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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In the Matter of the Detention of: M.N.	No. 53943-8-II UNPUBLISHED OPINION

CRUSER, J. — MN appeals a trial court order that extended his involuntary commitment for mental health treatment for an additional 180 days. He argues that the State failed to provide sufficient evidence to support the court's finding that he was gravely disabled. The State contends that the court's conclusion that MN was gravely disabled was supported by clear, cogent, and convincing evidence. Because sufficient evidence supports the trial court's conclusion that MN was gravely disabled, we affirm.

FACTS

In March 2016, the Pierce County Superior Court ordered MN to undergo a 90-day competency restoration treatment related to a charge of indecent liberties. The State dismissed the charge after the court subsequently found that MN had not regained competency and his competency was not likely to be restored. MN was then committed to Western State Hospital (WSH). The hospital petitioned for, and the court granted, at least three subsequent petitions for

180 days of involuntary treatment. In each of the orders granting the petitions, the court found that MN was gravely disabled.

In September 2019, Dr. Kamran Naficy and Dr. Wendi Wachsmuth of WSH filed a petition for a further 180 days of involuntary commitment. Naficy and Wachsmuth submitted a declaration in support of the petition detailing MN's treatment history at WSH and the status of his mental state and how it related to his ability to make judgments about his treatment. MN did not appear but was represented by his attorney.

At a hearing on the petition, Wachsmuth testified that MN was diagnosed with bipolar type schizoaffective disorder and poly-substance abuse disorder. The current admission was MN's eighth at WSH, and he had previously undergone treatment at other facilities. Wachsmuth testified that MN exhibited mood lability and unpredictability, stating that he would begin by being "polite and engaging" and moments later being "hostile" and "angry" towards the same individual. Report of Proceedings (RP) at 7. For example, Wachsmuth had seen MN on several occasions conversing with staff, and later the same day he would be "yelling at the top of his lungs, cursing people out, and slamming doors." *Id.* MN also continuously expressed "delusional thought content primarily in a grandiose theme" whereby he "articulates that [he is] the king or the pope or some other high-ranking official and is entitled to all sorts of demands because of that." *Id.* MN's current symptoms, Wachsmuth opined, impaired his functioning somewhat in the hospital, but less so than would be seen outside of the hospital setting. She also testified that his behavior, namely taking his medication and following staff directions, indicated that he acknowledged on some level that he needed medication, but otherwise he had never independently recognized the need for care or acknowledged that he had a mental illness.

Wachsmuth testified that MN's judgment had improved and his behavior had been more controlled. At the time of the most recent interview, Wachsmuth found that MN's cognitive and volitional control had greatly improved since his admission, and he was "linear, logical, [and] goal directed" during that conversation. *Id.* at 9. The hospital recently granted MN privilege to walk the grounds unescorted for brief periods of time. Wachsmuth also stated that many chart notes indicated that he still had intrusive, delusional thought content when engaging in longer conversations. She also had recently observed MN yelling and slamming doors, although she noted that he was less often hostile and aggressive than earlier in the commitment period.

Wachsmuth testified that MN attended to his daily living activities independently and only had to be reminded occasionally to shower. She also testified that his record indicated that while previously on release to the community, MN quickly stopped taking his medication. She opined that if he was released with no structured support in place, he would be unable, as a result of his mental disorder, to consistently meet his basic health and safety needs and he would be placed at risk of serious physical harm. Without a structured support system, the gains MN made during the last commitment periods would "virtually disappear within at least a month's time or the half[-]life of the medication." *Id.* at 12. Additionally, MN would not seek out or follow through with mental health care because at that time, she believed he could not make rational decisions regarding mental health treatment. Wachsmuth concluded that MN was gravely disabled but was ready for a less restrictive alternative with a structured setting because he was "at baseline" and for the purposes of hospitalization at WSH, he was "as good as he's going to get." *Id.* at 13.

The court entered an order committing MN to an additional 180 days of treatment, concluding that MN continued to be gravely disabled. Specifically, the court found that MN met

the second definition of "gravely disabled" under former RCW 71.05.020(22)(b) (2019). The order included the court's findings of fact, which were a summary of Wachsmuth's testimony. The order also stated that MN was ready for a less restrictive alternative as soon as an appropriate one was found. MN appeals.

