Cite as 2024 Ark. App. 225

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-293

NICOLAS LELIEUR APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered April 3, 2024 APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT [NO. 15PR-22-15] HONORABLE JERRY DON RAMEY, JUDGE AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Nicolas Lelieur appeals an order from the Conway County Circuit Court involuntarily admitting him to a receiving facility or program for alcohol- or drug-addiction treatment pursuant to Arkansas Code Annotated section 20-64-821(d) (Repl. 2018). This court previously remanded this case to the circuit court to settle and supplement the record. *Lelieur v. State*, 2023 Ark. App. 240 ("*Lelieur I*"). As in the first appeal, Lelieur argues the circuit court erred in finding clear and convincing evidence was presented that he was a danger to himself or others and in involuntarily committing him for drug-and-alcohol treatment. We affirm.

We must first determine whether this court has jurisdiction to hear this appeal. In *Lelieur I*, we remanded the case to settle and supplement the record with the final order of involuntary admission, which had not been included in the record; this omission has now been corrected, and the final order involuntarily committing Lelieur indicates that it was signed by the circuit

court on February 11, 2022, and filed of record on February 18, 2022. In Lelieur's notice of appeal and designation of record, which was filed on March 2, 2022, he states that he is appealing the order filed on February 11, 2022, committing him to twenty-one days at Harbor House in Hot Springs, Arkansas. While there was an order filed in this case on February 11, 2022, it was an order for immediate detention providing that a probable-cause hearing would be held on February 11, 2022; it did not contain the language that Lelieur was committed to Harbor House for twenty-one days. However, the final order of involuntary admission, which was signed on February 11 but not filed until February 18, contained the Harbor House language.

Rule 3(e)(ii) of the Arkansas Rules of Appellate Procedure–Civil (2023) provides that a notice of appeal shall "designate the judgment, decree, order or part thereof appealed from." While the filing of a notice of appeal is jurisdictional, our appellate courts have required only substantial compliance with the procedural steps set forth in Rule 3(e). *Emis v. Emis*, 2017 Ark. 52, 508 S.W.3d 886. A notice of appeal that fails to designate the judgment or order appealed from as required under Rule 3(e) is deficient, but such a defect is not necessarily fatal to the notice of appeal where it is clear which order the appellant is appealing, and the notice of appeal was filed timely as to that order. *Id.*

Here, Lelieur designated the order filed on February 11 for immediate detention in his notice of appeal instead of the final order of involuntary commitment filed on February 18. However, in his notice of appeal, Lelieur noted that he was committed to twenty-one days at Harbor House in Hot Springs, Arkansas, which is found only in the final order of involuntary commitment. Furthermore, Lelieur's notice of appeal, filed on March 2, 2022, was filed timely

as to the February 18 order. Thus, we hold that it is clear which order Lelieur is appealing, his notice of appeal substantially complies with the requirements set forth in Rule 3(e), and the error is not fatal to our appellate jurisdiction.

We also hold that this issue is not moot, although the twenty-one-day confinement most likely had long expired before Lelieur could appeal and have his case reviewed. When a case becomes moot before litigation can run its course, appellate courts have regularly refused to permit mootness to determine the outcome, particularly in cases of involuntary commitments. *Black v. State*, 52 Ark. App. 140, 915 S.W.2d 300 (1996).

On February 10, 2022, Lelieur's mother, Angel Cloud, filed a petition in the probate division of the Conway County Circuit Court to have Lelieur involuntarily admitted to an appropriate substance-abuse-treatment facility due to his drug addiction, specifically fentanyl. The circuit court determined that, after a hearing on February 11, 2022, and pursuant to Arkansas Code Annotated section 20-64-821(d), clear and convincing evidence proved Lelieur should be involuntarily committed to Harbor House in Hot Springs, Arkansas, for twenty-one days.

At the involuntary-commitment hearing, Cloud testified that Lelieur had overdosed on Narcan "probably about 20 times this year" and that he had been found lying in the street three or four months before the hearing. Cloud testified that Lelieur has an addiction that causes him to have a mental issue, that he hears voices, and that she is "scared for his life." She said that Lelieur, who lives with her, had used methamphetamine three times and that two days before the hearing, she had taken him to the hospital to "make sure that he was okay" because she had concluded that he was high. Cloud said that she also took Lelieur to Counseling

Associates, and the therapist had told her that Lelieur really needed to get into a rehabilitation program. She said Lelieur had come to her three days before the hearing and had told her he needed help, but when she took him to a facility to have him admitted, he changed his mind about treatment and refused to be admitted; she told him at that time "to go ahead and be homeless and if that's the life he wants to lead then that's the life he wants to lead." Cloud said that the last time she had seen Lelieur use fentanyl, which he inhaled with a straw and tin foil, was four months before the hearing, but she knew how he acted when he was using fentanyl, and he had been high three days before the hearing. She had also found a used needle in her yard three days before the hearing. She feared that Lelieur would get high, walk into the road, cause an accident, and be killed.

