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NO. COA09-760

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

IN THE MATTER OF:

JERRY WEBBER,  
Respondent.

Cleveland County  
No. 07 SPC 207

Appeal by respondent from order entered 5 November 2008 by Judge Ali B. Paksoy in Cleveland County District Court. Heard in the Court of Appeals 30 November 2009.

*Attorney General Roy Cooper, by Assistant Attorney General M. Elizabeth Guzman, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender David W. Andrews, for respondent-appellant.*

GEER, Judge.

Respondent Jerry Webber appeals from the trial court's order recommitting him to a fourth 180-day period of involuntary outpatient treatment. In a prior appeal, this Court rejected Mr. Webber's argument that the trial court lacked subject matter jurisdiction, an argument repeated in this appeal. Mr. Webber also contends that the trial court failed to make the necessary findings of fact to support his recommitment. Because the trial court found that without treatment, Mr. Webber will likely be further hospitalized – which is equivalent to a finding that Mr. Webber

will likely become a danger to himself or others – and recorded facts sufficient to support that ultimate finding, we affirm.

### Facts

On 21 May 2007, after being discharged from Broughton Hospital, Mr. Webber was involuntarily committed to outpatient treatment. After Mr. Webber's treating physician requested a second commitment hearing, Mr. Webber was recommitted on an outpatient basis on 15 November 2007. A third recommitment order was entered on 14 May 2008. Mr. Webber timely appealed to this Court from the trial court's 14 May 2008 order. This Court's opinion filed in that appeal, *In re Webber*, \_\_\_ N.C. App. \_\_\_, 689 S.E.2d 468 (2009) ("*Webber I*"), contains a more extensive recitation of the underlying factual circumstances of this case.

On 9 October 2008, while Mr. Webber's appeal was pending, Steve Wilhelm of Pathways mental health facility requested a re-hearing on Mr. Webber's continued commitment. At the 5 November 2008 recommitment hearing, Dr. Godfrey testified that he had been treating Mr. Webber for over two years. Dr. Godfrey's report, which was admitted into evidence, stated that it was his opinion that Mr. Webber was "mentally ill," that he was "capable of surviving safely in the community with available supervision," and that based on his treatment history, he "[was] in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3(11)."

The report also stated that it was Dr. Godfrey's opinion that Mr. Webber's "current mental status or the nature of his illness limits or negates his/her ability to make an informed decision to seek treatment voluntarily or comply with recommended treatment." Finally, the report stated:

The patient has grandiose & paranoid delusions that a government (U.S.) conspiracy exists to prevent his starting an educational program, and to kill him. He feels that he will eventually be installed as leader of the world. He believes he is the anti-christ.

At the hearing, Dr. Godfrey testified that he had examined Mr. Webber on 1 October 2008. During this session, Mr. Webber told him that "the medication made no difference" and that "there is no sense in taking it." Mr. Webber told Dr. Godfrey:

That he would, at some point, be - I don't know, installed as the - the leader of the world, basically, and that people that had been in his way would die. And he was very firm in that belief. He believes that there is a huge conspiracy to prevent him from establishing some sort of program to help the homeless and - and the uneducated in the area. He wasn't really specific as to how they did that and who they are but he has a [sic] very persecutory and grandiose ideas that I think are delusional and they've been, essentially, unshakable since I've met him.

Dr. Godfrey explained that the medication being given to Mr. Webber "if successful, makes the delusion less of a preoccupation with the individual so that they're free to do other things than focus on that." With respect to Mr. Webber, however, the medication was not as successful as Dr. Godfrey had hoped because Mr. Webber sounded "exactly the same" with respect to his delusions. Nevertheless, according to Dr. Godfrey, "the medication

has made [Mr. Webber] much calmer and more pleasant and able to discuss . . . the subject without getting so angry." It was Dr. Godfrey's opinion that "when he's off of the medication, he ends up in the hospital within a few months or weeks. Because he's unable to contain his anger." Dr. Godfrey said that Mr. Webber's medication "keeps him out of the hospital" and that "he needs to stay on it to stay out of the hospital." Dr. Godfrey recommended that Mr. Webber "stay in the same treatment that he is in right now" – meeting with his physician and continuing medication.

After hearing this testimony, the trial court entered an involuntary outpatient commitment order incorporating Dr. Godfrey's report. The trial court also made the following additional finding of fact:

Based on testimony from Dr. Godfrey, Mr. Webber believes his medication makes no difference. He still has delusional thoughts, believes there is a conspiracy against him, and that people would die. The testimony indicates that the medication makes his delusions less of a pre-occupation and would prevent further hospitalization, and anger.

Based on its findings of fact, the trial court concluded that Mr. Webber was mentally ill and

capable of surviving safely in the community with available supervision from family, friends or others; and based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability and deterioration which would predictably result in dangerousness to self or others. And, that the respondent's inability to make an informed decision to voluntarily seek and comply with recommended treatment is caused by:

. . . .

. . . the nature of the respondent's mental illness.

