Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-112

OCTOBER TERM, 2019

In re T.H.*	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit,
	}	Family Division
	}	
	}	DOCKET NOS. 24-2-19 Wnmh & 30-3-19 Wnmh
		Trial Judge: Thomas S. Durkin

In the above-entitled cause, the Clerk will enter:

T.H. appeals the family division's orders granting the Commissioner of Mental Health's applications for his continued hospitalization and involuntary treatment. We affirm.

At the time of the March 13, 2019 hearing on the applications, T.H. was a fifty-three-year-old man residing at the Vermont Psychiatric Care Hospital (VPCH) pursuant to a February 17, 2018 order of hospitalization. T.H., who is diagnosed as suffering from paranoid schizophrenia, was committed to the Commissioner's care and custody in late 2015 under an order of involuntary treatment just before completing a twenty-five-year sentence of incarceration for aggravated assault, sexual assault, and burglary. Beginning in February 2017, he was treated at a secure residential setting, the Middlesex Therapeutic Community Residence (MTCR), under a nonhospitalization order. He remained at MTCR until February 2018, when he was again ordered hospitalized as the result of his paranoid delusions that included his sexualized fixation on an MTCR social worker whom he believed had burned down his house and murdered his 187,000 children. At the time, the family division granted the Commissioner's application for continued treatment at VPCH for a period of one year, until February 15, 2019, after concluding that without being treated with antipsychotic medication T.H.'s mental health would quickly deteriorate and he would become a danger to the social worker.

In early February 2019, the Commissioner filed an application for T.H.'s continued treatment, pursuant to 18 V.S.A. § 7620(a)-(b), alleging that T.H. was a "patient in need of further treatment," as defined by 18 V.S.A. § 7101(16). A few weeks later, the Commissioner filed an application for T.H.'s involuntary medication. A hearing on the applications was held on March 13, 2019. At the conclusion of the hearing, the family division made oral findings from the bench. The following day, the court issued an order of continued hospitalization, finding by clear and convincing evidence that T.H. was a person in need of treatment, and thus a patient in need of further treatment as defined by § 7101(16), and that there was no less restrictive treatment alternative than continued hospitalization. That same day, the court issued an order for T.H.'s involuntary medication.

T.H. appeals those orders, arguing that the State did not satisfy its burden of proving that he was a person in need of treatment, and hence a patient in need of further treatment, insofar as there was no clear and convincing evidence that he posed a danger to himself or others. We conclude that the record supports the family division's determination, by clear and convincing evidence, that T.H. was in need of continued treatment. "Clear and convincing does not mean . . . that the State's evidence must be wholly uncontradicted or unimpeached." In re N.H., 168 Vt. 508, 512 (1998). Even under a clear-and-convincing standard of proof, "we will uphold [the] trial court['s] findings as long as there is substantial evidence to support them although they are contradicted by credible evidence." Id. (quotation omitted). "We rely on the factfinder's assessment of the credibility of the witnesses and weighing of the evidence" and are not "free to ignore the trial court's findings, reweigh the evidence, and make [our] own independent findings and conclusions." Id. "The test on review is not whether this Court is persuaded that there was clear and convincing evidence, but whether the factfinder could reasonably have concluded that the required factual predicate was highly probable." Id. at 512-13.

Before addressing the merits of T.H.'s arguments, we first examine the relevant statutory provisions. Prior to the expiration of an order committing a patient to the care and custody of the Commissioner, the Commissioner may apply for an order of continued treatment. 18 V.S.A. § 7620(a). "To succeed on an application for continued treatment, the State must show, by clear and convincing evidence, that the patient is in need of further treatment as defined by statute." In re T.C., 2007 VT 115, ¶ 7, 182 Vt. 467; see 18 V.S.A. § 7616(b) ("The State shall have the burden of proving its case by clear and convincing evidence."). "A patient in need of further treatment" is defined as either "a person in need of treatment" or "a patient who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his or her condition will deteriorate and he or she will become a person in need of treatment." 18 V.S.A. § 7101(16). "A person in need of treatment" is defined as a person whose mental illness reduces "his or her capacity to exercise self-control, judgment, or discretion in the conduct of his or her affairs and social relations" to the extent "that he or she poses a danger of harm to himself, to herself, or to others." Id. § 7101(17). To demonstrate a danger of harm to others, the State must establish that the person "has inflicted or attempted to inflict bodily harm on another," "has placed others in reasonable fear of physical harm to themselves," or "has presented a danger to persons in his or her care." Id. § 7101(17)(A). To demonstrate a danger of harm to himself or herself, the State must establish that the person "has threatened or attempted suicide or seriously bodily harm," id. § 7101(17)(B)(i), or

> has behaved in such a manner as to indicate that he or she is unable, without supervision or 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.

Id. § 7101(17)(B)(ii).

