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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-173

APRIL TERM, 2018

In re M.K.*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	
	}	DOCKET NO. 61-3-17 Wmmh
		Trial Judge: John P. Wesley (Ret.), Specially Assigned

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

Respondent appeals a nonhospitalization order based on the parties' stipulation. He argues that he was not receiving adequate treatment at the time of the order and therefore there was not a basis for continued treatment. We affirm.

Respondent was committed to the care and custody of the State Department of Mental Health on January 30, 2017. In March 2017, the State filed an application for continued treatment of respondent. The parties agreed to a disposition and waived a hearing on the matter. Pursuant to the parties' disposition, respondent agreed to waive "all findings of fact and conclusions of law" and agreed that the court had jurisdiction over the matter. Based on the parties' stipulation, in April 2017 the court entered an order of nonhospitalization for one year and set the terms. Respondent then filed a notice of appeal.

Under 18 V.S.A. § 7620, the State can file a request to continue treatment of a patient under the care and custody of the Department of Mental Health. The State must demonstrate by clear and convincing evidence that the person is a patient in need of further treatment. In re T.C., 2007 VT 115, ¶ 7, 182 Vt. 467. That is, 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).

On appeal, respondent argues that he was not receiving adequate treatment at the time the petition was filed and therefore was not a patient in need of further treatment. Based on documents not contained in the record from the trial court, respondent asserts that his treatment was inadequate because he was unsafe and had been assaulted by other patients on four occasions in the facility where he was being treated. Respondent claims that the court was required to inquire into the adequacy of his existing treatment before entering an order for continued treatment.

We conclude that respondent's arguments are not properly preserved for our review. Respondent stipulated to the nonhospitalization order below, including specifically waiving a hearing and factual findings by the court, and consenting to the court's jurisdiction. Consequently,

respondent did not offer the evidence he now relies on to challenge the order. There is no record of any motion asking the trial court to set aside the stipulation and judgment. Our review is limited to the record submitted in the superior court and therefore we do not consider the evidence submitted for the first time on appeal. V.R.A.P. 10(a)(1); see Gauthier v. Keurig Green Mountain, Inc., 2015 VT 108, ¶ 2, 200 Vt. 125 (striking documents from printed case not submitted to trial court as outside record on appeal). Moreover, respondent did not raise the issue of the adequacy of his treatment before the superior court. "We have consistently held that we will not consider arguments on appeal that were not preserved in the trial court." State v. B.C., 2016 VT 66, ¶ 20, 202 Vt. 285. Therefore, respondent has waived the ability to raise this challenge on appeal. To the extent respondent alleges that his treatment was not being safely or adequately provided, his recourse is to seek review in the superior court in the first instance.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice