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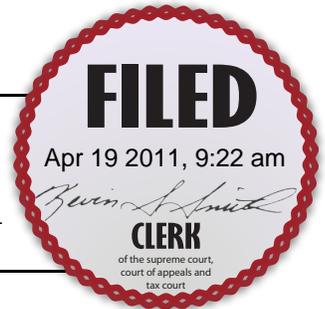
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE COMMITMENT OF T.S., )  
T.S., )  
Appellant-Respondent, )  
vs. )  
V.A. MEDICAL CENTER, )  
Appellee-Petitioner. )

No. 49A02-1009-MH-990

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gerald S. Zore, Judge  
Cause No. 49D08-1008-MH-35313

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April 19, 2011

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

T.S. appeals an order involuntarily committing him to a mental health facility as an inpatient.<sup>1</sup> He presents a single issue for review, namely, whether the evidence is sufficient to support the commitment order.

We affirm.

## FACTS AND PROCEDURAL HISTORY

In 2010, T.S. was a twenty-two-year-old member of the National Guard who lived in Coatesville. He had served in Iraq from 2008 to 2009 and, more recently, had attended Indiana University studying environmental science. In the summer of 2010, while on break from school, T.S. was living at home in Coatesville with his mother (“Mother”), her significant other, and two grandchildren over whom Mother had guardianship.

In August, Mother noticed a significant change in T.S.’s behavior. Specifically, he was “not sleeping much” and was “having racing thoughts and talking about religious things and he’s not normally religious, so it was quite a change, quite a change.” Transcript at 26. T.S. also talked extensively to his eight-year-old niece “about religious things and saying she was the key to solving all the problems of the world and he would be the new planet[.]” *Id.* at 27.

The following day, August 8, Mother called for an ambulance to take T.S. to the hospital for psychiatric treatment. T.S. was admitted to the Veterans Administration

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<sup>1</sup> Because T.S. was committed for ninety days or less, the commitment from which he appeals has ended. Ordinarily this matter would then be moot. While we generally dismiss cases that are deemed moot, such cases may be decided on their merits where they involve questions of great public interest that are likely to recur. *In re Commitment of Bradbury*, 845 N.E.2d 1063, 1064 n.1 (Ind. Ct. App. 2006) (citation omitted). The question of how persons subject to involuntary commitment are treated by our trial courts is one of great importance to society. *Id.* Therefore, we will address T.S.’s claim.

Hospital (“the V.A.”) in Indianapolis. Dr. Joshua Goergen, a psychiatrist, examined T.S. on his admission date. On August 9, the V.A. filed its application for emergency detention of T.S. The court ordered T.S. to remain in the V.A. hospital until a hearing on the application on April 16.

At the hearing on April 16, Dr. Goergen described T.S. at the time of admission to have been in an

acute manic state. He was very hyper-talkative with pressured speech. Very grandiose on flight of ideas. Was also delusional as well and saying numerous things with some religious preoccupations that he was—he was saying that he was a religious figure and that he was going to show us all the light and he talked a lot about oneness, you are I, I am you, and things of this nature. And he also went to his mother and call[ed] her—saying she was Luci[f]er, things of this nature.

Transcript at 8. In the succeeding eight days, Dr. Goergen examined T.S. five or six times and found T.S. to be

very intrusive; very, very talkative. He was saying that this past Sunday the world was going to end, something great was going to happen. He had to show us all the light before this occurred. If you didn’t leave the hospital, then the world would end and you’d never know. And this creates enlightenment. He also—he just continued to talk about oneness. Everything was one. He also was saying some very inappropriate sexual things, talking about ultimate orgasm, talking about or using the “F” word quite frequently. And he also was saying that he owned the hospital. He was saying he would like to be placed as a plant in the hospital so he could help heal all the patients there. He felt he could do good that way. Just delusional thinking at the time.

Id. at 9. Based on his observations, Dr. Goergen diagnosed T.S. with bipolar I disorder with psychotic features. T.S. and Mother also testified at the detention hearing.

Following the close of evidence, the trial court determined that T.S. was mentally ill and gravely disabled. Based on those determinations, the court entered an order

granting the V.A.'s application and involuntarily committing T.S. to the V.A. for ninety days. T.S. now appeals.

