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**Court of Appeals, Div. II,
of the State of Washington**

In re Detention of T.L.C.:

State of Washington,

Respondent,

v.

T.L.C.,

Appellant.

Amended Brief of Appellant

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1. Introduction

T.L.C.¹ is a 77-year old man suffering from the effects of old age. His memory is failing. He needs prompting to remind him when to shower or eat a meal. He is still alert and coherent and able to make rational choices regarding his care and essential needs. His family is able to provide the assistance he needs, yet the State wants him committed for mental health treatment.

In making its determination that T.L.C. was gravely disabled, the trial court refused to consider the assistance that T.L.C.'s family would provide. The trial court based its decision on what the doctors speculated would be the result if T.L.C. were to live on his own—even though the only evidence was that prior to detention T.L.C. had made the rational choice to provide for his own needs through an assisted living facility. Now he wants to provide for his needs through the assistance of family. Where such assistance is available, the trial court must consider it in determining whether a person is gravely disabled. Where capable assistance is available, there is no substantial risk of serious harm, and therefore no grave disability.

This Court should clarify the standard and reverse.

¹ T.L.C.'s original brief used T.L.C.'s full name. This amended brief changes all references to T.L.C. to initials, per this Court's General Order 92-3, in the interests of confidentiality.

2. Assignments of Error

Assignments of Error

1. The trial court erred in ordering T.L.C. detained for involuntary mental health treatment.
2. Substantial evidence does not support the trial court's finding that T.L.C. "is/continues to be gravely disabled and ... 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."

Issues Pertaining to Assignments of Error

1. Before ordering involuntary mental health treatment, a trial court must find that the respondent is "gravely disabled" as defined in RCW 71.05.020 and *In re LaBelle*, 107 Wn.2d 196, 728 P.2d 138 (1986). The evidence here was insufficient to establish that T.L.C. was "in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety," particularly where his family was ready and able to care for him. Did the trial court err in ordering T.L.C. detained for involuntary treatment? (assignments of error 1-2)

3. Statement of the Case

T.L.C. is a 77-year-old man who suffers from memory loss caused by "Neurocognitive disorder; possibly Alzheimer's." CP 20, 29, 48. Prior to his initial detention, T.L.C. had been living in an assisted living/retirement community where his meals and cleaning were provided for him. CP 51-52. He had no history of psychiatric treatment. CP 52. There was no indication that

T.L.C.'s basic needs were not being met in the community before he was detained. *See* CP 51-52.

T.L.C. has “impaired memory and poor concentration.” CP 29 (trial court’s findings of fact). He has trouble problem solving and making decisions. CP 29. He has occasional angry outbursts when his needs are not met, but he does not get assaultive and is easily redirected. CP 29, 56-57, 59. He needs assistance with his activities of daily living—that is, he “needs prompting regarding hygiene.” CP 29. He is compliant with his prescribed medications. CP 29. When evaluated, he was “oriented to time, place, and person” and his answers to questions were coherent and responsive. CP 60. “He’s generally doing pretty well overall.” CP 29.

T.L.C.’s contact with the State mental health system began after he was charged with a serious felony but then found incompetent to stand trial. CP 1-2. After the charges were dismissed, T.L.C. stipulated to an initial 90-day civil commitment on the basis of grave disability. CP 14. No evidence of criminality was presented. CP 16. The trial court ordered up to 90 days of “intensive inpatient treatment.” CP 18.

At the conclusion of the 90-day commitment, the doctors at Western State Hospital petitioned for an additional 180-day period based on continued grave disability. CP 20-22. The doctors indicated that T.L.C. was stable, but that the prior

(dismissed) charges might present a barrier to placement in a care facility. CP 25-26.

Dr. Donald Slone testified for the State at the hearing. Based on Dr. Slone's testimony, the trial court made the findings outlined above. *See* CP 29. Although Dr. Slone testified that T.L.C. would be unable to meet his basic needs independently in the community without some structured support, CP 49, 53, he also testified that the treatment team was satisfied that T.L.C.'s family would be able to care for him and provide for his needs, CP 29, 55.

