IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-673

No. COA20-821

Filed 7 December 2021

Mecklenburg County, No. 17SPC4673

In the Matter of:

T.S.

Appeal by Respondent from order entered 27 September 2019 by Judge Elizabeth Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 24 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth Forrest, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for Respondent-Appellant.

COLLINS, Judge.

¶ 1 Respondent appeals from the trial court's order involuntarily committing him to an outpatient facility for a period not to exceed 180 days. Respondent argues that the trial court had no authority to involuntarily commit him and erred by ordering him to comply with outpatient treatment. We disagree with Respondent's arguments and affirm the trial court's order.

I. Background

¶ 2 Dr. Maria Almeida filed an affidavit and petition for involuntary commitment on 26 May 2017, alleging that Respondent was "mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness." The petition stated the following facts in support of this allegation:

> 56 y/o male with schizoaffective disorder, bipolar type, delusional disorder and antisocial/narcissistic personality disorder admitted to observation after he started having increased paranoia regarding being under surveillance by law enforcement/FBI, reports that his phones have been tapped and that his computer has been hacked. He reports feeling unsafe and is now reporting having thoughts of suicide as well as harming others (will not specify the targets). patient also has been refusing to take his medications for the last day. Patient needs further inpatient care for stabilization.

Dr. Almeida recommended inpatient commitment for 30 days.

¶ 3 That same day, the trial court found that Respondent was mentally ill and dangerous to self or others and ordered law enforcement to take Respondent into custody and transport him to AIC Behavioral Health Charlotte. Dr. W. Carlta Gay conducted an examination of Respondent on 28 May 2017 to determine the necessity for Respondent's involuntary commitment. Dr. Gay found that Respondent was mentally ill, dangerous to self, dangerous to others, and

> [r]eports thoughts of wanting to end his life or potentially

> creating a situation where he would die "suicide by cop." He has a history of several suicide attempts by O.D. Also has [history] of self mutilation. Since arriving here in the ED, he has refused meds & refused blood draws for labs.

Dr. Gay recommended inpatient commitment for 30 days.

¶ 4 After a hearing on 2 June 2017, the trial court determined that Respondent was mentally ill and dangerous to himself, and found as follows:

> The respondent was admitted because he was planning suicide. There have been prior suicide attempts. The respondent has been admitted to the hospital for psychiatric treatment on prior occasions with referrals to outpatient treatment providers. Respondent has both failed to engage or threatened harm to treatment providers resulting in termination of services.
>
> Respondent came to psychiatric ER on 5/25/17 seeking help for paranoia and distress associated with symptoms of schizoaffective disorder.
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> Respondent has said that he will cause harm to the members of the managed care organization if he does not have [illegible] outpatient support upon discharge.
>
> No community support is currently available to mitigate limited capacity to exercise judgment necessary to meet needs for self protection. [illegible] risk of poor judgment or danger to others. Respondent requires medication management.

¶ 5 The trial court ordered Respondent committed to seven days inpatient commitment and 90 days outpatient commitment, and set a hearing on 9 June 2017 to review the outpatient commitment. Over the course of the next two years, between 2017 and 2019, Respondent consented to six extensions of his outpatient

commitment.

¶ 6 Dr. Susan Gray, Respondent's physician, petitioned the trial court on 25 September 2019 to have Respondent's outpatient commitment extended again. Respondent objected to this extension and filed a motion in opposition. The basis for Respondent's motion was that "the Court itself cannot manage or supervise his mental health treatment" because it has no "authority to order or direct any agency to provide the Respondent" with specific services, such as Assertive Community Treatment services ("ACT"). ACT uses a team approach to help individuals with medication management, everyday basic tasks, and skill building for living within the community.

¶ 7 Respondent asserted that ACT provides "the highest level of mental health services available in the community, prior to hospitalization," and that his doctors testified to his need for ACT. Respondent alleged that he had been denied ACT by three different providers "based upon the premise that one of his diagnosis, *borderline personality disorder*, excludes him from ACT[.]" Respondent concluded that, because he was unable to obtain ACT, the trial court should "no longer entertain" Respondent's outpatient commitment.

¶ 8 The trial court held a hearing on 27 September 2019 to determine whether Respondent should be involuntarily committed to an outpatient facility. At the hearing, Dr. Gray testified to the following: She had been working with Respondent

for more than two years and had seen him weekly or bi-weekly as needed for his schizoaffective "psychotic disorder." Respondent had "delusions about law enforcement monitoring him, following him, potentially trying to detain him, arrest him, incarcerate him" and that these delusions became a "very serious preoccupation" when he was not medicated. Respondent became so anxious and agitated that he "needs to take action" and "needs to approach people that he feels are law enforcement agents." Dr. Gray worried for Respondent's safety as he "becomes more desperate in the sense that he feels his life is not worth living because this is a very plaguing situation for him." While Dr. Gray believed ACT would benefit Respondent, and Respondent desired such services, that treatment was unavailable to him at AIC Behavioral Health Charlotte; she thus met with Respondent as often as her schedule allowed.

¶ 9 Respondent testified that he did not have a broad paranoia that law enforcement was "out to get" him, but that he has provided to his health clinicians "compelling evidence that suggests I am being surveilled, that I am a target of something." Respondent also testified that he agreed "100 percent with Dr. Gray that medication helps minimize the symptoms of [his] paranoia" but stated that the medication was exacerbating his already-serious health problems with his heart and that he would not take the medication until he felt it was appropriate again.

