to clarify the witness's testimony. *Id.* ¶¶ 23, 25. Our Supreme Court held that this did not violate the respondent's due process rights because, "[b]y calling the witness . . . to testify and asking even-handed questions, the trial court did not advocate for or against the involuntary commitment of respondent; it merely heard evidence in conjunction with the contents of the petition and applied the law to the facts as presented." *Id.* ¶ 30.

¶ 20 The transcript in this case shows that the trial court proceeded with Respondent's commitment hearing in exactly the same manner as the judge in *J.R.*; indeed, the same trial judge presided over both commitments. Consistent with our Supreme Court's decision in *J.R.*, we hold the trial court did not violate Respondent's

due process rights here.

III. CONCLUSION

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

AFFIRMED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).