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Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-0633-MR

G.P. APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PATRICIA MORRIS, JUDGE
ACTION NO. 24-H-000221-001

COMMONWEALTH OF KENTUCKY APPELLEE

AND

NO. 2024-CA-1319-MR

G.P. APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PATRICIA MORRIS, JUDGE
ACTION NO. 24-H-000221-001

COMMONWEALTH OF KENTUCKY APPELLEE

AND

NO. 2025-CA-0587-MR

G.P. APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PATRICIA MORRIS, JUDGE
ACTION NO. 24-H-000221-001

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, ECKERLE, AND MOYNAHAN, JUDGES.

MOYNAHAN, JUDGE: G.P. brings this appeal from an April 18, 2024, commitment hearing at which the jury returned a verdict finding that G.P. met the Kentucky Revised Statutes ("KRS") 202C.050 involuntary commitment criteria. G.P. now challenges the constitutionality of KRS Chapter 202C and KRS 504.110(2). G.P. additionally challenges the circuit court ruling on his motions for a directed verdict and to dismiss at the evidentiary hearing. After thoughtful consideration of the facts and law, we affirm the circuit court's commitment order.

BACKGROUND

In 2013, upon his discharge from the United States Navy, G.P.'s mental health problems made it difficult for him to hold steady employment. G.P. had delusions of government agents stalking him, and as a result, G.P. eventually became homeless. In the spring of 2018, his mother, R.P., invited G.P. to live with her. On April 23, 2018, G.P. called 911 twice. An officer responded to the first call and found no emergency; two hours later, another officer was sent to the apartment to find G.P. lying on the bathroom floor, and R.P. dead in the kitchen from 14 gunshot wounds. A .45-caliber handgun and magazine were found on the kitchen counter; each was laboratory tested and came back with results that matched G.P.'s DNA sample. G.P. told Kentucky Correctional Psychiatric Center ("KCPC") staff that he had killed his mother because she was conspiring against him.

Later in 2018, G.P. was indicted on one count of murder in the Jefferson County circuit court. Eventually, the circuit court found G.P. incompetent to stand trial, and unlikely to regain competency in the foreseeable future. The Commonwealth then filed a petition for involuntary commitment under KRS 202C. G.P. filed written objections to the petition arguing 21 Regular Session House Bill 310 ("HB 310") was unconstitutional on several grounds. The circuit court heard argument on August 30, 2021, and on September 15, 2021,

overruled G.P.'s objections and held the evidentiary hearing required by KRS 202C.030 that same day. The circuit court found the Commonwealth had presented sufficient evidence that G.P. was "guilty" of murder. On December 17, 2021, G.P. filed an original action in this court, arguing the provisions of HB 310 were unconstitutional. This court denied the writ, and G.P. appealed the denial of the writ and the Kentucky Supreme Court determined a writ was not the correct procedural measure in *G.P. v. Bisig*, 655 S.W.3d 128, 132 (Ky. 2022).

The Commonwealth then dismissed the KRS 202C petition and filed a KRS 202A.026 ("KRS 202A") petition for involuntary hospitalization. On April 10, 2023, a jury found that G.P. met the criteria for a 60-day commitment to Central State Hospital. In September 2023, G.P. was once again evaluated for competency and found incompetent to stand trial. On January 30, 2024, the circuit court held a competency hearing and reached the same conclusion. The Commonwealth then filed another petition for involuntary commitment under KRS 202C on February 13, 2024. The circuit court conducted the KRS 202C.030 evidentiary hearing on March 7-8, 2024, and reached the same conclusion as before: the Commonwealth proved by a preponderance of the evidence that G.P. is guilty of murder. In the April 7-8, 2024, KRS 202C.040 commitment hearing, the jury concluded that G.P. met the criteria for involuntary commitment. The circuit court issued a commitment order. The No. 2024-CA-0633-MR appeal was then

initiated. G.P. has since challenged the extensions of his involuntary commitment. G.P. challenges the constitutionality of KRS 202C on various grounds, including the applicability of KRS 202C to offenses that occurred before April 1, 2021, and for vagueness. We will address each argument in turn.

