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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-387

Filed: 7 January 2020

Wake County, No. 18 SPC 5553

IN THE MATTER OF D.B.

Appeal by Respondent from order entered 4 October 2018 by Judge V.A. Davidian, III, in Wake County District Court. Heard in the Court of Appeals 30 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert T. Broughton, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for Respondent-Appellant.

COLLINS, Judge.

Respondent D.B.¹ appeals from an involuntary commitment order committing him to inpatient treatment, followed by outpatient treatment. Respondent argues that the trial court made insufficient findings of fact to support its conclusion that Respondent was dangerous to himself. We affirm.

¹ We use initials to protect Respondent's identity.

I. Procedural History

D.B. was forty-nine years old when his fiancée filed an affidavit and petition on 25 September 2018 to have him involuntarily committed. Pursuant to a magistrate’s order, law enforcement took D.B. into custody and transported him to UNC Hospitals at Wakebrook (“Wakebrook”) to determine whether it was necessary to commit him. Physicians at Wakebrook examined D.B. and maintained custody of him until a court hearing on 4 October 2018. At the conclusion of the hearing, the trial court ordered D.B. committed to inpatient treatment at Wakebrook for a period not to exceed 15 days, followed by a commitment to outpatient treatment at NC Recovery Support Services for a period not to exceed 75 days.

D.B. filed notice of appeal on 19 October 2018.

II. Background

D.B. is a high school graduate and a veteran of the United States Navy. He had maintained employment in the past but had become unemployed at the time the commitment petition was filed. D.B. presented a history of mental illness beginning in the early 1990s. He was diagnosed with bipolar disorder around 2006. Sometime around 2013, D.B. appeared to his father to be suicidal, so his father petitioned for him to be committed. It was during that hospitalization that D.B. was prescribed a medication regimen and treatment plan in Johnston County that he continued for several years, which helped him remain stable. D.B. was also diagnosed as suffering

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from post-traumatic stress disorder. He had been hospitalized in mental health facilities a total of eight times prior to the commitment hearing in this case, most recently in August 2018 at Wakebrook.

There have been time periods during which D.B. has been psychiatrically stable, has understood his mental illness, has engaged willingly in psychiatric treatment, and has maintained personal relationships. During other times, D.B. has been unwilling to take prescribed medications. From December 2017 to February 2018, D.B. showed symptoms of mania associated with bipolar disorder, could not maintain a job, engaged in excessive spending, exercised poor judgment and decision making, and did not sleep well. He was verbally aggressive toward his fiancée, made her fear for her safety, and threatened “to kill her with his bare hands.”

Also, D.B. has been unwilling at times to participate in treatment programs, such as in August 2018 when D.B. refused to comply with an outpatient program and was asked to leave. After being discharged by Holly Hill Hospital from inpatient treatment, D.B. began dressing up as “Batman” and “Elvis” and visiting children’s hospitals with his cat. He also went to convenience stores at night dressed in costumes.

In September 2018, D.B. was taken into custody as a result of the filed affidavit and petition in this case. He was agitated, irritable, uncooperative, hostile, and unwilling to answer questions. D.B. spoke in rapid and pressured speech, was

disorganized in communicating his thoughts to the nurse who examined him, and exhibited grandiose behavior such as telling people he was “God.” The doctor who examined D.B. concluded he was mentally ill and dangerous.

At the commitment hearing, D.B.’s father, the nurse who examined D.B. at Wakebrook, D.B., and D.B.’s friend testified. The nurse testified as an expert witness in psychiatry that D.B. suffered from bipolar disorder type I, was experiencing a current manic episode with psychotic features, and lacked insight into his illness, and opined that he would take necessary medications if discharged. The trial court concluded that Respondent was mentally ill and dangerous to himself.

III. Discussion

D.B. argues that the trial court erred by committing him, because the involuntary commitment order was not supported by sufficient findings that D.B. was dangerous to himself. He specifically argues that “[d]espite the order’s repeated recitation of the statutory definition of dangerousness, none of its factual findings demonstrated that [he] would suffer serious physical debilitation within the near future if he did not remain hospitalized.”

This Court reviews an involuntary commitment order to determine whether the ultimate findings of fact are supported by the trial court’s underlying findings of fact and whether those underlying findings, in turn, are supported by any competent evidence. *In re W.R.D.*, 248 N.C. App. 512, 515, 790 S.E.2d 344, 347 (2016); *In re*

Collins, 49 N.C. App. 243, 246, 271 S.E.2d 72, 74 (1980). Respondent did not challenge any of the trial court's findings of fact. They are thus binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted).

