

## RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0995-15T2  
A-0996-15T2

IN THE MATTER OF THE  
COMMITMENT OF W.K.

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IN THE MATTER OF THE  
COMMITMENT OF L.R.

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Argued November 10, 2016 – Decided March 27, 2017

Before Judges Alvarez and Manahan.<sup>1</sup>

On appeal from a Municipal Court of New  
Jersey, Docket Nos. CC-174-15 and Docket No.  
CC-366-15.<sup>2</sup>

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<sup>1</sup> Hon. Carol E. Higbee participated in the panel before whom this case was argued. The opinion was not approved for filing prior to Judge Higbee's death on January 3, 2017. Pursuant to R. 2:13-2(b), "Appeals shall be decided by panels of 2 judges designated by the presiding judge of the part except when the presiding judge determines that an appeal should be determined by a panel of 3 judges." The presiding judge has determined that this appeal shall be decided by two judges. Counsel has agreed to the substitution and participation of another judge from the part and to waive reargument.

<sup>2</sup> This direct appeal to the Appellate Division from an order entered by a municipal court judge is permitted pursuant to N.J.S.A. 30:4-27.15, and the definition of "court" contained in N.J.S.A. 30:4-27.2(f), as Superior Court or municipal court.

Stanley Shur, Assistant Deputy Public Defender, argued the cause for appellants W.K. and L.R. (Joseph E. Krakora, Public Defender, attorney; Mr. Shur, on the briefs; Lorraine Gormley-Devine, Assistant Deputy Public Defender, on the brief).

Michael M. Mulligan, Salem County Counsel, attorney for respondent State of New Jersey in A-0995-15 (Mr. Mulligan, on the statement in lieu of brief).

John Anthony Alice argued the cause for respondent State of New Jersey in A-0996-15 (Mr. Alice, on the brief).

PER CURIAM

In these back-to-back appeals, consolidated for purposes of this opinion, L.R. appeals from an August 28, 2015 order, and W.K. appeals from a September 11, 2015 order, continuing their respective involuntary civil commitment pursuant to Rule 4:74-7.<sup>3</sup> L.R. and W.K. both argue the State failed to prove by clear and convincing evidence that they were in continued need of involuntary commitment. We agree and reverse.

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<sup>3</sup> Although L.R. and W.K. have since been released after entry of these orders, our courts generally consider appeals challenging civil commitment because of the importance of the committee's liberty interest and the likelihood of repetition of error that will escape review. See In re Commitment of N.N., 146 N.J. 112, 124 (1996); In re Commitment of T.J., 401 N.J. Super. 111, 118 (App. Div. 2008). Thus, the court should decide the issue of the propriety of ordering involuntary commitment "because it implicates a committee's constitutional right to liberty[.]" In re Commitment of G.G., 272 N.J. Super. 597, 600 n.1 (App. Div. 1994).

L.R. was admitted to Hampton Behavioral Hospital on August 13, 2015. At a hearing on August 28, 2015, the psychiatrist, who testified at the hearing on behalf of the State, diagnosed L.R. with schizophrenia.<sup>4</sup> When asked if L.R. posed a danger to herself, others or property, the doctor stated, "[n]ot at this point because she is in an environment where, you know, [she is] being supervised and [she is] getting medication[, ] so not at this point." Adopting the doctor's recommendation, the trial court entered an order for continued involuntary commitment. L.R. was discharged from Hampton Hospital, however, prior to the next scheduled hearing for September 11, 2015.

W.K. was admitted to Hampton Behavioral Hospital on August 7, 2015. A review hearing was held on September 11, 2015. At the hearing, W.K.'s treating psychiatrist was the State's only witness. The doctor testified that W.K. suffers from schizophrenia. In support of his recommendation for continued commitment, with authorization to transfer to a long-term facility, the doctor further testified that W.K. would be a danger to himself if released because of W.K.'s inability to obtain shelter. Based on this testimony, the trial court entered an

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<sup>4</sup> The State's brief incorrectly identifies the testifying psychiatrist as the psychiatrist who testified on behalf of the State in the companion case involving W.K.

order for continued commitment and W.K. was transferred to Ancora Psychiatric Hospital. At the next scheduled hearing, W.K. was placed on Conditional Extension Pending Placement (CEPP) status. W.K. was thereafter discharged to his sister's home.

On appeal, both L.R. and W.K. argue that the record developed at their hearings did not support an order of commitment. Regarding L.R., the State agrees the record was inadequate to support the State's request for continued commitment. Regarding W.K., no opposition was filed by the Salem County Counsel.