ANALYSIS

I. Constitutional Challenges Addressed by *R.L.P.*

First, our analysis begins with the challenged statutes and the issues decided by the recent Kentucky Supreme Court decision in *R.L.P. v. Commonwealth*, 733 S.W.3d 265 (Ky. 2026). KRS 202C was also challenged in *R.L.P.*, and this court found no constitutional deficiencies. We find no reason to depart from the logic of *R.L.P.* and thus view the following issues raised as settled law. Specifically, G.P. argues that the evidentiary hearing violates equal protection and due process as it allows an element of commitment to be decided by a preponderance of the evidence; that HB 310 was adopted in violation of § 46 and § 51 of the Kentucky Constitution; that KRS 202C requires an adjudication of an incompetent person's guilt, which also violates equal protection and due process; that KRS 202C violates due process and equal protection by creating a more restrictive commitment only for those found incompetent.

R.L.P. settles these constitutional challenges and finds that KRS 202C complies with both the requirements of the state and federal equal protection and

due process clauses. First, the Supreme Court in *R.L.P.* found that the evidentiary hearing required by KRS 202C, and the "preponderance of the evidence" standard do not violate the constitution because they represent an initial hearing or determination, rather than an element of commitment. *Id.* at 283. *R.L.P.* also noted that "[a]n initial hearing or determination with a lower standard of proof followed by a hearing with a heightened standard of proof is the typical procedure under our involuntary commitment statutes." *Id.* Next, the Supreme Court held that KRS 202C functions as a civil, rather than a criminal proceeding. *Id.* at 286. Notably, the United States Supreme Court has held that because the involuntary commitment of potentially dangerous individuals is not punitive, then it is not itself a criminal adjudication. *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997).

Turning to Kentucky Constitutional issues, our Supreme Court explicitly held that § 46 and § 51 were not violated under the circumstances and that HB 310 essentially passed unanimously by the legislative branch and was followed by an endorsement of the executive branch.[1] *R.L.P.*, 733 S.W.3d at 291.

[1] Section 46 requires every bill to be read "at length on three different days in each House, but the second and third readings may be dispensed with by a majority of all the members elected to the House in which the bill is pending." Section 51 states that "[n]o law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title[.]"

Finally, as in *R.L.P.*, the due process violation G.P. levies against KRS 202C – that it creates a "more restrictive commitment only for those found incompetent" – was not preserved for review. *Id.* at 287. G.P. acknowledges as much in his brief and requests palpable error review. *See* Kentucky Rules of Civil Procedure ("CR") 61.02. We find none, however, as G.P. "has failed to identify any rights that were not afforded to him that are provided to respondents under any other involuntary commitment statute." *Id.* at 288.

II. Ex Post Facto

Next, G.P. argues that the constitutional prohibition against *ex post facto* laws prevents the retroactive application of KRS 202C. U.S. Const. art. I, § 10 and Ky. Const. § 19(1). In *Buck v. Commonwealth*, the Supreme Court of Kentucky adopted the federal standard of determining whether a law is an *ex post facto* law. 308 S.W.3d 661 (Ky. 2010). An *ex post facto* law is any law which (1) criminalizes an act that was innocent when done; (2) aggravates or increases the punishment for a crime as compared to when the crime was committed; or (3) alters the rules of evidence to require less or different proof in order to convict than was necessary when the crime was committed. *Id.* at 664 (citing *Purvis v. Commonwealth*, 14. S.W.3d 21, 23 (Ky. 2000)).[2] The key inquiry is whether a

[2] The Kentucky rule is derived from the Federal rule established in *Calder v. Bull*, 3 U.S. 386, 1 L. Ed. 648 (1798).

retrospective law is punitive. *Id.* at 664-65 (citing *Martin v. Chandler*, 122 S.W.3d 540 (Ky. 2003)). To determine whether a law is punitive, the court must assess if the legislature "intended to establish a civil, nonpunitive, regulatory scheme" or "intended to impose punishment." *Id.* at 665. Both the United States and Kentucky Supreme Courts apply the same five-factor test to determine whether a civil, regulatory scheme is punitive in purpose or effect. The factors are "whether, in its necessary operation, the regulatory scheme" (1) has been regarded in our history and traditions as punishment; (2) promotes the traditional aims of punishment; (3) imposes an affirmative disability or restraint; (4) has a rational connection to a nonpunitive purpose; or (5) is excessive with respect to the nonpunitive purpose. *Buck*, 308 S.W.3d at 665 (citing *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009)).[3]

