SECOND DIVISION
April 28, 2015

No. 1-14-0987

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 08 CR 1800 |
| | ) | |
| NANCY LAROCHE, | ) | Honorable |
| | ) | Kevin M. Sheehan, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**O R D E R**

¶ 1 *HELD*: Circuit court's finding that defendant was in need of mental health service on an inpatient basis was not against the manifest weight of the evidence where defendant has a history of violent behavior due to her mental illness, has not adhered to a medication regimen in the past, and is currently assessed to be in need of additional treatment to mitigate her risk; court did not abuse its discretion in denying defendant's motion to reconsider the finding that led to her involuntary commitment.

¶ 2 Defendant, Nancy LaRoche, suffers from schizoaffective disorder. In 2008, while off her medication, she stabbed her daughter and two people on a bus and was charged with several offenses. Following a bench trial, she was found not guilty of attempted first degree murder and attempted aggravated vehicular hijacking, and found not guilty by reason of insanity of aggravated battery and aggravated battery of a child. Pursuant to section 5-2-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4 (West 2012)), the trial court ordered that defendant submit to an evaluation by the Department of Human Services (Department) to determine whether she was in need of mental health services on an in-patient basis. The Department submitted a report and recommendation to the court. The court then heard testimony from the psychiatrist who evaluated defendant, and ultimately agreed with the Department's recommendation to place defendant in the care of the Department for mental health services on non-secure inpatient basis. On appeal, defendant contends that the court's findings were against the manifest weight of the evidence and that the court abused its discretion in denying her motion to reconsider. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The record does not contain a report of the proceedings from defendant's criminal trial. We therefore rely on the report of the Department's psychiatrist in setting forth the facts which led to the charges in this case.

¶ 5 Defendant is a female in her 30s who has been diagnosed with schizoaffective disorder and schizophrenia. Her medical history shows that she suffers from auditory hallucinations for which she has been hospitalized on numerous occasions. At one point, defendant was prescribed an outpatient medication regimen, but she never faithfully adhered to it. As relevant here,

defendant stopped taking her psychotropic medication when she became pregnant and remained off her medication through the time of the incident that led to the charges.

¶ 6 On January 8, 2008, defendant could not sleep because she was thinking about hurting someone. The next day, her boyfriend went to get milk and left their baby in her care. Defendant stabbed the baby near the eye with a pair of scissors, then boarded a bus and stabbed two others with scissors as well. At the time, she heard voices saying "come here," "get the eyes," and "let me show you." The voices also told her "to get blood from the babies to save them."

¶ 7 The State charged defendant with attempted first degree murder, 3 counts of aggravated battery of a child, 11 counts of aggravated battery, and attempted aggravated vehicular hijacking. Defendant was found not guilty of attempted first degree murder and attempted aggravated vehicular hijacking, and not guilty by reason of insanity of all the other offenses. Pursuant to section 5-2-4 of the Code, the trial court ordered an evaluation by the Department to determine whether defendant was in need of in-patient mental health services.

¶ 8 A Department psychologist, Dr. Sreehari Patibandla, evaluated defendant and prepared a report that was submitted to the court on November 6, 2013. Dr. Patibandla opined that defendant was in need of mental health services on a non-secure inpatient basis. In reaching his conclusion, he relied on previous Department records, interviews with defendant, a 2010 psychiatric examination of defendant by Dr. Daniel Yohanna, and a Chicago Police Department report pertaining to the crimes. In his report, Dr. Patibandla noted defendant's many previous hospitalizations and the fact that she had not adhered to an outpatient medication regimen. Although he spoke positively of defendant's behavior since she was admitted to the Department's medical health center, he identified several problem areas which required treatment, specifically: (1) psychosis and mood disturbance; (2) treatment and medication non-compliance; and (3) lack

of professional support. Dr. Patibandla also identified two factors which "should decrease" the risk of defendant potentially harming herself or others: (1) durable remission of mood and psychotic symptoms, and (2) development of a comprehensive continuing care plan. With regard to the latter, he explained that defendant "will need to develop a plan to successfully manage her illness and symptoms both during and after her hospitalization."

¶ 9 At a hearing on December 17, 2013, Dr. Patibandla testified that defendant was previously treated by the Department after being found not guilty by reason of insanity on a different charge. At that time, she was placed in a secure setting; now, he recommended a non-secure setting. The difference between the two is essentially "the number of doors, number of times that patients *** are checked on."

¶ 10 Dr. Patibandla testified that defendant has been non-compliant with her medications in the past, but that she is currently compliant with treatment and is taking her medications. She is not currently a danger to herself or others and is not likely to be a danger "as long as she receives treatment." Dr. Patibandla testified that defendant has insight into her mental illness and that she receives evaluations with respect to her treatment plan.

