COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00011-CV
NO. 02-17-00012-CV

IN THE MATTER OF M.T.

FROM COUNTY COURT AT LAW NO. 2 OF WICHITA COUNTY
TRIAL COURT NOS. 39974-L, 40008-L-D

MEMORANDUM OPINION[1]

I. INTRODUCTION

In these two consolidated accelerated appeals, Appellant M.T. challenges the legal and factual sufficiency of the evidence to support his court-ordered commitment for temporary inpatient mental health services and his court-ordered administration of psychoactive medication. *See* Tex. Health & Safety Code Ann.

[1]*See* Tex. R. App. P. 47.4.

§ 574.034(a) (West Supp. 2016), § 574.106(a–1) (West 2010). Because both orders are supported by legally and factually sufficient evidence, we will affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND[2]

M.T. suffers from schizoaffective disorder and has been hospitalized for his mental illness on multiple occasions. Two months after M.T.'s October 2016 discharge from North Texas State Hospital (NTSH), M.T.'s mental health again deteriorated.

The decline in M.T.'s mental health status caused M.T.'s father on December 15, 2016, to complete an application for M.T.'s emergency detention. The application stated that M.T. had been carrying on conversations with voices only M.T. heard; had stood in the street screaming and threatening neighbors at 1:45 a.m. that morning; and had grabbed, pushed, and chased his mother to her car after she checked on him at 10:00 a.m. that morning. Based on these allegations in the application for emergency detention, M.T. was apprehended and transported to NTSH for a preliminary evaluation.

During the preliminary evaluation, the clinician noted that M.T. paced, talked to himself, exhibited an aggressive physical posture, claimed to not know why he was at NTSH, was verbally hostile, and was uncooperative in answering questions. Based on M.T.'s behavior, the clinician recommended that M.T. be

[2]Because M.T. challenges the legal and factual sufficiency to support both the commitment order and the medication order, we set forth a detailed factual background, which we will then summarily reference in our analysis below.

admitted to NTSH. Thereafter, an application for temporary court-ordered mental health services and an application to authorize the administration of psychoactive medication was filed.

At the combined hearing on the two motions, the State asked the trial court to take judicial notice of the documents on file with the court. The commitment file contains the application for emergency detention completed by M.T.'s father and two certificates of medical examination for mental illness.[3]

The certificate signed by Dr. Satyam Jain and dated December 16, 2016, stated that he had performed a psychiatric evaluation of M.T. Dr. Jain's certificate explained that M.T. had stopped taking his prescribed medications; that M.T. was psychotic and aggressive; that M.T. had threatened his neighbors and his family and that they were scared of him; that M.T. had threatened the admissions staff and the examining physician at NTSH; that M.T. was responding to auditory hallucinations; and that M.T. exhibited poor insight and judgment. Dr. Jain expressed his opinion that M.T. is mentally ill and that as a result of that illness, M.T. met at least one of the statutory criteria for court-ordered temporary mental health services. Dr. Jain's certificate, as set forth below, indicated M.T. met the following statutory criteria:

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[3]*See* Tex. Health & Safety Code Ann. § 574.009(a) (West 2010) (requiring at least two certificates of medical examination for mental illness—which were completed by different physicians, each of whom had examined the proposed patient during the preceding thirty days—to be filed before a hearing can be held on the application for temporary mental health services).

( ) is likely to cause serious harm to self; or

(X) is likely to cause serious harm to others; or

(X) is suffering severe and abnormal mental, emotional[,] or physical distress; experiencing substantial mental or physical deterioration of his/her ability to function independently, which is exhibited by the proposed patient's inability, except for reason of indigence, to provide for the proposed patient's needs, including food, clothing, health, or safety and not able to make a rational and informed decision as to whether to submit to treatment.

See id. § 574.034(a).