The trial court, therefore, ordered Mr. Webber recommitted to an outpatient facility for a period not to exceed 180 days. Mr. Webber timely appealed to this Court.<sup>1</sup>

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On appeal from a commitment order, "[t]he questions for our determination [are] (1) whether the court's ultimate findings are indeed supported by the 'facts' which the court recorded in its order as supporting its findings, and (2) whether in any event there was competent evidence to support the court's findings." *In re Hogan*, 32 N.C. App. 429, 433, 232 S.E.2d 492, 494 (1977).

Mr. Webber first argues that the trial court lacked subject matter jurisdiction to enter an order recommitting him because the initial commitment order contained a term of commitment exceeding the statutory maximum. We rejected this contention in Mr. Webber's first appeal, *Webber I*, and, therefore, do not address it further here.

Mr. Webber also argues that the trial court's findings of fact are insufficient to support its order for outpatient commitment. N.C. Gen. Stat. § 122C-267(h) (2009) requires the trial court "to find by clear, cogent, and convincing evidence that the respondent

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<sup>1</sup>The trial court's commitment order specified a term of 180 days that has since expired. This fact does not, however, moot Mr. Webber's appeal. See *In re Booker*, 193 N.C. App. 433, 436, 667 S.E.2d 302, 304 (2008) (holding that "'a prior discharge will not render questions challenging the involuntary commitment proceeding moot'" (quoting *In re Mackie*, 36 N.C. App. 638, 639, 244 S.E.2d 450, 451 (1978))).

meets the criteria specified in G.S. 122C-263(d)(1)" and to "record the facts which support its findings . . . ." "A trial court's duty to record the facts that support its findings is 'mandatory.'" *Booker*, 193 N.C. App. at 436, 667 S.E.2d at 304 (quoting *In re Koyi*, 34 N.C. App. 320, 321, 238 S.E.2d 153, 154 (1977)).

N.C. Gen. Stat. § 122C-263(d)(1) (2009) sets out the criteria for outpatient commitment:

- a. The respondent is mentally ill;
- b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
- c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
- d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

Mr. Webber challenges the sufficiency of the trial court's findings regarding § 122C-263(d)(1)(c).

Mr. Webber, in arguing that the trial court's findings are insufficient, points to *Hogan*, 32 N.C. App. at 433-34, 232 S.E.2d at 494 (holding trial court's findings that respondent was delusional and out of touch with reality were insufficient to support its conclusion that she was dangerous to herself or others), and *In re Bartley*, 40 N.C. App. 218, 219-20, 252 S.E.2d 553, 554 (1979) (reversing involuntary commitment order for

insufficient findings where trial court made findings only that respondent was imminently dangerous to herself since she could not care for herself and was delusional and "'out of touch with reality'").

*Hogan* and *Bartley*, however, involved inpatient involuntary commitment requiring findings that the respondent was, at the time of commitment, *imminently* dangerous to himself and others and not just possibly dangerous some time in the future. See N.C. Gen. Stat. § 122C-271(b)(2) (2009). In *Hogan*, 32 N.C. App. at 433, 232 S.E.2d at 494-95, the trial court's findings of fact merely established that the respondent was mentally ill and did not relate to any danger to self or others. In *Bartley*, 40 N.C. App. at 218-19, 252 S.E.2d at 554, there was no suggestion that the respondent was dangerous to others, and the trial court's findings, although indicating she may not have been competent, did not suggest her mental illness was creating a risk of imminent danger to herself.

In contrast, for outpatient commitment, there is no requirement of actual imminent dangerousness. Instead, the assessment is predictive: there must be a showing that treatment is necessary to prevent further disability or deterioration that would predictably result in dangerousness in the future. N.C. Gen. Stat. § 122C-263(d)(1)(c). Here, while the findings<sup>2</sup> are admittedly a

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<sup>2</sup>In *Booker*, 193 N.C. App. at 437, 667 S.E.2d at 304, this Court addressed the use of the same form of order used in this case. The trial court in that case had checked the box incorporating the doctor's report as findings of fact, as the trial court did here. The *Booker* Court, in considering the sufficiency of the findings of fact, considered both the doctor's report and the findings added to the form by the trial judge. *Id.* We,

bit sparse, they indicate that without treatment, Mr. Webber would likely be subject to further hospitalization. Since Mr. Webber could only be further involuntarily hospitalized if he was an imminent danger to himself or others, the trial court's findings are equivalent to a finding that without treatment, respondent would likely become dangerous to himself or others. In light of the statutory requirements for inpatient commitment, we find unpersuasive Mr. Webber's argument that the reference to "further hospitalization" does not necessarily equate with dangerousness.

Mr. Webber also argues that the trial court did not fulfill its statutory duty to record facts to support its ultimate findings of fact. To the contrary, however, the trial court found that Mr. Webber's medication (1) lessens the delusions that cause him to think the government is conspiring against him and that people will die, (2) prevents anger, and (3) would prevent further hospitalization. As the court further found, however, Mr. Webber believes the medication does not help him, and his mental illness hinders his ability to voluntarily pursue treatment. These findings support the trial court's ultimate finding that without treatment, it is likely that Mr. Webber would become dangerous to himself or others. The findings are comparable to those we upheld in *Webber I*, \_\_\_ N.C. App. at \_\_\_, 689 S.E.2d at 477-78. We, therefore, affirm.

Affirmed.

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therefore, do the same here.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).