¶ 11 On cross-examination, Dr. Patibandla stated that defendant has not been violent, argumentative, or aggressive during her time in the custody of the Department. He also acknowledged that, in his report, he noted a number of positive signs with respect to defendant's condition. He noted that she has been pleasant and cooperative, that she interacts easily and casually with peers and staff, that her mood is good and her affect is bright, that she is fully oriented, that her appetite and sleep are good, that she is able to independently and appropriately care for her grooming and hygiene, and that she actively participates in her treatment and is eager to obtain further privileges.

¶ 12 The court, after hearing the above testimony, found that defendant was presently suffering from a mental illness and was in need of mental health services on an inpatient basis. The court remanded defendant to the custody of the Department for a maximum period of 19 years.

¶ 13 On January 16, 2014, defendant filed a motion to reconsider. She argued that there was no evidence establishing that she was in continued need of inpatient mental health services: specifically, that there was no testimony indicating that she was reasonably expected to inflict serious physical harm upon herself or another. On March 11, 2014, the court denied defendant's motion.

¶ 14 Defendant timely appealed. We thus have jurisdiction pursuant to Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Feb. 6, 2013).

¶ 15 ANALYSIS

¶ 16 Defendant contends that the court's finding that she was in need of mental health services on an inpatient basis was against the manifest weight of the evidence. She argues that the State failed to satisfy its burden to demonstrate, through, clear and convincing evidence, that she was a threat to harm herself or someone else.

¶ 17 The State responds that the testimony and report of Dr. Patibandla established that defendant was in need of mental health treatment on an inpatient basis. The State notes that Dr. Patibandla testified that defendant was not a threat only to the extent that she receives the necessary treatment. The State argues that where defendant has a history of violent conduct and medication non-compliance, the court's finding that she was in need of inpatient treatment was not manifestly erroneous.

¶ 18 The treatment of an individual who has been acquitted of a crime by reason of insanity is governed by section 5-2-4 of the Code. *People v. Jurisec*, 199 Ill. 2d 108, 115 (2002). Section 5-2-4 provides that, after an acquittal by reason of insanity, "the defendant shall be ordered to the Department of Human Services for an evaluation as to whether [she] is in need of mental health services." 730 ILCS 5/5-2-4(a) (West 2012)). The Department is required to provide the court with a report of its evaluation within 30 days. 730 ILCS 5/5-2-4(a) (West 2012). The court must then hold a hearing under the Mental Health and Developmental Disabilities Code. 730 ILCS 5/5-2-4(a) (West 2012). The question for the court is whether defendant is: "(a) in need of mental health services on an inpatient basis; (b) in need of mental health services on an outpatient basis; [or] (c) a person not in need of mental health services." 730 ILCS 5/5-2-4(a) (West 2012).

¶ 19 In this case, the trial court found that defendant was in need of mental health services on an inpatient basis. This is defined by the Code as "a defendant who has been found not guilty by reason of insanity but who due to mental illness is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care." 730 ILCS 5/5-2-4(a-1)(B) (West 2012).

¶ 20 This court has noted that "[r]elevant factors in determining a person's dangerousness include evidence of (1) prior hospitalization with the underlying facts of that hospitalization and (2) defendant not taking [her] medication in the past and still not perceiving the value of continued medical treatment." *People v. Robin*, 312 Ill. App. 3d 710, 717-18 (2000). This court has also set forth "[f]actors that are not sufficient to sustain a finding of involuntary commitment includ[ing] violations of conditions of release and the possibility that defendant may not comply with the prescribed treatment." *Id.* at 718.

¶ 21 The burden is on the State to prove by clear and convincing evidence that defendant is subject to involuntary commitment based on her mental condition. *People v. Robin*, 312 Ill. App. 3d 710, 715 (2000); see also 730 ILCS 5/5-2-4(g) (West 2012). We will not reverse the trial court's determination unless it is manifestly erroneous. *Id.* That is, we will not reverse unless the opposite conclusion was clearly evident. *People v. Coleman*, 2013 IL 113307, ¶ 98.

¶ 22 The record shows that defendant has a history of hospitalizations for auditory hallucinations and has been unable to adhere to a medication regimen in the past. Significantly, defendant has engaged in violent behavior when she has stopped taking her medication. Dr. Patibandla acknowledged that defendant has shown several positive traits while in the custody of the Department. However, this progress has not overcome the several problem areas which he believes require continued in-patient treatment: specifically, defendant's psychosis and mood disturbance, her treatment and medication non-compliance, and her lack of professional support. Dr. Patibandla testified that defendant is not likely to be a danger "as long as she receives treatment." According to Dr. Patibandla's report, defendant still needs to show a durable remission of mood and psychotic symptoms and to develop a comprehensive continuing care plan. Put simply, there is still work to be done before Dr. Patibandla can say that defendant is not reasonably expected to inflict serious physical harm upon herself or another due to her mental illness. Under the circumstances, we believe that there was clear and convincing evidence that defendant was in need of mental health services on an inpatient basis.

