



**NUMBERS 13-17-00061-CV
& 13-17-00129-CV**

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI—EDINBURG

**THE STATE OF TEXAS FOR THE BEST INTEREST
AND PROTECTION OF S.R.**

**On appeal from the Probate Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Hinojosa
Memorandum Opinion by Chief Justice Valdez**

This is an accelerated appeal of the trial court's order committing appellant, S.R., to a mental health facility for the provision of temporary mental health services. See TEX. HEALTH & SAFETY CODE ANN. § 574.070(a) (West, Westlaw through 2015 R.S.). By one issue, appellant challenges the legal sufficiency of the evidence to support the trial court's commitment order in appellate cause number 13-17-00129-CV. We affirm.

I. BACKGROUND

The evidence at the commitment hearing showed the following. In December 2016, while responding to a welfare concern, a McAllen police officer found appellant sitting on a street curb wrapped in a blanket with her dog. According to the police officer, appellant had been seen wandering the streets the day before and appeared to be talking to her daughter although nobody was in her immediate presence. Appellant was not able to tell the officer where she lived. The police officer contacted appellant's daughters, but efforts to reunite appellant with her daughters were unsuccessful. The police officer then contacted appellant's mother. Appellant's mother agreed to take possession of appellant's dog but stated that she and appellant's daughters were afraid of appellant.¹ Thereafter, appellant was taken to a mental health hospital to be evaluated by a doctor. The doctor testified, among other things, that appellant was suffering from a delusional disorder and extreme paranoia and was refusing to be treated at the hospital.

At the commitment hearing, appellant disputed the doctor's diagnosis regarding her mental health. Appellant testified that certain agents within the Drug Enforcement Agency (DEA) are protecting her from her ex-husband and that she was waiting on them for a ride when the McAllen police officer approached her on the street curb. Appellant further testified:

Appellant: [The DEA] can prove to you, sir. . . .

Trial Court: Ma'am, what are the names of the DEA agents that you keep referring to? You said you knew their names. What are their names?

. . . .

¹ Appellant's daughter testified that appellant one time tried to take her friend's vehicle, asserting that she had been sent by "God." Appellant's daughter also testified that on another occasion, appellant searched through every room in her apartment for "two people named Jack and Cindy," refusing to leave the apartment after being told to do so.

Appellant: Brett Turkington. I have them written down.

Trial Court: When was the last time that you say you talked to that person? Just tell me the last time you say you talked to Brett Turkington with the DEA.

Appellant: Well, through the devices I speak with they [sic], sir.

Trial Court: When was the last time you spoke to them?

Appellant: Today. Through this device you can speak with them.

Trial Court: What device, ma'am?

Appellant: It's put in the ear. I don't know exactly where, but you can call them and they'll tell you.

Trial Court: You spoke to him. Anyone else you spoke to today? Did you advise him of this hearing today?

Appellant: They—they—yeah, they know of it, yes. Another one—

. . . .

Trial Court: Okay. Who else did you—you started telling me someone else you talked to.

Appellant: Jack Arnold.

Trial Court: When was the last time you talked to or had communication with Jack Arnold?

Appellant: I speak with him daily.

. . . .

Trial Court: Do you have a phone number for them?

Appellant: I do not have a phone number because I don't need to because of how I get to speak with them. . . .

. . . .

Trial Court: Anyone else that you speak to?

Appellant: The scientist.

Trial Court: The what?

Appellant: The scientist. That's what they call him. He's their boss.

. . . .

Trial Court: You talk to that person. Do you know that person's name?

Appellant: That's what he's referred to, for his protection.

Trial Court: The scientist, and you talked to the scientist today?

Appellant: Yes, sir.

Trial Court: Through the same device?

Appellant: Yes, sir.

Trial Court: You don't know where it is in your head?

Appellant: Well, they put it—they placed it in my head.

After hearing the evidence, the trial court entered an order committing appellant to a mental health facility not to exceed ninety days for the provision of temporary mental health services. In its commitment order, the trial court specifically found that:

[appellant] is mentally ill and that as a result of that mental illness . . . [she will] continue to suffer severe and abnormal mental, emotional or physical distress and will continue to experience deterioration of the ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.

This appeal followed.

