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NO. 52641-7

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

In re the Detention of:

V.S.,

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

V.S. suffers from schizoaffective disorder and a mild vascular neurocognitive disorder. She was involuntarily committed to Western State Hospital for the first time in 2017. By August 2018, V.S. had improved to the point where doctors at Western State Hospital acknowledged that she was ready for a less restrictive placement and petitioned the Pierce County Superior Court for an order allowing them to involuntarily treat V.S. at the hospital until such time as an appropriate placement in the community became available. After holding a hearing in which one of the petitioning doctors and V.S. both testified, a mental health commissioner granted the petition for up to 180 days on the ground that V.S. is gravely disabled.

V.S. now challenges the sufficiency of the evidence supporting the trial court's determination that she is gravely disabled. Substantial evidence supports the trial court's findings, and the findings support the legal conclusion that V.S. is gravely disabled as a result of her mental disorder. Therefore, the civil commitment order should be affirmed.

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II. COUNTERSTATEMENT OF THE ISSUES[1]

A. Does Sufficient Evidence Support the Trial Court's Conclusion that V.S. is Gravely Disabled?

III. COUNTERSTATEMENT OF THE FACTS

V.S. was admitted to Western State Hospital in June 2017. Supplemental Clerk's Papers (Suppl. CP) at 240. A petition for 180 days of involuntary treatment was filed on August 10, 2018, alleging that V.S. was gravely disabled and ready for a less restrictive alternative placement when an appropriate one was available. Suppl. CP at 237-239. The petition was supported by the declaration of Dr. Samir Aziz, M.D., and Dr. Trace Drake, Ph.D. Suppl. CP at 240-244.

A hearing on the petition was held on August 20, 2018. Dr. Drake testified on behalf of the petitioners, stating that she had diagnosed V.S. with schizoaffective disorder and a mild vascular neurocognitive disorder. VRP at 74, Aug. 20, 2018. Dr. Drake explained that when V.S. is not stable she exhibits symptoms consistent with this diagnosis, but because V.S. has shown improvement while at the hospital and is currently stable, she appeared to be more reality-based with no current problematic behavior or

[1] V.S. also raises as an issue whether or not the Court should review the case since the commitment period has expired. This is not an issue. This Court has previously ruled that the appeal of an involuntary commitment order is not moot because the order may have adverse consequences on future involuntary commitment determinations. *In re Det. of M.K.*, 168 Wn. App. 621, 625, 279 P.3d 897 (2012).

problematic mood symptoms. *Id.* at 74-75. However, Dr. Drake expressed concern because V.S. still did not think she has a mental disorder or that she needs to take her medication, even though she has agreed to take her medications until she can work with an outside provider. *Id.* at 75.

Next Dr. Drake testified that V.S. was ready to leave the hospital, but that she would need the support of an adult family home placement because she would not be able to consistently meet her basic health and safety needs in the community without housing support, funding, and follow-up mental health care. *Id.* at 75-76. Dr. Drake explained that V.S.'s inability to meet her basic health and safety needs was a result of both her mental disorder and her neurocognitive disorder, and that when V.S. first came to Dr. Drake's ward, she "wasn't doing very well at all." *Id.* at 76-77. On cross-examination Dr. Drake elaborated on this further, stating that prior coming to Western State Hospital V.S. had been "refusing medications, refusing care, refusing to eat, neglecting her hygiene, agitated, combative and hitting staff." *Id.* at 81.

Dr. Drake testified that there was a combination of things that would put V.S. at risk of serious physical harm if she were to be released without a less restrictive placement that can meet her needs. *Id.* at 77-78. These included her need for assistance with daily personal care such as bowel and bladder care, as well as assistance in managing her diabetes. *Id.* at 79-80.

Dr. Drake also expressed concern that V.S. would change or go off her medications if not put into an appropriate placement "because she doesn't see the world the same way that the treatment team does." *Id.* at 78.

V.S. also testified, stating that she was in basic agreement with the hospital's discharge plan for her, that there were no specific parts of the plan that she was not in agreement with, and that she was ready for placement. *Id.* at 83-84.

In the court's Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment, the trial court made a finding that V.S. "as a result of a mental disorder is in danger of serious physical harm resulting from the failure to provide for his/her essential needs of health or safety." CP at 217. The court further found that less restrictive alternative treatment was "in her best interest when available." *Id.* The trial court thereby concluded that V.S. continues to be gravely disabled and ordered up to 180 days of involuntary treatment at Western State Hospital. CP at 217-218.

V.S. was conditionally released from Western State Hospital to an adult family home 36 days later. CP at 219-223.

IV. ARGUMENT

A. Standard of Review

A trial court's finding of grave disability will generally not be overturned at the appellate level if it is 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 LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (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 (1998). Additionally, when sufficiency of the evidence is challenged, the appellate court must ask 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 (2014).

B. Sufficient Evidence Supports the Trial Court's Determination that V.S. is Gravely Disabled

Under RCW 71.05.320, an individual who is currently involuntarily committed for 180 days can be recommitted at the end of her commitment period for an additional 180 days 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, or as a result of the use of alcohol or other psychoactive chemicals: (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. *LaBelle*, 107 Wn.2d at 202. 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." *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." *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, V.S. would have been unable to meet her essential health and safety needs if she were discharged from the hospital without a less restrictive placement.