¶ 23 Defendant maintains that the case at bar is analogous to *People v. Nunn*, 108 Ill. App. 3d 169 (1982), and *In re Schumaker*, 260 Ill. App. 3d 723 (1994). We disagree.

¶ 24 In *Nunn*, the respondent was charged with several felony offenses in connection with his abduction of a Chicago police officer. *Nunn*, 108 Ill. App. 3d at 171. He was acquitted by reason

of insanity, and the State petitioned for his involuntary admission to a mental institution. *Id.* At a hearing on the State's petition, three psychiatrists offered their opinions as to whether the respondent presented a danger to himself or others in the future; only one of the three believed that the respondent posed such a danger. *Id.* at 171-72. The basis for his opinion was that the respondent would lose control if he stopped taking his medication; he noted that respondent's abduction of the officer was the result of failing to take his medication. *Id.* at 171. Significantly, he found that respondent's illness would be controlled if he took his medication; he was aware of no evidence that respondent would resist taking his medication; and he acknowledged that respondent had lost his medication at the time of the abduction. *Id.*

¶ 25 The jury entered a verdict finding the respondent subject to involuntary commitment. This court reversed, finding "that the commitment order in question was not based upon the danger respondent posed because of his mental disorder but, rather, upon the fact that he might inflict harm if he failed to take prescribed medication." *Id.* at 174. We noted that there was no evidence to support the psychiatrist's prediction that the respondent would stop taking his medication and that, in any event, "the refusal to take medication is not sufficient to justify an order of commitment." *Id.* We concluded that "the State cannot successfully maintain that the potentially permanent institutionalization of respondent is justified by speculation that he may fail to take medication." *Id.* at 175.

¶ 26 In *Schumaker*, we again reversed an order of involuntary commitment based on a lack of sufficient evidence showing that the respondent posed a danger. In that case, the respondent told a social worker that "someone was trying to murder her husband and herself," and " 'that if she wasn't *** discharged within five days that she would try and kill someone.' " *Schumaker*, 260 Ill. App. 3d at 725. The social worker "described respondent's demeanor as very angry, loud, and

somewhat hostile"; however, she admitted that the respondent did not threaten her or anyone else in particular. *Id.* A psychiatrist who conducted an examination of the respondent diagnosed her with a mild form of bipolar affective disorder. *Id.* The psychiatrist testified that the respondent "was in need of hospitalization because only the structure and control provided by such a facility would 'keep her from exercising bad judgment detrimental to herself or other people.' " *Id.* at 726. He subsequently clarified that his allusion to "bad judgment" was a reference to the respondent's ability to obtain a job, support herself, and manage money. *Id.*

¶ 27 The trial court found that there was clear and convincing evidence that the respondent, as a result of her mental illness, was reasonably expected to inflict serious physical harm upon herself or another in the future. *Id.* 726-27. This court disagreed, noting that the psychiatrist was never asked to render an opinion on the respondent's dangerousness and "never testified that he believed respondent would act in a violent or hostile manner, but merely that she might exercise bad judgment possibly to the detriment of herself and others." *Id.* at 728. We stated that "an order of commitment must be supported by *explicit* medical testimony regarding the need for confinement." (Emphasis in original.) *Id.* We noted that the psychiatrist "offered no opinion, explicit or otherwise, that respondent posed a serious physical danger to herself or others as a result of her mental illness." *Id.*

¶ 28 We find *Nunn* and *Schumaker* distinguishable from the case at bar. Unlike *Nunn*, Dr. Patibandla was not merely speculating that defendant might not take her medication in the future; he was aware of defendant's demonstrated history of failing to adhere to a medication regimen and found that this was something that she needed to focus on in treatment. Also, unlike *Schumaker*, Dr. Patibandla offered an explicit opinion as to defendant's dangerousness: he testified that defendant is not likely to be a danger "as long as she receives treatment." We

emphasize that this is not a case where defendant is being confined merely because she might not take her medication in the future. Rather, it is a case where defendant is being confined because she currently requires *treatment* that will reduce her risk of harming herself or someone else. Defendant has already harmed several people as a result of her inability to adhere to, or non-compliance with, her medication regimen. It is imperative that she is afforded, and receives, the services and treatment necessary to address the problem areas identified by Dr. Patibandla before she is released back into society, for both her sake and the sake of the community. Under the circumstances, we cannot say that the trial court's finding that defendant was in need of mental health services on an inpatient basis was against the manifest weight of the evidence. The trial court therefore did not abuse its discretion in denying defendant's motion to reconsider, which challenged that finding. See *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 24 (noting that a trial court's decision to grant or deny a motion to reconsider is reviewed for an abuse of discretion).

¶ 29 For the foregoing reasons, we affirm the order of the circuit court of Cook County remanding defendant to the Department for mental health services on an inpatient basis.

¶ 30 Affirmed.