The second physician's certificate was signed by Dr. Diana Isachievici and dated December 29, 2016. In it she stated that M.T. suffers from schizoaffective disorder and that after two weeks of hospitalization, he remained "easily agitated, demanding release from the hospital." Dr. Isachievici noted that M.T. continued to exhibit poor insight and judgment and had been treated with emergency medications due to his aggressive behavior. Based on the acts M.T. had committed on December 15 and his mental health status at the time Dr. Isachievici completed her certificate, she recommended temporary commitment and court-ordered medications for M.T. Dr. Isachievici indicated in the certificate that she was of the opinion that M.T. is mentally ill and that as a result of that illness, M.T. met at least one of the same two statutory criteria set forth in Dr. Jain's certificate.

Dr. Isachievici also testified at the non-jury hearing on the motions. She explained that M.T.'s specific schizoaffective behaviors included the following: talking with unseen others; exhibiting paranoia concerning his detention and

having his blood drawn; threatening staff and physicians to the extent staff intervention was required; threatening to harm other patients; and refusing to take antipsychotic medications. Dr. Isachievici referenced M.T.'s aggression with his mother on December 15, which triggered M.T.'s admission to NTSH, and said that M.T. remained irritable, aggressive, and psychotic as of the date of the commitment hearing on January 4, 2017. Dr. Isachievici testified that while M.T. had been at NTSH, he had been sexually inappropriate toward a female staff member, attempting to collect her personal information "so he could 'F' her when he g[ot] out," and had also threatened to gouge out his roommate's eyes and to kill him. Dr. Isachievici testified that M.T.'s behavior presented a risk of harm to others. She said that M.T. was suffering severe and abnormal mental, emotional, or physical distress because he did not believe he had a mental illness and would become agitated and demand his release from NTSH. Dr. Isachievici concluded that M.T. was not able to make a rational and informed decision as to whether he needed treatment. She recommended temporary commitment of M.T. to NTSH for a period not to exceed ninety days.

Dr. Isachievici also testified regarding the need for court-ordered authorization to administer psychoactive medication to M.T. because he refused to take the antipsychotic he had been prescribed. Although M.T. would take the mood stabilizer prescribed for him, the mood stabilizer was not designed to alleviate M.T.'s psychotic symptoms. As a result of M.T.'s refusal to take the prescribed antipsychotic medication, his symptoms had not improved to the

desired level. Dr. Isachievici opined that with the recommended medications—an antipsychotic and a mood stabilizer—M.T.'s psychosis would improve, along with his mood, to the point that he could be discharged into the community; without the recommended medications, M.T. would remain a risk to harm others. Dr. Isachievici attempted to discuss these risks and benefits of taking the recommended medication with M.T. But M.T. stated that he did not like the side effects of the prescribed antipsychotic medicine, was not interested in hearing about alternative antipsychotic medications, and should not be on medication because he was stable enough to be released. According to Dr. Isachievici, M.T. did not currently possess the capacity to make a decision regarding the administration of medication.

Outpatient treatment was not an option for M.T., in Dr. Isachievici's opinion, because M.T. continued to exhibit both mood and psychotic symptoms and posed a risk for aggressive behavior if released "due to his poor insight into his mental illness." Dr. Isachievici explained that she believed M.T. would "stop taking the mood stabilizer immediately after discharge . . . [b]ecause he does not think he needs to be on any medications" and because he had previously stopped taking his prescribed medication, which "is the reason why he deteriorated, became psychotic and aggressive[,] and [] had to be readmitted to [NTSH]." Dr. Isachievici believed that a temporary commitment, along with court-ordered medication, was in M.T.'s best interest.