“To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self . . . or dangerous to others” N.C. Gen. Stat. § 122C-268(j) (2018). Findings of mental illness and dangerousness to self are ultimate findings of fact. *Collins*, 49 N.C. App. at 246, 271 S.E.2d at 74. On appeal, “[w]e do not consider whether the evidence of respondent’s mental illness and dangerousness was clear, cogent and convincing. It is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof.” *Id.*

N.C. Gen. Stat. § 122C-3 provides, in relevant part, that a person is dangerous to himself if, within the relevant past, he has acted in such a way as to show:

- 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
- 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

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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) (2018).²

Subsection 11(a)(1)(II) prohibits a trial court from involuntarily committing a person based only on a finding that the person had a history of mental illness or behavior before the commitment hearing; the trial court must also make a finding that there is a reasonable probability of some future harm if the person is not treated. *In re J.P.S.*, 823 S.E.2d 917, 921 (N.C. Ct. App. 2019) (citation omitted) (vacating commitment order because findings of fact failed to include respondent’s potential future conduct and risk of danger to self in future). “Although the trial court need not say the magic words ‘reasonable probability of future harm,’ it must draw a nexus between past conduct and future danger.” *Id.* (citing *In re Whatley*, 224 N.C. App. 267, 273, 736 S.E.2d 527, 531 (2012)).

In *In re Moore*, 234 N.C. App. 37, 758 S.E.2d 33 (2014), we concluded that the trial court’s ultimate finding of dangerousness to self was supported by underlying findings. *Id.* at 44-45, 758 S.E.2d at 38. We explained,

The trial court found that respondent “is at a high risk of

² Subsection 11(a) was amended effective 1 October 2019 to alter pronouns and word choice. 2019 N.C. Sess. Laws ch. 76, § 1. We apply and quote in this opinion the version of the statute extant at the time the trial court conducted the hearing. We note that the 2019 amendment made no substantive change to the relevant portions of the statute.

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decompensation if released and without medication,” and that Dr. Fahs thought respondent, if released, would “relapse by the end of football season.” As a result, the trial court’s findings of fact indicate that respondent is a danger to himself in the future. Therefore, the trial court properly found that respondent is a danger to himself because there is a reasonable possibility that he will suffer serious physical debilitation in the near future.

Id.

This Court also reached a similar conclusion in *In re Zollicoffer*, 165 N.C. App. 462, 598 S.E.2d 696 (2004). Based on a treating physician’s examination and recommendation, the trial court found

that respondent has a history of chronic paranoid schizophrenia, that respondent admits to medicinal non-compliance which puts him “at high risk for mental deterioration,” that respondent does not cooperate with his treatment team, and that he “requires inpatient rehabilitation to educate him about his illness and prevent mental decline.”

Id. at 469, 598 S.E.2d at 700. Noting that “the failure of a person to properly care for his/her medical needs, diet, grooming and general affairs meets the test of dangerousness to self[.]” *id.* (quoting *In re Lowery*, 110 N.C. App. 67, 72, 428 S.E.2d 861, 864 (1993) (citation omitted)), we concluded that the findings of fact supported the conclusion of law that respondent was dangerous to himself. *Id.*

In this case, the trial court made the following relevant findings of fact:

The Court also finds by clear, cogent, and convincing evidence that the Respondent is dangerous to self because within the relevant past Respondent has acted in such a

way as to show that he would be unable, without care, supervision, and the continued assistance of others not otherwise available outside of Wakebrook, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, and there is a reasonable probability of Respondent suffering serious physical debilitation within the near future unless adequate inpatient treatment is given by Wakebrook. In support of this finding of ultimate fact, this Court finds the following evidentiary facts based upon the competent evidence from the hearing:

....

2. The mental illness of bipolar disorder is a mood disorder that is lifelong and chronic, and is characterized by occasional periods of mania. While it generally cannot be cured, its symptoms can be controlled through an effective medication regimen.

3. In the weeks prior to his 25 September 2018 admission to Wakebrook Respondent was in a manic state with psychotic features. During this time he made a number of impulsive decisions resulting in the termination of his engagement and his move to Asheville. During this time Respondent began dressing up as Batman and decorating his car a[s] the Bat Mobile. Respondent's plan was to pair up with a friend and go to children's hospitals to provide entertainment. Respondent's plan involved bringing his cat with him into the hospital to perform tricks for the children. During this time Respondent was taking no prescribed medications for his mental illness, instead opting to "self-medicate" with holistic remedies such as marijuana, cannabidiol oil, and St. John's Wart [sic].

4. Since his 25 September 2018 arrival at Wakebrook, Respondent's manic state has begun slowly resolving. Nevertheless, while at Wakebrook he had been irritable, verbally aggressive, and overtly hostile to Wakebrook staff. He has demonstrated pressured speech as well as delusional and disorganized thoughts—including loose thought associations and claims to be God. He has also endorsed the paranoid delusion that NP Coffin is trying to

kill him with medication. When at his behavioral baseline, Respondent is not manic. He can maintain employment and stable relationships in his life. Respondent is not currently at this behavioral baseline. It is reasonable to suspect that Respondent's manic state will fully resolve and that he will return to his baseline. However, this result will only occur with effective inpatient treatment. If released from Wakebrook in his current condition, it is reasonably probable that Respondent will suffer serious physical debilitation within the near future. Further inpatient treatment is required to prevent such a result.