The facts, which we view most favorably to the State, see In re N.H., 168 Vt. at 513, are not in dispute. At the time of his rehospitalization in February 2018, T.H. was prescribed antipsychotic medication and was being treated for prediabetes and an active tumor on his pituitary gland. T.H. first stopped taking his prescribed medication in October 2018. By the end of that month, he agreed to try another antipsychotic medication, but between the end of November 2018 and the March 2019 hearing, he refused to take any of the prescribed medications. He stopped

treatment based on his beliefs that the University of Vermont laboratories were part of a conspiracy against him and that he was being poisoned. By the time of the hearing, T.H. had persistent delusions that, among other things: he had been in the Marines; clones of himself were being made from his stolen DNA; one of his clones was having a sexual relationship with his social worker; he had millions of children; and his parents were not his real parents. T.H.'s treating psychiatrist testified that T.H.'s ideas about his need for medical care were related to his mental illness; his reasons for rejecting the prescribed medications were not grounded in reality but rather were the result of his mental illness; he did not have the ability to understand the consequences of not taking the prescribed medications; his refusing treatment had potential serious consequences to his physical and mental health; since stopping his medication, he has become more irritable, isolated, and sexually preoccupied; he would not be able to take care of himself outside of a hospital setting, given the prominence of his delusional beliefs; and if his treatment was discontinued, he would become a danger to others. T.H. reinforced the existence of his delusional beliefs during his brief testimony.

At the conclusion of the hearing, the family division found, by clear and convincing evidence, that T.H.'s mental illness impaired his judgment, his capacity to recognize reality, and his ability to meet the ordinary demands of his life; his condition would further deteriorate if were allowed to continue to refuse to take the prescribed medications; and he was a danger to himself.[*] The following day, the court issued two orders. In the first order, the court granted the application for continued treatment and entered an order of hospitalization for another year after finding by clear and convincing evidence that T.H. was a person in need of treatment and hence a patient in need of further treatment. In the second order, the court granted the application for involuntary medication and required the Commissioner to make weekly assessments of T.H.'s continued needs for the medications specified in the order.

T.H. argues that the family division erred by granting the application for involuntary treatment absent clear and convincing evidence that he represented a danger to himself or others. We disagree. As for being a danger to himself, T.H.'s psychiatrist testified, among other things, that in 2016 T.H. had been found to have a microadenoma (tumor) in his pituitary gland. Following a series of MRIs and blood work, providers determined that the tumor was not growing or progressing, but they recommended follow-ups every six months. Recommended follow-up treatment included MRIs and blood work. T.H.'s most recent blood work showed an increase in T.H.'s prolactin level, which indicated that the microadenoma was very active and producing and maybe growing in size. He declined to undergo an MRI. Consequences of a failure to treat the tumor could include loss of part of his vision, problems with gait resulting from increased pressure on the brain, and headaches. The record supports the court's orders granting continued hospitalization and involuntary medication.

T.H. contends that the threat to his health from refusing medication was not imminent, but the psychiatrist's testimony was sufficient for the family division to conclude by clear and convincing evidence that if treatment is discontinued, a substantial probability exists that T.H.'s

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[*] The court indicated that it had "some concern about a danger to others." It explained that the court had not heard testimony that suggested that T.H. was exhibiting acts of physical violence that would cause the court to believe that he was a danger to others "in a near cast," but expressed concerns that, if left without treatment, his beliefs would gain more steam and worsen, leading him to act against others. We do not view the trial court's expression of concern about potential danger to others in the future as a finding that if treatment were discontinued, a substantial probability exists that in the near future T.H. would pose a danger to others as defined by statute. See 18 V.S.A. § 7101(17)(A).

physical and mental conditions will deteriorate to the point that T.H. will become a person in need of treatment. See 18 V.S.A. § 7101(16)(B); see also § 7101(17)(B)(ii) (providing that person may be shown to be danger to self, and thus a person in need of treatment, if "it is probable that death, substantial bodily injury, serious mental deterioration, or serious physical debilitation or disease will ensue unless adequate treatment is afforded"). The psychiatrist noted evidence from T.H.'s bloodwork that the tumor in his pituitary gland was likely active following a period of stability, suggesting that in the absence of treatment a substantial probability existed that T.H. would suffer a range of serious adverse consequences resulting from the pressure in his brain. cf. In re T.S.S., 2015 VT 55, ¶¶ 29-30, 199 Vt. 157 (family division's finding that it was unknown when person's condition would deteriorate to point where he would be in need of treatment failed to meet statutory requirement that court find person is likely to become in need of treatment in near future). Here, the record demonstrates that T.H.'s refusal to accept treatment aimed at preventing potentially significant physical harm to him was based on his paranoid conspiratorial delusions that were separated from reality.

Affirmed.

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