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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Detention of C.C.,

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

After C.C. was detained under the Involuntary Treatment Act first on a 14-day, and then on a 90-day civil commitment, doctors at Western State Hospital petitioned the Pierce County Superior Court for a third order allowing them to involuntarily treat C.C. for up to an additional 180 days. A hearing on the 180-day petition occurred in January 2018, wherein the trial court granted the petition after determining that C.C. experiences paranoid schizophrenia, is gravely disabled as a result of a mental disorder, and that no less restrictive alternatives were in her best interests or the best interests of others.

C.C. now argues that this court should vacate the commitment because the trial court only had authority to commit her for up to 90 days, instead of 180 days. She also challenges the sufficiency of the evidence supporting the trial court's determination that she was gravely disabled. The trial court's order should be affirmed because the Involuntary Treatment Act gives the trial court the authority to detain individuals for up to 180 days following completion of a 90-day commitment, and because substantial evidence supports the trial court's findings on grave disability.

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II. COUNTERSTATEMENT OF THE ISSUES

- A. Did the trial court properly enter an order for up to 180 days under RCW 71.05.320(4) after C.C. had previously been committed for up to 90 days under RCW 71.05.320(1)?
- B. Does substantial evidence support the trial court's conclusion that C.C. is gravely disabled?

III. COUNTERSTATEMENT OF THE FACTS

C.C. was born in Maryland, raised in various places, and had been off and on homeless since the age of 13. RP 48:14-18, Jan. 8, 2018. C.C. came to Western State Hospital in July 2017 following the dismissal of criminal charges for assaulting a transit supervisor in Clallam County earlier that year. Her charges were dismissed due to incompetency to stand trial. RP 47:8-13, Jan. 8, 2018; CP 38–39. However, instead of filing a petition for up to 180 days of involuntary treatment under RCW 71.05.280(3), an initial detention under RCW 71.05.150 was commenced and C.C. proceeded through the successive steps of a 72-hour hold, a 14-day petition and order, and a 90-day petition and order, culminating in the 180-day order that is the subject of this appeal. CP 1-53. The 180-day petition filed in December 2017 alleged only grave disability as a result of the mental disorder. CP 36.

At the 180-day hearing in January 2018, Dr. Bryan Hill, Psy.D., testified in support of the petition he filed with co-Petitioner Dr. Katherine

Raymer, M.D. RP 43:21–55:12, Jan. 8, 2018. Dr. Hill testified that C.C. suffers from paranoid schizophrenia, and noted her presentation to be overly guarded, suspicious, accusatory, and ultra-religious. He testified that she punched the air in a ritualistic manner, paced the ward and isolated herself, and presented with irritability and mood lability. RP 46:3-22, Jan. 8, 2018. She also had five incidents that required seclusion or restraint since August 2017. RP 52:18-19, Jan. 8, 2018.

In regard to grave disability, Dr. Hill testified about C.C.’s ritualistic behaviors such as punching the air, and her verbally aggressive and accusatory behavior. Dr. Hill testified that, without the care and structure of Western State Hospital, C.C. would revert to “destructive schemas” such as being homeless, not taking medication, and aggressive actions towards others. RP 51:21–52:3, Jan. 8, 2018. He testified that C.C. was “somewhat” medication compliant at Western State Hospital. CP 44, RP 51:3-14, Jan. 8, 2018. An additional concern was that C.C. rubbed salt on her skin and had rashes, which caused her to be placed on salt restriction. RP 49:15-50:17, Jan. 8, 2018. When C.C. testified, she explained that salt was the only thing that controlled yeast on her skin. RP 57:1–59:11, Jan. 8, 2018.

Before a less restrictive placement could be considered for C.C., Dr. Hill wanted to see a reduction in symptomology of the paranoid

schizophrenia, and more volitional and cognitive flexibility so that she did not accuse others of abusing her and would agree to medically accepted treatment. RP 53:7-22, Jan. 8, 2018. C.C. testified that she was “traveling through” Port Angeles and was homeless prior to her admission. RP 60:20-61:4, Jan. 8, 2018. Her own plan for discharge was to go to a Tacoma shelter called “Nativity House”, RP 56:14-19, Jan. 8, 2018, but she admitted on cross-examination that she had never been to Tacoma before. RP 60:2-3, Jan. 8, 2018.