First, we must determine whether the legislature intended to create a criminal or civil statutory scheme when it enacted HB 310. We conclude it was the latter. As mentioned above, KRS 202C was included in the "economic security and public welfare" title of the KRS, and the statute lacked any criminal punishment objectives. Because the legislature intended to create a civil statutory scheme, we move on to the five-factor test to determine whether the "scheme is so

[3] The Federal rule is contained in *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d (2003).

punitive either in purpose or effect as to negate the [s]tate's intention to deem it civil." *Id*.

Whether involuntary commitment is a punishment historically is a question that requires us to analyze the initial legislative treatment of involuntary commitment. Even prior to enacting the Kentucky Mental Health Hospitalization Act (KRS 202A), Kentucky's involuntary commitment law revolved around treatment. Ky. Acts ch. 54 (1918), began the modern approach to involuntary civil commitment. The act is titled, in part, "to provide for the commitment, care, treatment" of incompetent persons. The act's stated purpose is to manage "the mental and physical training, the treatment and custody" of incompetent persons, as well as to promote "their happiness and wellbeing." This initial act, in addition to the historically consistent civil label given to involuntary commitment proceedings, shows a lack of punitive intent throughout Kentucky's history with involuntary commitment.

R.L.P. is once again binding on our determination of whether the statute serves the traditional purposes of punishment. The Kentucky Supreme Court found that "KRS Chapter 202C also serves neither the retributive nor deterrent objectives of criminal punishment. Its purpose is not retributive because it does not make a criminal conviction a prerequisite for commitment." and "KRS

Chapter 202C is also highly unlikely to serve as a deterrent to individuals who are eligible for commitment thereunder." *R.L.P.*, 733 S.W.3d at 286.

Because of the nature of involuntary commitment and the deprival of freedom, the disability and restraint factors weigh in favor of punitive intent. However, because the aims of the statute are public safety and rehabilitation of committed individual, we conclude that there is a rational connection to a nonpunitive purpose. In fact, in *R.L.P.*, the court recognizes the rehabilitative purpose of the statute, stating "its goals in relation to its involuntary commitment patients are first and foremost rehabilitative in nature, not penal. KCPC is meant to provide medication and therapy – in addition to basic necessities such as shelter, clothing, food, etc. – to its Chapter 202C patients with an aim towards those patients regaining competency." *Id.* at 286. The statute is not excessive with respect to the nonpunitive purpose because it does not impose disabilities or restraints beyond what is reasonably necessary to accomplish the stated goals of the statute. Confinement, while a burden, is necessary to ensure the treatment of the incompetent person, and the safety of the public given a finding that they pose a danger to themselves or others.

Having weighed all the factors, we hold that the application of KRS 202C in this instance does not qualify as an *ex post facto* law, because, following *R.L.P.*'s logic, the statute is more civil in nature and not punitive. Similarly,

because KRS 202C is more procedural than substantive, KRS 446.110 permits and warrants retroactive application.

III. Constitutional Vagueness

Finally, G.P. challenges KRS 202C under the void-for-vagueness doctrine. As the law is a civil one, not criminal, the standard for determining if the void-for-vagueness doctrine applies is whether the act is "so unintelligible as to be incapable of judicial interpretation." *Board of Trustees of Judicial Form Retirement System v. Attorney General of Commonwealth*, 132 S.W.3d 770, 778 (Ky. 2003). Additionally, this court has held "[f]or terms that are undefined by statute, the plain meaning is determined by reference to the common usage of the language used by the Legislature." *Ky. Heritage Land Conservation Fund Bd. v. Louisville Gas & Elec. Co.*, 648 S.W.3d 76, 85 (Ky. App. 2022). The standard of review applicable here is *de novo*, as this a pure question of law. *Davenport Extreme Pools & Spas, Inc. v. Mulflur*, 698 S.W.3d 140, 160 (Ky. App. 2024).

