NO. 12-11-00089-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

THE STATE OF TEXAS	***§***	***APPEAL FROM THE***
FOR THE BEST INTEREST	***§***	***COUNTY COURT AT LAW***
AND PROTECTION OF C.B.	***§***	***CHEROKEE COUNTY, TEXAS***

MEMORANDUM OPINION

C.B. appeals from an order for temporary inpatient mental health services. In five issues, C.B. asserts the evidence is legally and factually insufficient to support the order for temporary inpatient mental health services, and that the statute violates federal and state guarantees of due process and equal protection. We reverse and render.

BACKGROUND

On March 1, 2011, an application for court ordered temporary mental health services was filed requesting the trial court to commit C.B. to the Rusk State Hospital (the Hospital) for a period not to exceed ninety days. At the time the application was filed, C.B. was a patient at the Hospital. The application was supported by two physician's certificates of medical examination for mental illness. The first certificate stated that, on February 28, 2011, Gary Paul Kula, M.D. evaluated and examined C.B. and diagnosed her with schizophrenia, paranoid. According to Dr. Kula, C.B. was mentally ill, and was suffering severe and abnormal mental, emotional, or physical distress; was experiencing substantial mental or physical deterioration of her ability to function independently; and was unable to make a rational and informed decision as to whether or not to submit to treatment. As the basis for this opinion, Dr. Kula reported that C.B. stated she did not want to be at the Hospital, and believed that schizophrenia was the wrong diagnosis.

Further, he stated that C.B. was paranoid, psychotic, hostile, and uncooperative, and was unable to provide for her own health and safety.

On March 1, 2011, Robert Bouchat, M.D. evaluated and examined C.B. and diagnosed her with schizophrenia. According to Dr. Bouchat, C.B. was mentally ill, and was suffering severe and abnormal mental, emotional, or physical distress; was experiencing substantial mental or physical deterioration of her ability to function independently; and was unable to make a rational and informed decision as to whether or not to submit to treatment. As the basis for this opinion, Dr. Bouchat reported that C.B. admitted feeling that people are "out to harm" her, and admitted being in recent intense conflict with her husband. Further, he stated that C.B. was paranoid and hostile, and was presently homeless, "in large measure due to her delusions."

The hearing on the application for court ordered temporary mental health services was held on March 8, 2011. After a hearing, the trial court found, by clear and convincing evidence, that C.B. was mentally ill, and was suffering severe and abnormal mental, emotional, or physical distress; was experiencing substantial mental or physical deterioration of her ability to function independently, exhibited by C.B.'s inability, except for reasons of indigence, to provide for her basic needs, including food, clothing, health, or safety; and was unable to make a rational and informed decision as to whether or not to submit to treatment. The trial court entered an order for temporary inpatient mental health services, committing C.B. to the Hospital for a period not to exceed ninety days. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

In her first issue, C.B. argues that the evidence is legally and factually insufficient to support the order for temporary inpatient mental health services. C.B. contends that the evidence did not establish, by clear and convincing evidence, an overt act or a continuing pattern of behavior that tended to confirm the likelihood that she might harm herself or others, or evidence that tended to confirm her distress and deterioration of her ability to function.

Standard of Review

In a legal sufficiency review where the burden of proof is clear and convincing evidence, we must look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its findings were true. ***In re J.F.C.***, 96 S.W.3d 256, 266 (Tex. 2002). We must assume that the fact finder settled

disputed facts in favor of its finding if a reasonable fact finder could do so and disregard all evidence that a reasonable fact finder could have disbelieved or found incredible. ***Id.*** This does not mean that we are required to ignore all evidence not supporting the finding because that might bias a clear and convincing analysis. ***Id.***

The appropriate standard for reviewing a factual sufficiency challenge is whether the evidence is such that a fact finder could reasonably form a firm belief or conviction about the truth of the petitioner's allegations. ***In re C.H.***, 89 S.W.3d 17, 25 (Tex. 2002). In determining whether the fact finder has met this standard, we consider all the evidence in the record, both that in support of and contrary to the trial court's findings. ***Id.*** at 27-29. Further, we must consider whether disputed evidence is such that a reasonable fact finder could not have reconciled that disputed evidence in favor of its finding. ***In re J.F.C.***, 96 S.W.3d at 266. If the disputed evidence is so significant that a fact finder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. ***Id.***

This standard retains the deference an appellate court must have for the fact finder's role. ***In re C.H.***, 89 S.W.3d at 26. Additionally, the trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony. ***Nordstrom v. Nordstrom***, 965 S.W.2d 575, 580 (Tex. App.–Houston [1st Dist.] 1997, pet. denied). Thus, our review must not be so rigorous that only fact findings established beyond a reasonable doubt could withstand review. ***In re C.H.***, 89 S.W.3d at 26.

Applicable Law

The trial judge may order a proposed patient to receive court ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that the proposed patient is mentally ill and, as a result of that mental illness, she is likely to cause serious harm to herself, is likely to cause serious harm to others, or is (i) suffering severe and abnormal mental, emotional, or physical distress, (ii) experiencing substantial mental or physical deterioration of her ability to function independently, which is exhibited by her inability, except for reasons of indigence, to provide for her basic needs, including food, clothing, health, or safety, and (iii) unable to make a rational and informed decision as to whether or not to submit to treatment. TEX. HEALTH & SAFETY CODE ANN. § 574.034(a) (West 2010).