Following the testimony, the court ruled that Dr. Hill had met his burden of presenting clear, cogent and convincing evidence. RP 64:16-18, Jan. 8, 2018. The court noted that while progress in treatment had occurred, C.C. needed a more definite plan for discharge. The court’s order found grave disability under both definitions (essential needs of health and safety, and severe deterioration in routine functioning). The order noted C.C.’s overly guarded behavior, bizarre ritualistic behaviors, irritability and mood lability. The court noted the salt restriction because she rubbed it on her skin, and instances of seclusion or restraint in the treatment period due to aggressive behavior. CP 51. The court found C.C. could not meet her health and safety needs, despite her testimony about leaving Western State Hospital to live in a recovery home. CP 52.

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IV. ARGUMENT

A. The Trial Court Appropriately Entered An Order for Up to 180 Days Under RCW 71.05.320(4)(d)

C.C. asks this Court to vacate the 180-day order because the trial court allegedly lacked jurisdiction to order up to 180 days of involuntary treatment on the basis of grave disability. Br. of Appellant at 11-14 (citing *In Re Det. of R.H.*, 178 Wn. App. 941, 949, 316 P.3d 535 (2014)). C.C. argues that because she was not committed under RCW 71.05.280(3), she cannot be committed for 180 days. *See* Br. of Appellant at 14.

Citations to RCW 71.05.280 and *R.H.* are not applicable to the 180-day hearing held in January 2018. In this case, there was no conversion from RCW 10.77.086(4) directly to a 180-day commitment under RCW 71.05.320(1)(c) based on dismissed felony charges. Instead, a designated crisis responder¹ detained C.C. on a 72-hour hold and petitioned for an initial detention under RCW 71.05. CP 1-7. This was followed by the filing of a 14-day petition, CP 8-13, a 90-day petition, CP 20-28, and then a 180-day petition, CP 35-47. Orders were entered granting each successive petition. CP 15-18, 30-33, 50-53.

Under RCW 71.05.320(4)(d) (“the committed person continues to be gravely disabled”), the court’s January 2018 180-day order was

¹ Designated crisis responders were formerly called “designated mental health professionals”. Laws of 2005, ch. 504, § 104.

procedurally proper as a matter of law because it was preceded by a 90-day order under RCW 71.05.280(4). CP 30-33. Under RCW 71.05.280(4), a petition may be filed for up to 90 days alleging that a person is gravely disabled. The court may grant the petition under RCW 71.05.320(1). Then, under RCW 71.05.320(4), a successive petition may be filed. The court may order treatment at that stage for up to 180 days. RCW 71.05.320(6).

While it is possible to proceed directly to a 180-day petition following dismissal of felony charges under RCW 10.77.086(4), *see* RCW 71.05.290(3), that did not occur in this case. A “felony flip” petition was filed and withdrawn before it could be heard. CP 2; RP 6:15-9:10, October 6, 2017.

Further, *R.H.* is simply inapplicable to this case. The holding in *R.H.* only applies in those circumstances when petitioners seek a long-term order of commitment following dismissal of felony charges, but cannot or chose not to prove the elements of RCW 71.05.280(3). In that circumstance, the court only has authority to issue a 90-day order under RCW 71.05.280(4). Here, however, the petitioners never proceeded on felony grounds, and proceeded through the successive commitment stages to arrive at an order under RCW 71.05.320(4)(d) (grave disability).

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B. Substantial Evidence Supports the Court’s Determination That C.C. is Gravely Disabled

A trial court’s findings of grave disability will generally not be overturned at the appellate level if they are supported by substantial evidence that the trial court could have reasonably found to be clear, cogent, and convincing – i.e., that the issue in question was shown to be “highly probable.” *In re Det. of LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138, 146-47 (1986). Put another way, a sufficiency of the evidence challenge to a finding of grave disability will not prevail if the finding is supported by substantial evidence “in light of the ‘highly probable’ test.” *Id.*

Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Matter of Det. of A.S.*, 91 Wn. App. 146, 162, 955 P.2d 836, 845 (1998). When sufficiency of the evidence is challenged, the test for the appellate court is whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). The appellate court must defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *In re Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068, 1072 (2014).

Under RCW 71.05.320(4), an individual who is currently involuntarily committed for 90 days can be recommitted at the end of his/her commitment period if the individual continues to be gravely disabled. “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[.]

