

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-261

MARCH TERM, 2003

In re C.B.

}	APPEALED FROM:
}	
}	District Court of Vermont, Unit No. 3,
}	Lamoille Circuit
}	
}	
}	DOCKET NOS. 3-2-01 Lecm and 94-2-02
}	Lecr
}	
}	Trial Judge: Howard E. VanBenthuyzen

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

C.B. appeals the trial court's decision finding him a person in need of treatment under 18 V.S.A. § 7101 and committing him to the custody of the Commissioner of Developmental and Mental Health Services for hospitalization at the Vermont State Hospital (" VSH"). He argues that the record does not support the court's conclusion that he must remain hospitalized and the court was without authority to order him hospitalized indefinitely. We affirm.

C.B. was charged with two counts of retail theft and was ordered to undergo an evaluation for competency and sanity at the Vermont State Hospital. A VSH doctor found C.B. competent to stand trial but insane at the time of the offenses charged. This finding triggered a hospitalization hearing under 13 V.S.A. § 4820(1). C.B.' s family also commenced a proceeding for involuntary treatment under 18 V.S.A. § 7612. At the hospitalization hearing, numerous witnesses testified regarding C.B.' s mental health, including family members and C.B.' s treating psychiatrist at VSH, Dr. John Malloy. Dr. Malloy testified that C.B. had been admitted to VSH on three prior occasions. In 1987, he was admitted after being charged with sexual assault on a step-family member. At that time, doctors concluded that he suffered from a mental illness. He was admitted again in 1998, following criminal charges for unlawful restraints and aggravated domestic assault. After being examined, doctors concluded that he suffered from a delusional disorder. He was admitted again in 1999 for a probation violation and evaluated and treated by VSH doctors.

Dr. Malloy diagnosed C.B. as currently suffering from " schizophrenia of a paranoid sub type" and stated that his condition had worsened since 1998. He stated that, in addition to his own observations, he had reviewed and relied on reports of three other psychiatrists who had examined C.B. These reports were admitted into evidence. Dr. Malloy testified that C.B. holds unrealistic beliefs and he holds them strongly and consistently when he is partially treated or untreated. The doctor stated that C.B. has exhibited " a tendency to act on these delusions" in the past. He testified that C.B. seemed very preoccupied with certain delusions, including the possession of firearms, and he feared C.B. would act violently in the future. Dr. Malloy stated that C.B. was not ready to be discharged from the hospital. He testified that if C.B.' s treatment at VSH were discontinued, C.B. would remain delusional, the intensity of the delusions would likely increase, and he would be potentially dangerous to himself or others. He testified that he was not aware of any appropriate alternatives to hospitalization and that VSH was the most adequate and appropriate place for C.B. to receive care. Dr. Malloy also stated that C.B. did not want an increase in his medication but if the current level of medication did not show an increased benefit, he would ask C.B. to take more.

C.B.' s family members also testified to his mental instability. His brother, John, stated that C.B. would cycle in and out of stability and that his condition worsened when he stopped taking his medicine. He stated that C.B. suffers from

various delusions. He testified that when C.B. is in a downward cycle, he begins to act on his delusions and often commits criminal acts. He stated that his brother was currently in a downward cycle and seemed very agitated. He testified that he was concerned for his family's safety. C.B.'s son, Ben, similarly testified that his father cycled in and out of mental stability. Ben described finding a hunting rifle under C.B.'s bed, his threats to kill Ben's mother, and several other incidents where C.B. had acted on his delusions. He testified that C.B.'s condition worsens when he's not on medication. He stated that he did not allow his wife to stay at home alone in light of his father's erratic and violent past behavior.

After completion of the hearings, the court ordered C.B.'s hospitalization at VSH until further order of the court with the provision that the order be for a period of ninety days, and the further provision that C.B. not be placed back in the community without a hearing by the committing court pursuant to 13 V.S.A. § 4822(c). The court found that the State and C.B.'s family members had established by clear and convincing evidence that: (1) C.B. suffers from a mental disease or defect; (2) he is in need of further treatment; (3) he poses a danger to himself and others in his present condition; (4) VSH can provide him with the care and treatment he needs; and (5) there is no less restrictive environment than VSH for such treatment to be administered.

On appeal, C.B. argues that the court erred in finding him a person in need of treatment and ordering his hospitalization. According to C.B., the court "demonized" him based on his prior history and failed to recognize that he needs monitoring of his medication rather than long term confinement. He argues that there is no evidence in the record to support the court's conclusion that he must remain at VSH or that the local mental health agency cannot adequately monitor his medication and provide appropriate services. He specifically takes issue with the court's finding that he "is presently refusing to accept the increased doses of medications that his treating physician views as necessary to enable his condition to improve." C.B. further argues that the court exceeded its authority by ordering him hospitalized "until further order of the Court."

We will uphold the trial court's findings as long as they are supported by substantial evidence. In re N.H., 168 Vt. 508, 512 (1998). "We rely on the factfinder's assessment of the credibility of the witnesses and weighing of the evidence." 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.

In this case, the court made extensive findings that address the elements required for an order of hospitalization pursuant to 13 V.S.A. § 4822 and 18 V.S.A. § 7611. While C.B. correctly asserts that the court erroneously found that he was "presently refusing to accept the increased doses of medications that his treating physician views as necessary to enable his condition to improve," this error does not undermine the court's ultimate conclusion. Dr. Malloy testified that C.B. was not ready to leave the hospital and that there were presently no appropriate alternatives to C.B.'s hospitalization at VSH. He testified that he would ask C.B. to take more medicine if his condition did not improve; C.B. indicated that he did not want to take more medicine. Dr. Malloy testified that C.B. is delusional, has acted on his delusions, and may act violently in the future. He stated that C.B. was unlikely to follow up with psychiatric care if released and, consequently, his condition would worsen and he would pose a threat to himself and others. C.B.'s family members also testified to C.B.'s mental instability and his erratic behavior when he is not receiving treatment. In light of this and other evidence in the record, we find the court's decision to order C.B. hospitalized supported by substantial evidence.

We find no merit in defendant's contention that the court has ordered C.B. hospitalized indefinitely. The court's order specifically states that "this Order will be for a period of 90 days." The statement challenged by C.B., that he must "be hospitalized and treated at VSH until further Order of the Court," must be taken in context. Indeed, as the State points out, the Commissioner filed an application for continued treatment on July 31, 2002, in anticipation of the expiration of the ninety-day period. We therefore deny C.B.'s request to strike this phrase from the court's order.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned