NO. COA10-339

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

IN THE MATTER OF: Buncombe County
RUSSELL H. TRICE No. 09SPC531

Appeal by respondent from orders entered 5 November 2009 by Judge Marvin P. Pope, Jr., in Buncombe County District Court. Heard in the Court of Appeals 26 October 2010.

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

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Andrew DeSimone, for respondent-appellant.

HUNTER, JR., Robert N., Judge.

Respondent appeals an involuntary commitment order that temporarily confined him to the local VA Hospital. The trial court's written findings of fact are insufficient to support its conclusion that respondent was mentally ill. Therefore, the involuntary commitment order from which respondent appeals is reversed.

I. Factual and Procedural History

On 29 October 2009, Traci King filed an affidavit and petition in Henderson County District Court requesting that her brother, Russell H. Trice ("respondent"), be involuntarily committed. Respondent was placed in the local VA Hospital that day. Dr.

Thomas Lacy examined respondent the next day and recommended commitment, concluding respondent was mentally ill and a danger to himself. Dr. James Michalet examined respondent on 31 October 2009 and also recommended commitment, concluding respondent was mentally ill and a danger to himself. On 5 November 2009, respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted. The trial court held the motion open and held a hearing on Ms. King's petition that day.

At the hearing, Dr. Elizabeth Miller, a VA physician who had evaluated respondent the day before the hearing, testified respondent had been "very cooperative" and "appropriate" during her interaction with him. Respondent had been taking his prescribed medication prior to meeting with Dr. Miller, but he told her that he would not continue to take it because it severed his connection with God. Dr. Miller also testified that when respondent first arrived at the hospital, he provoked another patient who hit him, but respondent did not hit the other patient back. There was no evidence of violence involving respondent since that incident. Dr. Miller did not provide a diagnosis for respondent, but stated that if he failed to take his medication he would "lapse into the symptoms that brought him to be petitioned."

Ms. King, respondent's sister, testified that on 29 October 2009 (the day she petitioned for his commitment), she and her husband went to respondent's home and found the garage door open and the house dark. Respondent was extremely focused and agitated and was pacing with his fists clenched. When Ms. King asked

respondent where his vehicle was, he responded, "It's down the road. It ran out of gas." He also said, "She'll bring it back." When Ms. King asked who "she" was, respondent told her not to worry about it. He also told his sister that she had to have been there to understand and yelled, "You don't have enough faith. You don't have enough faith." Respondent also told Ms. King that he would not take his medicine; he tossed his medicine bottle at her, but not in a violent or angry manner. According to Ms. King, the most violent behavior respondent exhibited was when he said "death" in her face while clenching his fists. When Mr. King told respondent he could not see "the children" anymore unless he got help, respondent replied that he could see them whenever he wanted.

Respondent's father, Charles Trice, testified that he found respondent's vehicle eight miles away. The lights and radio had been left on and the battery was dead. He also testified that he found one of respondent's company trucks in a fire department parking lot with the engine running, the lights on, and the door open (respondent had taken over his father's plumbing business after his father retired).

Testimony at the hearing indicated respondent frequently made cryptic religious statements. He told Ms. King he would be a martyr. Charles Trice testified respondent invited him to dinner at a restaurant, but stared at him the entire time and did not eat. When they left, respondent told his father that he was "on a mission" and that his father did not "have enough faith." When his

father asked him what this meant, respondent told his father he (respondent's father) needed to go to church.

The trial court made the following written findings of fact:

> [B]y clear, cogent and convincing evidence [the Court] finds these . . . facts:
>
> R is mentally ill & displayed clenched fists to his sister & shouted "Death." The R is professing religious faith to the point of R being a martyr. Dr. Miller testified to the fact that R was taking his medication currently at the VA Hospital [b]ut needed to continue with his medication another seven days.

The trial court did not incorporate or adopt any medical reports into its findings. Based on its findings, the trial court concluded respondent was mentally ill and was a danger to others. The trial court issued an order denying respondent's motion to dismiss and an order committing respondent to the VA Hospital for a period not to exceed seven days. Respondent timely entered written notice of appeal from the trial court's order on 17 November 2009.

