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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-338

APRIL TERM, 2007

In re B.F.	}	APPEALED FROM:
	}	
	}	Washington Family Court
	}	
	}	DOCKET NO. F32-2-06 Wy-MH-AIT
		Trial Judge: Helen M. Toor

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

B.F. appeals from the trial court's order committing him to the care and custody of the Commissioner of Health for ninety days pursuant to 18 V.S.A. § 7619. He argues that the court erred because there was no evidence that he was likely to pose a danger to himself and others, and the court specifically stated that it could not find by clear and convincing evidence that he was likely to commit violence. We affirm.

The trial court made the following findings. B.F. is an approximately forty-year-old male who suffers from paranoid schizophrenia. As part of his illness, he has significant delusions of both a paranoid type and of a religious type. He believes that God speaks through him and that God has led him to send messages to people about their wrongdoing. He also believes that the police and legal system are persecuting him for his religious beliefs.

B.F. was first hospitalized in December 2005 on an emergency admission. The findings in that case indicated that in August 2005, B.F. sent a bulky envelope to the Windsor District Court that contained various threats of violence. This included statements such as: "IF YOU AVOID THIS CASE, I WILL HAVE EACH OF YOU BEHEADED. SOON. ELEPHANT STYLE, MY PROMISE, IT IS I YESHUA," "I WILL PROSECUTE YOU WITH DEATH PENALTY IF YOU SEEK TO OBSTRUCT JUSTICE OF THIS CASE!;" and "I AM COMING. You have not chance of surviving MY WRATH, you will each die." In November 2005, B.F. sent similar materials to the Windsor Superior Court. These included statements specific directed to Judge Harold Eaton, Jr., such as "HAROLD ORDERED IT, HE IS GUILTY! DEATH PENALTY MANDATORY." The trial court in that case found that B.F. was a person in need of treatment at the time of his admission, but it concluded that he was not a person in need of further treatment at the time of the hearing because he did not actually pose a threat of harm to others, even though he might continue his threatening writings. B.F. was therefore released in January 2006.

In February 2006, an attorney for the State received a package of written materials and two CDs from B.F. The writings referred to Judge Eaton and Judge Edward Cashman as "faggot cannibal-pharmacannibal pill 'culture' gay reich pedophile[s] [sic]" and stated, among other things:

"I WILL BEHEAD EVERY GAY, THREE DAYS, I COME TO DO IT, SAYS YESHUA THE LORD;" "YESHUA ALMIGHTY COMMANDING HAROLD EATON BE KILLED AS PEDOPHILE CRACK FALSE JUDGE." B.F. also wrote "Bye Harold." The CDs had writing on them indicating that they were posted on the internet. Shortly thereafter, B.F. was again placed in the hospital on an emergency admission.

After a merits hearing, the court made the following findings. Judge Eaton testified, and the court found, that as a result of B.F.'s writings, he feared that B.F. might physically harm him. The court found that any reasonable person seeing such writings directed at them would be afraid that the writer might physically harm him or her. Dr. Duncan, a psychiatrist at the hospital, also testified at the hearing. He stated that he saw B.F. in February 2006 and began treating him in March 2006. He also saw B.F. during his earlier admission in December 2005. The court found, based on Dr. Duncan's testimony, that the only treatment for B.F.'s illness was anti-psychotic medication, which B.F. refused to take voluntarily. The court found that without medication, B.F.'s condition would not improve for at least five to ten years, and it might get worse after that time period.

B.F. testified that he would not actually kill someone because he was merely passing on Yeshua's words. He stated his hope that the messages would cause those threatened with death to change their ways and be redeemed. The court found B.F. sincere in his statements that he did not intend to act on his "messages from God" by committing acts of violence, but it found that B.F. would likely commit acts of violence if he believed that God was telling him to act on the threats. The court had no way of predicting if B.F. was likely to believe at some point that God was telling him to act on the threats and actually hurt or kill people. Neither Dr. Duncan, nor Dr. Linder, an expert witness, could state with any certainty the likely risk of such behavior. Dr. Duncan expressed concern about B.F.'s escalating and more specific threats, as well as the fact that people with paranoid schizophrenia are able to make plans to carry through and take revenge on others. He agreed, however, that beyond a two-day period, psychiatrists were no better at predicting if someone would assault a particular person than other members of the general public. Dr. Linder opined that B.F. was less likely to follow violent "commands" from God as opposed to other types of commands, and he was less likely to act out violently than other paranoid schizophrenics given his high level of intellectual functioning. Nonetheless, the court found it clear from the doctors' testimony that neither was willing or able to predict B.F.'s future behavior with any certainty. Thus, the court stated that it could not find by clear and convincing evidence that B.F. was likely to commit violence.