In M.T.'s case in chief, he testified as the sole witness. He said that he did not agree with Dr. Isachievici's testimony regarding his condition, that she was disrespectful and "kind of like an odd person," and that she had purposely lied. M.T. agreed that he had been diagnosed with schizoaffective disorder but did not feel like he should have been detained at NTSH because he felt "a lot healthier." M.T. testified that he was willing to take medication to treat his schizoaffective disorder but that he would ultimately like to get off all medication. He said that if he started to "feel like, you know, like crazy or something, you know, then definitely take my medication." M.T. believed that the mood stabilizer had been effective but that it made him feel "cloudy like real sleepy," so that was why he wanted to stop taking it. He said that he had not stopped taking the mood stabilizer because he was afraid that he would not be released. M.T. testified that he was not opposed to outpatient treatment "especially like right now getting over all this stuff I kind of like -- like I said, getting more healthy, getting a, you know, more healthy lifestyle." When he was asked to explain what he meant by "getting more healthy," M.T. said that "it's a really hard concept to explain. It's kind of like I don't know, just kind of feel like my mind's getting more healthy." M.T. testified that he had been treated by Dr. Butera for several years as an outpatient, that he had the support of his family, and that they would provide transportation and make sure he attended any outpatient treatment that the trial court might order. When asked if there was anything else that he would like to tell the trial court, M.T. said that he was being held illegally, that he felt great, that

he wanted to be released as soon as possible, and that he planned to pursue a lawsuit even though he was afraid of retaliation.

On cross-examination, M.T. agreed that although his family was very supportive of him, they were the ones who had requested that he be admitted to NTSH. M.T. attempted to downplay the reports that he was aggressive toward his neighbors and his family, dismissing such reports as exaggerations. M.T. testified that on December 15, he did not speak to any of his neighbors; he had an outburst, went outside and screamed, but was not aggressive toward anyone. M.T. claimed that on December 15, he was taking the antipsychotic Geodon and a mood stabilizer but was not taking the Klonopin that Dr. Butera had prescribed to him for anxiety. M.T. agreed that he had experienced five or six outbursts that had caused him to be admitted to NTSH, but he said that he had never had an outburst like the one he experienced on December 15. Regarding the attack on his mother on that same date, M.T. did not recall laying a hand on his mother or grabbing her arm. M.T. agreed that grabbing, pushing, and chasing someone are all usually violent acts, but he said that he was not violent or aggressive toward his mother. He said that if he had grabbed his mother in any manner at all, it would have been in a relaxed way.

The trial court questioned M.T. and asked him what the December 15 outburst consisted of. M.T. responded,

> It was basically I just went outside and I just started yelling and what -- to me it was -- I mean it was kind of I'm an artist myself so I kind -- it was kind of like a metaphorical type. It was me I think

> and this is -- this is going to probably sound like the most crazy thing I'll say here today, is that it was kind of me getting over like losing the voices and the stuff that I was going through, and it was kind of me like beating that and that's what that consisted of, and ever since after that I was fine.
>
> Like after that day had ended I was fine, especially even when the police came to my house I was doing fine[,] and I didn't have any outbursts. I mean they came into my house[,] and I went with them willingly. I came up here -- I came up here because I was like, well they're going to let me go, you know, because I'm not doing anything crazy, I'm not acting crazy. It was just one outburst I just had.

The trial court also asked M.T. whether he had been hearing voices and how long his previous commitment to NTSH had lasted; M.T. admitted that he had heard voices and said that his last commitment at NTSH lasted one week.

After hearing the evidence, the trial court found by clear and convincing evidence that M.T.

> is mentally ill and that as a result of the mental illness[,] the Patient is likely to cause serious harm to others and will[,] if not treated, continue to suffer severe and abnormal mental[,] emotional[,] or physical distress and will continue to experience deterioration of the proposed patient's ability to function independently[,] which is exhibited by the proposed patient's inability[,] except for reasons of indigence[,] to provide for the proposed patient's basic needs[,] including food[,] clothing[,] health[,] or safety; and is unable to make a rational and informed decision as to whether or not to submit to treatment.

The trial court signed an order committing M.T. to NTSH for temporary inpatient mental health services for a period not to exceed ninety days.