The trial court also heard testimony from T.L.C.; from T.L.C.'s daughter, Roxanne Wrice; and from Wrice's daughter-in-law, Rindy Brown. Wrice and Brown testified that they would be able to provide T.L.C.'s food and medicines. CP 29. One of them would be home at all times to care for him. CP 29. Brown is a Certified Nursing Assistant and would be able to assist with T.L.C.'s activities of daily living and diabetes treatment. CP 63, 74-75.

T.L.C. admitted to suffering memory loss. CP 29. He agreed to follow doctors' instructions, take his medications, and allow his family to care for him. CP 29-30, 82-83. He did not believe he needed any other help beyond that. CP 29-30, 86-87.

The State argued that this was a "close case," but that T.L.C. should be found gravely disabled based on "his inability to

care for himself **independently** in the community.” CP 90 (emphasis added). T.L.C. argued that it was only a close case if the trial court ignored the presence of family members willing and able to assist T.L.C. in providing for his needs. CP 91. T.L.C. explained that the statutory definition of “gravely disabled,” as interpreted in *In re LaBelle*, could not be met because the presence of willing and able family support would enable T.L.C. to live safely in the community. CP 91-92.

The trial court commissioner reviewed *LaBelle* and concluded that the presence of family support did not change the “gravely disabled” analysis. CP 93. The trial court found that T.L.C. “is/continues to be gravely disabled” under the first prong of the statutory definition, finding that T.L.C., “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 29. The trial court specifically found that the second prong of the statute was not met. CP 29, 94. The trial court did consider the presence of family support in finding that a less restrictive alternative was in T.L.C.’s best interest. CP 29, 94. Nevertheless, the trial court ordered up to 180 days of intensive inpatient treatment. CP 30.

T.L.C. sought revision by a judge. CP 32. The judge upheld the commissioner’s order finding T.L.C. gravely disabled, but remanded for immediate release to a less restrictive

alternative setting. CP 110. The commissioner entered an order releasing T.L.C. to his daughter's home under a less restrictive alternative plan under court supervision for 180 days. CP 111-13.

4. Argument

The trial court erred in ordering T.L.C. committed due to grave disability. Contrary to the trial court's reasoning, the statutory definition, as interpreted in *LaBelle* to meet constitutional standards, requires the court to consider the presence of family support in determining whether a person is "in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety." The trial court applied an incorrect legal standard. Under the correct standard, substantial evidence does not support a finding of grave disability. This Court should reverse.

4.1 Standard of Review.

Where the trial court has weighed evidence and entered findings of fact and conclusions of law, this court reviews to determine whether substantial evidence supports the findings and, if so, whether the findings support the conclusions. *In re Detention of LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). In a 180-day involuntary commitment proceeding, the State bears the burden of proving its case by clear, cogent, and

convincing evidence. RCW 71.05.310. On review, the trial court's finding of "grave disability" must be supported by substantial evidence that is clear, cogent, and convincing, a higher standard than that required in other cases. *LaBelle*, 107 Wn.2d at 209.

4.2 This Court should address the standard for a finding of grave disability because it is a matter of continuing and substantial public interest.

As in many civil commitment cases, by the time this appeal is decided, T.L.C.'s 180-day commitment will have already come to an end. However, even if the case is technically moot, this Court may address the merits of the case if it involves matters of "continuing and substantial public interest." *LaBelle*, 107 Wn.2d at 200. The courts have repeatedly recognized that "the need to clarify the statutory scheme governing civil commitment is a matter of continuing and substantial public interest." *Id.*; see also, e.g., *In re Detention of C.W.*, 147 Wn.2d 259, 270, 53 P.3d 979 (2002).

There is such a need for clarification here. Involuntary commitment for mental disorders constitutes a significant deprivation of liberty that requires due process protections. *C.W.*, 147 Wn.2d at 277. Procedural safeguards are required in order to protect affected persons against abuses. *Id.* The State cannot constitutionally confine "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.”

LaBelle, 107 Wn.2d at 201 (quoting *O’Connor v. Donaldson*, 422 U.S. 563, 576, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975)).

This language quoted in *LaBelle* strongly suggests that the analysis of whether a person is gravely disabled depends at least in part on whether that person will be able to take advantage of “the help of willing and responsible family members or friends” to survive safely in freedom and provide for the person’s basic needs. The trial court disagreed. T.L.C. is not aware of any case law that clarifies this issue. This Court should address it on the merits and clarify whether the presence of willing and responsible family support must be considered as part of a determination of grave disability.

4.3 The trial court’s finding of grave disability is not supported by substantial evidence.

Involuntary commitment is a “massive curtailment of liberty” that cannot be undertaken without strict due process protections. *LaBelle*, 107 Wn.2d at 201; *C.W.*, 147 Wn.2d at 277. Where such a significant liberty interest is at stake, statutes must be construed strictly. *Id.* at 205. For this reason, the *LaBelle* court interpreted the definitions of “grave disability” in a manner to require that the proof of grave disability would be

substantial enough to justify the curtailment of liberty. *See Id.* at 204.

The State bore the burden of proving by clear, cogent, and convincing evidence that T.L.C. was in substantial danger of serious physical harm. The State could not prove such danger to the required standard when the evidence demonstrated that T.L.C.'s family was willing and able to help him provide for his essential health and safety needs. The State cannot constitutionally confine "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." *LaBelle*, 107 Wn.2d at 201. The trial court's finding of grave disability was not supported by substantial evidence that is clear, cogent, and convincing. This Court should reverse.

4.3.1 The State bears the heavy burden of proving by clear, cogent, and convincing evidence that T.L.C. was "gravely disabled" as defined in RCW 71.05.020 and *In re LaBelle*.

In a 180-day involuntary commitment proceeding, the State bears the burden of proving its case by clear, cogent, and convincing evidence. RCW 71.05.310. A person cannot be presumed to meet the standard just because they are the subject of an involuntary commitment proceeding. *Dunner v. McLaughlin*, 100 Wn.2d 832, 845, 676 P.2d 444 (1984).

The involuntary mental health treatment statute is intended to “prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment.” RCW 71.05.010(1)(b). It also seeks to “safeguard individual rights.” RCW 71.05.010(1)(d). “The legislature does not intend to create a presumption that a person who is found incompetent to stand trial is gravely disabled or presents a likelihood of serious harm requiring civil commitment.” Laws of 1998 ch. 297 § 1.

The terms of the statute are all carefully defined by the legislature. Those definitions have been further refined by the courts to meet constitutional standards. “Gravely disabled’ means 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.”² RCW 71.05.020(22). The risk of danger must be substantial and the harm must be serious. *LaBelle*, 107 Wn.2d at 204.

“The State must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment, which presents a

² There is a second, alternative prong, but the trial court expressly found that it was not met in this case. T.L.C. agrees.

high probability of serious physical harm within the near future unless adequate treatment is afforded.” *LaBelle*, 107 Wn.2d at 204-05.

4.3.2 The State failed to demonstrate that T.L.C. was in danger of serious physical harm, especially when his family was willing and able to help him provide for his essential needs of health and safety.

The *LaBelle* case is illustrative in what constitutes sufficient evidence to sustain a finding of grave disability under prong (a). *LaBelle* included the appeal of four different respondents challenging their commitments and the courts’ findings that they were gravely disabled. Appellant Richardson appealed from an order for 90 days of involuntary treatment based on grave disability. The evidence produced at the hearing was that when Richardson was initially detained, he was 1) suffering from a serious case of impetigo for which he would not get treatment; (2) Richardson mentioned to his doctor that he experienced intermittent pain in a tooth and had not been to the dentist in 12 years; and (3) Richardson indicated that he was not eating well before he was hospitalized but was unwilling to consider the possible consequences of that or seek medical help. *LaBelle*, 107 Wn.2d at 213, 214. The *LaBelle* court reversed the finding of grave disability stating that “Under these circumstances, the risk of physical harm from Richardson’s

tendency to neglect his health was too speculative and insubstantial to justify continued commitment for 90 days under the gravely disabled standard of RCW 71.05.020(1)(a).” *LaBelle*, 107 Wn.2d at 214.