5. Upon arrival at Wakebrook Respondent was initially unwilling to take anti-psychotic medications voluntarily. As a result, a non-emergent forced medication order was entered. When confronted with threat of an intramuscular injection, Respondent has taken a 20 mg dose of the anti-psychotic medication Abilify orally. However, Respondent has resisted the efforts of NP Coffin to increase this dosage to a level which she believes is necessary to effectively treat his mental illness. Respondent has likewise resisted the efforts of NP Coffin to start Respondent on a course of the mood stabilizer lithium. Treatment with an antipsychotic such as Abilify and a mood stabilizer such as lithium is the "gold standard" for the treatment of a person suffering from bipolar disorder type I, current episode manic with psychotic features.

6. Respondent does not believe that psychiatric medication is necessary for him and prefers holistic remedies such as marijuana, cannabidiol oil, and St. John's wart [sic]. These holistic remedies are insufficient to treat Respondent's mental illness. Nevertheless, Respondent intends to discontinue his prescribed psychiatric medications and resume them upon discharge from Wakebrook.

7. If released in his current condition, Respondent would fail to take his prescribed psychiatric medications. It is reasonably probable that such a failure would in the near future lead to a rapid decline in the condition of Respondent's mental illness, with a reemergence in the manic symptoms that caused him to present to Wakebrook

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on 25 September 2018. In turn, the reemergence of these symptoms would make it reasonably probable that Respondent will suffer serious physical debilitation within the near future. Further inpatient treatment is required to prevent such a result.

8. As of the time of this hearing Respondent possesses severely impaired insight and judgment. It is the opinion of NP Coffin as an expert in the field of psychiatry that Respondent possesses no insight into the fact that he suffers from a mental illness and has recently been manic, and Respondent denies suffering bipolar disorder to this Court despite acknowledging a history of receiving mental illness treatment and stating that he may have something “in the realm of bipolar II.” As a result of this deficit, this Court infers that Respondent is currently unable to care for himself now and will continue to be unable to do so into the near future. If released from Wakebrook in his current condition, this deficit of insight makes it reasonably probable that Respondent will suffer serious physical debilitation within the near future. Further inpatient treatment is required to prevent such a result.

9. In his current condition, Respondent possesses poor self-control, poor frustration tolerance, and a poor ability to make reasoned decisions throughout the course of his day. If released from Wakebrook in his current condition, these deficits make it reasonably probable that Respondent will suffer serious physical debilitation within the near future. Further inpatient treatment is required to prevent such a result.

10. At this time outpatient treatment is not a therapeutically appropriate alternative to treat Respondent given his current resolving manic state, his lack of insight, his unwillingness to continue with medication outside of an inpatient setting, and his unlikeliness to seek follow-up care for his mental illness outside of an inpatient setting.

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As in *In re Moore* and *In re Zollicoffer*, these findings of fact are sufficient to support a finding of “a reasonable probability” of some future harm absent treatment, as required by N.C. Gen. Stat. § 122C-3(11)(a)(1)(II). Similar to the findings in *In re Moore*, the trial court predicted Respondent’s future conduct absent inpatient treatment in Findings of Fact 4, 7, 8, 9, and 10. Finding of Fact 7 specifically predicted a “rapid decline in the condition of Respondent’s mental illness, with a reemergence in the manic symptoms” if Respondent refused to take medication.

Additionally, similar to the findings in *In re Zollicoffer*, the trial court found that, because of Respondent’s “severely impaired insight and judgment[,] . . . Respondent is currently unable to care for himself now and will continue to be unable to do so into the near future. If released from Wakebrook in his current condition, this deficit of insight makes it reasonably probable that Respondent will suffer serious physical debilitation within the near future. Further inpatient treatment is required to prevent such a result.” Contrary to D.B.’s argument, the trial court did not merely recite portions of the statute. Instead, it explained the nexus between Respondent’s past conduct and the potential of future danger. *See In re J.P.S.*, 823 S.E.2d at 921.

D.B. asserts that the physical debilitation requirement demands evidence of “physical harm that would result from the failure of the respondent to receive involuntary treatment.” However, psychiatric decompensation and mental

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deterioration can constitute the serious physical debilitation contemplated by the statute. *See In re Zollicoffer*, 165 N.C. App. at 469, 598 S.E.2d at 700. Thus, we reject this argument.

IV. Conclusion

We conclude that the trial court made sufficient findings of fact to support its ultimate finding that D.B. was dangerous to himself. Accordingly, we affirm the trial court's involuntary commitment order.

AFFIRMED.

Judges TYSON and BROOK concur.

Report per Rule 30(e).