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Washington State
Court of Appeals
Division Two
March 2, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Detention of: B.L.R., Appellant.	No. 53904-7-II UNPUBLISHED OPINION

CRUSER, J. — BLR appeals a trial court order extending his involuntary commitment for an additional 180 days of mental health treatment with a less restrictive alternative. BLR argues that the petition to continue his involuntary treatment did not make the requisite prima facie showing that as a result of a behavioral health disorder, he presents a substantial likelihood of committing acts similar to the charged criminal behavior. In addition, BLR argues that the trial court's conclusion that he continued to be gravely disabled was not supported by its factual findings.

We hold that the trial court did not err when it extended BLR's involuntary commitment for an additional 180 days in a less restrictive alternative placement. We hold that the petition made a prima facie showing that BLR continues to suffer from a behavioral health disorder that results in a substantial likelihood of him committing acts similar to the charged conduct. We further hold that the trial court's conclusion that BLR continues to be gravely disabled was supported by its factual findings.

Accordingly, we affirm.

FACTS

BLR, who is 30 years old, has a schizoaffective disorder and has experienced symptoms of a mental health condition since early childhood and adolescence. The schizoaffective disorder has caused BLR to experience somatic delusions, such as a belief that he suffers from a seizure disorder, and persecutory delusions stemming primarily from a perception of antagonistic treatment by his family. BLR has also displayed circumstantial and rigid thinking with occasional episodes of mood lability. BLR has received mental health treatment at various facilities and has been admitted to Western State Hospital on five occasions.

BLR's fifth admission to Western State Hospital occurred following an incident in which BLR repeatedly struck and choked his father. BLR, who had been living with his father at the time, was charged with one count of malicious harassment and one count of second degree assault. BLR was found incompetent to stand trial, and after two attempts at competency restoration at Western State Hospital, the trial court found BLR non-restorable, and the charges against him were dismissed without prejudice.

BLR's examining mental health professional and examining physician petitioned for 180 days of involuntary treatment, alleging that BLR was gravely disabled and that due to BLR's mental health condition, he posed a substantial likelihood of repeating acts similar to the violent felony with which he was charged. The trial court found that BLR had committed acts constituting the charged felonies. The trial court concluded that involuntary treatment was warranted for both reasons alleged by the petitioners, and BLR was civilly committed for 180 days. Following a second petition for involuntary treatment, BLR was recommitted for an additional 180 days.

Before the second period of involuntary treatment expired, Western State Hospital psychologist Jordan Charboneau, Ph.D. and psychiatrist Greg Longawa, M.D., petitioned for an

additional 180 day extension. The petition alleged that BLR continued to be gravely disabled and that due to his mental health condition, BLR continued to present a substantial likelihood of repeating acts similar to the violent felony offense with which he was charged.

While the declaration in support of the petition described some improvement in BLR's behavior, noting that BLR has maintained cognitive and volitional control, it also stated that BLR "continued to exhibit symptoms of mental illness, including mood lability and agitation, persecutory and somatic delusions, thought disorganization, poor motivation, as well as notably impaired insight and judgment." Clerk's Papers (CP) at 82. In particular, BLR expressed paranoia regarding his parents and his treatment team, including persecutory beliefs related to the reasons for his commitment and the events involved in the charged offense. The declaration further illustrated BLR's lack of "insight and judgment regarding his mental health symptoms, the difficulties that have resulted from such symptoms, and his need for ongoing treatment and mental health services." CP at 83. The petitioners described BLR's consistent refutation of his mental health diagnosis and his resistance to ongoing treatment. During an interview with Doctors Charboneau and Longawa, BLR expressed that he could stop his medications without any impact to his behavior, denying that the medications were helpful to him.

The petitioners' declaration detailed the difficulty in constructing a safe discharge plan for BLR due to his limited insight into his own condition. BLR was ambivalent toward the idea of residing in "structured and supported housing," and expressed his preference for being discharged to a "homeless shelter or [to a] small house community." 1 Verbatim Report of Proceedings (VRP) Aug. 27, 2019 at 134; CP at 85. BLR was resistant to applying for Supplemental Security Income (SSI) because it would require him to agree with his mental health diagnosis and it would "prevent him from gun ownership, something he believed he was entitled to." CP at 85.

The doctors noted that due to BLR's ongoing symptoms, and in particular his "impaired insight, and persecutory ideation," BLR's release presented a "risk of psychiatric decompensation and violence in the community." CP at 90. The declaration described BLR's "difficulty maintaining stability in the community previously due to noncompliance with treatment," observing that BLR was in his "fifth admission to [Western State Hospital]." CP at 90. For these reasons, the petitioners expressed their belief that due to his mental health condition, BLR presented a substantial likelihood of repeating behavior similar to that which led to the felony charges.

