MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Civil Commitment of S.W.,

Appellant-Respondent,

v.

Community Health Network, Inc.,

Appellee-Petitioner.

February 2, 2024

Court of Appeals Case No. 23A-MH-1818

Appeal from the Marion Superior Court

The Honorable David Certo, Judge

Trial Court Cause No. 49D08-2304-MH-15746

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

[1] S.W. appeals his regular involuntary commitment, raising three issues for our review:

> 1. Did the trial court violate Interim Indiana Administrative Rule 14 by conducting S.W.'s commitment hearing remotely?
>
> 2. Did the trial court deny S.W. his right to confer with counsel?
>
> 3. Does sufficient evidence support S.W.'s involuntary commitment?

[2] Concluding the trial court did not err by finding good cause to conduct S.W.'s commitment hearing remotely, S.W. was not denied his right to confer with counsel, and sufficient evidence supports S.W.'s commitment, we affirm.

Facts and Procedural History

[3] On April 18, 2023, Community Health Network ("Hospital") filed an application for the emergency detention of S.W. According to the physician's report accompanying the application, S.W. suffered from "Schizoaffective disorder, Bipolar." *Appellant's App. Vol. 2* at 16. The report also alleged S.W. was dangerous to others and gravely disabled. Following an evidentiary hearing, the trial court ordered S.W. committed for a period not to exceed ninety days—a temporary commitment.

[4] About two months later, the Hospital petitioned to extend S.W.'s temporary commitment to a regular commitment. Dr. Ishrat Bhat submitted a physician's

statement specifying S.W. suffered from "Schizoaffective disorder bipolar type" and continued to "experience manic symptoms and psychosis." *Id.* at 48–49. These symptoms caused S.W. to make "poor decisions" which Dr. Bhat considered "dangerous [to S.W's] life and the li[ves] of others." *Id.*

[5] On June 22, 2023, the trial court scheduled a remote hearing on the Hospital's request for S.W.'s involuntary regular commitment. Then, on July 11, 2023—one day before his commitment hearing was to take place—S.W., through counsel, objected to the remote hearing. The Hospital argued, in part, S.W.'s objection was untimely.

[6] On July 12, 2023, the trial court conducted S.W.'s commitment hearing remotely. At the start of his hearing, S.W. renewed his objection to holding the hearing remotely. S.W. argued that the record did not support a finding of good cause, therefore holding the hearing remotely was inappropriate and violated his rights. The trial court concluded it "would be unwise and unsafe to transport [S.W.] to the courthouse for a hearing." *Tr. Vol. 2* at 14. More specifically, the trial court found good cause to hold the hearing remotely because: (1) a sheriff's deputy had been murdered by an inmate at Marion County's Community Justice Campus earlier that week which resulted in limited resources at the courthouse to ensure the safety of witnesses, litigants, lawyers, and court staff; (2) S.W. displayed a persistence on leaving the Hospital and could try to escape; and (3) S.W. had received "as needed" medication that morning because his behavior was "unmanageable." *Id.*

[7] During the hearing, Dr. Shilpa Guggali—S.W.'s attending physician at the Hospital—testified S.W. continues to suffer from chronic mental illness, specifically schizoaffective disorder bipolar type. Dr. Guggali explained S.W. has "auditory hallucinations of angels" telling him to inappropriately touch peers and hospital staff. *Id.* at 27. Dr. Guggali further expressed S.W.'s behavior is disorganized and "very abnormal," his mood is irritable, and he is subject to "excessive flight or fight ideas." *Id.* When asked if S.W. has insight into his mental illness, Dr. Guggali responded: "Absolutely not[.]" *Id.* at 28. According to Dr. Guggali, S.W. is gravely disabled and dangerous to others.

[8] S.W.'s mother, Angela, also testified in support of the Hospital's request for S.W.'s involuntary regular commitment. Angela detailed how S.W. had started a large fire in his parents' backyard in the middle of the night. She also described another instance where S.W. left the oven and all the stove burners on overnight. Angela conveyed S.W.'s condition had "gotten worse" in the six months prior to the hearing and she was concerned for his safety and the safety of others. *Id.* at 17.

[9] S.W. was the final witness at the hearing. Before S.W. testified, the trial court asked S.W.'s counsel: "[D]o you want a moment to confer with [S.W.] or are you ready to proceed, sir?" *Id.* at 42. S.W.'s counsel responded he was "ready to proceed." *Id.* at 43. Before being questioned, S.W. asked to briefly use the restroom. After a short break, the commitment hearing resumed, and S.W. described why he believed his regular commitment was unnecessary.