In contrast, *LaBelle*, whose grave disability was affirmed, “suffered from **severe cognitive and functional impairment** as evidenced by impaired memory loss, inability to respond appropriately to questions, and disorientation. ... He was **unaware of his surroundings much of the time**. ... He lacked awareness of hygiene and routine care and was **unable to form realistic plans for taking care of himself** outside the hospital setting other than resuming a lifestyle of living on the streets without adequate food and shelter. ... The evidence here indicates that *LaBelle*’s plans to live on the streets are not the result of a choice of lifestyle but rather a result of his deteriorated condition which rendered him **unable to make a rational choice with respect to his ability to care for his essential needs**.” *LaBelle*, 107 Wn.2d at 210 (emphasis added).

Unlike *LaBelle*, T.L.C. suffers only from memory loss and a need for reminders about when to shower or eat meals. His essential needs are provided if he has the assistance of others to prompt him. He understands his need for this level of help and has made the rational choice to live with willing and able family members who can provide the necessary prompting. T.L.C. does

not suffer severe cognitive or functional impairment. He is oriented to time, place, and person. He responds appropriately to questions. He is aware of his surroundings. He cleans and feeds himself and takes his medications. He can form realistic plans and make rational choices for providing for his own essential needs. This is a far cry from clear, cogent, and convincing evidence of a substantial risk of severe physical harm.

“The State must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment, which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded.” *LaBelle*, 107 Wn.2d at 204-05. The State has utterly failed to do so. T.L.C. has no history of failing to provide for his own essential needs. Prior to his detention, he was living in an assisted living facility where his essential needs were met. In his testimony, Dr. Slone could not articulate any particular basis for his opinion that T.L.C. would need help finding food, shelter, or medical care if he was released:

Q And what do you base that on?

A Just his trouble problem-solving and making decisions and -- (PAUSE) mainly that. And just the assistance he needs here.

Q What level does he -- of assistance does he need here?

A Ah, just mostly things are provided for him. I don't -- let me double check. He -- for his hygiene, he needs cueing. Basically. To get his basic self-care done.

CP 50.

The State's evidence of risk of harm is speculative at best. There are no concrete examples of any danger that T.L.C. posed to himself. Perhaps most important, the only needs identified by the State—T.L.C.'s need for prompting to take care of his basic activities of daily living—would be easily and adequately provided by the assistance of willing and able family members with whom T.L.C. planned to live upon his release.

It is particularly telling that T.L.C.'s treatment team was in agreement with T.L.C.'s plan of living with his family members upon his release. It simply cannot be said that T.L.C. was in substantial danger of serious physical harm when his treatment team believed he could successfully live in freedom with the assistance of his family.

It makes no difference whether the doctors believed T.L.C. could not make it alone. T.L.C. was not planning to be alone. He had made the rational choice to live with his family in order to make sure his basic needs would be met. He was able and

willing to seek out the assistance he needed, without any compulsion or confinement by the State.

“A State cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.” *LaBelle*, 107 Wn.2d at 201. The support of family and friends must be considered in determining if a person is gravely disabled. If the help of family and friends makes a person capable of surviving safely in freedom then he cannot be found gravely disabled. There has been no showing that T.L.C.’s essential needs of health and safety were not being met in the community prior to detention and would not now be met in the community with the aid of family.

5. Conclusion

The trial court applied the wrong standard in determining whether T.L.C. was gravely disabled. A determination of grave disability must also consider the availability of assistance from willing and able family members and friends. Under this standard, the trial court’s finding that T.L.C. was gravely disabled was not supported by substantial evidence that was clear, cogent, and convincing. This Court should reverse.

Respectfully submitted this 3rd day of June, 2019.

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I certify, under penalty of perjury under the laws of the State of Washington, that on June 3, 2019, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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