The scope of appellate review of a trial court's decision in a commitment proceeding is extremely narrow. In re Commitment of J.P., 339 N.J. Super. 443, 459 (App. Div. 2001) (citing State v. Fields, 77 N.J. 282, 311 (1978)). The trial court's "determination should be accorded 'utmost deference' and modified only where the record reveals a clear abuse of discretion." Ibid. "The appropriate inquiry is to canvass . . . expert testimony in the record and determine whether the lower courts' findings were clearly erroneous." In re D.C., 146 N.J. 31, 58-59 (1996) (citing Fields, supra, 77 N.J. at 311).

A court can continue an individual's temporary involuntary commitment if it finds "by clear and convincing evidence that the patient needs continued involuntary commitment[.]" N.J.S.A. 30:4-27.15(a). "Clear and convincing evidence is evidence that produces

'a firm belief or conviction' that the allegations are true; it is evidence that is 'so clear, direct and weighty and convincing' that the factfinder can 'come to a clear conviction' of the truth without hesitancy." In re Civil Commitment of R.F., 217 N.J. 152, 173 (2014) (quoting In re Jobes, 108 N.J. 394, 407 (1987)).

Involuntary commitment is warranted when there is clear and convincing evidence:

(1) the person is mentally ill, as that term is defined in N.J.S.A. 30:4-27.2(r); (2) the mental illness causes the person to be dangerous (a) to self or (b) to others or property, as those terms are defined in N.J.S.A. 30:4-27.2(h), (i); (3) the person is unwilling to be admitted to a facility for voluntary care; and (4) the patient needs care at a psychiatric facility or hospital because other available services will not meet the patient's needs.

[In re Commitment of M.M., 384 N.J. Super. 313, 337 (App. Div. 2006) (citing N.J.S.A. 30:4-27.2(m)); see also R. 4:74-7(f)(1).]

"Dangerous to self" as defined by statute means:

that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the

supervision and assistance of others who are willing and available. This determination shall take into account a person's history, recent behavior and any recent act, threat or serious psychiatric deterioration.

[N.J.S.A. 30:4-27.2(h).]

To justify an involuntary commitment, it is necessary to show more than the potential for dangerous conduct. In re Commitment of R.B., 158 N.J. Super. 542, 547 (App. Div. 1978). "[T]he risk of dangerousness that will warrant involuntary commitment must be relatively immediate[.]" N.N., supra, 146 N.J. at 130. There must be, in fact, a "substantial risk of dangerous conduct within the reasonably foreseeable future." In re S.L., 94 N.J. 128, 138 (1983) (quoting State v. Krol, 68 N.J. 236, 260 (1975)).

Notwithstanding our deference, we "must consider the adequacy of the evidence." M.M., supra, 384 N.J. Super. at 334 (citing D.C., supra, 146 N.J. at 58-59). "[W]e have not hesitated to reverse involuntary commitments when the record failed to contain clear and convincing evidence of a substantial risk of dangerous conduct within the reasonably foreseeable future." T.J., supra, 401 N.J. Super. at 119 (citations and internal quotation marks omitted).

We are mindful of the importance of the right to be free from unjustified confinement. See id. at 118-19. CEPP status is appropriate when "a patient otherwise entitled to discharge from

an inpatient facility cannot be immediately discharged due to the unavailability of an appropriate placement[.]” R. 4:74-7(h)(2). “An ‘appropriate placement’ . . . is a placement in a facility that will provide continuing support and assistance through the day to mentally ill people who are ‘incapable of survival on their own.’” G.G., supra, 272 N.J. Super. at 604 (quoting S.L., supra, 94 N.J. at 140).

Both L.R. and W.K. were involuntary committed based on the testimony of psychiatrists who opined that they would be unable to provide shelter and care for themselves outside the hospital. Without more, we deem this testimony fails to provide an adequate basis for a finding of dangerousness. See ibid.; see also In re Commitment of Raymond S., 263 N.J. Super. 428, 433-34 (App. Div. 1993). In the absence of the requisite demonstration of dangerous conduct within the reasonably foreseeable future, the orders for continued commitment of L.R. and W.K. were entered in error.

Finally, notwithstanding the concurrence of respondent in L.R. and the absence of opposition in W.K., predicated upon our independent review, we are convinced that the State failed to establish by clear and convincing evidence that L.R. or W.K. presented a danger to herself or himself, others or property as required by N.J.S.A. 30:4-27.15(a) and (c)(1)(b).

Reversed. The orders are vacated.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

A handwritten signature in black ink, appearing to be 'JMA', is written over the text 'file in my office'.

CLERK OF THE APPELLATE DIVISION