



respondent refused the food that Officer Dince offered. Respondent was making incoherent statements and talked about the Lord Almighty and warlocks. She stated that there was a warlock attached to her buttocks, causing a sharp pain.

The qualified mental-health professional, who responded to the scene, testified. He stated that respondent was speaking loudly and shaking her finger at Officer Dince and saying something about trying to turn a Wiccan family into an angelic family. The professional testified that he attempted to interview respondent, but she walked away and disengaged. The professional got a warrant for an emergency examination.

Respondent's treating psychiatrist also testified. The psychiatrist testified that respondent suffered from mental illness and her behavior on the night in September 2018 was a result of that mental illness. He explained that respondent has a substantial disorder of thought, mood, perception, orientation, and memory that impairs her judgment and impairs her ability to recognize reality. He stated that after admission respondent's behavior escalated to the point that there was a concern for imminent danger to someone else. He stated that respondent's disorganized thought severely impairs meaningful conversation about treatment, and how respondent might care for herself. The psychiatrist stated that he could not have a meaningful conversation with respondent because respondent would not engage and would shout. Respondent displayed unexpected behaviors such as walking backwards and refusing to sleep in her own room. He testified that respondent's mental illness affected her ability to meet the ordinary demands of life. He testified that respondent's condition had improved after treatment began but she continued to have difficulty communicating without interrupting or becoming irritated. He opined that he would be concerned if respondent left the hospital because respondent does not believe that she needs medication and, given her current interactions, would be unable to get shelter, get food, and generally negotiate taking care of herself.

After an evidentiary hearing, the court granted the application. The court made oral findings on the record. The court found that respondent was suffering from a mental illness and that her behavior included walking in a large roadway at night, acting distraught and agitated, refusing food after eating only an orange for a couple of days, complaining a warlock was attached to her back, and having conversations with people that weren't there. The court concluded, "All of that causes me great concern for A.M.'s wellbeing, safety, her ability to care for herself, meet the ordinary demands of life back on September 16th." On that basis, the court concluded that respondent was a person in need of treatment on September 16, 2018. The court concluded that she was a patient in need of further treatment at the time of the hearing as well. In support of this conclusion, the court credited the testimony concerning respondent's continued symptoms and inability to converse with doctors about her strategy of treatment and medication. The court said this testimony "caused me grave concerns and caused me to conclude that she has substantial disorder of thought and perception and orientation and that those symptoms, if you will, grossly impair her judgment and behavior and capacity to recognize reality or to meet the ordinary demands of life." Finding that no less restrictive alternatives were available, the court granted the petition for involuntary treatment. Respondent appeals.

"We accept the superior court's factual findings unless they are clearly erroneous; that is, unless there is no reasonable and credible evidence to support them." In re T.S.S., 2015 VT 55, ¶ 28, 199 Vt. 157 (quotation omitted).

On appeal, respondent argues that the evidence was insufficient to support the court's conclusions that A.M. was a person in need of treatment at the time of application, and that she

was a patient in need of further treatment at the time of hearing. A.M. does not dispute that she has a mental illness that significantly lessens her capacity to exercise self-control, judgment, or discretion in the conduct of her affairs and social relations. And nobody contends that she posed or poses a danger to others. The pivotal issues in this case are whether her faculties were, at the time of application and at the time of hearing, so diminished that she posed a danger to herself, 18 V.S.A. § 7101(17)(B), and whether, without treatment, there is a substantial probability that her condition would deteriorate to the point that she becomes a danger to herself, *id.* § 7101(16). Under the statute, a danger of harm to oneself can be shown with evidence that the person

behaved in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, personal or medical care, shelter, or self-protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration, or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

18 V.S.A. § 7101(17)(B)(ii).

We do not address the sufficiency of the evidence on this point, because we conclude that the trial court's findings were insufficient to meet the high bar required for involuntary treatment, and we reverse on that basis. As to whether A.M. was a danger to herself at the time of application, the court recited the applicable facts and concluded, "All of that causes me great concern for A.M.'s wellbeing, safety, her ability to care for herself, meet the ordinary demands of life back on September 16th." Concerning the question of whether A.M. would become a person in need of treatment if treatment was discontinued, the court expressed "grave concerns" about her ability to function outside of the hospital and meet her daily needs. Concern about respondent is insufficient to make the findings required for involuntary treatment. Given the facts in this case, the court had to find that at the time of application it was probable that death, substantial physical bodily injury, serious mental deterioration, or serious physical debilitation or disease would ensue without treatment. 18 V.S.A. § 7101(17)(B)(ii). The court had to further find that at the time of hearing, A.M. met this same standard or that she was currently receiving adequate treatment and without further treatment there was a substantial probability that in the near future her condition would deteriorate to such a state. 18 V.S.A. § 7101(16). The court did not make any of these findings.

This isn't simply a matter of reciting boilerplate language. The statutes governing involuntary treatment contemplate that even people with severe mental illness that significantly compromises their function are only subject to involuntary treatment if they pose a danger to themselves or others. The "danger" factor is critical to the analysis under § 7101(17)(B) and, derivatively, under § 7101(16) (defining patient in need of further treatment with reference to standards applicable to determination of whether person is in need of treatment). Although the evidence of A.M.'s significant mental illness was strong in this case, whether she posed a danger to herself was a much closer question. The trial court's expression of concern, even grave concern, is not the same thing as a determination by clear and convincing evidence that it is "probable that death, substantial physical bodily injury, serious mental deterioration, or serious physical debilitation or disease will ensure unless adequate treatment is afforded." Therefore, we reverse.

In many circumstances, where the trial court's findings are insufficient, if the evidence would be sufficient to support the trial court's ultimate determination, we remand to provide the court with an opportunity to evaluate whether the evidence supports additional findings. Here, the

ninety-day order on appeal has ended and there is no indication in the record that an application for continued treatment has been filed. Because a remand would not alter the current situation, in which respondent is not subject to treatment under this order, we do not reach the question of whether the evidence here is sufficient to support the order for involuntary treatment and instead simply vacate the order on appeal.

Reversed and vacated.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice