Affirmed and Opinion filed December 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00931-CV

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IN THE INTEREST OF J. G., JR.

On Appeal from the Probate Court No. 4
Harris County, Texas
Trial Court Cause No. 80,636

O P I N I O N

The appellant appeals from a temporary involuntary commitment order. The court found the appellant to be mentally ill and ordered his commitment to Rusk State Hospital as an in-patient for a period not to exceed 90 days. In one point of error, the appellant challenges the legal and factual sufficiency of the evidence to support the trial court's finding that he was mentally ill.

BACKGROUND

On July 10, 1998, the appellant's brother, Robert Anderson (Anderson), filed an application for temporary mental health services seeking commitment of appellant pursuant to the Texas Health and Safety Code. *See* Section 574.034 TEXAS HEALTH & SAFETY CODE

ANN. (Vernon Supp. 1999). The appellant was represented by counsel and trial was held before the court. A judgment was entered on July 16, 1998, indicating a finding by the trial judge that appellant was mentally ill, and as a result of that mental illness, he met the statutory criteria for court-ordered temporary mental health services. The court indicated the bases upon which it based its decision by placing a mark in front of all three statutory criteria listed on the preformatted judgment. The judgment recited that the court found appellant was:

(1) likely to harm himself;

(2) likely to harm others;

(3) (i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of his ability to function independently, except for reasons of indigence, to provide for the proposed patient's basic needs; including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

After hearing the evidence and examining the clerk's file, the court ordered that appellant be committed for court-ordered temporary mental health services for a period not to exceed 90 days. The appellant's request for findings of fact and conclusions of law was untimely, he failed to file a Notice of Past Due Findings of Fact and Conclusions of Law, and no findings of fact and conclusions of law appear in the record. *See* Rule 296, 297 TEX. R. CIV. P. (Vernon Supp. 1999).

BURDEN OF PROOF AND STANDARD OF REVIEW

In an involuntary commitment proceeding, the court may determine that a proposed patient requires court-ordered temporary mental health services only if it finds from clear and convincing evidence that (1) the proposed patient is mentally ill; and (2) as a result of that illness he (A) is likely to cause serious harm to himself; (B) is likely to cause serious harm to others; or (C) is: (i) suffering severe and abnormal mental, emotional, or physical distress; (ii) experiencing substantial mental or physical deterioration of his ability to function

independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and (iii) is unable to make a rational and informed decision whether or not to submit to treatment. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.034(a)(1), (2)(A)-(C) (Vernon Supp.1999); *Mezick v. State*, 920 S.W.2d427, 428-429 (Tex. App.—Houston [1st Dist.] 1996, no pet.). Before court-ordered temporary mental health services can be ordered, the judge or jury must find that at least one of the three criteria of section 574.034(a)(2) has been established by clear and convincing evidence. *See Mezick v. State*, 920 SW2d at 430. It is the State's burden to prove one of these statutory criteria by clear and convincing evidence. *See id.* (citing *Khateeb v. State*, 712 S.W.2d 881, 885 (Tex. App.—Houston [1st Dist.] 1986, no pet.)). To be clear and convincing under the statutory section, the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to the proposed patient or others, or the proposed patient's distress and the deterioration of ability to function. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.034(d) (Vernon Supp. 1999).

The clear and convincing evidence standard is applied in limited situations. The standard applies by statute in civil involuntary commitments. TEX. HEALTH & SAFETY CODE ANN. § 574.034. This is an intermediate standard, falling between the preponderance standard of ordinary civil proceedings and the reasonable doubt standard of criminal proceedings. *See State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979) (per curiam); *Trimble v. Protective & Reg. Service*, 981 S.W.2d 211, 217 (Tex. App.—Houston [14th Dist.] 1998, no pet.). Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. *See id.* While the proof must weigh heavier than merely the greater weight of the credible evidence, there is no requirement that the evidence be unequivocal or undisputed. *See State v. Addington*, 588 S.W.2d at 570; *K.L.M. v. State*, 735 S.W.2d 324, 326 (Tex. App.—Fort Worth 1987, no pet.). The requirement of clear and convincing evidence is merely

another method of stating that a cause of action must be supported by factually sufficient evidence. *Meadows v. Green*, 524 S.W.2d 509, 510 (Tex. 1975).