II. DISCUSSION

By one issue, appellant contends that the evidence is legally insufficient to support the trial court's commitment order.

A. Standard of Review

We may sustain a legal sufficiency challenge only when "(1) the record discloses a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the

evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of a vital fact.” *Damian v. Bell Helicopter Textron, Inc.*, 352 S.W.3d 124, 156–57 (Tex. App.—Fort Worth 2011, pet. denied) (citing *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 334 (Tex. 1998)). In conducting a legal-sufficiency review, “we consider only the evidence and inferences tending to support the finding, and we disregard all contrary evidence and inferences.” *M.S. v. State*, 137 S.W.3d 131, 135 (Tex. App.—Houston [1st Dist.] 2004, no pet.). We will uphold the decision if any evidence of probative force exists to support the finding. *Id.*

B. Applicable Law

Section 574.034 of the Texas Health and Safety Code prescribes specific criteria that authorizes a judge to order a proposed patient to receive temporary inpatient mental health services. TEX. HEALTH & SAFETY CODE ANN. § 574.034 (West, Westlaw through 2015 R.S.). Specifically, subsection (a) prescribes the following criteria:

(a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if [the judge] finds, from clear and convincing evidence, that:

(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.

Id. § 574.034(a).

“Clear and convincing” evidence is generally defined as that measure or degree of proof that will produce in the mind of the judge a “firm belief or conviction as to the truth of the allegations sought to be established.” TEX. CIV. PRAC. & REM. CODE ANN. § 41.001(2) (West, Westlaw through 2015 R.S.). More specifically, subsection (d) of section 574.034 identifies the kind of evidence that would supply clear and convincing proof of the criteria listed in subsection (a). TEX. HEALTH & SAFETY CODE ANN. § 574.034(d). Subsection (d) states that:

To be clear and convincing under subsection (a), the evidence must include expert testimony and . . . 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. Additionally, evidence which merely reflects that an individual is mentally ill and in need of hospitalization is not sufficient, by itself, to prove an overt act or continuing pattern of behavior as required by subsection (d). See *G.H. v. State*, 96 S.W.3d 629, 634 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (concluding that the proposed patient's behavior of spitting and mood changes that the doctor relied on as the factual basis for his opinion that appellant was unable to function independently constituted nothing more than evidence of appellant's mental illness and therefore did not amount to evidence tending to confirm that appellant was unable to provide for her own basic needs); see *also*

Broussard v. State, 827 S.W.2d 619, 622 (Tex. App.—Corpus Christi 1992, no writ) (holding that evidence of the proposed patient’s delusion and vague generalizations about her hostile behavior during hospitalization, without further factual elaboration, do not show deterioration of her ability to function independently).

Finally, as relevant here, section 574.034, subsection (c), provides that if the judge finds that the proposed patient meets the commitment criteria prescribed by subsection (a), the judge must specify which criterion listed in subsection (a)(2) forms the basis for the decision. TEX. HEALTH & SAFETY CODE ANN. § 574.034(c).

C. Analysis

In accordance with subsection (c), the trial court specifically found that appellant met the criterion set out in subsection (a)(2)(C)(i)–(iii). *Id.* § 574.034(a)(2)(C). This means that the trial court necessarily found that appellant was mentally ill and that, as a result of that mental illness, she was, as set out in subsection (a):

- (i) suffering severe and abnormal mental, emotional, or physical distress;
- (ii) experiencing substantial mental or physical deterioration of [her] ability to function independently, which is exhibited by [her] inability, except for reasons of indigence, to provide for [her] 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.

Id.

On appeal, appellant concedes that she has a mental illness. Appellant also concedes that as a result of her mental illness, she suffers the kind of distress described by (i) and is unable to make the kind of rational decision regarding treatment described by (iii). However, she maintains that there is no clear and convincing proof that her mental illness has deteriorated her ability to function independently to the level described by (ii)

because the State did not offer the kind of evidence set out in subsection (d) to support that finding—i.e., the State did not offer “expert testimony and . . . evidence of a recent overt act or a continuing pattern of behavior that tends to confirm . . . the deterioration of [her] ability to function.” *Id.* § 574.034(d). We disagree.

The doctor testified that:

Doctor: [I]n the past two years or almost two years [appellant] moved six times, because she gets paranoid thinking that somebody is after her. We do not know the details about the last housing situation because, once again, she's not willing to allow us to work with her.

