IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1357

Filed: 4 October 2016

Buncombe County, No. 15-SPC-799

IN THE MATTER OF: Kiley Winebarger

Appeal by respondent from order entered 4 June 2015 by Judge Andrea Dray in Buncombe County District Court. Heard in the Court of Appeals 8 June 2016.

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

Glenn Gerding, Appellate Defender, by Emily H. Davis, Assistant Appellate Defender, for respondent-appellant.

DAVIS, Judge.

Kiley Winebarger ("Respondent") appeals from the trial court's order committing her to a facility for a period of inpatient mental health treatment. On appeal, Respondent argues that the trial court lacked jurisdiction to enter the commitment order. After careful review, we affirm the trial court's order.

Factual Background

On 23 April 2015, Rick Tipton, Director of the Yancey County Department of Social Services ("DSS"), filed a petition (the "Petition") seeking an adjudication of incompetence as to Respondent. The Petition contained an application for

appointment of an interim guardian for Respondent. On 5 May 2015, the Yancey County Clerk of Court (the "Clerk") held a hearing on the Petition and entered an order that same date (1) adjudicating Respondent to be incompetent; and (2) appointing DSS as her interim guardian. On 6 May 2015, Respondent was temporarily admitted to Mission Hospital ("Mission") in Asheville, North Carolina.

On 4 June 2015, a hearing was held before the Honorable Andrea Dray in Buncombe County District Court to consider whether Respondent's continued inpatient treatment at Mission was necessary. That same day, the trial court entered a commitment order concluding that Respondent was mentally ill and in need of additional inpatient treatment at Mission. Respondent filed a timely notice of appeal of the 4 June 2015 order to this Court.

Analysis

Respondent argues on appeal that her admission to Mission was unlawful based on a failure to comply with the statutory procedures governing the commitment of incompetent adults. She also contends that the trial court lacked jurisdiction to enter the 4 June 2015 commitment order because there had not previously been an adjudication of Respondent's incompetence.[1]

[1] We note that although Respondent's commitment period has expired, her appeal is not moot given the "possibility that [R]espondent's commitment in this case might . . . form the basis for a future commitment, along with other obvious collateral legal consequences[.]" *In re Hatley*, 291 N.C. 693, 695, 231 S.E.2d 633, 635 (1977).

We review the trial court's order "to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact." *In re T.H.T.*, 185 N.C. App. 337, 343, 648 S.E.2d 519, 523 (2007) (citation, quotation marks, and brackets omitted), *aff'd as modified*, 362 N.C. 446, 665 S.E.2d 54 (2008). Findings of fact that are supported by competent evidence or are unchallenged by the appellant are binding on appeal. *In re A.B.*, __ N.C. App. __, __, 781 S.E.2d 685, 689 (2016). "Such findings are . . . conclusive on appeal even though the evidence might support a finding to the contrary." *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003). We review a trial court's conclusions of law *de novo*. *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006).

In order to analyze Respondent's arguments, it is necessary to understand the statutory scheme governing the manner in which an incompetent adult may be admitted for inpatient treatment at a mental health facility. There must first be "[a] verified petition for the adjudication of incompetence of [the] adult . . . filed with the clerk [of court] by any person . . . ." N.C. Gen. Stat. § 35A-1105 (2015). Where the petitioner files a motion for adjudication of incompetency and appointment of an interim guardian, "the clerk shall immediately set a date, time, and place for a hearing on the motion." N.C. Gen. Stat. § 35A-1114(c) (2015).

> If at the hearing the clerk finds that there is reasonable cause to believe that the respondent is incompetent, and:

> (1) That the respondent is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to his physical well-being, and that there is immediate need for a guardian to provide consent or take other steps to protect the respondent, or
>
> (2) That there is or reasonably appears to be an imminent or foreseeable risk of harm to the respondent's estate, and that immediate intervention is required in order to protect the respondent's interest,
>
> the clerk shall immediately enter an order appointing an interim guardian.

N.C. Gen. Stat. § 35A-1114(d).