The trial court also found that M.T. is in need of psychoactive medication, that M.T. is under a court order to receive inpatient mental health services, that M.T. lacks the capacity to make a decision regarding the administration of the

proposed medication, and that treatment with the proposed medication is in the best interest of M.T. The trial court signed a separate order authorizing the administration of antipsychotics and mood stabilizers, regardless of M.T.'s refusal. M.T. then perfected appeals from the two orders.[4]

III. BURDEN OF PROOF FOR TEMPORARY COMMITMENT AND MEDICATION ORDERS AND SUFFICIENCY STANDARDS OF REVIEW

The State bears the burden of establishing by clear and convincing evidence the statutory requisites for court-ordered temporary mental health services and court-ordered administration of psychoactive medication regardless of the patient's refusal. *See id.* §§ 574.034(a), 574.106(a–1). In this context, "clear and convincing evidence" means "that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." *State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979).

Because the State's burden of proof is clear and convincing evidence, we apply a heightened standard of review to sufficiency-of-the-evidence challenges.

[4]One week after the trial court signed the orders committing M.T. for temporary mental health services and authorizing the administration of psychoactive medication, the superintendent of NTSH discharged M.T. "as authorized by Section 574.087 of the Texas Laws Relating to Mental Health and Mental Retardation." *See* Tex. Health & Safety Code Ann. § 574.087 (West 2010). In situations like this, the Texas Supreme Court has held that due to the stigma of being committed to a mental hospital and the stigma of being subjected to an order authorizing psychoactive medication, appeals from such orders are not moot. *See State v. K.E.W.*, 315 S.W.3d 16, 20 (Tex. 2010) (*K.E.W. I*); *State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980); *see also J.M. v. State*, 178 S.W.3d 185, 190 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

See In re C.H., 89 S.W.3d 17, 25 (Tex. 2002). When reviewing the legal sufficiency of the evidence in a case requiring proof by clear and convincing evidence, we determine whether the evidence is such that a factfinder could reasonably form a "firm belief or conviction as to the truth of the allegations sought to be established." *K.E.W. I*, 315 S.W.3d at 20 (quoting *Addington*, 588 S.W.2d at 570). We examine all evidence in the light most favorable to the finding, including every reasonable inference in favor of those findings, and assume that the factfinder resolved any disputed facts in favor of its finding, so long as a reasonable factfinder could do so. *See In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002).

Likewise, the higher burden of proof alters the appellate standard of review for factual sufficiency. *C.H.*, 89 S.W.3d at 25–26. In reviewing the evidence for factual sufficiency under the clear and convincing standard, we inquire "whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *See id.* at 25. We consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding. *J.F.C.*, 96 S.W.3d at 266; *K.E.W. v. State*, 333 S.W.3d 850, 855 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (*K.E.W. II*). In so doing, we must give "due consideration to evidence that the factfinder could reasonably have found to be clear and convincing." *See J.F.C.*, 96 S.W.3d at 266. We examine the entire record to determine whether "the disputed evidence that a reasonable factfinder could not have credited in

favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction"; if it is, the evidence is factually insufficient. *Id.*; *K.E.W. II*, 333 S.W.3d at 855.

IV. SUFFICIENT EVIDENCE SUPPORTS THE ORDER FOR TEMPORARY MENTAL HEALTH COMMITMENT

In his appeal from the commitment order, M.T. argues in a single issue that the evidence is legally and factually insufficient to support the order.

A. Statutory Requirements for Temporary Mental Health Commitment

A trial court may order a proposed patient to receive temporary inpatient mental health services only if it finds, from clear and convincing evidence, the following:

> (1) the proposed patient is a person with mental illness; and
>
> (2) as a result of that mental illness the proposed patient:
>
> > (A) is likely to cause serious harm to the proposed patient;
> >
> > (B) is likely to cause serious harm to others; or
> >
> > (C) is:
> >
> > > (i) suffering severe and abnormal mental, emotional, or physical distress;
> > >
> > > (ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

> (iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

Tex. Health & Safety Code Ann. § 574.034(a). To be clear and convincing, the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm: (1) the likelihood of serious harm to the proposed patient or others; or (2) the proposed patient's distress and the deterioration of the proposed patient's ability to function. *Id.* § 574.034(d).