RCW 71.05.020(22). The statute sets forth two alternative definitions of gravely disabled, either of which provides a basis for involuntary commitment. *In re Det. of LaBelle*, 107 Wn.2d at 202. In this case, substantial evidence supports the trial court’s conclusion that C.C. is gravely disabled under both definitions. The court should be affirmed.

1. Substantial evidence supports the finding that C.C., as a result of her mental disorder, is in danger of serious physical harm resulting from the failure to provide for her essential needs of health or safety

To establish grave disability under RCW 71.05.020(22)(a), the evidence is required to show “a substantial risk of danger of serious physical harm resulting from failure to provide for essential health and safety needs.” *In re Det. of LaBelle*, 107 Wn.2d at 204. “[E]ssential health and safety needs” under RCW 71.05.020(22)(a) includes “such essential human needs

as food, clothing, shelter, and medical treatment.” *In re Det. of LaBelle*, 107 Wn.2d at 204-05.

The trial court had a clear evidentiary basis to conclude that, as a result of her mental disorder, C.C. would have been unable to meet her basic health and safety needs if she were discharged from the hospital. C.C. had no firm housing in the community other than to line up at a shelter. RP 60:5-25, Jan. 8, 2018. She had little commitment to taking medications, and would generally not agree to accepted medical treatments (preferring to use salt which gave her skin rashes). *See* RP 49:15–54:20, Jan. 8, 2018. Further, her aggressive behaviors and verbal accusations put her safety at risk should she have been released. RP 52:6-19, Jan. 8, 2018. These actions would bring her to the attention of law enforcement or others in the community. The assault on a Clallam County transit operator in May 2017 that brought her to the hospital for competency restoration, when combined with her current presentation, was also relevant in regard to her ability to conduct herself safely in the community. RP 47:8-13, Jan. 8, 2018; CP 51.

2. Substantial evidence supports the finding that C.C., as a result of her mental disorder, manifests severe deterioration in routine functioning and is not receiving such care as is essential for health and safety

In order to establish grave disability under RCW 71.05.020(22)(b), the evidence “must include recent proof of significant loss of cognitive or

volitional control[,] . . . [and] must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety.” *In re Det. of LaBelle*, 107 Wn.2d at 208.

As the *LaBelle* court explained, the prong (b) portion of the definition of grave disability “was intended to broaden the scope of the involuntary commitment standards in order to reach those persons in need of treatment for their mental disorders who did not fit within the existing, restrictive statutory criteria.” *In re Det. of LaBelle*, 107 Wn.2d at 205-06. “Before passage of this expanded ‘gravely disabled’ standard, these chronically ill persons could not be treated *until they had decompensated to the point that they were in ‘danger of serious . . . harm’* from their inability to care for themselves.” *Id.* at 206 (citing former RCW 71.05.020(1)(a) (1979)) (emphasis added).

The expanded definition of grave disability under former RCW 71.05.020(1)(b) (1979) “permits the State to treat involuntarily those discharged patients who, after a period of time in the community, drop out of therapy or stop taking their prescribed medication and exhibit ‘rapid deterioration in their ability to function independently.’” *In re Det. of LaBelle*, 107 Wn.2d at 206. “By permitting intervention before a mentally ill person’s condition reaches crisis proportions,” prong (b) of

the grave disability definition enables the State to break the “ ‘revolving door’ syndrome,” a cycle of repeated hospitalizations, by providing “the kind of continuous care and treatment that could break the cycle and restore the individual to satisfactory functioning.” *In re Det. of LaBelle*, 107 Wn.2d at 206.

The trial court had substantial evidence to find that, as a result of her mental disorder, C.C. would have been subject to “a severe deterioration in routine functioning” under “prong b” of the grave disability definition. Evidence was presented to establish that C.C. had “repeated and escalating loss of cognitive or volitional control,” including perceptions of abuse, accusatory statements, verbal aggression and punching the air. RP 46:7-12, 50:20-25, Jan. 8, 2018. Further, the five incidents of seclusion or restraint since August 2017 demonstrated loss of volitional control. RP 52:10-19, Jan. 8, 2018; CP 51. C.C.’s statement that she would take “outpatient” medications to address her schizophrenia was equivocal at best, particularly when she qualified that statement with “if they have a drop-in center”. RP 61:11-12, Jan. 8, 2018. Because C.C. was not a long-term Washington State resident, and there was little history of her psychiatric treatment available, Dr. Hill could not firmly establish a history of prior psychiatric treatment and hospitalizations except for SSI benefits based on a diagnosis of schizoaffective disorder. RP 48:10–49:2, Jan. 8, 2018. Nonetheless, C.C.

