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

In re the Detention of:

E.F.,

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

E.F. suffers from schizophrenia. He was involuntarily committed to Western State Hospital in 2019 after two felony charges of Assault in the Third Degree were dismissed due to his incompetency to stand trial. Doctors at Western State Hospital petitioned for E.F.'s further detention under the Involuntary Treatment Act on the grounds that, as a result of a mental disorder, he was (1) substantially likely to commit similar acts, and (2) gravely disabled. After holding a hearing in which one of the petitioning doctors and one of E.F.'s assault victims both testified, a mental health commissioner granted the petition on both grounds. E.F. then sought revision to the Pierce County Superior Court, which denied his motion to revise.

E.F. now challenges the sufficiency of the evidence supporting the superior court's determination that he is gravely disabled. Substantial evidence supports the superior court's findings, and the findings support the legal conclusion that E.F. is gravely disabled as a result of his mental disorder. Therefore, the civil commitment order should be affirmed.

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II. COUNTERSTATEMENT OF THE ISSUES

A. Does Sufficient Evidence Support the Superior Court's Conclusion that E.F. is Gravely Disabled?¹

III. COUNTERSTATEMENT OF THE FACTS

On February 19, 2019, E.F. assaulted Valinda Roehl, a registered nurse who was working at the Skagit Valley Hospital. Verbatim Report of Proceedings 1 (VRP1) 20-21, Aug. 8, 2019. He repeatedly punched her after she intervened to attempt to stop him assaulting another patient. VRP1 22-26. E.F. was charged with two counts of Assault in the Third Degree, but was found incompetent to stand trial and the charges were dismissed. Clerk's Papers (CP) 21-22. E.F. was then committed to Western State Hospital. *Id.*

In July 2019, the hospital petitioned to have E.F. involuntarily civilly committed on two bases. CP 1-13. First, under RCW 71.05.280(3), the hospital alleged that E.F. had committed acts constituting a felony and that he presented a substantial likelihood of repeating similar acts as a result of a mental disorder. CP 2. Second, under RCW 71.05.280(4), the hospital alleged that E.F. was gravely disabled as the result of a mental disorder. *Id.*

¹ E.F. 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).

The petition was supported by the declaration of Dr. Rogelio Zaragoza, M.D., and Dr. Virginia Klophaus, Ph.D. CP 4-13.

A hearing on the petition was held on August 8, 2019. Two witnesses testified on behalf of the petitioners. The first was Valinda Roehl, who testified about the assault. The second was one of the petitioners, Dr. Klophaus.

Dr. Klophaus testified that E.F. suffers from schizophrenia, and explained that he has a history of delusional beliefs, has been observed responding to internal stimuli, suggesting the presence of hallucinations, and has engaged in disorganized behavior. VRP1 30. She stated that E.F. has presented with negative symptoms of psychosis, including poor hygiene, flat affect, and poverty of speech. VRP1 31. Dr. Klophaus also testified that there had been approximately nine incidents of assaultive behavior toward staff and peers on the part of E.F., and that it was frequently unprovoked. VRP1 30-33.

Dr. Klophaus testified that E.F. is substantially likely to repeat acts similar to the assault described by Ms. Roehl. VRP1 33. Her opinion was based upon a pattern of similar behavior E.F. demonstrated during a prior hospitalization to Western State Hospital earlier in the year in which frequent assaultive behavior occurred earlier in the hospitalization but decreased over time with improved medication adherence. *Id.* She stated,

however, that even with this reduction in assaultive behavior, E.F. still had incidents of physical aggression, along with verbal altercations that appeared to be escalating until he was able to be redirected by staff. *Id.* Dr. Klophaus also testified that it was likely that E.F. would discontinue his medication upon leaving the hospital as he did not demonstrate any insight regarding the need for medication, stating that they were not really helpful for him and that nothing would change if he stopped taking his medication. VRP1 34. She also noted that he did not have a concrete plan for obtaining his medication in the community, and was unable to name any of his medications. VRP1 33-34. While E.F. told Dr. Klophaus he would go to a “comprehensive center” in Skagit County, he acknowledged that he had never been there and did not have a doctor there, although he initially stated that he did. VRP1 34. He also told Dr. Klophaus that he might go to Pasco instead. VRP1 38.