Upon the completion of a hearing on the petition, the clerk must then determine whether the individual is, in fact, incompetent. *See id.* "Following an adjudication of incompetence, the clerk shall . . . appoint a guardian . . . ." N.C. Gen. Stat. § 35A-1112(e) (2015). The guardian may be either a general guardian or an interim guardian. *See* N.C. Gen. Stat. §§ 35A-1112, -1114. The main difference between the two types of guardianships is that a general guardianship is indefinite, *see* N.C. Gen. Stat. § 35A-1112, while an interim guardianship terminates pursuant to one of the criteria listed in N.C. Gen. Stat. § 35A-1114(e).[2]

[2] Although the statute governing general guardianships states that the guardian should be appointed "[f]ollowing an adjudication of incompetence," N.C. Gen. Stat. § 35A-1112(e), the statute addressing interim guardianships permits the petitioner to request the appointment of an interim guardian "[a]t the time of or subsequent to the filing of a petition" seeking an adjudication of incompetency. N.C. Gen. Stat. § 35A-1114(a).

If the clerk finds that an interim guardian should be appointed, the appointment "shall include specific findings of fact to support the clerk's conclusions, and shall set forth the interim guardian's powers and duties." *Id.* With regard to the voluntary admission of an incompetent adult into an inpatient facility, the interim guardian has the same powers and duties as a general guardian except that the interim guardian's powers are limited in duration. *See id.*

Chapter 122C of the North Carolina General Statutes sets out the process of voluntarily admitting an adult previously adjudicated to be incompetent to a facility for inpatient treatment. Generally, "an incompetent adult may be admitted to a facility when the individual is mentally ill . . . and in need of treatment." N.C. Gen. Stat. § 122C-231 (2015). In such circumstances, "the legally responsible person shall act for the individual, in applying for admission to a facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article." *Id.* In cases where a guardian has been appointed, the guardian is the "legally responsible person" for the incompetent adult. *See* N.C. Gen. Stat. § 122C-3(20) (2015). As such, the guardian may seek "voluntary admission" of the incompetent adult to a facility for inpatient treatment. N.C. Gen. Stat. § 122C-211(a) (2015).

Upon such an admission, "a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the

incompetent adult is admitted to the facility." N.C. Gen. Stat. § 122C-232(a) (2015). In order for this hearing to take place, "no petition is necessary; the written application for voluntary admission shall serve as the initiating document for the hearing." N.C. Gen. Stat. § 122C-232(b).

Having reviewed the applicable statutes, we must now determine whether they were followed in the present case. We conclude that they were.

Director Tipton filed the Petition with the Clerk, alleging that Respondent was incompetent because she had been diagnosed with traumatic brain injury after the age of 21, post-traumatic stress disorder, and major depressive disorder. The Petition stated that Respondent "often cries all day long"[;] "rarely sleeps at night"[;] had "auditory hallucinations and [spoke] with people who are not there"[;] "reported that someone had pulled all her teeth while [her husband] was gone"[;] "often wanders into the woods, others['] property and down public roads confused and disoriented"[;] "often goes without eating because she fears her food is being poisoned"[;] "stabbed herself in her hand/arm"[;] and "was not compliant with her mental health services." Tipton also alleged that Respondent "has told her mental health providers, family, and social worker that she will commit suicide" and that "she had even constructed two structures with ropes and ladders to hang herself."

The Petition further stated that Respondent had a volatile relationship with her husband, including a statement from her husband that "he couldn't take it

anymore and that she was going to kill herself or that he was going to." The Petition also alleged that Respondent's father could not help her or bring her into his home because he feared for his family's safety and did not trust her. Finally, the Petition contained a motion for the appointment of an interim guardian for Respondent.

In response to the filing of the Petition, the Clerk conducted a hearing on 5 May 2015 and entered an order that same day entitled "Order on Motion for Appointment of Interim Guardian." In this order, the Clerk made the following finding of fact: "Due to the behaviors that are a direct result of the Respondent's traumatic brain injury, there exists sufficient evidence to re[a]sonably believe that she represents a serious and immediate danger to herself and her estate." Based on this finding, the Clerk checked the following boxes on the form order:

> [T]here is reasonable cause to believe that the respondent is incompetent, and that:
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> a. the respondent is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to the respondent's physical well-being, and there is immediate need for a guardian to provide consent or take other steps to protect the respondent.
>
> b. there is or reasonably appears to be an imminent or foreseeable risk of harm to the respondent's estate, and immediate intervention is required in order to protect the respondent's interest.

The Clerk also checked a box on the form order stating that "[u]pon qualifying, the interim guardian shall have the powers and duties specifically set forth below."

She then assigned "all powers and duties of a gen[e]ral guardian" to DSS as Respondent's interim guardian.

Thus, the Clerk's 5 May 2015 order did two things. First, it adjudicated Respondent to be incompetent. Second, it appointed DSS to be Respondent's interim guardian. The period of interim guardianship was subsequently extended by the Clerk on two separate occasions.

On 6 May 2015, Patricia Rose, the DSS social worker who was assigned to Respondent's case, had Respondent admitted to Mission. Because Rose — on behalf of DSS — was Respondent's interim guardian, she was also the "legally responsible person" for Respondent for purposes of N.C. Gen. Stat. § 122C-231. Thus, she had the power to voluntarily admit Respondent to Mission for a period of ten days. As required by N.C. Gen. Stat. § 122C-211, Respondent was evaluated by Dr. Suzanne Collier on 7 May 2015. Collier recommended to DSS that Respondent be admitted for treatment and rehabilitation.

Pursuant to N.C. Gen. Stat. § 122C-232, a hearing was held in Buncombe County District Court.[3] In accordance with that statute, no written petition was required to initiate the hearing. *See* N.C. Gen. Stat. § 122C-232. Rather, the written application for voluntary admission served as the initiating document for the hearing.

[3] The hearing was held in Buncombe County District Court because Mission is located in Buncombe County.

On 4 June 2015, a hearing was held in Buncombe County District Court before Judge Dray. At the hearing, Rose and Dr. Trace Fender, a psychiatrist at Mission, testified as to Respondent's mental health. Based on the evidence presented, the trial court entered a form order captioned "Order Voluntary Admission of Incompetent Adult" containing the following pertinent findings:

> The Respondent was represented by counsel in this hearing, but waived her own appearance.
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> The Court heard the testimony of Tricia Rose of Yancey County D.S.S., who is the Respondent's Interim Guardian, acting under an Order of Appointment that bestows upon her all powers of a general guardian.
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> The Court further heard testimony from Dr. Trace Fender, a board certified psychiatrist who is the Respondent's primary treating physician, whom the court certified as an expert in the field of psychiatry.
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> Based on the testimony of Dr. Fender, the Court finds by clear, cogent, and convincing evidence that the respondent is mentally ill, and specifically suffers from unspecified psychosis, likely paranoid schizophrenia, and depression.
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> The Court further finds that, when the Respondent was initially committed, she was open with regard to her suicidal ideations and past suicide attempts.
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> The Court further finds that the Respondent has, during her present commitment, exhibited symptoms of psychosis, and has been resistant to treatment, including refusing to cooperate with interviews or follow her prescribed pharmaceutical regimen.
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> The Court further finds that the Respondent would be unable to maintain her prescribed treatment regimen in a

> less-restrictive setting than an inpatient treatment facility.
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> Based on the testimony of Tricia Rose, the Court finds by clear, cogent, and convincing evidence that the Respondent was unable to care for herself while living independently with her spouse.
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> The Court further finds that, prior to her commitment, the Respondent frequently wander[ed] away from home, placing herself in harm's way, and repeatedly expressed suicidal thoughts, which manifested in at least one suicide attempt.
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> Based on all testimony heard by the Court, the Court finds by clear, cogent, and convincing evidence that the Respondent is mentally ill, is unable to meet her own mental health needs, that there is a high risk her condition would deteriorate outside of an inpatient commitment setting, and that no less restrictive treatment measure than inpatient treatment would be medically appropriate for the Respondent at this time.
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> The Ninety (90) days of inpatient commitment authorized below shall be the maximum duration for the Respondent's present commitment, which may be terminated at the discretion of the Respondent's 24-hour facility at an earlier point.

Based on these findings, the trial court proceeded to check the boxes on the form order indicating that Respondent was "mentally ill[,]" that she was "in need of continued treatment at the 24-hour facility to which [she] ha[d] been admitted[,]" and that "less restrictive measures would not be sufficient." Finally, the court checked the box on the order stating that it "concur[red] with the voluntary admission and authorized the continued admission of the respondent for [90 days.]"

Respondent argues that her admission to Mission was akin to an *involuntary* commitment and that the trial court lacked jurisdiction to enter the 4 June 2015 commitment order because "there was . . . no commitment of an incompetent adult under §§ 122C-231 and 122C-232[.]" We disagree. As discussed above, the statutory procedure for a voluntary admission of an incompetent adult was followed in all respects. Respondent was adjudicated to be incompetent by a clerk of court, and an interim guardian was appointed for her. Upon the guardian's admission of her to a mental health facility, a timely hearing was held in district court, and the court entered an order containing legally sufficient findings that Respondent receive inpatient treatment for a stated period of time. Accordingly, Respondent's argument is overruled.

Conclusion

For the reasons stated above, we affirm the trial court's 4 June 2015 order.

AFFIRMED

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).