The Texas Supreme Court has concluded that "a proposed patient's words are overt acts within the meaning of Section 574.034(d)" and can be relevant in predicting what actions he might or will take in the future as a result of mental illness. *K.E.W. I*, 315 S.W.3d at 22. The statute permits "the law's intervention to prevent serious injury to others" when a person with a mental illness makes statements that foreshadow violence. *Id.* The statutory language does not require evidence of a recent overt act that, by itself, proves the likelihood a proposed patient will cause serious harm to others. *Id.* at 23. Rather, the statute requires evidence of an overt act that "tends to confirm" the "likelihood" of serious harm to others. *Id.* at 23 (citing Tex. Health & Safety Code Ann. § 574.034(d)(1)). "[A] recent overt act by a proposed patient 'tends to confirm' that the patient poses a likelihood of serious harm to others within the meaning of Section 573.034(d) if the overt act is to some degree probative of a finding that

serious harm is probable." *Id.* at 24. This is true even though the overt act itself may not be dangerous. *Id.*

B. Sufficiency of the Evidence to Support Commitment Order

Here, M.T. does not challenge the trial court's finding under section 574.034(a)(1) that he is mentally ill. Rather, he contends the evidence is insufficient to support the trial court's findings under section 574.034(a)(2)(B) and (2)(C). We begin by reviewing the record to determine whether under section 574.034(a)(2)(B), sufficient evidence exists to show "a recent overt act" that tends to confirm that, as a result of mental illness, M.T. was likely to cause serious harm to others. *See* Tex. Health & Safety Code Ann. § 574.034(a)(2)(B).

The record, as set forth above, contains evidence of M.T.'s verbal threats against his neighbors, against female staff members at NTSH, and against his roommate, as well as evidence of M.T.'s physical attack on his mother. These recent verbal threats and physical acts by M.T. constitute recent overt acts that are probative of a finding that serious harm to others is probable if M.T. is not treated. *See K.E.W. I*, 315 S.W.3d at 22, 24 (defining what constitutes a recent overt act); *G.H. v. State*, Nos. 01-13-00422-CV, 01-13-00423-CV, 2013 WL 5613457, at *6 (Tex. App.—Houston [1st Dist.] Oct. 10, 2013, no pet.) (mem. op.) (holding appellant's verbal threats to kill hospital staff constituted overt acts).

In his brief, M.T. attacks the sufficiency of the evidence of these overt acts, arguing that Dr. Isachievici did not have personal knowledge of them; that there was no elaboration provided regarding the events on December 15 or his

sexually inappropriate comments to female staff; that there was no corroboration of his mother's description of the alleged December 15 attack on her and no corroboration of the threat M.T. allegedly made to his roommate; that these overt acts did not generate physical harm, criminal charges, or a violent outcome; and that his December 15 outburst should not be considered because it had occurred three weeks prior to the commitment hearing. We address each of his arguments in turn.

With regard to M.T.'s personal-knowledge argument, he later admits in his brief, and we agree, that there is no requirement that the testifying physician have personal knowledge of the events forming the basis of the admission for temporary inpatient mental health services. *See* Tex. Health & Safety Code Ann. § 574.034(d) (requiring "expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm . . . the likelihood of serious harm to . . . others"); *State ex rel. L.G.*, Nos. 04-13-00556-CV, 04-13-00557-CV, 2013 WL 6672796, at *4 (Tex. App.—San Antonio Dec. 18, 2013, no pet.) (mem. op.) (stating that statute does not require personal observation of the overt act). With regard to M.T.'s contentions that the State was required to further elaborate on the details surrounding the overt acts concerning the December 15 events or the sexually inappropriate comments to female staff, no such elaboration requirement exists. With regard to M.T.'s complaints that no corroborating evidence was presented concerning the December 15 events or his threat to his roommate, these reliability and credibility