Dr. Klophaus testified that E.F.’s disorder interferes with his ability to provide for his basic health and safety needs. VRP1 34. She stated that, in terms of his basic health, things like hygiene continue to be poor. *Id.* She further testified that, regarding future housing, while E.F. stated that he could stay with a couple of friends, he refused to provide her with their contact information. *Id.* The doctor testified that E.F. did not have much in the way of concrete plans for accessing other basic needs in the community

either. VRP1 35. When asked about future financial support, E.F. stated that he expected to receive two thousand dollars a week, but was unclear about where this money would come from. VRP1 34-35. And when asked about public assistance, E.F. stated that he had received food stamps in the past and did not know how to restart them, but that perhaps his mother could help him with that. VRP1 35. Dr. Klophaus also testified that E.F. has been treated multiple times at Eastern State Hospital, as well as once in Skagit County, prior to his current hospitalization at Western State Hospital. VRP1 35-36.

Finally, Dr. Klophaus testified that, in her professional opinion, E.F. is gravely disabled as a result of his mental disorder and that he currently needs to remain within the highly structured environment of Western State Hospital. VRP1 36. She testified that, before he would be ready for a less restrictive placement, E.F. would need to improve his medication compliance and demonstrate some insight regarding the benefit of continued medication adherence. VRP1 36-37. He would also need to demonstrate some ability to cope with stressors so as to not become as easily agitated or need redirection from staff to not engage in harmful behaviors. VRP1 37.

In the court's Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment, the commissioner made a finding

that E.F. was determined to be incompetent and felony charges were dismissed. CP 24. She found that E.F. committed one count of Assault 3, and that he presents a substantial likelihood of repeating similar acts as a result of a mental disorder. *Id.* She also found that, as a result of a mental disorder, he manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his actions, and is not receiving such care as is essential for health and safety. CP 25. The commissioner then concluded that E.F. presents a substantial likelihood of repeating acts similar to the charged criminal behavior of assault, and is gravely disabled, and ordered up to 180 days of involuntary treatment at Western State Hospital. CP 26.

E.F. sought revision of the court commissioner's order before the Pierce County Superior Court on a number of issues, including the findings and conclusions of law regarding grave disability. CP 37-38. Superior Court Judge John Hickman denied the motion to revise. Verbatim Report of Proceedings 2 (VRP2) 21, Aug. 30, 2019; CP 143-144. In his oral ruling, Judge Hickman found by clear, cogent, and convincing evidence that E.F. committed Assault in the Third Degree against Ms. Roehl, and that he would be substantially likely to reoffend. VRP2 18-21. He also found that there was "more than enough evidence under clear, cogent, and convincing evidence to find . . . grave disability." VRP2 19. In particular,

Judge Hickman cited to E.F.'s prior criminal history, his violent tendencies, his lack of insight into his condition, his lack of realistic planning, and his threatening behavior. VRP2 20. He found that E.F. was a danger to himself and others, and that E.F.'s safety could be in jeopardy if he was confronted by a third party during an unprovoked assault while unmedicated, which Judge Hickman found would be "fairly predictable." VRP2 20-21. Finally, the judge found that E.F. "seemed to have no insight that he needed to take meds in order to be stable," and that E.F. had "absolutely no common sense or insight into any kind of program that he would be willing to abide to that would assure for his safety and that of the public." VRP2 21.

E.F. timely appealed. CP 156-158.

IV. ARGUMENT

A. Standard of Review

This case was subject to revision below, therefore on appeal the Court reviews the superior court's decision, not the court commissioner's decision. The record is reviewed for evidence sufficient to support the superior court's findings. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). However, since E.F. was committed on two independent bases by the superior court and he is not challenging his commitment on the basis that he presents a substantial likelihood of repeating acts similar to the charged criminal behavior of assault, that finding is not subject to review

and cannot be overturned. Instead, E.F. is only challenging the superior court's finding that he is gravely disabled. Brief of Appellant at 1.

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 Superior Court's Determination that E.F. is Gravely Disabled

The petitioners presented sufficient evidence to justify the superior court's finding that E.F. is 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(21).

Either definition of grave disability provides a basis for involuntary commitment. *LaBelle*, 107 Wn.2d at 202. The petitioners bear the burden of proof by clear, cogent, and convincing evidence. RCW 71.05.310.

Additionally, RCW 71.05.245 provides that:

(1) In making a determination of whether a person is gravely disabled . . . 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 . . . when . . . [s]uch 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.

Further, under RCW 71.05.285, evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) repeated hospitalizations, or (2) repeated peace officer interventions resulting in criminal charges, may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety.