[10] Before announcing its decision, the trial court thanked S.W. for participating in the proceedings but shared "[S.W.] has repeatedly interrupted [the hearing] but not in a way that is violent or threatening in any fashion." *Id.* at 61. Thus, the trial court had muted S.W. at various times throughout the hearing because the trial court and parties "ha[d] to hear [the] witnesses." *Id.* The trial court ordered S.W.'s involuntary regular commitment.[1]

1. No Error in Finding Good Cause to Conduct S.W.'s Commitment Hearing Remotely

[11] S.W. first contends the trial court failed to make the requisite findings of good cause to conduct his commitment hearing remotely. In essence, S.W. argues the trial court violated Indiana Interim Administrative Rule 14 ("Interim Rule 14"). S.W.'s claim implicates two standards of review. First, we review what constitutes good cause under Interim Rule 14 *de novo*. *B.N. v. Health & Hosp. Corp.*, 199 N.E.3d 360, 363 (Ind. 2022). And second, we review a trial court's good-cause determination for an abuse of discretion. *Id.*

[12] Interim Rule 14 "explains when and how trial courts may conduct remote proceedings using telephone or audiovisual telecommunication." *Id.* In pertinent part, Interim Rule 14 states:

> A court must conduct all testimonial proceedings in person except that a court may conduct the proceedings remotely for all

[1] We commend Judge Certo for the level of care and respect he consistently displayed throughout such a delicate proceeding.

> or some of the case participants *for good cause shown* or by agreement of the parties. Remote proceedings must comply with constitutional and statutory guarantees.

Ind. Administrative Rule 14(C) (emphasis added). A trial court's authority to conduct remote proceedings under this rule, however, is not without limits. Without the parties' agreement, good cause must be shown to conduct a testimonial proceeding remotely.[2] *See* Admin. R. 14(C).

[13] Findings of good cause under Interim Rule 14 require "particularized and specific factual support." *B.N.*, 199 N.E.3d at 364.[3] That is, to conduct remote proceedings over a party's objection, a trial court "must offer something more than a one-size-fits-all, boilerplate pronouncement[.]" *Id.* "[G]ood cause requires something specific to the moment, the case, the court, the parties, the subject matter, or other relevant considerations." *Id.* at 364–65.

[14] Applying that standard here, the trial court did not abuse its discretion by finding good cause to conduct S.W.'s hearing remotely. Recall, the trial court grounded its finding of good cause in the unique circumstances at the Community Justice Campus following the killing of a sheriff's deputy; S.W.'s

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[2] A "testimonial proceeding" is a proceeding in which the judge receives sworn oral testimony. Admin. R. 14(A)(3). S.W.'s commitment hearing certainly fits this definition.

[3] Although our Supreme Court in *B.N.* analyzed a prior version of Administrative Rule 14, the Court explicitly noted the standard it set forth for finding good cause to proceed remotely over a party's objection would also apply to Interim Rule 14 once it became effective January 1, 2023. *See B.N.*, 199 N.E.3d at 364 (explaining findings of good cause under then "forthcoming Interim Rule 14" require "particularized and specific factual support").

flight risk; and S.W.'s "unmanageable" behavior the morning of the hearing. *See Tr. Vol. 2* at 14. Simply put, the trial court did not give a "one-size-fits-all, boilerplate pronouncement" our Supreme Court has cautioned as inadequate. *See B.N.*, 199 N.E.3d at 364 (concluding a trial court's generic reference—"due to the COVID-19 pandemic"—did not amount to a finding of good cause). Rather, the trial court's finding was based on "particularized and specific factual support." *Id.* Thus, we cannot say the trial court abused its discretion when it conducted S.W.'s commitment hearing remotely.[4]

2. S.W. Was Not Denied His Right to Confer with Counsel

[15] Next, S.W. asserts that by conducting his commitment hearing remotely, the trial court deprived him of "access to counsel and full participation in his defense." *Appellant's Br.* at 10. From S.W.'s perspective, the trial court violated Indiana Interim Administrative Rule 14(D) ("Interim Rule 14(D)") because he "had no means to communicate with his attorney" during his remote commitment hearing. *Id.* at 18. We disagree.

[16] Indiana Code Section 12-26-2-2(b) sets forth rights an individual with a mental illness has during, among other proceedings, a commitment hearing. One such right is the right to be present at the hearing. Ind. Code § 12-26-2-2(b)(3) (2007). Yet this right is subject to the trial court's right to remove the individual

[4] Because we conclude the trial court did not abuse its discretion when finding good cause to conduct S.W.'s commitment hearing remotely, we need not decide if the trial court erred by initially setting the commitment hearing to be conducted remotely, or if S.W.'s objection to the setting of a remote hearing was timely.

"if the individual is disruptive to the proceedings." I.C. § 12-26-2-2(b)(3)(A). Another right afforded to an individual is the right to be represented by counsel. I.C. § 12-26-2-2(b)(4). Interim Rule 14(D) further mandates that "[d]uring a remote proceeding, a court must provide the opportunity for confidential communication between a party and the party's counsel."