¶ 10 Following the hearing, the trial court determined that Respondent was

mentally ill, and—while not dangerous to himself or others—in need of treatment "to prevent further disability or deterioration which would predictably result in dangerousness to self or others." By written order entered 27 September 2019, the trial court extended Respondent's outpatient commitment for another 180 days. Respondent timely appealed.

II. Discussion

¶ 11 Respondent argues that (1) the trial court had no authority to order him involuntarily into "outpatient treatment when the court had no power to enforce the commitment order and ensure that he received the necessary treatment" and (2) the trial court erred by ordering him involuntarily into "outpatient treatment when the record before the court showed that the treatment available to him was inadequate to meet his needs."

¶ 12 Respondent alleges statutory error in both issues on appeal; we review statutory errors de novo. *State v. Lu*, 268 N.C. App. 431, 433, 836 S.E.2d 664, 666 (2019).

¶ 13 Chapter 122C of the North Carolina General Statutes, entitled the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985, governs how the State assists individuals in need of mental health services. It provides, in pertinent part:

> Within *available resources* it is the obligation of State and

> local government to provide mental health . . . services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life.

N.C. Gen. Stat. § 122C-2 (2019) (emphasis added). If a mental health examiner recommends involuntary outpatient commitment, an initial district court hearing must be held to determine whether such commitment is appropriate. N.C. Gen. Stat. § 122C-267(a) (2019). The trial court may order outpatient commitment if it determines that a respondent has a mental illness and

> that the respondent is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness . . .; and that 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[.]

N.C. Gen. Stat. § 122C-271(a)(1) (2019).

¶ 14 During an outpatient commitment rehearing, the trial court may order involuntary outpatient commitment if it finds that:

> a. The respondent has a mental illness.
>
> b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others.
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> 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).
>
> 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.

N.C. Gen. Stat. § 122C-263(d)(1) (2019). If the respondent continues to meet the criteria of N.C. Gen. Stat. § 122C-263(d)(1), the court may order involuntary outpatient commitment for an additional period not to exceed 180 days. N.C. Gen. Stat. § 122C-275(c) (2019).

¶ 15 Respondent argues that the trial court had no authority to order involuntary outpatient commitment when it had no power to ensure that he received ACT. Respondent mischaracterizes the trial court's order; it did not specifically order ACT but instead ordered that he be "committed to outpatient commitment under the supervision and management of" AIC Behavioral Health Charlotte. The trial court found:

> Respondent is diagnosed with schizoaffective disorder. He has been seen by Dr. Gray in the AIC clinic since 2017. While there have been long standing clinical recommendations for [ACT] and referrals for such services, Respondent has not been approved for ACT treatment by any provider. Respondent does require more intensive support than is permitted under current service allowance for psychiatric care. Dr. Gray sees respondent twice as often as is typical for outpatient psychiatric care. This outpatient care is the most intensive available community

> support.
>
> Respondent suffers from persistent paranoia and delusions about law enforcement surveillance and harassment. His current medication mitigates the extent to which delusions disrupt daily functioning.
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> Respondent has recently discontinued his medication. In the past Respondent, when not taking medication, has become so distressed by paranoia and delusions that he has become hopeless – not wanting to live. When not on medication, Respondent has become so distressed that he has approached strangers he believes are law enforcement surveilling him which could place him at risk of harming others. There is a risk that distress from paranoia would result in self-harm. The commitment order improves Respondent's motivation to comply with medication management.

Upon these findings, the trial court ordered Respondent to 180 days outpatient commitment at AIC Behavioral Health Charlotte.

¶ 16 In addition to its written findings of fact, the trial court incorporated Dr. Gray's "examination and recommendation to determine the necessity for involuntary commitment report" as additional findings of fact. The report stated: Respondent has a "history of multiple previous psychiatric hospitalizations" and a "history of stopping his medication"; "when [Dr. Gray] saw him on 9/17/19, he had already stopped his medication and talked about not wanting to return to see this MD"; and "when [Respondent] stops his medication, he becomes paranoid to the point of taking actions that place himself and others in danger."

¶ 17 Taken together, these findings of fact support the conclusions that: (1)

Respondent has a mental illness in the form of schizoaffective disorder; (2) Respondent is capable of surviving safely in the community with available supervision from others, as he had been engaged in outpatient treatment for over two years without needing inpatient treatment; (3) Respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as Respondent stopped taking his medication, which resulted in him becoming paranoid, and distressed, and placed him at risk of self-harm; and (4) the nature of Respondent's illness limits or negates his ability to make an informed decision to seek voluntarily or comply with treatment, as Respondent indicated to Dr. Gray that he was feeling hopeless and had already stopped taking his psychiatric medications.

¶ 18 Additionally, while Respondent may have benefitted from ACT, under N.C. Gen. Stat. § 122C-2, the State must only provide mental health services "[w]ithin available resources." The unavailability of one specific type of treatment does not prohibit Respondent from being ordered to receive other, available treatments, where such treatment is necessary to prevent further deterioration that would result in harm. As Respondent continued to meet the criteria of § 122C-263(d)(1), the trial court did not err by involuntarily committing Respondent to an outpatient facility for a period not to exceed 180 days and by ordering Respondent to comply with outpatient treatment. The trial court's order is affirmed.

AFFIRMED.

Chief Judge STROUD and Judge DIETZ concur.

Report per Rule 30(e).