1. E.F. is gravely disabled under the prong (b) definition of gravely disabled

In this case, the evidence and the superior court's findings support the conclusion that E.F. meets the second definition of grave disability by manifesting severe deterioration in his routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his actions, and is not receiving such care as is essential for his health or safety.

The Washington Supreme Court in *LaBelle* rejected a strict, literal reading of "repeated and escalating loss of cognitive or volitional control," finding that requiring the release of a person whose condition had stabilized or improved minimally, but who would decompensate in the community and be rehospitalized, would lead to "absurd and potentially harmful consequences." 107 Wn.2d at 207. Instead, the key question for the trial court is whether the person is showing severe deterioration of routine functioning, evidenced by recent proof of loss of cognitive or volitional

control, and whether they would receive the care they need to maintain their health and safety if released. *Id.* at 208. Under the standard articulated in *LaBelle*, the evidence must show that the person is unable to make a rational choice about his or her need for treatment, creating a “causal nexus” between the person’s severe deterioration in routine functioning and evidence that they would not receive essential care if they were released. *Id.*

Committing mentally ill persons under this definition of grave disability allows the State to intervene “before a mentally ill person’s condition reaches crisis proportions” and to “provide the kind of continuous care and treatment that could break the cycle and restore the individual to satisfactory functioning.” *Id.* at 206. As the *LaBelle* court noted, the express intent of the statute is to “provide continuity of care for persons with serious mental disorders.” *Id.* at 207 (quoting RCW 71.05.010[(1)(e)]).

Here, the evidence at trial supports a civil commitment under prong (b) because E.F. does not appear able to make a rational choice about his need for continued psychiatric treatment in the community. Dr. Klophaus testified that it was likely that E.F. would discontinue his medication upon leaving the hospital as he did not demonstrate any insight regarding the need for medication, stating that they were not really helpful for him and that nothing would change if he stopped taking his medication. VRP1 34. She also noted that he did not have a concrete plan for obtaining

his medication in the community, and was unable to name any of his medications. VRP1 33-34. While E.F. told Dr. Klophaus he would go to a “comprehensive center” in Skagit County, he acknowledged that he had never been there and did not have a doctor there, although he initially stated that he did. VRP1 34. He also told Dr. Klophaus that he might go to Pasco instead. VRP1 38.

The testimony also demonstrated that E.F. did not have a concrete plan for accessing other basic needs in the community. With regard to housing, E.F. stated that he could stay with a couple of friends, but refused to provide more specific information. VRP1 34. When asked about future financial support, E.F. stated that he expected to receive two thousand dollars a week, but was unclear about where this money would come from. VRP1 34-35. And when asked about public assistance, E.F. stated that he had received food stamps in the past and did not know how to restart them, but that perhaps his mother could help him with that. VRP1 35. All of these uncertainties, combined with his threatening behavior, violent tendencies, and history of repeated peace officer interventions resulting in criminal charges, support the superior court’s conclusion that E.F. would not receive, if released, such care as is essential for his or her health or safety.

E.F. cites to *In re Det. of M.K.*, 168 Wn. App. 621, 279 P.3d 897 (2012), to argue that the petitioners did not provide sufficient evidence to

support the finding of grave disability. Brief of Appellant at 8-10. However, this reliance on *M.K.* is misplaced, as *M.K.* was only partially published by the Court, with the published section consisting of a mootness analysis. The remainder of the opinion, which addressed the merits of M.K.’s appeal, was not published. *See 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, E.F.’s citations to it on issues other than mootness violate GR 14.1(a) and this Court should not consider or discuss them. GR 14.1(a), (c).

Construed in the light most favorable to the petitioners, the evidence presented, and the reasonable inferences therefrom, provide a factual basis to sustain the finding that E.F. is gravely disabled under RCW 71.05.020(21)(b). The superior court’s order should be affirmed.

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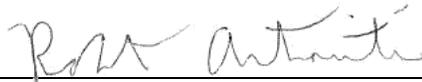
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V. CONCLUSION

This Court should affirm the superior court's order because the evidence and facts are sufficient to support the conclusion that E.F. is gravely disabled as a result of his mental disorder.

RESPECTFULLY SUBMITTED this 10th day of April 2020.

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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 April 10, 2020, 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 10th day of April 2020, at Tumwater, Washington.



HOLLY MCCLURE
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

April 10, 2020 - 3:07 PM

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