The clear and convincing standard of proof does not alter the appropriate standard of review. *See Trimble v. Protective & Reg. Service*, 981 S.W.2d at 217. When both legal and factual sufficiency challenges are raised on appeal, the appellate court must first examine the legal sufficiency of the evidence. *See id.* In determining a no evidence or legal sufficiency point, an appellate court considers only the evidence and inferences that tend to support the finding and disregards all evidence and inferences to the contrary. *See, id.; Weirich v. Weirich,* 833 S.W.2d 942, 945 (Tex. 1992)*;Roland v. State,* 989 S.W.2d 797, 799(Tex. App.—Fort Worth 1999, no pet.). If there is more than a scintilla of evidence to support the finding, the claim is sufficient as a matter of law, and any challenges go merely to the weight accorded the evidence. *See Trimble v. Protective & Reg. Service*, 981 S.W.2d at 217; *Roland v. State,* 989 S.W.2d at 800. There is some evidence when the proof supplies a reasonable basis on which reasonable minds may reach different conclusions about the existence of a vital fact. *See Roland v. State,* 989 S.W.2d at 800. In reviewing the factual sufficiency of the evidence, an appellate court considers and weighs all the evidence, and sets aside the judgment only if it is so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. *See Trimble v. Protective & Reg. Service*, 981 S.W.2d at 217; *In Re J.N.R.*, 982 S.W.2d 137, 143 (Tex. App.—Houston [14th Dist.] 1998, no pet.).

Without findings of fact and conclusions of law, we must presume that the trial court resolved all questions of fact in support of the judgment. *See Oak v. Oak*, 814 S.W.2d 834,838 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd); *Pierson v. GFH Financial Services Corporation,* 829 S.W.2d 311, 314 (Tex. App.—Austin 1992, no pet.). We review the record to determine if any evidence supports the judgment and concomitant implied findings, considering only the evidence favorable to the issue and disregarding all evidence or inferences to the contrary. *See id.*

EVIDENCE

At appellant's hearing for court-ordered temporary mental health services, Dr. Douglas Samuels testified as an expert witness for the State. Based on his evaluation of appellant and based on a reasonable degree of medical certainty, Dr. Samuels diagnosed appellant as suffering from chronic schizophrenia. The doctor testified that, as a result of his condition, appellant would be likely to cause harm to himself and others and he recommended that appellant be committed for treatment at Rusk State Hospital.

To support his opinion and recommendation, Dr. Samuels testified, based on his interview with appellant, his review of appellant's chart[1], and conversations with the treatment team at Harris County Psychiatric Center (H.C.P.C), that appellant had threatened suicide prior to his admission to H.C.P.C., had threatened to jump from a very high porch, had threatened to try to conduct electricity from electrical sockets into himself, and had threatened homicide. Dr. Samuels testified that appellant was paranoid, hallucinatory, and refused all treatment. Dr.Samuels stated that appellant would require several weeks of hospitalization for his condition to stabilize.

Robert Anderson, appellant's younger brother, testified at the hearing. Anderson testified that he, the appellant, and a wheelchair-bound man, Joey, lived together in Anderson's residence. Anderson stated that he observed troubling behavior that caused him to seek the

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[1] The trial record also contains a document from Dr. K.J. Krajewski, an examining physician at H.C.P.C., entitled "certificate of medical examination." This document indicates that appellant suffered from a psychotic mental state requiring inpatient care. The trial record contains an additional "certificate of medical examination" signed by Dr. D. Rocha as examining physician. Dr. Rocha indicated that appellant was likely to cause harm to himself or others as evidenced by his threats to kill himself and others, combative behavior at the hospital requiring seclusion, disorganized behavior, poor self care, noncompliance, poor insight and failed outpatient treatment. Also present in the trial record is a document entitled "Harris County Psychiatric Intervention Screening Form," wherein a clinician at H.C.P.C. noted that appellant's symptoms included: diabetes (untreated due to appellant's noncompliance), possible cocaine usage, threats to harm himself by playing with electrical sockets, threats to jump off a very high porch, threats to harm others by beating them to death, depression, frequent crying, lack of appetite, sleep deprivation (appellant "jumps in his room all night and/or screams"), poor grooming, agitation, hallucinations, nonsensical conversation, and concern with the "Nazi population."