At a hearing on the petition, BLR did not present his own expert. Over BLR's objection, the trial court found that the petition presented prima facie evidence that BLR's mental health condition results in a substantial likelihood of him committing acts similar to those charged.

Dr. Charboneau testified consistently with the facts as stated in the petitioners' declaration supporting the petition. Dr. Charboneau expounded that BLR does not have difficulty with activities of daily living and that BLR is generally able to maintain cognitive and volitional control with no violent or assaultive episodes since his commitment. However, Dr. Charboneau clarified that BLR's persecutory delusions were less impactful on his behavior within the ward because the delusions did not involve other patients. Emphasizing his particular concern that BLR lacked insight into his own condition and the risk that BLR would cease taking his medications and decompensate in an unstructured environment, Dr. Charboneau believed BLR should remain at Western State Hospital and that he should not be released to a less restrictive alternative placement.

BLR also testified at the hearing. He explained that his intent on discharge would be to find temporary residence at a homeless shelter until he could secure sufficient income to stay at a clean and sober house. For income, he intended to find minimum wage employment and expressed that

he would not accept SSI because he did not believe he had a mental health condition. BLR stated that he would take his medication in injection form upon release.

The trial court granted the petition to extend BLR's involuntary treatment for 180 days, concluding that BLR continued to present a likelihood of repeating acts similar to the charged criminal behavior and that BLR continued to be gravely disabled. It found by clear, cogent, and convincing evidence that "though he ha[d] substantially improved over time," BLR met the standard for grave disability under former RCW 71.05.020(22)(b)[1] (2019). 1 VRP Aug. 27, 2019 at 148.

In support of its decision, the trial court emphasized BLR's history, his multiple admissions to mental health treatment facilities, his ongoing symptoms, and his denial that he has a mental health condition. The trial court also expressed a concern that if BLR were released to an unstructured environment, he would cease taking medication and decompensate.

Contrary to the petitioner's recommendation, however, the trial court believed that BLR was ready for a less restrictive alternative placement. Because BLR had been participating in treatment and showing improvement, the trial court believed that BLR could function in less restrictive placement, so long as the environment was "highly structured." CP at 144; 1 VRP Aug. 27, 2019 at 149. The trial court emphasized, however, that "WITHOUT CLEAR STRUCTURE AND OVERSIGHT, THE COURT BELIEVES [BLR] WOULD LIKELY DECOMPENSATE." CP at 144 (emphasis in original).

[1] Under former RCW 71.05.020(22)(b), a person continues to be gravely disabled if, as a result of a behavioral health disorder, that person "manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety." We note that the language in RCW 71.05.020 is the same in both the former (22)(b) and current (23)(b) versions of the statute.

BLR appeals the recommitment order extending his involuntary treatment for 180 days at a less restrictive alternative placement.

DISCUSSION

I. SUBSTANTIAL LIKELIHOOD OF COMMITTING A SIMILAR ACT TO THE CHARGED BEHAVIOR

BLR argues that the petition to extend his involuntary commitment failed to present prima facie evidence that he continues to suffer from a behavioral health disorder that results in a substantial likelihood that he will commit acts similar to the charged offense. BLR asserts that although he continues to experience symptoms of his mental health condition, the petition showed that he did not act violently while in treatment and that he maintained cognitive and volitional control with only mild episodes of mood lability. Because, according to the petition, BLR's symptoms had not manifested in a recent violent episode, BLR asserts that it failed to make the requisite showing that there was a substantial likelihood that he would commit an additional violent act on release.

The State responds that BLR's history, his lack of understanding regarding the reason for his commitment, and his continued denial of his mental health condition constitute prima facie evidence that BLR is likely to repeat acts similar to the charged behavior. The State denies that a petition must describe a violent episode while in treatment to constitute sufficient prima facie evidence, explaining that the lack of an episode might have more to do with the setting than an improvement in BLR's condition.

The petition presented sufficient prima facie evidence that BLR poses a substantial likelihood of repeating acts similar to the charged conduct. While BLR did not exhibit violent behavior in treatment and showed signs of improvement, the State presented sufficient prima facie

evidence based on BLR's lack of insight into his condition and the circumstances that caused him to become involuntarily committed.

