Affirmed and Opinion filed May 25, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00620-CV
NO. 14-99-00621-CV

NATHAN DALE CAMPBELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 727,765, and 729,925

O P I N I O N

This is an accelerated appeal from an extension of court-ordered mental health services under § 574.035 of the Texas Health & Safety Code. Nathan Dale Campbell, Appellant, argues that the trial court erred in ordering him to undergo an additional year of inpatient treatment at a state mental health facility. For the reasons set out below, the trial court's order is affirmed.

BACKGROUND AND PROCEDURAL HISTORY

On July 16, 1996, Campbell attacked his girlfriend and attempted to remove both of her eyes with a knife. As a result of the attack, she lost one eye and suffered permanent damage to the other. Campbell was arrested and charged in separate indictments with aggravated assault and aggravated kidnapping for the attack on his girlfriend. Because of the psychotic nature of his behavior, Campbell was admitted to the Psychiatric Treatment Unit at the Harris County Jail. While in custody, Campbell was evaluated by several doctors for the Harris County Mental Health Mental Retardation Authority, each of whom reached the conclusion that Campbell was insane at the time of the offense.

Campbell waived a jury trial and agreed to a consolidated bench proceeding on both indictments before the 180th Criminal District Court for Harris County, Texas. On April 28, 1997, the trial court found that Campbell was "not guilty by reason of insanity" of the offenses alleged in the indictments. Because the trial court also found that Campbell had committed an act of serious bodily injury to another person, it retained jurisdiction over him and, on June 25, 1997, he was automatically committed to Vernon State Hospital, pursuant to § 46.03 of the Texas Code of Criminal Procedure.

Campbell stayed at Vernon State Hospital's maximum security facility until April 1, 1998, when he was transferred to the less-restrictive Rusk State Hospital. On July 23, 1998, the trial court determined that Campbell continued to meet the criteria for involuntary commitment and ordered him to continue inpatient treatment at Rusk for an additional period of one year. On December 29, 1998, Rusk's superintendent, Harold R. Parrish, Jr., notified the trial court of his opinion that Campbell "no longer needed" inpatient care, and he recommended that Appellant's treatment regimen be modified from inpatient to an outpatient basis. On January 29, 1999, Appellant's counsel filed a motion to modify the terms of Campbell's commitment from inpatient to outpatient treatment. On February 4, 1999, the State filed an application for "Extended Court Ordered Mental Health Services" in Campbell's case.

Campbell remained at Rusk until February 12, 1999, when he was transferred to the Harris County Psychiatric Center to await court proceedings on the proposed modification in treatment. At the trial court's request, Campbell was evaluated by doctors at Vernon State Hospital in May of 1999. The issues

raised by both Campbell and the State were heard by the trial court on June 3, 1999. Each side presented expert testimony on whether Campbell met the criteria for continued court-ordered mental health services. Following the bench trial, the trial court entered an order for extended court-ordered mental health services, pursuant to § 574.035 of the Texas Health and Safety Code. In that order, the court found that Campbell was "mentally ill" and that he met the criteria for involuntary commitment. The court found further that, as a result of Campbell's mental illness, he was "likely to cause serious harm to others," that he was "experiencing severe mental and emotional distress," and was "unable to make a rational and informed decision as to whether or not to submit to treatment." Therefore, the court ordered Campbell to return to Rusk for another one-year period so that he could continue treatment. In its order, the trial court emphasized Campbell's need to participate in psychotherapy to address his condition. This appeal followed.

Campbell complains that the trial court's order for extended mental health services was erroneous, and he raises the following issues in this appeal: (1) the state relied upon a defective medical certificate which did not identify Campbell as either dangerous or deteriorating; (2) the evidence presented by the State did not include both expert and lay testimony, but expert opinion alone; (3) testimony that Campbell was dangerous was unsupported by evidence of any recent overt act or continuing pattern of behavior; (4) the State's application for extended court-ordered mental health services was invalid; (5) the State improperly shifted the burden of proof to Campbell; (6) the evidence offered by the State is legally and factually insufficient to support court-ordered mental health services; and (7) the failure to file a "Recommendation for Treatment" as required by Texas Health and Safety Code § 574.012 invalidates the order for extended mental health services. The State responds that the evidence presented to the trial court was sufficient to show, by clear and convincing evidence, that Campbell met the criteria for continued court-ordered treatment for his mental illness. The State also points out that Campbell failed to preserve error for purposes of an appeal on a number of the issues raised.

