IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-862

No. COA22-337

Filed 20 December 2022

Cumberland County, No. 21 SPC 50166

IN THE MATTER OF: T.B.

Appeal by Respondent from order entered 19 October 2021 by Judge Frances M. McDuffie in Cumberland County District Court. Heard in the Court of Appeals 5 October 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling Rozear, for Respondent-Appellant.

GRIFFIN, Judge.

¶ 1 Respondent T.B.[1] appeals from an order involuntarily committing him to thirty days at an inpatient facility. Respondent argues there were insufficient evidence and findings to support the order, the trial court erred when the trial judge assumed the role of prosecutor, and, alternatively, that he received ineffective assistance of counsel

[1] We use Respondent's initials pursuant to N.C. R. App. P. 42 and N.C. Gen. Stat. § 122C-52 (2021).

when his trial counsel failed to object to the trial judge's assumption of this role. We affirm the trial court's order.

I. Factual and Procedural Background

¶ 2 On 11 October 2021, Respondent was admitted to the Fayetteville VA Medical Center. The following day, an affidavit and petition were filed for Respondent to be involuntarily committed. The petition alleged that Respondent was a danger to himself and others because he "ha[d] been diagnosed with schizophrenia[,] . . . prescribed lithium but has not been taking it[,] . . . display[ed] suicidal ideation[,] . . . display[ed] aggressive behavior towards assistant living staff[, and] . . . [wa]s not eating or sleeping regularly."

¶ 3 On 19 October 2021, a hearing was held on the involuntary commitment petition. The trial court heard testimony from Dr. Atul Kantesaria, the Medical Center's in-patient staff psychiatrist. Dr. Kantesaria testified that Respondent made threats toward staff, was "hyper-verbal," was not sleeping well, tried to rip out a phone, "was very upset and angry[,]" and the weekend before the hearing, "defecated and urinated on the . . . bed sheets and towels." Dr. Kantesaria further testified that Respondent was threatening staff by allegedly "making a pipe bomb[;]" that the day before the hearing, Respondent allegedly threatened to kill a staff member with a machete; and on the day of the hearing he noticed Respondent "was pretty hyper-verbal, went from topic to topic, grandiose ideations and stuff." While Dr. Kantesaria

had not heard Respondent mention anything about suicide, it was recommended that Respondent be committed for thirty days because he "need[ed] a lot more help at [that] point."

¶ 4 On 19 October 2021, the trial court ordered Respondent to be involuntarily committed for thirty days of inpatient treatment. Respondent timely appealed.

II. Analysis

¶ 5 Respondent argues: (1) that there was insufficient evidence to establish he was a danger to himself or others, and the findings do not support the order; (2) "the trial judge violated [his] right to an impartial tribunal by assuming the role of prosecutor[;]" and (3) he "received ineffective assistance of counsel when [his] trial counsel failed to object to the trial judge's assumption of the role of prosecutor." We address each argument.

A. Findings of Fact and Sufficient Evidence

¶ 6 In reviewing an involuntary commitment order, we must "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 competent evidence." *Matter of C.G.*, 278 N.C. App. 416, 2021-NCCOA-344, ¶ 32 (citation 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) (2021). North

Carolina law defines danger to self, in part, as

> a. Dangerous to self. -- Within the relevant past . . .
>
> 1. The individual has acted in such a way as to show all of the following:
>
> I. The individual 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 the individual's daily responsibilities and social relations, or to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety.
>
> II. There is a reasonable probability of the individual's 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 or herself.

N.C. Gen. Stat. § 122C-3(11) (2021). An involuntary commitment order "cannot be based solely on findings of the individual's history of mental illness or . . . behavior prior to and leading up to the commitment hearing, but must [also] include findings of a reasonable probability of some future harm absent treatment[.]" *C.G.*, ¶ 31 (alterations in original) (citation and internal quotation marks omitted). The trial

court's order is not required to explicitly find a "reasonable probability of future harm," but "it must draw a nexus between past conduct and future danger." *Id.* (citation and internal quotation marks omitted). An individual is deemed "dangerous to others" if, "[w]ithin the relevant past, the individual . . . threatened to inflict serious bodily harm on another, . . . or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated." *Id.* ¶ 30 (quoting N.C. Gen. Stat. § 122C-3(11) (2019)).

¶ 7 Respondent makes no argument that he is not mentally ill. Rather, Respondent takes issue with the trial court's finding that he is a danger to himself and others. The trial court found that:

> 3) Respondent's diagnoses manifest themselves by him having disordered thoughts, (going topic to topic), [R]espondent stays agitated, irritable and paranoid, suffers from psychosis, very energetic (not sleeping) and having suicidal ideations.
>
> 4) Currently at the hospital, [R]espondent has threatened hospital staff with [a] machete and has urinated on bedsheets. He is compliant with treatment and medications at this time but very disruptive during groups.
>
> . . .
>
> 6) Respondent is not at baseline.
>
> 7) Respondent does currently have a guardian, but they were not present at hearing.
>
> 8) Dr. Kantesaria recommends 30 days of Inpatient

> treatment so he can continue to try to find [a] placement for [R]espondent.
>
> 9) Respondent is currently on Lithium (Dr. Kantesaria is trying to get the dosage right for [R]espondent).
>
> 10) Respondent is in need of further treatment in a treatment facility and lesser restrictive measures would be insufficient in effecting said treatment.

¶ 8 These findings are a summation of Dr. Kantesaria's testimony during the petition hearing and support the finding that Respondent was a danger to others. Finding of fact 4 clearly evidences that Respondent threatened to inflict serious bodily harm when he threatened hospital staff with a machete. Further, findings 6 through 10 show that there is a reasonable probability of future dangerous conduct because Respondent is not at baseline, currently has a guardian, and required thirty days of inpatient treatment to find a placement because his condition required further treatment. *See C.G.*, ¶ 35 (holding that the trial court "created the nexus between [the respondent's] mental illness and future harm to himself" and "satisfied the requirement it find a reasonable probability of future harm absent treatment" based on finding that treatment team was unable to sufficiently care for the respondent's dental and nourishment needs).

¶ 9 We conclude that there were sufficient findings supported by testimonial evidence to support the trial court's ultimate finding that Respondent was a danger to others, and therefore do not reach the issue of whether Respondent was a danger

to himself.

B. Judge as Prosecutor

¶ 10 Respondent further asserts that "the trial judge violated [Respondent's] right to an impartial tribunal by assuming the role of prosecutor and presenting the State's case." However, Respondent's trial counsel did not object to this at trial, and the issue is therefore not preserved for our review. *See* N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context."). Further, we decline Respondent's request to invoke Rule 2 of the North Carolina Rules of Appellate Procedure in this instance.

C. Ineffective Assistance of Counsel

¶ 11 Alternatively, Respondent asserts an ineffective assistance of counsel ("IAC") claim against his trial counsel for failing to object to the trial judge assuming the role of prosecutor at his petition hearing. Yet, Respondent fails to cite, nor are we able to identify, any authority applying *Strickland*, the seminal case outlining IAC claims in the criminal context, to an involuntary commitment hearing. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also In re J.C.D.*, 265 N.C. App. 441, 452–53, 828 S.E.2d 186, 194 (2019) ("However, no prior case has determined that [*Strickland*] . . . [is] applicable to an involuntary commitment hearing." (citations omitted)). We

therefore conclude that Respondent's IAC claim is without merit.

III. Conclusion

¶ 12 For the foregoing reasons, we affirm the trial court's order.

AFFIRMED.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).