determinations are within the province of the factfinder at a commitment and court-ordered medication hearing. *See Villalpando v. Villalpando*, 480 S.W.3d 801, 806 (Tex. App.—Houston [14th Dist.] 2015, no pet.) ("As the factfinder, the trial court alone determines the credibility of the evidence and the witnesses, the weight to give their testimony, and whether to accept or reject all or any part of their testimony."); *House v. State*, 261 S.W.3d 244, 254 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (stating that trial court, as factfinder and sole judge of the credibility of the witnesses, was "within its discretion in finding the testimony from [expert who testified in support of extending appellant's involuntary inpatient mental health treatment] to be more credible than that of [two experts who testified in favor of appellant's release]"). M.T.'s argument related to the purported lack of physical harm, criminal charges, or violence stemming from his overt acts belies the Texas Supreme Court's holding that an overt act includes verbal statements. *See K.E.W. I*, 315 S.W.3d at 22. Furthermore, with regard to M.T.'s argument that his December 15 outburst and attack on his mother was not a recent overt act because it occurred three weeks prior to the commitment hearing, he cites no case law to support this argument, and other courts have held that acts further attenuated from a commitment hearing met section 574.034(d)'s overt act requirement. *See Ex parte T.L.M.*, No. 10-15-00009-CV, 2015 WL 5135662, at *5 (Tex. App.—Waco Aug. 31, 2015, no pet.) (mem. op.) (holding acts that occurred more than ten months before commitment hearing were overt acts that supported commitment order).

In summary, after examining all of the evidence in the light most favorable to the trial court's finding, including every reasonable inference in favor of that finding, we hold that the evidence is such that a factfinder could reasonably form a firm belief or conviction that as a result of his mental illness, M.T. would likely cause serious harm to others based on the recent overt acts he had committed. *See K.E.W. I*, 315 S.W.3d at 26 (holding evidence legally sufficient to support finding that as a result of his mental illness, appellant would likely cause serious harm to others and that recent objectively observable acts by appellant tended to confirm such a finding); *G.M. v. State*, No. 05-12-01633-CV, 2013 WL 4478205, at *3 (Tex. App.—Dallas Aug. 20, 2013, no pet.) (mem. op.) (concluding that evidence of assault at group home and verbal statements at hospital constituted overt acts and holding evidence legally sufficient to support commitment order). Accordingly, we hold the evidence legally sufficient to support the trial court's order for temporary inpatient mental health services.

We have also reviewed the evidence in a neutral light and cannot conclude that the disputed evidence, including evidence that M.T.'s mother exaggerated about his treatment of her and that there was no physical harm or criminal charges as a result of M.T.'s treatment of his mother, is so significant that the trial court could not have reasonably formed the firm conviction or belief that M.T. was likely to cause serious harm to others based on the recent overt acts he had committed. *See K.E.W. II*, 333 S.W.3d at 855–56, 858; *G.H.*, 2013 WL 5613457, at *7 (holding evidence factually sufficient to support order for temporary inpatient

mental health services); *G.M.*, 2013 WL 4478205, at *3 (same). We therefore hold the evidence factually sufficient to support the trial court's order for temporary inpatient mental health services.

Having determined that the evidence is both legally and factually sufficient to support the trial court's order for temporary inpatient mental health services,[5] we overrule M.T.'s sole issue in his appeal from the order for temporary inpatient mental health services.

V. Sufficient Evidence Supports the Order Authorizing the Administration of Psychoactive Medication

In his appeal from the order authorizing the administration of psychoactive medication, M.T. argues in two issues that he was not a patient subject to a court order for mental health services and that the evidence is legally and factually insufficient to support the order authorizing the administration of psychoactive medication.