EXTENDED COURT-ORDERED MENTAL HEALTH SERVICES

In his sixth point of error, Campbell complains that the evidence offered by the State is both legally

and factually insufficient to support court-ordered mental health services. In that regard, Campbell argues that there is no evidence, or insufficient evidence, to show that he continues to meet the criteria for court-ordered hospitalization. The State responds that the evidence is both legally and factually sufficient to support Campbell's continued commitment for inpatient treatment.

In Texas, a person subject to court-ordered mental health services due to insanity is "entitled to treatment, to periodic and recurrent review of his mental condition, and to release at such time as he no longer presents a danger to himself or others." *State v. Turner*, 556 S.W.2d 563, 566 (Tex. 1977), *cert. denied*, 435 U.S. 929 (1978). A proceeding for extended commitment to a mental hospital is a civil matter and, as such, is governed by the "clear and convincing evidence" standard of proof. *See In re G.B.R.*, 953 S.W.2d 391, 395 (Tex. App.—El Paso 1997, no writ). Clear and convincing proof is defined as "the measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." *Id*. at 396 (citing *State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979)). While such proof "must weigh heavier than merely the greater weight of the credible evidence, there is no requirement that the evidence be unequivocal or undisputed." *G.B.R.*, 953 S.W.2d at 396 (citing *Addington*, 588 S.W.2d at 570).

A judge or jury may determine that a patient requires an extension of court-ordered mental health services on an inpatient basis only if the trier of fact finds, from clear and convincing evidence, that the following circumstances are present:

(1) the proposed patient is mentally ill; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed

> patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and
>
> (iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Section 5, Article 46.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

TEX. HEALTH & SAFETY CODE ANN. § 574.035(a) (Vernon Supp. 2000). A court may not renew an order under this section unless it finds that the patient meets the criteria for extended mental health services prescribed by §§ 574.035(a) (1), (2), and (3). *See* TEX. HEALTH & SAFETY CODE ANN. § 574.066(f) (Vernon 1992). To constitute clear and convincing in this context, the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the following: (1) the likelihood of serious harm to the proposed patient or others; or (2) the proposed patient's distress and the deterioration of the proposed patient's ability to function. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.035(e).

Here, Campbell contends that the evidence is legally and factually insufficient to show that he is mentally ill or that, because of his mental illness, he is likely to cause harm to another. Campbell complains further that there was no evidence, or insufficient evidence, that he is suffering from severe and abnormal mental, emotional, or physical distress, or that he is experiencing substantial mental or physical deterioration such that he is unable to make a rational and informed decision about whether or not to submit to treatment. Therefore, Campbell argues that the trial court erred in renewing his order for extended mental health services because the State failed to show that he met the criteria found in §§ 547.035(a) (1), (2), or (3). We review Campbell's challenge to the legal sufficiency of the evidence first.

STANDARD OF REVIEW: LEGAL SUFFICIENCY

In reviewing a "no evidence" complaint concerning the legal sufficiency of a mental health

commitment, we must review the evidence favorable to the court's judgment to see if there is more than a scintilla. *See Johnston v. State*, 961 S.W.2d 385, 388 (Tex. App.—Houston [1st Dist.] 1997, no writ). We consider only the evidence and inferences tending to support the fact finding, and we disregard all contrary evidence and inferences. *See Leitch v. Hornsby*, 935 S.W.2d 114, 118 (Tex.1996). If there is more than a scintilla of evidence to support the finding, then the no-evidence challenge fails. *See Niswanger v. State*, 875 S.W.2d 796, 798 (Tex. App.—Waco 1994, no writ) (citing *Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 928 (Tex. 1993)).

EVIDENCE PRESENTED AT THE HEARING

At the hearing on June 3, 1999, the State presented expert testimony from Dr. Fred Fason. Dr. Fason testified that, in his opinion, Campbell was suffering from a bipolar disorder in partial remission and was therefore mentally ill. In his written "medical certificate of examination" filed with the trial court, Dr. Fason opined that Campbell presented "a substantial risk of serious harm to both himself and to others if not immediately restrained." Dr. Fason also stated that Campbell would continue to suffer severe and abnormal mental, emotional, and physical distress and that he would continue to experience deterioration of his ability to function independently. Dr. Fason concluded further that Campbell was unable to make a rational and informed decision as to whether or not to submit to treatment. Dr. Fason based his opinions on Campbell's "gross denial as a defense [against] his hostility," his "rationalizations," and a "question of distortion of data input."

