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Court of Appeals  
Division I  
State of Washington

NO. 74747-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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IN RE THE DETENTION OF W.T.

STATE OF WASHINGTON,

Respondent,

v.

W.T.,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE SUZANNE PARISIEN

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. DID THE TRIAL COURT FIND BY THE PROPER STANDARD OF EVIDENCE THAT THE RESPONDENT IS A LIKELIHOOD OF SERIOUS HARM TO OTHERS AND GRAVELY DISABLED UNDER "PRONG A"?
2. DID THE TRIAL COURT VIOLATE RCW 71.05.240(3)(A) AND W.T.'S CONSTITUTIONAL RIGHT TO DUE PROCESS IN COMMITTING W.T. FOR UP TO 14 DAYS OF INVOLUNTARY TREATMENT WHEN THE COURT FOUND DR. SHAFFER'S TESTIMONY CREDIBLE AND THE DOCTOR STATED A LESS RESTRICTIVE ORDER WAS NOT IN W.T.'S BEST INTEREST?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On January 21, 2016, the Honorable Suzanne Parisien presided over a probable cause hearing based on a petition for up to 14 days of involuntary treatment brought by Harborview Medical Center (Harborview) regarding Respondent W.T. Harborview was represented by Deputy Prosecuting Attorney (DPA) Leandra Ebreo. W.T. was represented by Nathan Bays of The Defender's Association (TDA). RP 1. W.T. appeared at the hearing in person. RP 1.

The Petitioner alleged that due to a mental disorder, the Respondent presented as a substantial risk of physical harm to others and was gravely disabled under "prong a." RP 3. The

Petitioner requested that W.T. be ordered to remain at Harborview for up to 14 days of involuntary inpatient mental health treatment. RP 3.

The Court heard testimony from the Petitioner's witness and W.T. RP 4-20. During the Petitioner's case, Dr. Joyce Shaffer, a licensed clinical psychologist in the State of Washington, testified on behalf of Harborview. RP 4-12. Dr. Shaffer provided expert testimony about W.T.'s presentation while hospitalized and gave her clinical opinion as to his mental state along with her recommendation for treatment. RP 4-12. After the Petitioner rested, W.T. testified. RP 17-20.

At the conclusion of the hearing, the Court found that W.T. suffered from a mental disorder and as a result was both a substantial risk of physical harm to others and gravely disabled under "prong a." RP 26. The Court ordered W.T. to remain inpatient at Harborview for up to 14 days. RP 26-27.

On January 27, 2016, the Appellant filed a Notice of Appeal. CP 7. On March 28, 2016, Supplemental Findings of Fact and Conclusions of Law were filed and signed by the Honorable Suzanne Parisien.

## 2. SUBSTANTIVE FACTS

During the probable cause hearing, Dr. Shaffer testified as a licensed clinical psychologist in the State of Washington on behalf of Harborview. RP 4. Respondent's counsel stipulated to the professional qualifications of Dr. Shaffer. RP 4. Dr. Shaffer testified that she is employed by Harborview and that she evaluated and observed W.T. prior to the hearing. RP 4.

Dr. Shaffer testified that W.T. had a mental impairment with a working diagnosis of psychosis with a manic component. RP 4. Dr. Shaffer opined that W.T.'s mental disorder had a substantial, adverse effect on W.T.'s cognitive and volitional functions. RP 4-5. In Dr. Shaffer's expert opinion, W.T. was a substantial risk of physical harm to others and gravely disabled under "prong a." RP 4. In forming her opinion, Dr. Shaffer considered her interview with W.T., her observations of W.T., the ITA initial detention paperwork, W.T.'s medical record at Harborview including his psychiatric history, and her personal conversations with W.T.'s clinicians. RP 4-5.

Significantly, Dr. Shaffer described her personal interactions with W.T. during her interview with him. RP 7-8. During this interview, W.T. acknowledged to Dr. Shaffer that prior to

hospitalization, he had a sleep problem and had driven his car so fast in an attempt to get away from his family that he totaled his car. RP 8. She further described that at the beginning of her interaction with W.T., W.T. was quietly lying on his bed. RP 7. W.T. then suddenly leapt off of the bed and began accusing Harborview of “trying to keep him from the media so that he could not get his story out.” RP 7. Dr. Shaffer also described that W.T. then rushed past her down the hallway. RP 8. After these observations, Dr. Shaffer ended her interaction with W.T. because she was concerned for her safety based on W.T.’s escalation and his “extreme anger at that point.” RP 8. Dr. Shaffer further emphasized that some of her main concerns about W.T. were his rapid change in mood and perspective, and the unpredictability of his behavior. RP 7.