The previous version of KRS 202C.050(1)(c) specifically stated that a respondent will not be involuntarily committed unless there is a determination that: "[t]he respondent has a demonstrated history or recent manifestation of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations under KRS Chapter 202A or 202B prior to the commission of the charged crime." G.P. specifically challenges the phrases

"mental condition" and "demonstrated history of criminal behavior" under the void-for-vagueness doctrine. Thus, the issue is whether the phrases are unintelligible in meaning or application. First, the legislative intent is clear, the General Assembly sought to limit the population that qualifies for involuntary commitment to those who pose a danger to themselves, others, or both. Based on the subsequent reiterations written to replace KRS 202C, and the fact that the initial amendments were proposed to prevent first-time offenders from being ineligible for involuntary commitment, the circuit court's reading of the contested terms is certainly intelligible. *See Pannell v. Shannon*, 425 S.W.3d 58, 71 (Ky. 2014); *see also Kotila v. Commonwealth*, 114 S.W.3d 226, 238 (Ky. 2003), *abrogated on other grounds by Matheny v. Commonwealth*, 191 S.W.3d 599 (Ky. 2006). To interpret otherwise essentially invalidates the reason the statute was amended in the first instance. *See George v. Alcoholic Beverage Control Bd.*, 421 S.W.2d 569, 571 (Ky. 1967) ("[A] statute must not be interpreted so as to bring about an absurd or unreasonable result.").

Next, the plain meaning of the terms supports the circuit court's interpretation of KRS 202(C) at the time. We agree with the Commonwealth that a "mental condition" means a status of mental health which both causes incompetency and causes a potential risk of harm. This is especially clear when read in conjunction with KRS 504.100(1), which requires that a psychiatrist or

psychologist report on an individual's "mental condition" and formulate an opinion on incompetency before commitment proceedings can even commence. *See R.T. v. Commonwealth*, 583 S.W.3d 1, 4 (Ky. App. 2018) (citation omitted) (holding that other relevant parts of a legislative act can provide insight into legislative intent).

Finally, Appellant argues that a "demonstrated history of criminal behavior" cannot encompass the alleged crime which precipitated G.P.'s commitment proceedings because that clause must be read in conjunction with the "prior to the commission of the charged crime" modifier. We disagree. The "prior to" language immediately proceeds the phrase "substantial history of involuntary hospitalizations" and, as the Commonwealth argues, more logically relates to that phrase. Accordingly, we conclude that an interpretation of the phrase "demonstrated history of criminal behavior" that excludes the alleged crime which precipitated the commitment proceedings runs contrary to the legislative intent of the statute.[4] Thus, despite the lack of explicitly defined terms in KRS 202C, we hold that the law is sufficiently intelligible to be capable of judicial interpretation and does not encourage arbitrary or discriminatory application. Finally, to the extent that G.P. challenges the denial of his CR 41.02(2) motion to dismiss and his

[4] Appellant cites to our opinion in *H.M. v. Commonwealth*, No. 2022-CA-1016-MR, 2024 WL 1122572, at *10 (Ky. App. Mar. 15, 2024), to support his position that a finding of guilt in the 202C evidentiary hearing is "insufficient, standing alone, to show that [a] respondent has a demonstrated history of criminal behavior." The Kentucky Supreme Court, however, has recently rendered an opinion superseding ours in *H.M.*, and interpreted the language Appellant now relies upon to be dicta. We decline here to follow the reasoning set out by that dicta.

motion for a directed verdict at the April 18, 2024, commitment hearing, we discern no abuse of discretion or other basis to reverse. *See R.S. v. Commonwealth*, 423 S.W.3d 178, 184 (Ky. 2014). Based on our review of the record on appeal, the evidence presented at the KRS 202C.030 evidentiary hearing was sufficient to support the circuit court's findings by a preponderance of the evidence that G.P. engaged in the act of killing his mother, which is all that is required by KRS 202C.030. Furthermore, the circuit court did not err in denying G.P.'s motion for a directed verdict because there existed more than a "scintilla of evidence" that G.P. had demonstrated a history of criminal behavior, and it would not have been clearly unreasonable for the jury to find so. *Culver v. Commonwealth*, 590 S.W.3d 810, 812-13 (Ky. 2019); *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991).

CONCLUSION

Based on the foregoing, we affirm.

ALL CONCUR.

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