In his testimony at the hearing, Dr. Fason elaborated that, in his view, "Mr. Campbell would be a severe risk to the general public at large, particularly females." Dr. Fason pointed out that, in February of 1998, Campbell was observed to have "a pattern of hostile dependency upon women" which "remain[s] to be dealt with and if not resolved, place[s] the women who are close to him in his life at risk for harm." Dr. Fason testified that this pattern was "very consistent" with the explanation given for Campbell's attack on his girlfriend. In a written report which was admitted into evidence, Dr. Fason noted that Campbell was supposed to have received "long-term intensive psychotherapy" upon his transfer to the Rusk facility in April of 1998, as recommended by his therapist at Vernon State Hospital, Dr. Kelly Goodness, but that

Campbell did not receive this treatment. Dr. Fason commented that a March 12, 1999 interview at the Harris County Psychiatric Center revealed that Campbell was "still in denial as far as his having any anger at women." Dr. Fason opined as follows:

> Since the treating professionals at Rusk State Hospital never addressed [Campbell's] hostility towards women, did not address his 'affinity for rough sex' which Dr. Goodness at Vernon State Hospital believed was related to the crime, and did not follow up on Dr. Goodness's discussion of the necessity of confronting negative emotions with people we are close to . . . it is my opinion that the factors in Nathan Campbell's psyche, which led to the assault upon [his girlfriend] are still present. As it appears likely that Nathan would have killed [his girlfriend] if the neighbor had not interceded on her behalf, to release this individual with the determinants of the prior assault still operate in his psyche may well result in the actual murder of his next victim.

Dr. Fason also offered the following comment at the June 3, 1999 hearing: "I examined [Campbell] today and I saw the same factors present in the interview today in him that I saw present before that I think are factors that made him dangerous." Dr. Fason explained further:

> [Campbell] is in denial about what he's like inside. He's in denial about having any anger or any hostility at all. He has not faced the hostility and the anger that is within himself. He's in denial about his affinity for rough sex that he discussed with Dr. Goodness and how that relates to the incident that occurred with [his girlfriend]. He is in denial about accepting responsibility for what he does rather than externalizing blame on his quote, illness.

When asked if Campbell would continue to suffer severe and abnormal mental, emotional, physical distress, to continue to experience deterioration of his ability to function independently, and render him unable to make a rational and informed decision as to whether or not to submit to treatment, Dr. Fason again pointed to Appellant's problems with anger and hostility. Testimony from Dr. David Korman, who cared for Appellant at Rusk State Hospital, agreed that Campbell's unresolved "psychodynamic issues about his relationship with women" could be grounds for court-ordered mental health services.

The record also contains a report from Michael T. Jumes, Ph.D., who examined Campbell at the court's request at Vernon State Hospital on May 5, 1999. Dr. Jumes noted that, if released to outpatient treatment, "Mr. Campbell's vulnerability to develop chaotic relations with women is . . . problematic and

could precipitate regression or decompensation."[1] Dr. Jumes commented that, without conditions such as "mandatory participation in individual psychotherapy," and "mandatory psychiatric follow-up," there is "a good likelihood that [Campbell] will decompensate and again act in an irresponsible and irrational way, which renders him considerabl[y] dangerous."

Reviewing only the evidence in support of the trial court's findings, we hold that there is more than a scintilla of evidence to show that Campbell continues to meet the criteria for court-ordered mental health services. *See Johnston v. State*, 961 S.W.2d 385, 388 (Tex. App.—Houston [1st Dist.] 1997, no writ). Accordingly, Campbell's sixth point of error based on legal insufficiency is overruled.

STANDARD OF REVIEW: FACTUAL SUFFICIENCY

Campbell's sixth point of error also contends that the evidence is factually insufficient to support the trial court's order to extend his inpatient mental health services. To determine an "insufficient evidence" challenge to the factual sufficiency of a finding made by clear and convincing evidence, we review the record to decide if the trial court could reasonably find the fact was highly probable. *Johnston*, 961 S.W.2d at 388 (citing *Mezick v. State*, 920 S.W.2d 427, 430 (Tex. App.—Houston [1st Dist.] 1996, no writ)). Under this standard, we must consider whether the evidence was sufficient to produce in the mind of the fact-finder a firm belief or conviction as to the truth of the facts. *See Johnston*, 961 S.W.2d at 388 (citing *Mezick*, 920 S.W.2d at 430). In that regard, we will sustain an insufficient evidence point of error only if the fact-finder could not have reasonably found the fact was established by clear and convincing evidence. *See id.* (citing *Mezick*, 920 S.W.2d at 430).