II. Jurisdiction

Respondent timely appealed from a final commitment order; therefore, we have jurisdiction over his appeal. *See* N.C. Gen. Stat. § 122C-272 (2009) ("[A commitment] [j]udgment of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases.").

III. Analysis

Respondent first argues the trial court erred by involuntarily committing him because the trial court failed to support its

conclusion that he was mentally ill with sufficient written findings of fact. We agree. The expiration of the period of involuntary commitment does not render respondent's appeal moot. *See In re Mackie*, 36 N.C. App. 638, 639, 244 S.E.2d 450, 451 (1978) ("[O]ur courts have made it clear that a prior discharge will not render questions challenging the involuntary commitment proceeding moot."). When reviewing a commitment order, our role is to determine whether the trial court's conclusions of law are supported by its written findings of fact and whether any competent evidence supports those findings of fact. *In re Booker*, 193 N.C. App. 433, 436, 667 S.E.2d 302, 303 (2008). In order to issue a commitment order, a trial court must find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or to others. N.C. Gen. Stat. § 122C-268(j) (2009). The trial court must "record the facts that support its findings." *Id.* It is irrelevant that there was sufficient evidence presented at a hearing to establish mental illness or dangerousness if the trial court fails to make sufficient findings of fact to support its finding of mental illness or dangerousness. *See In re Booker*, 193 N.C. App. at 437, 667 S.E.2d at 303-04 (stating that the sufficiency of evidence presented at hearing was irrelevant when the trial court failed to make findings of fact and merely incorporated a physician's findings in its order).

When applied to an adult, such as respondent, the term "mental illness" means "an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the

conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control." N.C. Gen. Stat. § 122C-3(21) (2009). The trial court's factual finding that "R[espondent] is mentally ill" is insufficient to support its conclusion that respondent was mentally ill. *See In re Neatherly*, 28 N.C. App. 659, 660-61, 222 S.E.2d 486, 486-87 (1976) (holding that the trial court made insufficient findings to show that the respondent was dangerous to others when the trial court's order found as a fact that the respondent was "imminently dangerous to others"). While a medical diagnosis is not required to establish mental illness, *In re Underwood*, 38 N.C. App. 344, 347, 247 S.E.2d 778, 780 (1978), we note that no medical diagnosis is referenced in the trial court's findings of fact. The closest thing to a professional medical opinion on respondent's mental health is the trial court's finding that respondent was taking medication and needed to continue to do so for the next seven days. While this statement may allude to a possible diagnosis of mental illness, we find it fails to support the trial court's conclusion that respondent was mentally ill.

We are likewise unpersuaded by the trial court's finding that respondent was "professing religious faith to the point of R[espondent] being a martyr." Preoccupation with religion is insufficient to support a finding of mental illness. *See In re Hogan*, 32 N.C. App. 429, 433, 232 S.E.2d 492, 494 (1977) ("[T]he finding that [the] respondent was 'preoccupied with religious subjects' hardly furnishes support for an ultimate finding . . .

that she was mentally ill . . . ."). Although the evidence presented at the hearing might be able to support factual finding that could justify a commitment order, the trial court's written findings of fact do not indicate respondent holds delusional beliefs, labors from significant cognitive impairment, or lacks self-control and judgment necessary to manage his own affairs that would justify involuntary commitment. *Cf. In re Hogan*, 32 N.C. App. at 433, 232 S.E.2d at 294-95 ("The remaining facts which the court recorded as supporting its ultimate findings, that respondent had delusions as to the extent of the danger posed by the Ku Klux Klan, that she misinterpreted stimuli, and that she was out of touch with reality, may furnish some support for the ultimate finding that she was mentally ill."); *In re Underwood*, 38 N.C. App. at 346-48, 247 S.E.2d at 779-81 (concluding factual finding supported conclusion that the respondent was mentally ill where trial court found, *inter alia*, that the respondent said he had to leave a rescue mission to support his wife and children when he had none). We hold that, even assuming there was adequate evidence of mental illness presented at respondent's hearing, the trial court's written findings of fact fail to support its conclusion that respondent was mentally ill. Consequently, we do not reach respondent's remaining arguments.

The involuntary commitment order from which respondent appeals is reversed.

Reversed.

Judges HUNTER, Robert C., and BEASLEY concur.

Report per Rule 30(e).