commitment of appellant: appellant physically assaulted Joey on three occasions without provocation; appellant hit Joey in the face on more than one occasion; appellant accused Joey of sexual abuse of Anderson's children, which Anderson knew to be untrue; appellant accused Joey of "being with the Nazis;" appellant accused Joey of "bringing in evil spirits;" appellant allowed his blood sugar to elevate and refused to go to the hospital; and once, when taken to the hospital by ambulance for treatment, took a taxi home without seeking medical attention.[2]

ANALYSIS

Appellant contends that the State did not prove by clear and convincing evidence that he was likely to cause serious harm to himself. He argues that there is no evidence in the record of any recent overt acts or evidence of a continuing pattern of behavior that would support this finding. We disagree.

We acknowledge that expert diagnosis alone is not sufficient to confine a patient for compulsory treatment. *See Mezick v. State*, 920 S.W.2d at 430 (citing *In Re J.S.C.*, 812 S.W.2d 92, 95 (Tex. App.—San Antonio 1991, no pet)). The expert opinions and recommendations must be supported by a showing of the factual bases on which they are grounded. *Id.*

After reviewing the evidence, we conclude the evidence is sufficient to support the trial court's finding that if appellant was not treated, he was likely to cause serious harm to himself. Dr. Samuel's testimony concerning appellant's threats of suicide, threats to harm himself through improper use of electricity, and refusal of treatment provides sufficient evidence that appellant was likely to cause serious harm to himself. *Mezick v. State*, 920 S.W.2d at 430;

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[2] The trial record contains two documents sworn to by Anderson. An "affidavit of applicant" signed by Anderson on July 9, 1998, states that on or about July 3, 1998, appellant attacked Joey; on or about July 4, 1998, Anderson heard appellant stating that the Nazis were here; appellant called his mother to ask about a house fire; appellant had been heard screaming and stomping the floor; appellant had been staying up all night; appellant had been standing outside in the sun; and appellant had brought a mattress into the kitchen to sleep on the floor. An "application for emergency detention" signed by Anderson states that appellant had threatened Anderson's children, had been hearing and seeing things, and was suicidal.

Hohenstein v. State, 723 S.W.2d 244, 246 (Tex. App.—Houston [1st Dist.] 1986, no pet.). Anderson's testimony, as supported by his affidavits in the trial record, concerning threats and acts of violence committed by appellant a few days prior to the hearing, as well as appellant's hallucinations and inability to adequately care for himself, tends to show that the appellant required hospitalization. *See id.; Taylor v. State*, 671 S.W.2d 535, 538 (Tex. App.—Houston [1st Dist.] 1983, no pet.). The evidence before the trial judge was sufficient to show recent overt acts or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to appellant or appellant's distress and deterioration of his ability to function. We find that the testimony of Dr. Samuels and Mr. Anderson established a continuing pattern of psychosis and dangerous behavior that tends to confirm the likelihood of serious harm to appellant. We conclude that the trial judge, as the fact finder, could have reasonably found, by clear and convincing evidence, that the appellant was likely to cause serious harm to himself, and thus that §574.034(a)(2)(A) has been satisfied.

Reviewing only the evidence in support of the trial court's finding, we determine that the evidence is legally sufficient to support the trial court's finding. *See Roland v. State*, 989 S.W.2d at 802; *Johnstone v. State*, 988 S.W.2d 950, 953 (Tex. App.—Houston [1st Dist.] 1998, no pet.). Furthermore, our review of the entire record does not indicate that the judgment is so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. *Id*. Because only one statutory criterion must be met under section 574.034(a)(2) to form the basis of the court's order for temporary mental health services, we are not required to decide whether there was sufficient evidence to satisfy §574.034(a)(2)(B) or (C), the court's second and third basis for commitment. *See Mezick v. State*, 920 S.W.2d at 431, (citing *L.S. v. State*, 867 S.W.2d 838, 844 (Tex. App.—Austin 1993, no pet.).

Accordingly, we overrule appellant's point of error and affirm the trial court's judgment.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed December 23, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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