In addition to the evidence recited above, the record contains testimony from Campbell's attending physician at the Harris County Psychiatric Center, Dr. Armando Heredia. Campbell stayed at the Harris County facility for four months while awaiting the hearing, from February through April of 1999. Dr. Heredia reported that, based on his examination of Appellant during that time, Campbell's mental illness

[1] Regression and decompensation are psychiatric terms. Regression means a return of the symptoms of psychosis, such as delusional beliefs and auditory hallucinations. Decompensation means to lapse into a psychosis.

was in full remission and that he made no attempt to harm anyone while there. Dr. Heredia opined therefore that Campbell did not meet the requirements for court-ordered mental health services. On cross-examination, however, Dr. Heredia conceded that he only examined Campbell while "[g]oing through [his] rounds," and that he had "no counseling sessions" with Appellant. Dr. Heredia also acknowledged that Campbell chose to avoid more than half of the therapy sessions recommended for him, and that Appellant had to be reminded to take his medication while at Harris County Psychiatric Center. Dr. Heredia could give no opinion on Campbell's "future dangerousness" if released on an outpatient basis.

The record also contains a discharge summary, dated February of 1999, from Dr. Korman of Rusk State Hospital, which notes that Campbell was "cooperative and compliant" and that he had no recent "incidences of agitation or grossly violent behavior." In addition, Appellant submitted a May 1999 report from his attending psychiatrist at Vernon State Hospital in 1997, Dr. Anthony Hempel, which concludes that Campbell no longer suffers from a major mental illness and was not "manifestly dangerous" at that time. In their written reports, both Dr. Korman and Dr. Hempel concluded that Campbell did not meet the requirements for court-ordered mental health services. However, Dr. Korman acknowledged, at the June 3, 1999 hearing, that Campbell's failure to remember his medication on his own while at the Harris County Psychiatric Center indicated that he was at "significant risk to have psychotic regression." Dr. Korman agreed that the "only way to absolutely guarantee" that Campbell will continue to take his medication is if he remains in a highly structured environment.

Based on the foregoing, as well as a review of the entire record, we find that the trial court could reasonably find that Campbell continued to meet the requirements for court-ordered mental health services. *See Johnston*, 961 S.W.2d at 388 (citing *Mezick*, 920 S.W.2d at 430). Campbell's sixth point of error based on factual insufficiency is therefore overruled.

OVERT ACT OR CONTINUOUS PATTERN OF BEHAVIOR

In his third point of error, Appellant complains that the trial court's findings were unsupported by evidence of a recent overt act or continuous pattern of behavior, as required under § 574.035(e). To support the extension of a court order for mental health services, Texas law mandates that, unless this

requirement is waived, the State must demonstrate either "a recent overt act *or* a continued pattern of behavior which tends to confirm" the patient's likelihood of causing serious harm to himself or others, or which demonstrates the patient's distress and deterioration. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.035(e) (emphasis added). As noted above, the State presented evidence that is both legally and factually sufficient to show that, at the time of the hearing, Campbell continued to exhibit a pattern of denial with regards to his anger and hostility toward women. Dr. Fason testified that, given Campbell's vicious attack on his girlfriend, Appellant's continued state of denial, and his complete lack of treatment while at Rusk State Hospital on the issue of his hostility, these are factors which continue to make him dangerous to others at the present time. We hold that, because the evidence demonstrated a continued pattern of behavior, the State satisfied the requirements of § 574.035(e). Therefore, Campbell's third point of error is overruled.

LAY TESTIMONY

In his second point of error, Campbell argues that the trial court's order is erroneous "in that evidence for court-ordered mental health services presented by the State did not include both expert and lay testimony, but expert opinion alone." Campbell insists that lay testimony regarding a patient's dangerousness is required before a court can order mental health services, and points to *Moss v. State*, 539 S.W.2d 936 (Tex. Civ. App.—Dallas 1976, no writ). Campbell claims that, because the State relied solely on testimony from Dr. Fason, there is insufficient evidence to support the court's order for extended mental health services.