Dr. Shaffer introduced evidence from W.T.’s Harborview medical record that described W.T.’s hallucinations, delusions, and paranoia. RP 8. Dr. Shaffer opined that although W.T. stated that he did not hear voices, his belief that his children were being held against their will down the hall from him exemplified W.T.’s hallucinations and paranoia. RP 9.

Dr. Shaffer opined that based on her interactions with W.T. and his acknowledgement of being violent when decompensated,

W.T. presented a substantial risk of physical harm to others as a result of his mental disorder. RP 6-10. Dr. Shaffer further indicated that W.T. presented as gravely disabled under “prong a” based on W.T.’s acknowledgement of driving his car so fast that he totaled his car which put himself at risk for serious harm. RP 11. She stated that W.T. did not have useful insight into his need for treatment. RP. 11.

Dr. Shaffer recommended that the respondent remain at Harborview for further inpatient care “where the safety of this gentleman [W.T.] and others can be safeguarded.” RP 12. She opined that a less restrictive order was not appropriate at that time since W.T. was “unpredictable, because his judgment and impulse control are profoundly impaired by the paranoid psychosis.” RP 12. During redirect, Dr. Shaffer testified that despite the fact W.T. has been showing improvement in the hospital, Dr. Shaffer continued to recommend that the respondent remain at Harborview for further inpatient treatment. RP 15-16. After Dr. Shaffer’s testimony, the Petitioner rested. RP 16.

W.T. testified on his own behalf. RP 17. W.T. said that prior to his hospitalization he was running from his family. RP 18. When asked whether he would remain peaceful, W.T. stated that he

would just run from them [his family]. RP 19. During cross examination, W.T. stated that he believed he was in the hospital because people were threatening to shoot him at the Convention Center. RP 19. W.T. further stated that he is on every news station in the country. RP 19.

After hearing argument from both parties, the Court found by a preponderance of the evidence that W.T. suffered from a mental disorder, specifically psychosis with manic components, and that he posed a substantial risk of physical harm to others and was gravely disabled under “prong a.” RP 26.

The Court found that W.T. presented a substantial risk of physical harm to others and was gravely disabled under “prong a.” RP 26. The Court based its opinion on Dr. Shaffer’s expert opinion, Dr. Shaffer’s interactions with W.T., and W.T.’s own statements that he was being chased due to threats from his family members. RP 26. The Court found concerning W.T.’s own statements regarding his actions prior to hospitalization, specifically that he was driving so fast that he totaled his vehicle. RP 26-27.

C. ARGUMENT

1. **THE TRIAL COURT FOUND BY THE PROPER STANDARD OF EVIDENCE THAT THE RESPONDENT IS A LIKELIHOOD OF SERIOUS HARM TO OTHERS AND GRAVELY DISABLED UNDER "PRONG A"**

The trial court found by the proper standard of evidence that W.T. posed a substantial risk of physical harm to others and was gravely disabled under "prong a." In reviewing an involuntary commitment order the court considers "whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment." *In re LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986), (citing *Ridgeview Properties v. Starbuck*, 96 Wash.2d 716, 719, 638 P.2d 1231 (1982)). The burden of proof at a 14 day commitment proceeding is preponderance of the evidence. RCW 71.05.240. RCW 71.05.240(1) instructs that after a petition for fourteen days of involuntary treatment is filed, "the court shall hold a probable cause hearing within seventy-two hours of the initial detention" of such person. RCW 71.05.240(1). At the conclusion of the probable cause hearing, RCW 71.05.240(3) further instructs:

if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive

alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department.

RCW 71.05.240(3).

In challenges to Involuntary Treatment Act (ITA) cases, such as this, Washington courts have already held that “when a trial court has weighed the evidence, appellate review is limited to whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court’s conclusions of law and judgment.” *In re A.S.*, 91 Wn. App. 146, 162 (Div. 1, 1998), (citing *In re LaBelle*, 107 Wash.2d at 209, 728 P.2d 138). The case *In re A.S.* describes “substantial evidence” as “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Id.* (citing *Holland v. Boeing Co.*, 90 Wash2d 384, 390, 583 P.2d 621 (1978)). The party challenging a finding of fact bears the burden of demonstrating that the finding is not supported by substantial evidence.” *Id.* (citing *Nordstrom Credit Inc. v. Department of Revenue*, 120 Wash.2d 935, 939-40, 845 P.2d 1331 (1993)).

In this case, it is W.T.'s burden to prove that the trial court lacked substantial evidence to reach the findings of fact and conclusions of law. Ultimately, as set for in *In re A.S.*, this Court must decide whether the trial court had substantial evidence to support its decision and that a "fair minded person" would concur with the trial court's decision. *In re A.S.*, 91 Wn. App. 146 (Div. 1, 1998).