[17] Here, at the outset of S.W.'s hearing, the trial court informed S.W. an attorney had been appointed to represent him. *See Tr. Vol. 2* at 5 ("I want to emphasize how important it is for you to hear what I hear so that you can ask questions, assist your lawyer, so there aren't any secrets among us . . . I've appointed a lawyer to assist you. Mr. Leonard is here this morning for that purpose."). After the Hospital's final witness, the trial court asked S.W.'s counsel, while S.W. was present, "do you want a moment to confer with [S.W.] or are you ready to proceed, sir?" *Id.* at 42. S.W.'s counsel confirmed he was ready to proceed. S.W. then requested to use the restroom. S.W. did not request an opportunity to confer with counsel.

[18] Additionally, S.W. "repeatedly interrupted" during his hearing. *Id.* at 61. Although S.W.'s interruptions were not "violent or threatening in any fashion," the trial court nonetheless found it appropriate to mute him at various points so the parties and the trial court could hear the witnesses. *Id.* Because S.W. was being disruptive to the proceedings, the trial court had the right to remove him. *See* I.C. § 12-26-2-2(b)(3)(A). But the trial court chose not to do so. Instead, the trial court opted to temporarily mute S.W. on a few occasions. While muted,

S.W. was still present and able to see and hear the lawyers, witnesses, and trial court. We cannot say S.W. was denied his right to confer with counsel.[5]

3. Clear and Convincing Evidence Supports S.W.'s Commitment

[19] Lastly, S.W. claims the evidence was insufficient to support his commitment. When reviewing such a claim, we will affirm a trial court's determination if, "considering only the probative evidence and the reasonable inferences supporting it, without weighing evidence or assessing witness credibility, a reasonable trier of fact could find [the necessary elements] proven by clear and convincing evidence." *Civ. Commitment of T.K. v. Dep't of Veterans Affairs*, 27 N.E.3d 271, 273 (Ind. 2015) (quoting *Bud Wolf Chevrolet, Inc. v. Robertson*, 519 N.E.2d 135, 137 (Ind. 1988)). Clear and convincing evidence requires the existence of a fact to be "highly probable." *Civ. Commitment of A.O. v. Comm. Health Network, Inc.*, 206 N.E.3d 1191, 1193 (Ind. Ct. App. 2023).

[20] To properly commit S.W., the Hospital needed to show—by clear and convincing evidence—S.W. was (1) mentally ill; (2) *either* dangerous *or* gravely disabled; and (3) his commitment was appropriate. I.C. § 12-26-2-5(e). S.W. does not dispute he is mentally ill. And the trial court did not find S.W. was

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[5] Even if the trial court did err, such error was harmless. A trial court's error is harmless when "its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties." Ind. Appellate Rule 66(A). In light of S.W.'s active participation during his remote hearing, the lack of technological issues which may have adversely impacted him, and S.W.'s counsel's advocacy, the probable impact of any such error was sufficiently minor such that we conclude it did not affect S.W.'s substantial rights.

dangerous.[6] Rather, on appeal, S.W. challenges only the trial court's finding that he is gravely disabled.

[21] S.W. is "gravely disabled" if, due to his mental illness, he is in danger of coming to harm because he "(1) is unable to provide for [his] food, clothing shelter, or other essential human needs" or because he "(2) has a substantial impairment or an obvious deterioration of [his] judgment, reasoning, or behavior that results in [his] inability to function independently." I.C. § 12-7-2-96.[7]

[22] The Hospital presented sufficient evidence showing S.W. has "a substantial impairment or an obvious deterioration of [his] judgment," *i.e.*, schizoaffective disorder, bipolar type, which poses a danger of S.W. coming to harm because it impairs his "ability to function independently." I.C. § 12-7-2-96(2). Dr. Guggali testified S.W. suffers from hallucinations and severely lacks insight into his condition. Additionally, there were several examples of poor judgment, reasoning, and behavior that affected S.W.'s ability to function independently, such as setting a large fire in the middle of the night and leaving an oven and stove burners on overnight. S.W.'s reliance on his own testimony to argue otherwise is an invitation to reweigh evidence, which we may not do. *See*

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[6] The Hospital need only have proven S.W. was either dangerous or gravely disabled; it was not required to prove both elements to carry its burden of proof. *See Commitment of A.O.*, 206 N.E.3d at 1193.

[7] Because the statutory definition of "gravely disabled" is written in the disjunctive, the Hospital was only required to prove S.W. was gravely disabled under one of the two prongs. *See* I.C. § 12-7-2-96.

Commitment of T.K., 27 N.E.3d at 273. The Hospital presented sufficient evidence from which a reasonable trier of fact could find, by clear and convincing evidence, S.W. was gravely disabled.

Conclusion

[23] The trial court did not err in finding good cause to conduct S.W.'s commitment hearing remotely. S.W. was also not denied his right to confer with counsel during his commitment hearing. And sufficient evidence supports S.W.'s regular involuntary commitment. Accordingly, we affirm.

[24] Affirmed.

Altice, C.J., and Weissmann, J., concur.