Dr. Drake testified that, while V.S. was ready to leave the hospital, she would not be able to meet her basic health and safety needs in the community without the support of an adult family home placement. She identified V.S. as needing assistance with housing, financial support, and medical and mental health care. Dr. Drake testified that, in particular, V.S.'s need for assistance with daily personal care such as bowel and bladder care, as well as assistance in managing her diabetes, put her at risk of serious physical harm.

Dr. Drake explained that V.S.'s inability to meet her health and safety needs was due in part to her mental disorder and her continued belief that she does not have a mental disorder or needs to take her medication. Dr. Drake expressed concern that V.S. would change or go off her medications if not put into an appropriate placement "because she doesn't see the world the same way that the treatment team does." Finally, Dr. Drake described how V.S. had refused medications, refused care, refused to eat, and neglected her hygiene, along with being agitated and combative, prior to being admitted to the hospital.

During her testimony, V.S. did not present any evidence to contradict Dr. Drake. In fact, V.S. indicated that she was in basic agreement with the hospital's discharge plan for her, and that there were no specific parts of the plan that she was not in agreement with.

Construed in the light most favorable to the petitioners, the evidence presented, and the reasonable inferences therefrom, provide a factual basis to sustain a finding that V.S. is gravely disabled under RCW 71.05.020(22)(a).The trial court's order should be affirmed.

V.S. cites to RCW 71.05.240(3)(a) and two cases to argue that the petitioners did not provide sufficient evidence to support the finding of grave disability. However, her reliance on this statute and these cases is misplaced, as none are applicable to this proceeding. V.S. cites to RCW 71.05.240(3)(a) for the proposition that "[t]o commit a person for involuntary treatment, the state must show by preponderance of the evidence that the person[,] is gravely disabled as a result of a mental disorder, and presents a likelihood of serious harm." Appellant Br. at 4. This assertion is incorrect. Presenting a likelihood of serious harm or being gravely disabled are two separate commitment standards. *See* RCW 71.05.240(3)(a) ("if the court finds by a preponderance of the evidence that such person, as the result of a mental disorder or substance use disorder, presents a likelihood of serious harm, <u>or</u> is gravely

disabled...") (emphasis added). This difference is reflected both in the petition filed in this case, which alleges grave disability but not a likelihood of serious harm, as well as the trial court's order, which makes findings and conclusions that V.S. is gravely disabled but not that she presents a likelihood of serious harm. Suppl. CP at 238, CP at 215-218.

V.S.'s reliance on RCW 71.05.240 is also misplaced because this is not the statute under which V.S. was committed. RCW 71.05.240 applies to probable cause hearings for 14 days of involuntary treatment or 90 days of less restrictive alternative treatment. *See* RCW 71.05.240(1). As this was a petition for up to an additional 180 days of involuntary treatment following a prior order for 180 days of involuntary treatment, RCW 71.05.320(4) applies.[2] Suppl. CP at 237.

V.S. cites to *Matter of Det. of D.V.*, 200 Wn. App. 904, 403 P.3d 941 (2017), for the proposition that a threat of harm to oneself must be corroborated by evidence of an actual threat of self-harm. Appellant Br. at 5, 8. While this may be an accurate interpretation of the holding in *D.V.*, it is inapplicable in this case because, as described above, V.S. was not committed because she presents a likelihood of serious harm. V.S. was committed for being gravely disabled, which does not implicate the

[2] One result of this difference is that the burden of proof for petitioners was clear, cogent, and convincing evidence, and not a preponderance of the evidence. *See* RCW 71.05.310.

definition of "likelihood of serious harm" from RCW 71.05.020(35). Since the petitioners were not required to prove V.S. presented a likelihood of serious harm, any references to the requirements set out in *D.V.* are inapplicable to this case.

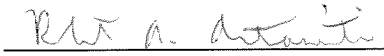
The second case V.S. cites to is *In re Det. of M.K.*, 168 Wn. App. 621, 279 P.3d 897 (2012). While V.S. correctly cites to *M.K.* for the proposition that this appeal is not moot, she incorrectly cites to it as the case in which "this Court provided the quantum of evidence necessary to establish this first prong of RCW 71.05.020(22)(a)." Appellant Br. at 3, 6. *M.K.* was only partially published by the Court, with the published section consisting of the mootness analysis. The remainder of the opinion, which addressed the merits of M.K.'s appeal, was not published. *See In re Det. of M.K.*, 168 Wn. App. at 630 ("A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.") As the remainder of the *M.K.* opinion is an unpublished opinion of the Court of Appeals filed before March 1, 2013, V.S.'s citations to it violate GR 14.1(a) and this Court should not consider or discuss them. GR 14.1(a), (c).

V. CONCLUSION

This Court should affirm the trial court's order committing V.S. to 180 days of involuntary treatment at Western State Hospital because the evidence and facts are sufficient to support the trial court's conclusion that V.S. is gravely disabled as a result of her mental disorder.

RESPECTFULLY SUBMITTED this 15th day of March, 2019.

ROBERT W. FERGUSON
Attorney General



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PROOF OF SERVICE

I, *Holly McClure*, 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 March 15, 2019, 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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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 15th day of March 2019, at Tumwater, Washington.

HOLLY MCCLURE
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

March 15, 2019 - 3:22 PM

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