On cross-examination, Cloud testified that she knew Lelieur was using fentanyl when he was found in the road because that was the drug he used, and the five times she had found him, he had fentanyl and tin foil on him. She said that the week before the hearing, she had found straws and tin foil in Lelieur's pants pockets when she did his laundry, which she believed to be drug paraphernalia, given her experience with him. Cloud said that when Lelieur is high on fentanyl, he is delusional and talks to himself. When asked about methamphetamine, which had not been mentioned in the petition, Cloud said that Lelieur had told her that he had used that for the last three weeks. Cloud testified that Lelieur had attempted suicide, stating that he had burned his wrist two months before the hearing and had cut his wrists, but she admitted that she had not seen him deliberately burn himself in the last week and that the cuts were from at least a year ago. Although she asserted hospital reports had indicated Lelieur was high on drugs, Cloud did not have copies of any reports with her at the hearing. Cloud admitted that

Lelieur is able to feed himself and take care of himself; she also admitted that he understands the court proceedings. The State rested after Cloud's testimony.

Lelieur testified that all the allegations his mother had made were years old. He said that when Cloud took him to the hospital, he went in just to please her; he admitted that he had a "heavy" drug problem a couple of years ago, but he "got over it," and he denied leaving a needle in his mother's yard or using drugs the week before the hearing. Lelieur testified that he had not attempted to kill himself in the past thirty days, nor had he threatened to kill someone else in the past thirty days. He stated that he understands how to take care of himself, and he agreed that he is able to do that, stating that he was sure he could find a place to live.

On cross-examination, Lelieur testified that he does not have a drug of choice; that he had been under stress due to a romantic relationship, but he is fine; and that he is perfectly capable of getting a job and doing what he needs to do—he was just going through some hard times at the moment. Lelieur admitted that he had a drug problem in 2019 for six to eight months; he smoked fentanyl during that time, using tin foil to inhale the fumes.

After Lelieur's testimony, the circuit court found the State had met its burden of proof for involuntary commitment. The court stated that not only did it find Lelieur is a danger to himself or to others, but there was also testimony about past suicidal issues "which coincide with other elements that are equal today as they were at that time."

When the burden of proof is by clear and convincing evidence, our standard of review is whether the circuit court's finding is clearly erroneous; due deference is given to the superior position of the circuit court to evaluate the evidence. *Campbell v. State*, 51 Ark. App. 147, 912 S.W.2d 446 (1995). In *Black*, *supra*, this court stated:

> Clear and convincing evidence, which is a higher burden of proof than preponderance, has been defined as proof so clear, direct, weighty, and convincing that the fact finder is able to come to a clear conviction, without hesitation, of the matter asserted. It is that degree of proof that will produce in the trier of fact a firm conviction respecting the allegation sought to be established. *Maxwell v. Carl Bierbaum, Inc.*, 48 Ark. App. 159, 893 S.W.2d 346 (1995). In *McLain v. McLain*, 36 Ark. App. 197, 820 S.W.2d 295 (1991), we declared that clear and convincing evidence is evidence by a credible witness whose memory of the facts about which he or she testifies is distinct, whose narration of the details is exact and in due order, and whose testimony is so direct, weighty, and convincing as to enable the fact finder to come to a clear conviction, without hesitation, of the truth of the facts related.

52 Ark. App. at 142, 915 S.W.2d at 301.

Pursuant to Arkansas Code Annotated section 20-64-815(a) (Repl. 2018), any person having reason to believe that a person is homicidal, suicidal, or gravely disabled may file a petition for involuntary commitment with the clerk of the circuit court of the county in which the person alleged to be addicted to alcohol or other drugs resides or is detained. "Homicidal" refers to, for the purposes of this subchapter, "a person who is addicted to alcohol or drugs and poses a significant risk of physical harm to others as manifested by recent overt behavior evidencing homicidal or other violent assaultive tendencies." Ark. Code Ann. § 20-64-801(5) (Repl. 2018). "Suicidal" refers to "a person who is addicted to alcohol or other drugs and by reason thereof poses a substantial risk to himself or herself as manifested by evidence of, threats of, or attempts at suicide or serious self-inflicted bodily harm, or by evidence of other behavior or thoughts that create a grave and imminent risk to his or her physical condition." Ark. Code Ann. § 20-64-801(8). "Gravely disabled" refers to

> a person who, if allowed to remain at liberty, is substantially likely, by reason of addiction to alcohol or other drugs, to physically harm himself or herself or others as a result of inability to make a rational decision to receive medication or treatment, as evidenced by: (A) Inability to provide for his or her own food, clothes, medication, medical care, or shelter; (B) An inability to avoid or protect himself or herself from severe impairment or

injury without treatment; or (C) Placement of others in a reasonable fear of violent behavior or serious physical harm to them.

Ark. Code Ann. § 20-64-801(4).

While there was no evidence presented that Lelieur was homicidal, we hold that the State proved that he was gravely disabled and suicidal due to his drug use. Cloud's testimony, which the circuit court clearly credited over that of Lelieur's, indicated that Lelieur had overdosed numerous times on fentanyl, passing out in the street due to his drug use just a few months before the hearing. Just before the hearing, Cloud took Lelieur to a treatment center in an effort to obtain help for him—after he admitted to her that he has a drug problem and told her that he needs help—but when they arrived at the rehabilitation facility, he refused consent to enter treatment. While Lelieur postured that he would be able to care for himself, the circuit court was not required to believe that testimony, especially since Lelieur had been living with his mother, who was providing for his needs. As for being suicidal, while the cutting allegedly took place over a year old, Cloud testified that Lelieur had overdosed numerous times on fentanyl, even being found in the street unconscious. We cannot say under these facts that the circuit court was clearly erroneous and therefore affirm.

Affirmed.

MURPHY and BROWN, JJ., agree.

Beth Wright, Public Defender, for appellant.

Tim Griffin, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.