Based on these and other findings, the court concluded that B.F. was (1) a patient in need of treatment at the time of admission and application, and (2) a patient in need of further treatment at the time of hearing. See 18 V.S.A. § 7617(b). In this case, the court explained, B.F.'s mental illness caused him to write letters stating that various people deserved to die. The writings were ones that a reasonable person would find frightening because of the implication that B.F. either sought to kill them or sought to incite others to kill them. The court found that it did not matter if B.F. intended or was likely to act on the threats because "placing others in reasonable fear" met the requirements of the statute. Thus, the court concluded that B.F. was a patient in need of treatment at the time of his admission to the hospital.

The court also concluded that B.F. was a patient in need of further treatment. It explained that the evidence showed that B.F. continued to believe that God spoke through him and that it was his responsibility to convey the messages from God. If he was released, he would continue to make similar written statements that would reasonably place others in fear. The court found that the only adequate treatment for schizophrenia was medication, and B.F. refused medication because he did not believe he was ill. Without medication, there was little likelihood of any improvement in his condition for many years. Because the only place he could be provided with medication against his will was the Vermont State Hospital, the court concluded that it was currently the only appropriate placement. Pending a ruling on a recusal motion filed by B.F., the court ordered B.F. committed to the custody and care of the Commissioner for a period not to exceed ninety days from May 12, 2006. B.F.'s motion to recuse Judge Toor was denied, and this appeal followed.

B.F. argues that the court's failure to find that he was likely to commit violence precluded a determination that he was a person in need of treatment or a patient in need of further treatment. According to B.F., involuntary commitment is impermissible and in violation of due process where the state cannot show that the respondent is likely to endanger himself or others if he is not treated. He asserts that the commitment statute is designed to protect the public from actual danger that may be caused by threats, and that the mere existence of threats, without more, is insufficient. He maintains that in this case, there was no evidence that he was likely to take action to harm himself or others in the absence of involuntary mental health treatment. As support for this assertion, he cites his own testimony, his behavior while at the hospital, Dr. Linder's testimony that he was not likely to escalate his behavior, as well as both doctors' testimony about his future behavior if he were to be discharged without treatment. B.F. also suggests that Judge Eaton's testimony was insufficient to establish that he suffered reasonable fear of harm from B.F.'s communications.

We find these arguments without merit. As set forth above, to order B.F.'s involuntary commitment, the State was required to prove by clear and convincing evidence that B.F. was a person in need of treatment at the time of admission and a patient in need of further treatment at the time of the hearing. 18 V.S.A. §§ 7616(b), 7617. The record shows that the State met its burden.

By statute, a "person in need of treatment" is one "who is suffering from mental illness and, as a result of that mental illness, his capacity to exercise self-control, judgment or discretion in the conduct of his affairs and social relations is so lessened that he poses a danger of harm to himself or others." Id. § 7101(17). It specifically provides that a "danger of harm to others" may be shown by establishing that "by his threats or actions he has placed others in reasonable fear of physical harm to themselves." Id. § 7101(17)(A)(ii). A patient in need of further treatment is defined as: "(A) A person in need of treatment; or (B) A patient who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his condition will deteriorate and he will become a person in need of treatment." Id. § 7101(16).

B.F. argues that this language must be interpreted to implicitly require a finding that an individual is likely to commit an act of violence or follow through on violent threats. He also asserts that the statute does not provide that placing a person in reasonable fear of harm will necessarily suffice to establish a danger of harm to others because the statute uses the permissive words "may be shown by." According to B.F., the factors listed by the Legislature "may be adduced not for their

intrinsic value, but because the Legislature determined that they may be probative of the respondent's propensity to endanger himself or someone else." He maintains that the purpose of the statute is not to protect the public against threatening statements but to protect the public from the actual danger that those statements may represent.

We reject these arguments. "Our objective in construing a statute is to effectuate the Legislature's intent, and we look first to the statute's language." In re Carroll, 2007 VT 19, ¶ 9, __ Vt. ___. If the Legislature's intent is evident from the plain language used, we will enforce the statute according to its terms. Id. In this case, the statute plainly states that "danger of harm to others" may be established by showing that an individual placed others in reasonable fear of physical harm by his threats or actions. We "presume that the [L]egislature chose its words advisedly," Robes v. Town of Hartford, 161 Vt. 187, 193 (1993), and "where the statutory language is clear and unambiguous in its meaning, as in the present case, we will look no further in an effort to determine a contrary legislative intent." Cavanaugh v. Abbott Labs., 145 Vt. 516, 530 (1985).