To be clear and convincing under this statute, the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends

to confirm either the likelihood of serious harm to the proposed patient or others, or the proposed patient's distress and the deterioration of her ability to function. TEX. HEALTH & SAFETY CODE ANN. § 574.034(d) (West 2010). Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. ***State v. Addington***, 588 S.W.2d 569, 570 (Tex. 1979). The statutory requirements for an involuntary commitment are strict because it is a drastic measure. ***In re C.O.***, 65 S.W.3d 175, 182 (Tex. App.–Tyler 2001, no pet.).

Analysis

The State provided expert testimony from Dr. Kula and Dr. Bouchat. Dr. Kula examined C.B. and diagnosed her with schizophrenia, paranoid. At trial, Dr. Bouchat testified that he examined C.B. and diagnosed her with schizophrenia. He stated that Dr. Kula shares his opinion that C.B. suffers from schizophrenia. Both doctors provided evidence showing that C.B. was mentally ill. Dr. Kula stated that C.B. told him she did not want to be at the Hospital, and believed schizophrenia was the wrong diagnosis. According to Dr. Kula, C.B. was paranoid, psychotic, hostile, and uncooperative, and unable to provide for her own health and safety. Dr. Bouchat stated that C.B. admitted feeling that people were "out to harm" her, and also admitted being in recent intense conflict with her husband. Further, Dr. Bouchat stated that C.B. has been paranoid and hostile, and was presently homeless, "in large measure due to her delusions."

However, expert testimony confirming mental illness, standing alone, will not support an involuntary commitment. *See* ***T.G. v. State***, 7 S.W.3d 248, 252 (Tex. App.–Dallas 1999, no pet.). Evidence of continuing delusional or paranoid behavior merely reflects that an individual is mentally ill and in need of hospitalization, but does not provide the overt act or continuing pattern of behavior necessary to support a commitment. *See* ***In re C.O.***, 65 S.W.3d at 182; ***Broussard v. State***, 827 S.W.2d 619, 622 (Tex. App.–Corpus Christi 1992, no writ). An expert opinion recommending commitment must be supported by the factual bases on which it is grounded and not simply recite the statutory criteria. *See* ***J.M. v. State***, 178 S.W.3d 185, 193 (Tex. App.–Houston [1st Dist.] 2005, no pet.). What is necessary is the expert's description of the patient's specific behaviors on which the expert's opinion is based. *See* ***id.*** No doctor provided evidence of an overt act, and there is no evidence in the record of an overt act. Therefore, we must examine the record to determine whether there is clear and convincing evidence showing a continuing pattern of behavior that tended to confirm the likelihood of her

distress and the deterioration of her ability to function. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.034(d).

At trial, Dr. Bouchat testified that C.B. has been "under the influence of [a] severe persecutory paranoia," believing that people are "out" to kill her. He stated that C.B. has been in recent conflict with her husband and has been hostile at times. According to Dr. Bouchat, C.B. is homeless and refuses to accept medical care because of her persecutory paranoia. He testified that C.B. has no insight into her illness and is refusing all treatment. Dr. Bouchat also stated that C.B. refused to help the social worker with her social security because she believed the Hospital will spy on her if she signs a document. However, he admitted that C.B. is taking care of her hygiene, converses well, and has not been disruptive.

Dr. Bouchat offered no specific evidence of a continuing pattern of behavior that would generally affect C.B.'s ability to function independently on a daily basis without the imposition of mental health services. *See* ***Broussard***, 827 S.W.2d at 622. To the contrary, Dr. Bouchat testified that C.B. was taking care of her personal hygiene, conversed well, and was not disruptive. Moreover, there was no testimony or evidence that C.B. was unable to provide for her basic needs, including food, clothing, health, or safety. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.034(a)(2)(C)(ii). The State must show more than delusions or other facts that merely confirm C.B.'s mental illness to meet the evidentiary standard for a temporary commitment. *See* ***In re C.O.***, 65 S.W.3d at 182.

Because Dr. Bouchat's opinions were not supported by a factual basis or by a description of specific behaviors by C.B. on which his opinions were based, we cannot say that his opinions would lead a reasonable trier of fact to form a firm belief or conviction of a continuing pattern of behavior tending to confirm C.B.'s distress and the deterioration of her ability to function. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.034(d). Therefore, viewing the evidence in the light most favorable to the findings, we conclude a reasonable trier of fact could not have formed a firm belief or conviction that C.B. was suffering severe and abnormal mental, emotional, or physical distress; was experiencing substantial mental or physical deterioration of her ability to function independently; and was unable to make a rational and informed decision as to whether or not to submit to treatment. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.034(a), (d); ***In re J.F.C.***, 96 S.W.3d at 266. Consequently, the evidence is legally insufficient to support the trial court's finding based upon section 574.034(d) of the Texas Health & Safety Code. We sustain

C.B.'s first issue as to legal insufficiency of the evidence. Having determined that the evidence is legally insufficient, it is unnecessary for us to address C.B.'s argument that the evidence is factually insufficient to support the trial court's finding, or her arguments that the trial court erred in rendering judgment in violation of state and federal guarantees of due process and equal protection. *See* TEX. R. APP. P. 47.1.

CONCLUSION

Based upon our review of the record, we conclude that the evidence is legally insufficient to support the trial court's order for temporary inpatient mental health services. We ***reverse*** the trial court's order for temporary inpatient mental health services, and ***render*** judgment denying the State's application for court ordered temporary mental health services.

BRIAN HOYLE
Justice

Opinion delivered September 7, 2011.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)