At the outset, we note that the State introduced voluminous documentation in addition to the testimony from Dr. Fason. Further, Campbell's reliance on *Moss* is misplaced in this instance. A true reading of the opinion in *Moss* shows that it does not, as Campbell contends, require lay testimony. Under the holding in *Moss*, expert testimony is insufficient to support a finding in a mental health commitment proceeding if it "does not give the factual basis on which the medical opinions are based." *Moss*, 539 S.W.2d at 949. In this case, and unlike the one in *Moss*, Dr. Fason explained in detail the factual basis of his opinion that Campbell is mentally ill and continues to be a danger to others. Indeed, Dr. Fason

testified at length about Campbell's continued denial of the hostility and anger he has towards women and how those feelings, which have gone untreated, continue to pose a danger. Accordingly, for this reason, and for those detailed above, the testimony presented at the hearing was sufficient to support the trial court's order. *See In re R.S.C.*, 921 S.W.2d 506, 511 (Tex. App.—Fort Worth 1996, no writ) (finding that expert medical opinions were sufficient evidence in a commitment proceeding because those opinions were supported by a showing of the factual bases on which they were grounded). Campbell's second point of error is therefore overruled.

BURDEN OF PROOF

In his fifth point of error, Campbell contends that, by "failing to represent Rusk State Hospital which had requested modification of a pre-existing commitment, the State improperly shifted the burden of proof to the Appellant." Campbell points to the December 29, 1998 letter to the trial court from Robert H. Parrish, Rusk State Hospital's Superintendent, which expresses his opinion that Appellant no longer meets the criteria for court-ordered mental health services on an inpatient basis. Campbell insists that the State should have advocated Parrish's opinion, instead of filing its application for extended court-ordered mental health services. In response, the State contends that Campbell is precluded from presenting this argument because he failed to assert it at trial.

To preserve a claim for appellate review, the record must show that the complaint was made to the trial court by a timely request, objection, or motion which, among other things, "stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context." TEX. R. APP. P. 33.1(a); *see also Williamson v. New Times, Inc.*, 980 S.W.2d 706, 711 (Tex. App.—Fort Worth 1998, no pet.). A review of the record shows that, although Campbell filed several pre-trial motions and raised numerous objections during the hearing, no request, objection, or motion raised his current complaint about the burden of proof. We conclude therefore that this claim was not preserved for appeal.[2] *See*

[2] Moreover, based on the foregoing discussion of the legal and factual sufficiency of the evidence in this case, there is no showing that the State did not, or was not required to, meet its burden of proof under (continued...)

TEX. R. APP. P. 33.1(a). Campbell's fifth point of error is overruled.

DEFECTIVE MEDICAL CERTIFICATES

In his first point of error, Campbell complains that the State improperly relied on medical certificates which failed to conform with § 574.009 of the Texas Health & Safety Code. In particular, Campbell complains that the certificates introduced by the State were defective because they did not "identify him as either dangerous or deteriorating." Campbell maintains, therefore, that the trial court erred in refusing to dismiss the State's application for extended court-ordered mental health services. In response to this issue, the State contends that all of the medical certificates on file, along with their supporting documentation, were sufficient to comply with the statute.

Section 574.009 of the Texas Health & Safety Code provides that a hearing for court-ordered mental health services "may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patent during the preceding 30 days." TEX. HEALTH & SAFETY CODE ANN. § 574.009 (Vernon Supp. 2000). In addition, the certificates must conform with the following:

> (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:
>
> (1) the name and address of the examining physician;
>
> (2) the name and address of the person examined;
>
> (3) the date and place of the examination;
>
> (4) a brief diagnosis of the examined person's physical and mental condition;
>
> (5) the period, if any, during which the examined person has been under the care of the examining physician;
>
> (6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and
>
> (7) the examining physician's opinion that:
>
> (A) the examined person is mentally ill; and

---

[2] (...continued)
the applicable statutes. Campbell's contention to the contrary is without merit.

(B) as a result of that illness the examined person is likely to cause serious harm to himself or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of his ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a) (7) (B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

TEX. HEALTH & SAFETY CODE ANN. § 574.011. Campbell points out that two of the medical certificates filed by the State with its application for extended hospitalization failed to include the necessary opinions required under § 574.011(a) (7) and § 574.011(c). Campbell argues that, because of these defects, the trial court should have dismissed the proceedings and immediately released Appellant.[3]

The issue raised by Campbell on this point has been reviewed and rejected by the Texas Court of

[3] Campbell's objections to these alleged deficiencies in the medical certificates were made and overruled by the trial court at the hearing, and so this complaint is preserved for appeal. *See* TEX. R. APP. P. 33.1(a).