A. Statutory Requirements for Order Authorizing Psychoactive Medication

A trial court may issue an order authorizing the administration of psychoactive medication, regardless of the patient's refusal of the medication, if (1) a patient is under a court order to receive inpatient mental health services, (2)

[5]Because only one of the statutory criteria must be proven to support the trial court's order for temporary inpatient mental health services, we need not address M.T.'s arguments challenging the legal and factual sufficiency of the evidence to support the trial court's section 574.034(a)(2)(C) finding. *See Mezick v. State*, 920 S.W.2d 427, 431 (Tex. App.—Houston [1st Dist.] 1996, no writ); *see also* Tex. Health & Safety Code Ann. § 574.034(a)(2).

the trial court finds by clear and convincing evidence that the patient lacks the capacity to make a decision regarding the administration of the proposed medication, and (3) the trial court finds by clear and convincing evidence that treatment with the proposed medication is in the best interest of the patient. Tex. Health & Safety Code Ann. § 574.106(a)(1), (a–1)(1). Of these three elements, M.T. challenges only the first and second elements.

B. Under a Court Order to Receive Inpatient Mental Health Services

In his first issue, M.T. challenges the sufficiency of the evidence to show that he is a patient who is under a court order to receive inpatient mental health services. M.T. points out that if he prevails in his appeal of the order for temporary inpatient mental health services, then the order authorizing the administration of psychoactive medication must be reversed because he would no longer be a patient subject to a court order for mental health services—a prerequisite for an order authorizing administration of psychoactive medication. *See id.* § 574.106(a)(1) ("The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who[] is under a court order to receive inpatient mental health services."). Because we have concluded that the order for temporary inpatient mental health services is supported by legally and factually sufficient evidence, M.T. is therefore a patient subject to a court order for temporary inpatient mental health services. *See State ex rel. E.S.R.*, No. 01-15-00784-CV, 2016 WL 3573126, at

*7 (Tex. App.—Houston [1st Dist.] June 30, 2016, no pet.) (mem. op.); *L.G.*, 2013 WL 6672796, at *5. We overrule M.T.'s first issue.

C. Sufficiency of the Evidence to Support Medication Order

In his second issue, M.T. argues that the evidence is legally and factually insufficient to support the order authorizing the administration of psychoactive medication because he was voluntarily taking the mood stabilizer and because he had the capacity to make a decision regarding whether to take the psychoactive medications.

M.T.'s first argument implies that his voluntary consent to take the court-ordered mood stabilizer somehow voids the medication order in whole or in part.[6] A patient's refusal to take medication is not a required finding that must be included in the trial court's order authorizing psychoactive medication. *See* Tex. Health & Safety Code Ann. § 574.106(a–1) (authorizing trial court to enter order authorizing psychoactive medication if patient lacks capacity or presents a danger to himself or others); *In re A.S.K.*, No. 02-13-00129-CV, 2013 WL

[6]In the analysis of his first argument—that "the evidence was legally and/or factually insufficient to support the [medication order], as rendered"—M.T. relies solely on Texas Health and Safety Code section 574.106(i), which requires that "[t]he classes of psychoactive medications in the order must conform to classes determined by the department." *See* Tex. Health & Safety Code Ann. § 574.106(i). M.T. does not specify how the classes of psychoactive medications listed in the order—antipsychotics and mood stabilizers—do not conform to the classes determined by the department—a list of which is attached to the application for court-ordered administration of psychoactive medication and includes mood stabilizers. Because the thrust of M.T.'s argument appears to be that the medication order is void because it includes the mood stabilizer that he was voluntarily taking, we focus our analysis there.