2. **THE TRIAL COURT DID NOT VIOLATE RCW 71.05.240(3)(A) OR W.T.'S CONSTITUTIONAL RIGHT TO DUE PROCESS IN COMMITTING W.T. FOR UP TO 14 DAYS OF INVOLUNTARY TREATMENT.**

The trial court did not violate RCW 71.05.240(3)(a) or W.T.'s constitutional right to Due Process. The Appellant incorrectly asserts that the trial court failed to find that less restrictive treatment was not in W.T.'s best interest or the best interest of others. In finding that W.T. should be committed for up to 14 days of involuntary treatment, the trial court found that less restrictive treatment was not in W.T.'s best interest or in the best interest of others. This is supported by the trial court's oral ruling in which it found Dr. Shaffer's testimony credible. RP 26.

The case *In re LaBelle*, 107 Wn.2d 196 (1986) is particularly informative regarding whether a trial court has made sufficient

findings of fact to hold a patient for up to 14 days of involuntary treatment. In *LaBelle*, the Appellants claimed that the written findings of fact in each of their involuntary commitments were inadequate. *LaBelle*, 107 Wn.2d at 218. The Washington State Supreme Court held in *LaBelle* that “written findings may be supplemented by the trial court’s oral decision or statements in the record.” *Id.* at 219. The court further specified, however, that the findings should *at the very least* indicate a factual basis underlying a court’s conclusion that a person is “gravely disabled” and would not benefit from less restrictive treatment. *Id.*

The findings of fact in W.T.’s case are distinguishable from those in the *LaBelle* case. Here, the trial court did not make conclusory and general findings. The trial court orally ruled that W.T. suffered from a mental disorder and due to that mental disorder, W.T. was a serious risk of physical harm to others and gravely disabled under “prong a.” RP 26. The findings in W.T.’s case are distinct from the findings in *LaBelle* because the trial court further explained its ruling in stating:

The Court further finds based on everything that he presents, that he has a grave disability and that the evidence has been shown, by a preponderance of the evidence, that he poses a substantial risk of physical harm to others. The Court is basing that on Dr.

Shaffer's expert opinion based on her interactions with W.T. while interviewing him – his rapid change from being calm to being quite agitated, his unpredictability during that interview, and on his own statements of being chased, of being threatened by family members.

...

The Court is certainly concerned about his [W.T.'s] own report to Dr. Shaffer that he totaled his vehicle, because he was driving so fast to avoid being capture by others.

RP 26-27.

Here, the trial court specifically stated that its ruling was based on:

(1) Dr. Shaffer's interactions with W.T., (2) Dr. Shaffer's expert opinion on W.T., and (3) W.T.'s own statements at the hearing.

By basing its ruling in part on Dr. Shaffer's opinion, the trial court inherently found Dr. Shaffer's testimony credible. RP 26. In filing the Supplemental Findings of Fact and Conclusions of Law, the trial court unambiguously found the testimony of Dr. Shaffer credible and incorporated her testimony by reference.

The trial court found that less restrictive treatment was not in W.T.'s best interest or in the best interest of others by relying on Dr. Shaffer's testimony. During Dr. Shaffer's direct examination she stated that she was not recommending less restrictive treatment under a court order for W.T. because "he is unpredictable, because

his judgement and his impulse control are profoundly impaired by his paranoid psychosis.” RP 12. When Dr. Shaffer was re-directed, she again stated that same opinion noting that her opinion did not change during cross examination because,

“he’s [W.T.] only beginning to show benefit, but as we’ve heard him say, even while he’s been interrupting us, he still does carry the delusions and fear that the family is somehow trying to kill him.”

RP 16.

The trial court did not violate RCW 71.05.240(3)(a) or W.T.’s constitutional right to Due Process when it considered Dr. Shaffer’s testimony, Dr. Shaffer’s expert opinion, and W.T.’s testimony. Here, the court made specific factual findings which included Dr. Shaffer’s opinion that a less restrictive option was not in W.T.’s best interest or the best interest of others.

**D. CONCLUSION**

For the foregoing reasons, the State requests that the Court deny the Appellant’s appeal on all issues raised above and affirm the trial court’s rulings.

DATED this \_\_\_\_\_ day of August, 2016.

RESPECTFULLY submitted,

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By: 

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Certificate of Filing and Service

On August 8, 2016, I e-filed the foregoing Brief of Respondent regarding In Re the Detention of: W.T., Cause No. 74747-9-I with the WA Court of Appeals Division 1 via JIS, and electronically served a copy of the same document to the following:

maria@washapp.org;

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 8<sup>th</sup> day of August, 2016.



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Samuel Pizelo, Paralegal  
Done in Seattle, Washington