Appeals in Fort Worth. In the case of *In re D.T.M.*, 932 S.W.2d 647 (Tex. App.—Fort Worth 1996, no writ), the appellate court held that defects or deficiencies in the medical certificates were "not jurisdictional" and, therefore, the trial court had jurisdiction to hold the hearing. Accordingly, the trial court did not err in refusing to dismiss Campbell's case due to deficiencies, if any, in the medical certificates. *See Weller v. State*, 938 S.W.2d 787, 788–89 (Tex. App.—Beaumont 1997, no writ) (holding that the trial court did not error in refusing to dismiss a commitment proceeding on the grounds that the supporting certificates of medical examination were defective).

Moreover, it is well settled that "a person cannot be committed to a mental hospital solely on the basis of these medical certificates of examination; competent medical or psychiatric testimony is necessary." *Porter v. State*, 703 S.W.2d 840, 843 (Tex. App.—Fort Worth 1986, no writ) (citing *Munoz v. State*, 569 S.W.2d 642, 644 (Tex. Civ. App.—Corpus Christi 1978, no writ)). A court may base its findings on medical certificates alone only when the proposed patient has waived his right to cross-examine witnesses. *See In re D.F.R.*, 945 S.W.2d 210, 213 (Tex. App.—San Antonio 1997, no writ). It follows that, unless a proposed patient waives the right to cross-examine witnesses, the court must hear competent expert testimony and may not make its findings solely from the medical certificates. *See id.* Indeed, if there has been no waiver, and expert testimony is required, then the medical certificates are not even required to be introduced into evidence during the course of a commitment proceeding. *See K.L.M. v. State*, 735 S.W.2d 324, 325 (Tex. App.—Fort Worth 1987, no writ). Here, Campbell did not execute a written waiver of his right to cross-examine the witnesses and, therefore, the trial court was required to hear expert testimony. *See D.F.R.*, 945 S.W.2d at 213. Because the State was required to present expert medical testimony at Campbell's hearing, the deficiencies in the medical certificates, if any, did not harm Appellant. *See id.* (holding that, because expert testimony was required, deficiencies in the medical certificates were harmless). Campbell's first point of error is therefore overruled.

In addition, Campbell complains, for the first time on appeal, of defects in the medical certificate executed by Dr. Fason. A review of the record shows that no objections or motions were lodged with regard to Dr. Fason's medical certificate at any time before, during, or after the hearing. Because Campbell failed to object to the errors in Dr. Fason's medical certificate, if any, he has waived error on

this complaint. *See* TEX. R. APP. P. 33.1(a).

THE STATE'S APPLICATION

In his fourth point of error, Campbell complains that the State's February 1999 application for court-ordered mental health services was "invalid" for the following reasons: (1) it did not have two medical certificates attached, as required by § 574.066 Tex. Health & Safety Code; (2) was a "throw-down application" supported by stale facts not "reasonably related in time to the moment of filing"; and (3) the June 3, 1999 hearing on the February 1999 application was untimely under § 574.005 of the Texas Health and Safety Code.[4] A reading of the record shows that none of these claims were raised before the trial court for a ruling. Accordingly, Campbell has waived error on each of these complaints. TEX. R. APP. P. 33.1(a).

RECOMMENDATION FOR TREATMENT

In his seventh point of error, Campbell claims that the failure to file a "Recommendation for Treatment" as required by Texas Health and Safety Code § 574.012 invalidates the order for extended mental health services. Section 574.012 requires that, prior to a hearing on court-ordered mental health services, the commissioner shall designate a facility or provider in the county in which an application is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. TEX. HEALTH & SAFETY CODE ANN. § 574.012(a). "The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists." *Id*. at § 574.012(e). A review of the record shows that no objections or motions were lodged with regard to the failure, if any, to file a recommendation for treatment, at any time before, during, or after the hearing. Because Campbell failed to object to the lack of a recommendation for treatment, he has waived error on this complaint. *See* TEX. R. APP. P. 33.1(a).

---

[4] Moreover, the Texas Supreme Court in *State v. Roland*, 973 S.W.2d 665 (Tex.), *cert. denied*, 525 U.S. 935 (1998), has addressed the claim that an untimely hearing warrants a dismissal, and has rejected Campbell's view.

CONCLUSION

Because we overrule each of the issues raised by Campbell, the trial court's order is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed May 25, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

Do Not Publish – TEX. R. APP. P. 47.3(b).