A. LEGAL PRINCIPLES

Upon finding that an individual is incompetent to stand trial for a felony charge, all charges shall be dismissed without prejudice, and the individual must "undergo a mental health evaluation for civil commitment and treatment." *In re Det of M.W.*, 185 Wn.2d 633, 642, 374 P.3d 1123 (2016) (citing former RCW 10.77.086(4) (2013)). Involuntary commitment is imposed on a short-term periodic basis, and the committed individual must be released at expiration of the treatment period unless a new petition for involuntary treatment is filed. Former RCW 71.05.320(4) (2018); *M.W.*, 185 Wn.2d at 642.

When initially seeking involuntary treatment for an individual found incompetent to stand trial for felony charges, "[t]he State must prove that 'as a result of a mental disorder, [the person] presents a substantial likelihood of repeating similar acts.'" *M.W.*, 185 Wn.2d at 642 (quoting former RCW 71.05.280(3) (2013)). And where the underlying charge is classified as a violent felony, the trial court must make an affirmative determination as to whether the individual committed acts that constitute a violent felony under RCW 9.94A.030. *Id.* (citing former RCW 71.05.280(3)(b)).

After the initial treatment period expires, if the State seeks recommitment, it may file a new petition asserting one of the grounds listed in RCW 71.05.280. *Id*. When seeking recommitment of an individual who has been previously found to have committed an act constituting a violent felony under RCW 71.05.280(3)(b), the State must satisfy its initial burden of presenting a petition that sets forth prima facie evidence that "the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood

of committing acts similar to the charged criminal behavior." Former RCW 71.05.320(4)(c)(ii). Prima facie evidence is "evidence that is 'sufficient' to sustain a judgment." *M.W.*, 185 Wn.2d at 657 (quoting *Murphy v. Immigration & Naturalization Serv.*, 54 F.3d 605, 610 (9th Cir.1995)).

"If the State fails to meet this burden, then the petition will be dismissed, and the person is released unless the State can proceed on alternative grounds for recommitment." *Id*. at 644. But where the State's petition presents sufficient prima facie evidence, "then the individual may rebut the State's showing by presenting 'proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior.'" *Id*. (quoting former RCW 71.05.320(3)(c)(ii) (2013)).

If the individual does not present any expert opinion in rebuttal, then the court will extend the individual's commitment for an additional 180 days. *Id*. If the individual does produce an expert opinion, then the court will hold a full evidentiary hearing. *Id*. at 656. Regardless of whether the committed individual presents any rebuttal evidence, the State retains the burden of proving the grounds asserted for recommitment by clear, cogent, and convincing evidence. *Id*. at 657.

B. APPLICATION

Here, at the initial petition hearing, the trial court made a special finding under former 71.05.280(3)(b) (2018) that BLR committed acts that constituted a violent felony. Therefore, on seeking to extend BLR's involuntary commitment for an additional 180 days, the State was required to present a petition setting forth prima facie evidence that as result of BLR's mental health condition, BLR posed a substantial likelihood of committing acts similar to the charged crimes. Former RCW 71.05.320(4)(c)(ii) (2018).

The State's petition set forth facts that were sufficient to satisfy its initial burden. In particular, the State's petition described BLR's lack of insight regarding the incident that resulted in the criminal charges and in his subsequent commitment. The petition recounts multiple statements BLR made denying that he had engaged in any violent acts against his father and asserting that his parents and Western State Hospital imposed involuntary treatment under false pretenses. The State's petition further noted that BLR consistently refused to acknowledge that he had a mental health condition. Moreover, BLR told the petitioners on numerous occasions that he did not think the medications were helpful or necessary. Due to this lack of insight, the petitioners stated that BLR presented a substantial risk of stopping his medications and decompensating on discharge. The petition detailed BLR's history of prior involuntary admissions to Western State Hospital and explained that because BLR had "difficulty maintaining stability in the community previously due to noncompliance with treatment," his lack of insight was of particular concern. CP at 90.

While the petition did not refer to a recent violent incident, BLR does not identify any support for his assertion that to extend involuntary treatment under former RCW 71.05.320(3)(c)(ii), a recent act of violence must be alleged. Moreover, to the extent that BLR relies on his recent symptomatic improvement while in treatment, this evidence indicates the efficacy of the treatment setting for BLR, but it does not countervail concerns raised in the petition. Primarily, the fact that BLR has shown improvement while in a structured, supervised environment at Western State Hospital does not dispel the evidence that BLR's lack of insight into his condition creates a substantial likelihood of decompensation once he is no longer in such an environment. Therefore, between BLR's history of multiple admissions for involuntary treatment, coupled with

his lack of insight, the petition set forth sufficient prima facie evidence that BLR posed a substantial risk of committing acts similar to the charged offenses.