3771348, at *3 (Tex. App.—Fort Worth July 18, 2013, no pet.) (mem. op.); *cf. State ex rel. R.P.*, No. 08-13-00180-CV, 2014 WL 2447470, at *7 (Tex. App.—El Paso May 30, 2014, no pet.) ("Evidence that Appellant is voluntarily taking his medication in the hospital setting does not demonstrate that he has the ability to make a rational and informed decision whether or not to submit to treatment [under section 574.034(a)(2)(C)(iii)]"). Here, the evidence demonstrates that the mood stabilizer M.T. was voluntarily taking at the time of the commitment hearing did not treat his psychotic symptoms, that he would remain at risk to harm others without the recommended antipsychotic medications, but that his psychosis would improve with the recommended medications and would allow him to be discharged into the community. The evidence is thus legally and factually sufficient to support the trial court's implicit conclusion that the medication order was necessary to restore M.T.'s mental health and to remove the psychosis under which he was currently suffering. *See A.S.K.*, 2013 WL 3771348, at *3 (holding evidence legally and factually sufficient to support trial court's implicit conclusion that medication order was necessary despite appellant's decision to voluntarily take medications).

M.T.'s second argument challenges the sufficiency of the evidence to support the finding in the medication order that he lacked the capacity to make a decision regarding the administration of the proposed medications. Capacity is defined as a patient's ability to (a) understand the nature and consequences of a proposed treatment—including the benefits, risks, and alternatives to the

proposed treatment—and (b) make a decision whether to undergo the proposed treatment. Tex. Health & Safety Code Ann. § 574.101(1) (West 2010). Here, the record contains expert testimony demonstrating that M.T. did not have the capacity to make a decision regarding the administration of the proposed medications because he lacked insight into his mental illness; he wanted to get off all medications because he did not think that he needed them.

After examining all of the evidence in the light most favorable to the trial court's finding, including every reasonable inference in favor of that finding, we hold that the evidence is such that a factfinder could reasonably form a firm belief or conviction that M.T. lacks the capacity to make a decision regarding the administration of the proposed medications. *See State ex rel. D.W.*, 359 S.W.3d 383, 387 (Tex. App.—Dallas 2012, no pet.) (holding evidence legally sufficient to show that patient lacked the capacity to make a decision regarding the administration of the proposed medications based on expert testimony that patient did not understand the nature of her mental illness or the necessity of the medications); *A.S. v. State*, 286 S.W.3d 69, 73 (Tex. App.—Dallas 2009, no pet.) (same). Accordingly, we hold the evidence legally sufficient to support the trial court's order authorizing the administration of psychoactive medication.

We have also reviewed the evidence in a neutral light and cannot conclude that the disputed evidence—including evidence that M.T. had sufficient ability to participate in conversations about his medication because he had attempted to speak with Dr. Isachievici about his concerns regarding the side effects of the

antipsychotic medication—is so significant that the trial court could not have reasonably formed the firm conviction or belief that M.T. lacks the capacity to make a decision regarding the administration of the proposed medications. *See D.W.*, 359 S.W.3d at 387 (holding evidence factually sufficient to show that patient lacked the capacity to make a decision regarding the administration of the proposed medications based on expert testimony that patient did not understand the nature of her mental illness or the necessity of the medications); *A.S.*, 286 S.W.3d at 73 (same). We therefore hold the evidence factually sufficient to support the trial court's order authorizing the administration of psychoactive medication.

Having determined that the evidence is both legally and factually sufficient to support the trial court's order authorizing the administration of psychoactive medication, including mood stabilizers, we overrule M.T.'s two issues in his appeal from the order authorizing the administration of psychoactive medication.

VI. CONCLUSION

Having overruled M.T.'s sole issue in the appeal from the order for temporary inpatient mental health services, we affirm the trial court's order in appeal number 02-17-00011-CV. Having overruled M.T.'s two issues in the appeal from the order authorizing the administration of psychoactive medication, we affirm the trial court's order in appeal number 02-17-00012-CV.

PER CURIAM

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DELIVERED: March 16, 2017