We note that the commitment statute similarly provides that a "threat" of suicide is sufficient to establish that a patient presents a danger of harm to himself. See 18 V.S.A. § 7101(17)(B)(i). As we stated in In re L.R., this subsection "establishes that a threatened suicide may be enough, without more, to show a danger of harm to oneself." 146 Vt. 17, 21-22 (1985). We reach a similar conclusion here. The Legislature has determined that an individual who makes threats that place others in reasonable fear of physical harm is someone who poses a "danger of harm to others." The trial court found that B.F.'s threats placed Judge Eaton in reasonable fear of physical harm, and that any reasonable person would fear physical harm as well. These findings are supported by the record and must stand on appeal. See N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 438 (1999) (Supreme Court will uphold the court's factual findings unless, taking the evidence in the light most favorable to the prevailing party, and excluding the effect of modifying evidence, there is no reasonable or credible evidence to support them); V.R.C.P. 52(a)(2). The findings support the court's conclusion that B.F. was a person in need of treatment, and a patient in need of further treatment at the time of the hearing.

Because our Legislature has plainly defined the term "danger of harm to others," we do not consider how other states may have defined or interpreted similar terms. We similarly need not address B.F.'s argument that there was no evidence to show that he posed a danger to himself or others. As reflected by the discussion above, this requirement was satisfied by the court's finding that B.F.'s threats placed others in reasonable fear of physical harm. The court was not required to find, nor the State to prove, that B.F. was likely to act on his threats. The statute contains no such requirement, and we decline to read this requirement into the plain language. We note that the court did find that it was likely B.F. would commit acts of violence if he believed that God instructed him to do so. What it could not discern, based on the expert testimony, was whether or when such instructions would be forthcoming.

Our conclusion does not "run afoul of the constitutional requirement of due process enunciated by the U.S. Supreme Court" in O'Connor v. Donaldson, 422 U.S. 563 (1975), as B.F. asserts. In O'Connor, a former patient who had been involuntarily committed to a state mental hospital sued various individuals at the hospital, alleging that they had intentionally and maliciously

deprived him of his constitutional right to liberty. The trial testimony demonstrated, without contradiction, that Mr. Donaldson posed no danger to others either during his long confinement or at any point in his life. Id. at 568. Instead, the evidence showed that his confinement was "a simple regime of enforced custodial care, not a program designed to alleviate or cure his supposed illness." Id. at 569. A jury specifically found that Mr. Donaldson was neither dangerous to himself nor dangerous to others. Id. at 573.

The issue before the Supreme Court was therefore a narrow one. As it explained, it did not need to decide "whether, when, or by what procedures, a mentally ill person may be confined by the State on any of the grounds which, under contemporary statutes, are generally advanced to justify involuntary confinement of such a person—to prevent injury to the public, to ensure his own survival or safety, or to alleviate or cure his illness" because the jury had found that none of these grounds were present. Id. at 573-74 (footnote omitted). The Court concluded that "a finding of mental illness alone" cannot "justify the State's locking a person up against his will and keeping him indefinitely in simple custodial confinement." Id. at 575. Even assuming that the term "mentally ill" could be defined with precision, the Court continued, "there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom." Id. In other words, it held, "a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." Id. at 576.

This case is not like O'Connor. Unlike Mr. Donaldson, B.F. has not been found simply mentally ill nor just classified as a "nondangerous" individual. To the contrary, he fits within the Vermont Legislature's definition of an individual who presents a danger of harm to others. The U.S. Supreme Court did not define the term "dangerous" in O'Connnor, nor did it establish a standard by which dangerousness must be measured. As we observed in In re P.S., 167 Vt. 63, 73-74 (1997) (footnote omitted),

> Although O'Connor, and later decisions that have followed it, have stated the general proposition that mentally ill persons who are not in any sense dangerous to themselves or others may not be involuntarily confined, the Supreme Court has never created a constitutional definition of "dangerous." Indeed, the Court in [Addington v. Texas, 441 U.S. 414, 431 (1974)] acknowledged that "the substantive standards for civil commitments may vary from state to state." Recently, in [Kansas v. Hendricks, 521 U.S. 346, 359 (1997)], the Supreme Court reaffirmed this view, stating that it has "never required State legislatures to adopt any particular nomenclature in drafting civil commitment statutes."

The Vermont Legislature's definition of the term "dangerous to others" does not violate the constitutional requirement of due process set forth in O'Connnor. Cf. In re L.R., 146 Vt. at 21 (holding that due-process concerns are satisfied by Vermont commitment statute, which requires the State to prove—at a hearing where the proposed patient is represented by counsel—by clear and

convincing evidence that proposed patient's threats or acts demonstrate that he is a danger to himself). We find no error in the trial court's interpretation and application of the statute, nor in its conclusion that B.F. should be committed to the custody of the Commissioner for ninety days.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice