IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1395

Filed: 20 November 2018

Buncombe County, No. 17 SPC 1076

IN THE MATTER OF

K.B.

Appeal by respondent from order entered 29 June 2017 by Judge Susan Dotson-Smith in Buncombe County District Court. Heard in the Court of Appeals 5 June 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General John Tillery, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for respondent.

CALABRIA, Judge.

Where the trial court's findings which cite a doctor's testimony are not mere recitations of the evidence, they constitute competent findings to support the trial court's ultimate findings of fact. Where the trial court's ultimate findings of fact are

supported by the underlying findings, the trial court did not err in ordering respondent's involuntary commitment. We affirm.

I. Factual and Procedural Background

This case arises from a petition for involuntary commitment filed by respondent's mother on 20 June 2017 and a related order of commitment entered on 29 June 2017. The petition alleged respondent had been diagnosed with schizoaffective disorder, experienced auditory hallucinations, refused to take his medications, spoke to voices in his head, was not sleeping or eating, and told his mother that he should have killed his doctor when he had the chance.

In response to the petition, respondent was admitted to Mission Hospital and was put on a forced medication protocol. An involuntary commitment hearing was held on 28 and 29 June 2017. Dr. Kimberly Stalford, respondent's treating psychiatrist, testified that respondent had stopped taking his medicine, would not shower, and accused her of "keeping him religious prisoner." Dr. Stalford also testified that respondent is "very psychotic" and his paranoia causes him to become angry and irritable to the point that it "comes across as quite threatening."[1] In addition to refusing to take his medicine, respondent refused to work with his ACT[2]

[1] However, Dr. Stalford later testified that she had never seen respondent specifically threaten anyone.

[2] An Assertive Community Treatment (ACT) team consists of a community-based group of medical, behavioral health and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. An individual who is appropriate for ACT

team and it was Dr. Stalford's expert opinion that he would not take his medicine without supervision. Dr. Stalford further opined that respondent had very poor insight into his mental health condition.

> Petitioner's Counsel: [W]hat is the Respondent's level of insight into his mental health condition?
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> Dr. Stalford: Very poor, and I— the lack of understanding that he has a very treatable psychiatric illness, his lack of compliance is what has led to the multiple, repeated ER[3] visits and the multiple repeat admissions. [He] responds to medication, and we frequently do forced medication protocol, and when he takes the medicine, he really does quite well.

Respondent also testified to experiencing auditory hallucinations, but stated that the voices did not urge him to be violent. Respondent testified that he did not intend to carry out any threat against his previous doctor, but rather he was attempting to avoid being placed in that doctor's ward again. Respondent believed his symptoms were a result of "post-traumatic stress" due to previous negative experiences when he was involuntarily committed:

> Respondent: Yeah. You know, I really want to focus on my health. I feel like, if I could get some time into the gym like— you know, she didn't even discuss the diagnosis of post-traumatic stress, you know, which I would say that all this mania and all this psychosis is really just hyper-vigilance from post-traumatic stress. Like that's one of the

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does not benefit from receiving services across multiple, disconnected providers and may become at greater risk of hospitalization, homelessness, substance use, victimization and incarceration. *Assertive Community Treatment*, NORTH CAROLINA DEPT. OF HEALTH AND HUMAN SERVICES, https://www.ncdhhs.gov/divisions/mhddsas/adultmentalhealth/act (last accessed 22 Aug. 2018).

> three diagnosis criteria: hyperv-vigilance, disassociation, and flashbacks; all of which I'm showing because of the hospital.

At the conclusion of the hearing, the trial court entered an order with the following findings of fact:

> 1. The Court heard the testimony of the Respondent's treating psychiatrist, Dr. Kimberley [sic] Stalford, whom the Court qualified as an expert in the field of adult psychiatry.
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> 2. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent presented for treatment after electing to stop taking his anti-psychotic medications, which led to his mental health deteriorating.
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> 3. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent is very familiar to her, as he has been admitted for inpatient mental health treatment one dozen times since 2012.
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> 4. Dr. Stalford testified, and the Court finds as competent evidence, that, during this admission, the Respondent has exhibited disorganized thinking, appears to be responding to internal stimuli, and has accused his doctors of poisoning him.
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> 5. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent has no insight into his mental illness which, coupled with his disorganized thinking, severely impairs his ability to meet his daily basic needs for shelter and hygiene.
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> 6. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent presented for treatment after threatening to kill one of his previous doctors. During his own testimony, the Respondent confirmed that he made this statement.

> 7. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent has refused to take his prescribed Zyprexa, and has been placed on a forced medication protocol.
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> 8. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent has not begun to respond to Zyprexa.
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> 9. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent remains psychiatrically unstable and, if discharged, would continue to deteriorate and be unable to meet his daily basic needs. On this basis the Respondent appears to be at a substantial risk of the Respondent suffering serious physical debilitation without further treatment.
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> 10. Dr. Stalford testified, and the Court finds as competent evidence, that the Respondent has refused to communicate with her, which is a hindrance to treatment.
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> 11. The uncontroverted evidence further shows that the Respondent has refused to work with his assigned ACT Team.
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> 12. The Respondent confirmed during his own testimony that he experiences auditory hallucinations.

Based on these findings, the trial court found that respondent was mentally ill and a danger to himself. He was committed to Mission Hospital Copestone for 14 days of inpatient treatment. Respondent appeals from this order and argues that the trial court's findings and the record evidence do not demonstrate that he was mentally ill and a danger to himself.