ANALYSIS

MN argues that the evidence presented demonstrates that he has shown considerable improvement in his judgment, volitional and cognitive control, and other behaviors. Therefore, he contends the State failed to provide sufficient evidence to show that he meets the definition of gravely disabled required to support an involuntary commitment. We disagree.

Generally, under the involuntary commitment statute, chapter 71.05 RCW, a person "may be involuntarily committed for treatment of mental disorders if, as a result of such disorders, they . . . are gravely disabled." *In re Det. of LaBelle*, 107 Wn.2d 196, 201–02, 728 P.2d 138 (1986).

"Gravely disabled" is defined as:

> a condition in which a person, as a result of a mental 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.

Former RCW 71.05.020(22).

To order involuntary commitment under subsection (b), the court must find: (1) "a recent proof of loss of cognitive or volitional control . . . due to [a] mental disorder," (2) inability "to make a rational choice about treatment due to . . . lack of insight into [the patient's] condition," and (3) "a factual basis for concluding that [the patient] would not receive essential care if [they]

were released." In re *Det. of D.W.*, 6 Wn. App. 2d 751, 757, 431 P.3d 1035 (2018) (citing *LaBelle*, 107 Wn.2d at 204-05).

In a civil commitment proceeding, "'[t]he State has the burden of proving that a person is gravely disabled by clear, cogent and convincing evidence.'" *Id.* at 756 (quoting *In re Det. Of R.H.*, 178 Wn. App. 941, 945-46, 316 P.3d 535 (2014)). This standard means that the State must show that it is "highly probable" that the person is gravely disabled. *Labelle*, 107 Wn.2d at 209. On appeal, 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." *Id.* We must defer to the trier of fact on the persuasiveness of the evidence and witness credibility. *In re Vulnerable Adult Petition for Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

Here, the evidence shows recent proof of loss of cognitive or volitional control by MN. Wachsmuth testified to the great improvements in MN's judgement and cognitive and volitional control over the current commitment period. However, she testified that MN still had "intrusive thought content" and articulated that he was entitled to demands because he was the king or some other high-ranking official. RP at 9. Additionally, although he was "less often" hostile or aggressive, MN continued to exhibit mood lability, and was recently observed yelling and slamming doors. *Id.* She opined that his symptoms impaired his functioning somewhat in hospital, but less so than they would out in the community.

The evidence also shows that MN had limited insight into his condition and was unable to make rational choices about his treatment. Wachsmuth testified that although superficial insight by MN into his condition was evidenced by his taking medication and following staff directions,

MN did not independently recognize that he had a mental illness or acknowledge that he needed care for it. She further opined that he could not independently make rational decisions regarding mental health treatment.

Finally, the court had an ample factual basis for concluding that MN would not receive essential care if he were released. The evidence shows that MN was capable of attending to his daily living activities and only has to be reminded occasionally to shower. However, it is clear from the testimony that MN's mental health relies in large part on consistently taking medication. Wachsmuth testified that MN's record indicated that previously upon release into the community, MN had quickly stopped taking his medication. This is evidenced in part by his eight prior commitments to WSH. She also opined that on release MN would not seek out or follow through with mental health care because in his current condition, he could not make rational decisions regarding mental health treatment. Further, she believed that if MN was released with no structured support in place, he would be unable, as a result of his mental disorder, to consistently meet his basic health and safety needs and he would be placed at risk of serious physical harm. Without a structured support system, the gains he made during the last commitment periods "would virtually disappear within at least a month's time or the half[-]life of the medication." *Id.* at 12.

In *Labelle*, the supreme court concluded that the inability to understand a need for treatment in addition to a minimal likelihood of taking the medication necessary to stabilize mental deterioration upon release tended to show that hospital treatment was essential to the appellant's health and safety. 107 Wn.2d at 213. Similarly, MN demonstrated both a lack of awareness of his mental illness and the resulting need for medication as well as likelihood that he would not continue taking medication upon release or seek out mental health services. We conclude that the

State presented clear, cogent, and convincing evidence that MN continued to be gravely disabled and required a further 180 day involuntary commitment.

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.