IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

J. B.,

Appellant,

v. Case No. 5D19-2983

STATE OF FLORIDA AND N. C., RNBC,
DON, AS DIRECTOR OF CIRCLES OF
CARE,

Appellees.
________________________________/

Opinion filed November 20, 2020

Appeal from the Circuit Court
for Brevard County,
David E. Silverman, Acting Circuit Judge.

James S. Purdy, Public Defender, and Kathryn Rollison Radtke, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Samantha-Josephine Baker, Assistant Attorney General, Tampa, for Appellee State of Florida.

Michael R. D'Lugo, of Wicker, Smith, O'Hara, McCoy & Ford, P.A., Orlando, for Appellee N.C., RNBC, DON, as Director of Circles of Care.

PER CURIAM.

Appellant, J.B., appeals an order of involuntary placement entered pursuant to section 394.467, Florida Statutes (2019). We reverse because the order is not supported by substantial competent evidence that without treatment, Appellant is likely to suffer from neglect or refusal to care for himself that "poses a real and present threat of substantial harm to his . . . well-being." § 394.467(1)(a)2.a.

At the hearing, the State presented the following evidence. Appellant has a diagnosis of "schizoaffective, bipolar type" and "is a chronic mental health patient." Additionally, Appellant has "issues managing his hygiene," his home is in "disrepair" and he will "decompensate" if released because he will stop taking his medications. According to the State's evidence, Appellant also refused the State's offer to place him in an assisted living facility even though Appellant is not "able to survive solely on his own." The State did not, however, present any evidence to explain how Appellant's mental health condition would result in any specific harm to his well-being.

Notwithstanding, at the conclusion of the hearing, the trial court found that Appellant suffers from a mental illness and without treatment, he is likely to suffer from self-neglect that poses a real and present threat of substantial harm to his well-being, and granted the State's petition for involuntary inpatient placement.

The evidence presented at the hearing does not support an order for involuntary placement pursuant to section 394.467. "[T]he mere fact that an individual might suffer from a mental illness is not sufficient standing alone to justify involuntary commitment." *D.F. v. State*, 248 So. 3d 1232, 1234 (Fla. 5th DCA 2018) (citation omitted). Moreover, "[i]t is well-settled that the need for treatment and medication and the refusal to take medication despite a deteriorating mental condition, standing alone" are insufficient to

meet the state's burden under subsection (1)(a)2.a. *Lischka v. State*, 901 So. 2d 1025, 1026 (Fla. 1st DCA 2005) (citations omitted). Importantly, "[c]onclusory testimony, unsubstantiated by facts in evidence . . . is insufficient to satisfy the statutory criteria by the clear and convincing evidence standard." *Boller v. State*, 775 So. 2d 408, 410 (Fla. 1st DCA 2000) (citation omitted).

In this case, the State failed to present any evidence linking Appellant's mental health condition, his failure to take medications, or his "issues managing his hygiene" to a real and present threat of substantial harm to Appellant's well-being. *See D.F.*, 248 So. 3d at 1233. The testimony that Appellant is not "able to survive solely on his own" is conclusory, and likewise does not support the order. Accordingly, we reverse.

REVERSED and REMANDED.

EVANDER, C.J., LAMBERT and EISNAUGLE, JJ., concur.