II. Standard of Review

"To support an involuntary commitment order, the trial court is required to find two distinct facts by clear, cogent, and convincing evidence: first that the respondent is mentally ill, and second, that he is dangerous to himself or others." *In re W.R.D.*, ___ N.C. App. ___, ___, 790 S.E.2d 344, 347 (2016) (citations and internal quotation marks omitted). These two distinct facts are the "ultimate findings" on which we focus our review. *Id.* "But unlike many other orders from the trial court, these 'ultimate findings,' standing alone, are insufficient to support the order; the involuntary commitment statute expressly requires the trial court also to 'record the facts upon which its ultimate findings are based.' " *Id.* Accordingly, we review the challenged commitment order to determine "whether the ultimate findings concerning the respondent's mental illness and danger to himself were supported by the court's underlying findings, and whether those underlying findings, in turn, are supported by competent evidence." *Id.*

III. Analysis

On appeal, respondent contends that the findings of fact that begin, "Dr. Stalford testified, and the Court finds as competent evidence," merely constitute recitations of the testimony, not findings of fact. Therefore, respondent argues, there were insufficient findings to show that he is mentally ill and dangerous to himself. To support his argument, respondent cites *In re Bullock*, 229 N.C. App. 373, 748 S.E.2d 27 (2013). In *Bullock*, this Court held that "findings" merely indicating that

"witnesses 'testified' about particular topics" did not constitute actual findings. *Bullock*, 229 N.C. App. at 378, 748 S.E.2d at 30. In contrast, in the instant case, the trial court included the language "and the Court finds as competent evidence[.]" The findings here are therefore distinct from those in *Bullock*, and are expressly findings of fact, not mere recitations of testimony.

These findings further support the ultimate finding that respondent was a danger to himself. Our General Statutes define "dangerous to self" to mean that, within the relevant past, the individual's conduct has shown:

> I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
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> II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself[.]

N.C. Gen. Stat. § 122C-3(11)(a)(1) (2017). Here, the trial court found that respondent "elect[ed] to stop taking his anti-psychotic medications, which led to his mental health deteriorating." Respondent has exhibited disorganized thinking, appeared to respond to internal stimuli, and accused doctors of poisoning him. Respondent has no insight

into his mental illness and continues to refuse his medication, causing the deterioration of his mental health and impairing "his ability to meet his daily basic needs for shelter and hygiene." These findings support the ultimate findings of fact that respondent is dangerous to himself.

Respondent's lack of insight into his illness and his rejection of treatment affect his inability to meet his need for shelter and basic hygiene, and create a reasonable probability of his suffering serious physical debilitation within the near future. There is no requirement in the statute that this debilitation be characterized as an "injury." It is sufficient that respondent will likely continue to suffer the deterioration caused by his illness. *See* N.C. Gen. Stat. § 122C-3(11)(a)(1).

The instant case is distinct from *In re W.R.D.* In *W.R.D.*, this Court held that there were insufficient findings of fact to support the trial court's determination that the respondent was a danger to himself where the only testimony supporting such a finding was a doctor's comment that the failure to take medication "could be deadly." *In re W.R.D.*, ___ N.C. App. at ___, 790 S.E.2d at 348. The instant case is distinguishable, however, because there are findings of fact which demonstrate an immediate impact on respondent's failure to take his prescription medication. The trial court found that auditory hallucinations, disorganized thinking, and responses to internal stimuli accompanied respondent's failure to take his medication. It also found respondent was unable to meet his daily basic needs of shelter and hygiene

while his thinking is disorganized. These findings of fact are unchallenged by respondent, and thus they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Therefore, this case is distinct from *W.R.D.*, and the trial court's ultimate findings that respondent is a danger to himself is supported by the trial court's findings of fact.

The unchallenged findings of fact also support the ultimate finding that respondent was mentally ill. When applied to an adult, 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). Here, the trial court found that respondent exhibited disorganized thinking, appeared to respond to internal stimuli, and accused his doctors of poisoning him. His disorganized thinking and lack of insight into his mental illness severely impair his ability to obtain shelter and meet his need for hygiene. Based on this behavior, the trial court concluded that respondent was mentally ill. We agree, and hold that the trial court's findings of fact support this conclusion.

The trial court's ultimate findings of fact are supported by the underlying and uncontested findings. We therefore affirm the trial court's involuntary commitment order.

AFFIRMED.

Judge ARROWOOD concurs.

Judge MURPHY concurs in a separate opinion.

Report per Rule 30(e).

No. COA17-1395 – *In the Matter of K.B.*

MURPHY, Judge, concurring.

I concur with the Majority but write separately to note my apprehension over involuntarily committing persons suffering from mental illness before they have truly become dangerous to themselves or others. Respondent has not made any argument on appeal that the evidence negated the State's prima facie showing under N.C.G.S. § 122C-3(11)(a) that he "is unable to care for himself." N.C.G.S. § 122C-3(11)(a)(1)(II) (2017); *In re: K.G.W.*, ___ N.C. App. ___, ___, 791 S.E.2d 540, 543 (2016) (noting, "it is not our role to determine the weight to give to the evidence"). Further, Respondent did not challenge this statutory presumption as unconstitutionally vague or overbroad or make any type of as applied challenge to the statute. *State v. Earls, LLC*, 234 N.C. App. 186, 192, 758 S.E.2d 654, 658 (2014) ("It is not the role of this Court to craft [a party's] argument for him.").

Respondent and others similarly situated may be caught in too large of an undefined funnel depriving them of their rights to liberty and forcing them to undertake psychoactive drug regimens at too remote a stage in their illness. However, Respondent has not made those arguments here. Therefore, we need not address the constitutionality of N.C.G.S. § 122C-3(11)(a)(1), either facially or as applied to Respondent. Consequently, I concur.