### **DISCUSSION AND DECISION**

T.S. appeals from the trial court's order committing him to the V.A. under Indiana Code Section 12-26-6-8. When reviewing a challenge to sufficiency of the evidence, we look to the evidence most favorable to the trial court's decision and all reasonable inferences drawn therefrom. J.S. v. Ctr. For Behavioral Health, 846 N.E.2d 1106, 1111 (Ind. Ct. App. 2006) (citation omitted), trans. denied. We will not reweigh the evidence or judge the witnesses' credibility. Commitment of Bradbury, 845 N.E.2d at 1065. If the trial court's commitment order represents a conclusion that a reasonable person could have drawn, the order must be affirmed, even if other reasonable conclusions are possible. Id. However, "the converse is also true." In re Commitment of G.M., 938 N.E.2d 302, 304 (Ind. Ct. App. 2010). "Even if the committing court does not base its determination upon the evidence which supports a conclusion of grave disab[ility], if such evidence exists and is clear and convincing, it is not necessary that we reverse the commitment order[.]" Id.

"An individual who is alleged to be mentally ill and either dangerous or gravely disabled may be committed to a facility for not more than ninety (90) days under [Indiana Code chapter 12-26-6]." Ind. Code § 12-26-6-1. In commitment proceedings, the petitioner is required to prove those elements by clear and convincing evidence. Ind. Code § 12-26-2-5(e). Clear and convincing evidence is an intermediate standard of proof greater than a preponderance of the evidence and less than proof beyond a reasonable

doubt. In re Christoff, 690 N.E.2d 1135, 1140 (Ind.1997). It requires the existence of a fact to be highly probable. Id.

“Mental illness” is defined in relevant part as “a psychiatric disorder that: (A) [s]ubstantially disturbs an individual’s thinking, feeling, or behavior; and (B) [i]mpairs the individual’s ability to function. The term includes mental retardation, alcoholism, and addiction to narcotics or dangerous drugs.” Ind. Code § 12-7-2-130. “Gravely disabled” is defined as “a condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual: (1) [i]s unable to provide for that individual’s food, clothing, shelter, or other essential human needs; or (2) [h]as a substantial impairment or an obvious deterioration of that individual’s judgment, reasoning, or behavior that results in the individual’s inability to function independently.” Ind. Code § 12-7-2-96.

Here, T.S. challenges the trial court’s determination that he was gravely disabled as defined by Indiana Code Section 12-7-2-96. Specifically, he contends that the evidence does not show a high probability that he had a substantial impairment or an obvious deterioration in his judgment, reasoning, or behavior, rendering him unable to function independently.<sup>2</sup> We conclude that the V.A. met its burden on this point, and T.S.’s arguments to the contrary are merely requests for this court to reweigh the evidence against him.

Dr. Goergen testified that T.S.’s bipolar disorder causes an obvious deterioration in judgment, reasoning, and behavior and that it affects T.S.’s ability to function

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<sup>2</sup> T.S. also contends that the V.A. did not show that he was unable to take care of his essential human needs under Indiana Code Section 12-7-2-96(1). We need not address that argument because we conclude that the V.A. met its burden of proof on the alternative ground discussed above.

independently. The doctor testified that, at the time of T.S.'s admission, he was "quite, quite disabled." Transcript at 12. "[H]is thought process was very impaired, you know, he was very delusional where he focused on these thoughts and ideas he had, he wasn't sleeping, he wasn't caring for himself in terms of his hygiene. As far as I know, he wasn't eating a lot either and was very preoccupied with these things that he was talking about." Id. at 14.

Since beginning inpatient treatment, including medication, Dr. Goergen said that T.S.'s moods had "improved, but [he] certainly wouldn't say [T.S.] is back to [himself]." Id. at 20. The doctor also testified that T.S. was taking his medication while an inpatient but would be gravely disabled without proper medication:

Q: Okay. Upon your examination, do you find [T.S.] to be gravely disabled?

A: Yes, without proper medication, certainly, yes.

Q: Has he refused to take the medication at any point while in the hospital?

A: When prompted and asked, he was taking medication, but he has repeatedly voiced that he would like to leave the hospital.

Q: Did he indicate whether or not he would take the medication if he left the hospital?

A: No, he was vague about that. He didn't commit either way, it seemed, whether he'd take medicine outside the hospital.

Id. at 14-15. In sum, Dr. Goergen recommended additional inpatient treatment for T.S., to be followed by a closely managed outpatient regimen.

Mother also testified that she believed T.S. needed additional inpatient treatment:

From what I've seen of my son and what I need to see more of with my son, I would like him to stay inpatient one or two more weeks—sorry—and I would like him to continue certainly taking his meds because I do not think he realizes what happened. And, you know, it runs in our family really badly.

Id. at 29. When asked, “if [T.S.] were to be discharged from the hospital after he’s inpatient, would he be able to come back and live at home with you[,]” Mother replied “[a]bsolutely.” Id. at 32. But Mother’s response was based on T.S.’s continued inpatient treatment. She also testified about her initial concern, on the day of his admission, about T.S. being around her grandchildren. When asked whether she was still concerned, she replied: “I have not talked to [T.S.] in over twenty-four hours, so I really don’t know if things have changed. But when I talked to him last, I still thought he was having a little bit of flight of ideas. I still felt he needed more time.” Id. at 35.