admitted to a forensic evaluator that she had gone off her medications in order “to heal her mental illness herself.” CP 40. Further, her spotty medication compliance in the hospital gave little assurance to Dr. Hill or the trial court that she would continue medications in the community. RP 51:4-12, Jan. 8, 2018; CP 51. Without firm discharge plans, a less restrictive alternative placement was not in her best interests. RP 53:1-54:8, 64, Jan. 8, 2018.

Appellant argues that substantial evidence does not support either prong of grave disability, likening this case to that of *In re the Det. of M.K.*, 168 Wn. App. 621, 279 P.3d 897 (2012). Br. of Appellant at 8-9. Appellant, however, cites to the unreported part of *M.K.* Br. of Appellant at 8 (citing to *In re the Det. of M.K.*, 168 Wn. App. at 630). The Court should disregard any argument based on the unreported part of *M.K.*

Moreover, “recent history evidence” supports a finding of grave disability in this case. *See M.K.*, 168 Wn. App. at 626-629. In particular, RCW 71.05.245 provides the following:

(1) In making a determination of whether a person is gravely disabled, presents a likelihood of serious harm, or is in need of assisted outpatient behavioral health treatment in a hearing conducted under RCW 71.05.240 or 71.05.320, the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent’s historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave

disability or likelihood of serious harm, or a finding that the person is in need of assisted outpatient behavioral health treatment, when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is probable.

RCW 71.05.245.

In regard to RCW 71.05.245(1), the court had “all available evidence concerning the [R]espondent’s historical behavior[,]” including Dr. Hill’s testimony about her on and off homelessness since the age of 13, SSI eligibility based on a diagnosis of schizoaffective disorder, and the May 2017 arrest for Assault in the Third Degree. *See* pages 2, 3, 9, *supra*.

The three elements of RCW 71.05.245(2) are also met by this case. First, C.C.’s presentation as described by Dr. Hill, and reflected in the court’s findings of fact, was “closely associated with symptoms or behavior which preceded and led to” a “severe deterioration”, the violent act of an assault on a transit operator, and the competency restoration admission. CP 51. Second, while Dr. Hill acknowledged that C.C.’s “baseline” functioning in a decompensated state would be difficult to measure given her limited Washington State history, the behaviors were outside normal functioning. RP 47:23–48:3, Jan. 8, 2018. Finally, Dr. Hill offered his

opinion that without treatment, “she would revert back to old and destructive schemas” of being homeless, not taking medications, aggressive actions, and making accusations against others. RP 51:21–52:1, Jan. 8, 2018; CP 52.

When viewed in the light most favorable to the petitioners, who prevailed below, and in deference to the trial court which weighed the evidence and witness credibility, this Court should affirm the order finding C.C. gravely disabled.

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V. CONCLUSION

For the reasons set forth above, this Court should affirm the trial court's commitment order. The order for up to 180 days of involuntary treatment was procedurally proper as a matter of law, and there was substantial evidence for the court's findings under both prongs of grave disability.²

RESPECTFULLY SUBMITTED this 23rd day of July, 2018.

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² Appellant makes an assignment of error regarding whether the trial court in the 14-day hearing erred by construing the 72-hour language in RCW 10.77.086(4) as a drafting error. Br. of Appellant at 1; RP 8:7-16, Oct. 6, 2017. This assignment of error is not presented as an issue for appeal and is not briefed. An assignment of error which is not argued in the brief is deemed to have been abandoned. *Spino v. Dep't of Labor & Indus.*, 1 Wn. App. 730, 732, 463 P.2d 256, 258 (1969).

CERTIFICATE OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On July 23, 2018 I served a true and correct copy of this **BRIEF OF RESPONDENT** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

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- By United States Mail**
- By E-mail PDF: liseellnerlaw@comcast.net**

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

DATED this 23rd day of July 2018, at Tumwater, Washington.


CHRISTINE TOWNSEND
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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