II. SUBSTANTIAL EVIDENCE OF A GRAVE DISABILITY

BLR argues that the State failed to present substantial evidence in support of the trial court's finding that he continues to be gravely disabled as defined under former RCW 71.05.020(22)(b). BLR contends that while he may lack insight into his own health condition and continues to exhibit some symptoms of somatic and persecutory delusions, he has not exhibited severe deterioration of his mental functioning such that he could be considered gravely disabled. BLR further asserts that the trial court substituted its belief about what kind of treatment would be in his best interest in place of the statutory standard which concerns only whether he is able to make a rational decision regarding his treatment.[2]

The State contends that the trial court's conclusion that BLR was gravely disabled under former RCW 71.05.020(22)(b) was supported by its findings regarding BLR's history of hospitalizations prior to his most recent admission, the nature of the event that lead to his commitment, his continued denial of his mental health condition, and his continued exhibition of certain symptoms. The State asserts that the standard under former RCW 71.05.020(22)(b) was designed to aid in the treatment of individuals with similar characteristics to BLR, who if left unsupported, present a risk of decompensating on release.

[2] BLR relies almost exclusively on *In re Det. of M.K.*, 168 Wn. App. 621, 630, 279 P.3d 897 (2012) to support his argument that the trial court's finding that he was gravely disabled within the meaning of former RCW 71.05.020(22)(b) was not supported by substantial evidence. But *M.K.* was published only on the mootness issue, and the portion BLR cites to support his argument, in which we addressed the merits, was unpublished and was filed in June 2012. Opinions filed prior to March 1, 2013 have no precedential value and are not binding on any court. GR 14.1(a). BLR's reliance on the unpublished portion of *M.K.* is thus improper, and any arguments he raises that are predicated solely on the unpublished portion lack support from legal authority.

BLR's lack of insight into his condition, and his repeated admonitions that medication was not helpful to him, as well as his history of decompensation, tend to show that he lacked the ability to care for his health and safety if released to an unsupportive environment. Therefore, we agree with the State that the trial court's finding that BLR continued to be gravely disabled under former RCW 71.05.020(22)(b) was supported by substantial evidence, and that this finding in turn, supports the conclusion that BLR continued to be gravely disabled.

A. LEGAL PRINCIPLES

An additional ground for extending involuntary treatment for an additional 90 to 180 days exists where a committed individual "[c]ontinues to be gravely disabled." Former RCW 71.05.320(4)(d). Under former RCW 71.05.020(22) a person is "[g]ravely disabled" when that person,

> as a result of a behavioral health disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety; . . .

Here, the trial court found that BLR fit the second definition of grave disability within former RCW 71.05.020(22)(b).

Former RCW 71.05.020(22)(b) incorporates the definition of decompensation and thus "permits the State to treat involuntarily those discharged patients who, after a period of time in the community, drop out of therapy or stop taking their prescribed medication and exhibit 'rapid deterioration in their ability to function independently.'" *In re Det. of LaBelle*, 107 Wn.2d 196, 206, 728 P.2d 138 (1986) (quoting Mary L. Durham & John Q. LaFond, *The Empirical Consequences and Policy Implications of Broadening the Statutory Criteria for Civil Commitment*,

3 YALE L. & POL'Y REV. 395, 410 (1985)). This alternate definition of grave disability was added by the legislature to "broaden the scope of the involuntary commitment standards." *Id*. at 205.

To find that an individual continues to be gravely disabled within the meaning of former RCW 71.05.020(22)(b), the evidence must show: (1) a severe deterioration in routine functioning and (2) failure to receive treatment that is essential for health or safety. *Id*. (discussing former RCW 71.05.020(1)(a) & (b) (1979)). With respect to the first requirement, evidence of a severe deterioration in functioning "must include recent proof of significant loss of cognitive or volitional control." *Id*. at 208 (discussing former RCW 71.05.020(1)(b)).

With respect to the second requirement in former RCW 71.05.020(22)(b),

> the evidence must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety. It is not enough to show that care and treatment of an individual's mental illness would be preferred or beneficial or even in his best interests. To justify commitment, such care must be shown to be essential to an individual's health or safety and the evidence should indicate the harmful consequences likely to follow if involuntary treatment is not ordered.

Id. (discussing former RCW 71.05.020(1)(b)). That is, the individual must be "*unable*, because of severe deterioration of mental functioning, to make a rational decision with respect to his need for treatment." *Id*. (emphasis in original). This requirement exists to establish the necessary causal nexus between "proof of 'severe deterioration in routine functioning'" and proof that the person so affected "'is not receiving such care as is essential for his or her health or safety.'" *Id*. (quoting but not citing to former RCW 71.05.020(1)(b)).