T.S. also testified at the hearing. When asked about his condition, T.S. testified, “I feel like I have had a stream of conscientiousness [sic] just come straight through my mind and out my mouth” and that it was “very hard to hold back.” Id. at 39. He described the disease as follows:

I think bipolar disorder is really—it’s a relative thing. You can stand at the center of it and not be recognized as bipolar, but when you’re out to one of the edges of the bipolar disorder, manic depressive, people notice it and they you and it’s a relative, I see you, you see me thing.

Id. He then testified, “I feel like I am on the outer edge.” Id.

T.S. also explained why he had wanted to go to the hospital on the day he was admitted:

Because I realized I was in an ambulance and I was going to go anyway. But half the reason was I like hospitals. When I was born in a hospital, I figured I loved hospitals and I always wanted to work in a hospital. I

wanted to become a doctor and that's why I started biochemistry at IU, but I stopped—I stopped studying because an ex-girlfriend had broken up with me a year before and it was still on my mind. I was depressed and so I stopped wanting to be so stressed out over things, so I dropped my pre-med program and I just went to environmental science and that's just how it went.

Id. at 45-46. When asked whether he would continue to take his medication if he were discharged from the hospital, T.S. stated “I don't really have much of a choice, but I do have a choice, but I don't see why I wouldn't, because then I would just end up right back here again, wouldn't I?” Id. at 41.

This court has held that a concern about the risk of decompensation may be sufficient to show that an inpatient is gravely disabled. In re Commitment of G.M., 938 N.E.2d at 304. In that case, we affirmed an order of involuntary regular commitment, reasoning as follows:

[A] reasonable determination from the opinion of Dr. Thompson as set forth in his commitment petition and as he testified at the May 21, 2010[,] commitment hearing is that if G.M. is released to an unsupervised environment his history indicates that he will go off his prescribed medication, be unable to function independently and thus will relapse into his drug and alcohol addictions and exacerbate his paranoid schizophrenia.

Id. We held that the concern by the petitioning psychiatrist that the patient might relapse into his debilitating medical state if he were to be relapsed and went off medication was adequate proof of grave disability. Id.

Such is the case here. T.S.'s condition had improved between the date of his admission and eight days later on the hearing date. But the improvement was not complete, and he was equivocal about whether he would continue his medication after leaving the hospital. Further, Mother did not believe that T.S. had insight into his

disease. Dr. Goergen also stated that T.S. had “an element of insight” at his last exam but, given the diagnosis, “it’s hard to absorb, certainly.” Transcript at 19. The evidence shows a high probability that T.S., at the time of the hearing, had a substantial impairment to his judgment, behavior, or reasoning that rendered him unable to function independently.

Still, T.S. challenges the trial court’s conclusion. He points to his own testimony that he was compliant as an inpatient; actively participated in his treatment; ate, slept, and tended to his hygiene; and had insight into his disease. He also testified that he would indeed remain compliant with his treatment plan and take his medication if discharged. Those arguments amount to a request that we reweigh the evidence, which we cannot do. Commitment of Bradbury, 845 N.E.2d at 1065.

T.S. also argues that certain evidence of his behavior is evidence only of his mental illness, not of his grave disability. We cannot agree. Evidence of T.S.’s behavior upon admission is, indeed, evidence of his mental illness, but it also provides a baseline for determining whether he is gravely disabled. A review of T.S.’s testimony at the hearing shows that, despite eight days of treatment, he still had a type of stream-of-consciousness train of thought that he vocalized without filter. While his testimony was not inappropriate in the same manner as some of his statements upon admission were, nevertheless his testimony demonstrated the effect of the disease upon his judgment, behavior, and reasoning. As such, that evidence was relevant in determining whether he was gravely disabled.

Finally, T.S. challenges the V.A.'s reliance on "hearsay" from a Physician's Statement in appellant's appendix. In its brief, the V.A. did rely in large part on information contained in a Physician's Statement. T.S. is correct that inadmissible hearsay may not be considered in commitment proceedings.

The official court record may include evidence from prior hearings, as well as past and present applications for emergency detention, reports following emergency detention, petitions for involuntary commitment, and orders of commitment. When documents in the record contain otherwise inadmissible hearsay, however, that information cannot properly be used as substantive evidence to support a commitment.

M.M. v. Clarian Health Partners, 896 N.E.2d 90, 95-96 (Ind. Ct. App. 2005). But we need not determine whether the V.A. relied on inadmissible hearsay in the Physician's Statement cited in its Appellee's Brief. The testimony of witnesses at the commitment hearing is sufficient to support the trial court's commitment order.

Affirmed.

ROBB, C.J., and CRONE, J., concur.