. . . .

Doctor: [S]he's extremely paranoid, refusing to eat[] properly. She's carrying stuff with her, and she does not make sense in her way to interpret environment and other people. Definitely her actions are not rational and are disturbing because of the thought process that is not within normal limits.

State: Okay. And, [d]octor, do you believe she can function independently if she's released from the hospital today?

Doctor: Based on the history that we have and what we notice while she's in the hospital, we don't think that she's able, based on the things that I already mentioned.

State: Okay. You don't believe that she'd be able to clothe or feed or provide shelter for herself?

Doctor: She does not—she didn't show us any skills or she didn't talk with us or proving that she's able to do that. We are—once again, we are kind of trying to fill out the puzzle. Because of her paranoia we cannot verify things, but she doesn't sleep well, and once again by the fact that she's extremely suspicious and she doesn't want to eat properly, that makes us think[] that she's not able to secure a safe environment and to keep herself safe in the community.

State: And do you believe that her inability to function independently will deteriorate if she's released from the hospital today?

Doctor: Yes, I think so, based on the fact that in the past two years she has been gradually deteriorating, and she's still not able

to function and interact with her family, that wanted to help her.

The doctor's testimony provides some evidence of appellant's continuing pattern of behavior that at least tends to confirm her inability to feed or house herself or to provide for her own safety.² *Cf. State ex rel. R.L.I.*, 132 S.W.3d 539, 544 (Tex. App.—Tyler 2004, no pet.) (concluding that the evidence was legally insufficient to prove appellant's inability to function independently where “the State did not offer evidence showing that [appellant] was unable to clothe, feed, or house herself, or was unable to provide for her own health or safety”). Therefore, we cannot agree with appellant that the record is devoid of evidence that section 574.034(d) requires in order to clearly and convincingly prove the deterioration of appellant's ability to function independently. See TEX. HEALTH & SAFETY CODE ANN. § 574.034(a)(2)(C)(ii) & (d).

Furthermore, in order to sustain her legal sufficiency challenge, the evidence would have to conclusively establish that appellant's ability to function independently has not deteriorated as a result of her mental illness. See *Damian*, 352 S.W.3d at 156–57 (observing that reviewing courts may sustain a legal sufficiency challenge if the evidence conclusively establishes the opposite of a vital fact). In this vein, we recognize that there is some testimony indicating that appellant had been living in an apartment at the time of the commitment hearing. However, the trial court, as the factfinder, was not required to believe that testimony. See *Sw. Bell Tel. Co. v. Garza*, 164 S.W.3d 607 (Tex. 2004) (observing that issues of witness credibility generally cannot be weighed by an appellate

² Appellant makes no argument that we are barred by rules of law or of evidence from giving weight to the doctor's testimony excerpted above. See *Damian v. Bell Helicopter Textron, Inc.*, 352 S.W.3d 124, 156–57 (Tex. App.—Fort Worth 2011, pet. denied) (providing that reviewing courts may sustain a legal sufficiency point when, among other things, the court is barred by rules of law or of evidence from giving weight to evidence offered to prove a vital fact).

court). Moreover, even if it were true that appellant was living in her own apartment at the time of the commitment hearing, appellant provides no authority and we find none that such evidence, by itself, conclusively demonstrates an ability to function independently.

We conclude that there is more than a scintilla of competent evidence demonstrating a continuing pattern of behavior that tends to confirm appellant's inability to function independently. See TEX. HEALTH & SAFETY CODE ANN. § 574.034(a)(2)(C)(ii); see also *Damian*, 352 S.W.3d at 156–57. We hold that the evidence is legally sufficient to support the trial court's commitment order, and we overrule appellant's sole issue.

The record shows that appellant filed a separate notice of appeal from the trial court's order to administer psychoactive medication. Appellant's appeal from this order has been assigned appellate cause number 13-17-00061-CV. However, appellant raises no issue on appeal challenging the propriety of that order. We therefore affirm the trial court's order to administer psychoactive medication.

III. Conclusion

We affirm the trial court's orders in both 13-17-00061-CV and 13-17-00129-CV.

/s/ Rogelio Valdez _____
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
20th day of April, 2017.