The State has the burden of proving that a person is gravely disabled by clear, cogent, and convincing evidence. *M.W.*, 185 Wn.2d at 656. We "will not disturb the trial court's findings of 'grave disability' if supported by substantial evidence which the lower court could reasonably have found to be clear, cogent and convincing." *Labelle*, 107 Wn.2d at 209. The "ultimate fact in issue

must be shown by evidence to be 'highly probable.'" *Id*. Our review is generally "limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment." *Id*.

B. APPLICATION

Contrary to BLR's assertions, his recent improvement in cognitive and volitional control, as well as his averring that he will take his medications by injection upon release, do not negate the fact that he has a grave disability within the meaning of former RCW 71.05.020(22)(b). Explaining the rationale behind the legislature's expansion of grave disability under this statue, the Supreme Court in *Labelle* rejected an interpretation of former RCW 71.05.020(1)(b) that would "exclude those persons whose condition has stabilized or improved, even if minimally (is not "escalating") by the time of the commitment hearing." *Id.* at 205. The Supreme Court cautioned that such an interpretation would:

> result in absurd and potentially harmful consequences, for a court would be required to release a person whose condition, as a result of the initial commitment, has stabilized or improved minimally—*i.e.*, is no longer "escalating"—even though that person otherwise manifests severe deterioration in routine functioning and, if released, would not receive such care as is essential for his or her health or safety.

Id. at 207. The Supreme Court also described a "'revolving door' syndrome, in which patients often move from the hospital to dilapidated hotels or residences or even alleys, parks, vacant lots, and abandoned buildings, relapse, and are then rehospitalized, only to begin the cycle over again." *Id.*

BLR's circumstances present the potential for decompensation that the Supreme Court in *Labelle* cautioned against, wherein a committed individual has benefited from treatment but not so extensively so as to no longer meet the definition of grave disability under former RCW 71.05.020(22)(b). With respect to the first requirement under former RCW 71.05.020(22)(b), while

BLR has improved in his cognitive and volitional control and has not had any violent episodes since his commitment, he continued to exhibit cognitive challenges related to his lack of insight into his condition. In particular, BLR continuously denied that he had a mental health condition. BLR has also disagreed that he benefitted from the medication and stated that he was only taking it because he was required to do so. While in treatment, BLR expressed persecutory delusions related to the reasons for his confinement, explaining that he was in Western State Hospital because the staff had to fill quotas and asserting that his parents "trap[ped]" him with the felony charges. CP at 83.

With respect to the second requirement under former RCW 71.05.020(22)(b), there was also substantial evidence establishing the necessary causal nexus between BLR's deterioration in his mental function and his inability to "make a rational decision with respect to his need for treatment." *See LaBelle*, 107 Wn.2d at 208 (discussing former RCW 71.05.020(1)(b)). Dr. Charboneau testified that despite BLR's improvement in his cognitive and behavioral controls, Dr. Charboneau had "significant concern[s]" that BLR would experience a deterioration in routine functioning if he were released. 1 VRP Aug.27, 2019 at 118. These concerns stemmed primarily from BLR's denial of his condition and of his need for treatment. Notably, the trial court found and stated with particular emphasis, that "without clear structure and oversight, the court believes [BLR] would likely decompensate." CP at 144 (emphasis omitted). BLR does not challenge this finding.

Due to BLR's improvements however, the trial court found that a less restrictive alternative placement was appropriate, "if it is highly structured, far more than just discharge to a shelter. Something closer to . . . a Group Home." CP at 144. Substantial evidence regarding BLR's lack of insight into his mental health condition supported the trial court's finding that BLR continued to

be gravely disabled as defined under former RCW 71.05.020(22)(b). In turn, this finding supported the trial court's conclusion that BLR continued to be gravely disabled. The trial court's recommitment order of an additional 180 days in less restrictive placement was properly entered.

CONCLUSION

We hold that the petition set forth sufficient prima facie evidence that as a result of his behavioral health disorder, BLR presented a substantial likelihood of repeating acts similar to the charged conduct. In addition, we hold that the trial court's finding that BLR fits the definition of grave disability set forth in former RCW 71.05.020(22)(b) was supported by substantial evidence, and that this finding, in turn, supported the trial court's conclusion that BLR continued to be gravely disabled. Therefore, we hold that the trial court did not err in recommitting BLR to an additional 180 days of involuntary treatment in a less restrictive alternative placement.

Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Cruser, J.
CRUSER, J.

We concur:

Maxa, J.
MAXA, J.

Sutton, A.C.J.
SUTTON, A.C.J.